



AGENDA
CITY OF LAKE WORTH BEACH
REGULAR CITY COMMISSION MEETING
BY TELECONFERENCE
TUESDAY, AUGUST 18, 2020 - 6:00 PM

ROLL CALL:

INVOCATION OR MOMENT OF SILENCE: led by Commissioner Scott Maxwell

PLEDGE OF ALLEGIANCE: led by Commissioner Omari Hardy

AGENDA - Additions / Deletions / Reordering:

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

A. [Proclamation in honor of Lineman Appreciation Day](#)

COMMISSION LIAISON REPORTS AND COMMENTS:

PUBLIC PARTICIPATION OF NON-AGENDAED ITEMS AND CONSENT AGENDA:

APPROVAL OF MINUTES:

A. [Special Meeting - June 30, 2020](#)

B. [Regular Meeting - July 7, 2020](#)

C. [Regular Meeting - July 21, 2020](#)

D. [Special Meeting -- July 28, 2020](#)

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

A. [Resolution No. 31-2020 – COVID-19 Federally Funded Subaward and Grant Agreement Z2079](#)

B. [Resolution No. 32-2020 – FY 2020 Justice Assistance Grant Application](#)

C. [Agreement with KVA, Inc., d/b/a KVA Power Protection & Control for a prefabricated control house](#)

D. [Consideration of settlement with Alide Cajuste in the amount of \\$35,000 \(inclusive of attorney's fees\)](#)

E. [Ratification of advisory board appointments and reappointments](#)

F. [Tenth Addendum to the Law Enforcement Service Agreement \(LESA\)](#)

PUBLIC HEARINGS:

- A. [Ordinance No. 2020-11 – Amend the City’s Code of Ordinances Chapter 23 Land Development Regulations](#)
- B. [Ordinance No. 2020-12 – Amend the City’s Code of Ordinances Chapter 23 Land Development Regulations](#)

UNFINISHED BUSINESS:

NEW BUSINESS:

- A. [Agreement with Racial Equity Institute to provide consulting services](#)
- B. [AT&T and City of Lake Worth Beach Settlement Agreement and Joint Use Pole Attachment Agreement](#)

CITY ATTORNEY'S REPORT:

CITY MANAGER'S REPORT:

ADJOURNMENT:

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

PROCLAMATION

WHEREAS, America is powered by thousands of independently owned and operated electric generating facilities known as power plants that generate electric energy; and

WHEREAS, these power plants are connected to a complex energy system called the electric grid that is comprised of over 5 million line miles of transmission and distribution lines that deliver energy to homes and businesses, churches, hospitals and schools across the country; and

WHEREAS, this system of electric lines is kept in a high state of readiness by 114,000 dedicated and skilled men and women known as electric line workers that work for all the independently owned and operated utilities across America; and

WHEREAS, electric line workers are a cohesive group that must work as highly effective teams in very hazardous situations under very rigorous conditions that respond to disaster areas to restore power to customer's homes and has been ranked as one of the 10 most dangerous jobs in which 30-60 people lose their lives annually; and.

WHEREAS Lake Worth Beach Electric line workers have demonstrated their dedication and skills and are hard working men and women who risk their lives daily working extremely dangerous situations to ensure that reliable electric energy is delivered to Lake Worth Beach homes and businesses.

WHEREAS it is most fitting and proper that the City of Lake Worth Beach set aside a special day to recognize and honor these dedicated professionals.

NOW, THEREFORE, I, Pam Triolo, Mayor of the City of Lake Worth Beach, Florida, by virtue of the authority vested in me, do hereby proclaim:

**August 18, 2020 as
LINEMAN APPRECIATION DAY**

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the City of Lake Worth Beach, Florida, to be affixed this 18th day of August, 2020.

Pam Triolo, Mayor

ATTEST:

Deborah M. Andrea, City Clerk

**MINUTES
CITY OF LAKE WORTH BEACH
SPECIAL CITY COMMISSION MEETING
BY TELECONFERENCE
TUESDAY, JUNE 30, 2020
IMMEDIATELY FOLLOWING THE ELECTRIC UTILITY MEETING**

The meeting was called to order by Mayor Triolo on the above date at 7:39 PM by teleconference from City Hall, 7 North Dixie Highway, Lake Worth Beach, Florida.

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

PLEDGE OF ALLEGIANCE: led by Commissioner Scott Maxwell.

PUBLIC HEARING:

- A. Ordinance No. 2020-08 – second reading – approve the establishment of a mixed use urban planned development for The Bohemian

City Attorney Ryan read the ordinance by title only:

ORDINANCE NO. 2020-08 – AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF LAKE WORTH BEACH, FLORIDA, AMENDING THE OFFICIAL ZONING MAP BY APPROVING THE CREATION OF A MIXED USE URBAN PLANNED DEVELOPMENT DISTRICT, LOCATED AT 1017 LAKE AVENUE, 101 SOUTH EAST COAST STREET, AND A PORTION OF 202 SOUTH EAST COAST STREET CONSISTING OF APPROXIMATELY 2.0359 ACRES AS MORE PARTICULARLY DESCRIBED IN EXHIBIT A, THAT IS LOCATED WITHIN THE TRANSIT ORIENTED DEVELOPMENT – EAST (TOD-E) AND ARTISANAL INDUSTRIAL (AI) ZONING DISTRICTS WITH A FUTURE LAND USE DESIGNATION OF TRANSIT ORIENTED DEVELOPMENT (TOD) THAT INCLUDES THE SPECIFIC DEVELOPMENT STANDARDS DESCRIBED IN EXHIBIT B; APPROVING A DEVELOPMENT OF SIGNIFICANT IMPACT; APPROVING A CONDITIONAL USE PERMIT; APPROVING DENSITY AND HEIGHT BONUS INCENTIVES THROUGH THE CITY’S SUSTAINABLE BONUS INCENTIVE PROGRAM AND TRANSFER OF DEVELOPMENT RIGHTS PROGRAM; APPROVING A MAJOR SITE PLAN FOR THE CONSTRUCTION OF A MIXED USE URBAN PLANNED DEVELOPMENT CONSISTING OF 200 RESIDENTIAL UNITS, A 3,619 SQ. FT. COMMERCIAL STRUCTURE, AND A FIVE STORY PARKING GARAGE; PROVIDED FOR SEVERABILITY, CONFLICTS AND AN EFFECTIVE DATE

Action: Motion made by Commissioner Maxwell and seconded by Vice Mayor Amoroso to approve Ordinance No. 2020-08 on second reading approving the establishment of a mixed use urban planned development for The Bohemian.

Mayor Triolo stated that this was the second reading of an ordinance to establish a mixed use urban planned development pursuant to section 23.3-25 of the City’s Land Development Regulations. She announced that the Commission had heard from staff

and the applicant at the first hearing and asked if staff or the applicant had anything to add or if the Commission had any questions for either.

Commissioner Robinson said that he looked forward to the project.

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

Noam Brown wrote in opposition to The Bohemian development.

Commissioner Hardy said that the impact of developments on neighboring areas should be considered and spoke in favor of the project.

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

UNFINISHED BUSINESS:

- A. Appeal of the Historic Resources Preservation Board's decision to approve the construction of a new single-family structure at 403 South M Street

Mayor Triolo read the title of the case into the record saying that this was an appeal by Dan Walesky on behalf of Royal Building Group, LLC, appealing the decision of the Historic Resources Preservation Board approving the construction of a new single-family structure with conditions at 403 South M Street. She stated the Commission had voted to continue the quasi-judicial hearing to hear an appeal pursuant to section 23.2-17 of the City's code of ordinances and under the City's code, the Commissioners would consider only the evidence presented at the HRPB meeting. She explained that the hearing would continue where it left off.

Mayor Triolo asked if there were any questions or comments on the procedure. No one had any questions or comments.

Mayor Triolo informed the Applicant that he could make his presentation, which could be no longer than ten minutes.

Dan Walesky, the Applicant, said that he was asking the Commission to appeal conditions 7 and 8 of the conditions of approval. He stated that he had not been able to build the home in a timely fashion after the first approval and spoke about the proposed design of the one-story three-bedroom home and the two new HRPB conditions. He said that the Board did not require a walkway, but still reduced the width of the driveway; he said that there were many examples of properties with 12' and wider driveways in the historic district. He reported that, when asked about the sidewalk, Mr. Waters commented that he could not get over the asymmetrical columns, which was the first time the issue was raised. He contended that staff said that the front porch configuration and front window were consistent with the Masonry Vernacular architectural style. Mr. Walesky stated in the Basis of Appeal that the Board amended conditions of approval were in contradiction with the City's Historic Preservation Design Guidelines (HPDG) portion on the Masonry Vernacular architectural style. He summarized that the front porch window and column configuration were approved on the original application. He explained that he had asked

the Board to approve the application as submitted or grant a continuance to allow him to bring evidence that the two issues were in compliance.

Mayor Triolo asked if any member of the public had submitted a public comment card.

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

Wes Blackman wrote in favor of the appeal.

Mayor Triolo asked if staff had any additional comments.

Abraham Fogel, Preservation Planner for Community Sustainability, stated that he would be able to screen share to answer any questions.

City Attorney Ryan clarified that the applicant had not clearly asked for a continuance at the HRPB meeting.

Mr. Walesky said that he had asked for a continuance to be more equipped if the application was not approved as presented.

Mayor Triolo recommended that the appeal should go back to HRPB for Mr. Walesky to do a full presentation.

Commissioner Hardy asked what the standard was to determine the outcome.

City Attorney Ryan gave a definition of arbitrary and capricious included evidence that the judge or officer who made the first decision failed to consider all of the evidence, to hear the relevant arguments, to consider reasonable alternative conclusions, to give a reasonable explanation for the decision reached or to reach an answer that logically relates to the evidence and arguments made, evidence of bias, vindictiveness, personal animosity, conflict of interest or incapacity may also demonstrate capriciousness.

Commissioner Hardy opined that HRPB did not behave arbitrarily nor capriciously.

Commissioner Robinson stated that in seeing the evidence, the applicant was reasonable and he disagreed with HRPB's judgment in the case.

Commissioner Maxwell said that the statutes regarding historic preservation were complicated for the average person. He asked why the project was brought back to a different board.

City Attorney Ryan explained that Mr. Walesky was not able to get a third extension for the project and although the HRPB had approved the project initially, new design guidelines had been adopted and there were new members on the HRPB in the time that elapsed.

Commissioner Maxwell stated that if all the aspects were looked at in context, the difference in opinion between the two boards was unreasonable. He said that he would vote in favor of the applicant.

Commissioner Hardy stated that the difference in opinion of the two boards was not evidence of anything and asked for City Attorney Ryan to read the definition of arbitrary and capricious again. He said that staff gave a presentation and the HRPB made a decision; the Commission would have to determine that the decision was arbitrary and capricious.

Commissioner Robinson said that the applicant appealed because he wanted to build his own design.

Vice Mayor Amoroso said that he agreed with Commissioners Maxwell and Robinson and would vote in favor of the applicant. He asked what the cost would be to go back to the HRPB.

Mayor Triolo stated that the historic preservation rules were changed to make it easier. She said that the applicant should be able to make a presentation to the HRPB as there was a misunderstanding about a continuance.

City Attorney Ryan said that there would not be a cost involved and that Mr. Walesky had a great presentation but could not include slides that had not been shown previously to the HRPB. She opined that there could be a different outcome if the applicant went back to the HRPB.

Commissioner Hardy stated that the Commission had to accept HRPB's decision and they had approved the project with conditions.

Commissioner Maxwell asked if there had been any reference in the backup to the symmetrical design of the columns.

City Attorney Ryan responded that there was not.

Commissioner Maxwell asked what would be gained by sending the issue back to the HRPB. He said that there were true purists in favor of historical preservation where the bar could be too high and the power of suggestion could have influenced the HRPB.

Commissioner Robinson stated that the Commission should be able to decide and not send the issue back to the HRPB. He said that the HRPB's decision was arbitrary and capricious.

Commissioner Hardy said that the Commission had limited power and was not allowed to question the judgment of the HRPB, only if they had acted arbitrarily and capriciously.

Mr. Walesky stated that staff did not recommend the change to the windows or the columns and the HRPB did not review any evidence nor discuss the historical context before making its decision.

Commissioner Maxwell stated that Mr. Waters made a comment about the columns that should have been included in the staff report. He asked City Attorney Ryan how the Commission should deal with the issue.

City Attorney Ryan replied that a vote to uphold the appeal would require a supermajority vote of four out of five in favor, a reverse would require a majority and would approve the

application without conditions 7 and 8 and remanding the issue would send it back to the HRPB.

Mayor Triolo said that she was more apt to agree with Commissioner Robinson because of Mr. Waters' comment. She stated that she was leaning towards agreeing with Mr. Walesky.

Mayor Triolo requested a motion, stating that under section 23.2-17 of the code, the Commission should approve, approve with modifications or disapprove the application and the considerations substantiating the decision should be outlined in the motion.

Action: Motion made by Commissioner Hardy to uphold the decision of the Historic Resources Preservation Board decision to approve the construction of a new \pm 2,267 square foot single-family structure at 403 South M Street with modifications to Conditions 7 & 8 as set forth in the Board's Development Order. **Motion died for lack of a second.**

Action: Motion made by Commissioner Hardy to remand the issue back to the HRPB. **Motion died for lack of a second.**

Action: Motion made by Commissioner Robinson and seconded by Commissioner Maxwell to reverse the decision of the Historic Resources Preservation Board decision to approve the construction of a new \pm 2,267 square foot single-family structure at 403 South M Street with modifications to Conditions 7 & 8 as set forth in the Board's Development Order.

Vote: Voice vote showed: AYES: Mayor Triolo, Vice Mayor Amoroso and Commissioners Maxwell and Robinson. NAYS: Commissioner Hardy.

ADJOURNMENT:

Action: Motion made by Vice Mayor Amoroso and seconded by Commissioner Hardy to adjourn the meeting at 9:08 PM.

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

Pam Triolo, Mayor

ATTEST:

Deborah M. Andrea, CMC, City Clerk

Minutes Approved: August 18, 2020

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

**MINUTES
CITY OF LAKE WORTH BEACH
REGULAR CITY COMMISSION MEETING
BY TELECONFERENCE
TUESDAY, JULY 7, 2020 - 6:00 PM**

The meeting was called to order by Mayor Triolo on the above date at 6:02 PM by teleconference from City Hall, 7 North Dixie Highway, Lake Worth Beach, Florida.

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

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

PLEDGE OF ALLEGIANCE: led by Commissioner Omari Hardy.

AGENDA - Additions/Deletions/Reordering:

Deborah Andrea, City Clerk, requested that New Business Item C be reordered to New Business Item A.

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

Vote: Voice vote showed: AYES: Mayor Triolo, Vice Mayor Amoroso and Commissioner Maxwell. NAYS: Commissioners Hardy and Robinson.

PRESENTATIONS: (there was no public comment on Presentation items)
There were no Presentations on the agenda.

COMMISSION LIAISON REPORTS AND COMMENTS:

Commissioner Robinson: stated that LWB did itself proud with the challenges due to events being canceled for the 4th of July. He extended condolences to the Lowe family on Grady's passing. He said that everyone should wear masks.

Commissioner Maxwell: said the entire City mourned Grady Lowe's passing and gave information about the upcoming service. He reported that Governor DeSantis had signed an Executive Order reopening the schools in August and that he would support anything the School Board did; the School Board would make the final decisions regarding how the reopening would look and he would report back. He stated that many neighborhoods had some 4th of July events and there were a lot of fireworks.

Vice Mayor Amoroso: iterated how important the 2020 Census was and that everyone needed to step up to improve the numbers for the City; the deadline had been extended until October. He thanked Lauren Bennett and her staff for arranging some virtual activities on the website. He reported that he was distributing hot meals three days a week and that the elected officials were attending many zoom meetings.

Commissioner Hardy: expressed condolences to Retha Lowe and her family. He said that a constituent had asked how racial inequity would be addressed in the City. He stated that there had not been a timeline established and would need to hear a detailed plan from City Manager Bornstein. He said that COVID-19 was still a big problem and the consequences of opening the schools could be dire. He stated that it was a big distraction for the City to be in the electric utility business and that FMPA should be contacted to see if the City could contact FPL about its interest in buying the LWBEU.

Mayor Triolo: stated that the Commission was one body and no Commissioner could contact other entities on behalf of the City. She said that Parrot Cove had a great event and everyone had a wonderful time. She announced that LWB was in the Census League and was probably in last place for responses; all the monies received by the City were dependent on the Census and it was imperative to the Community.

PUBLIC PARTICIPATION OF NON-AGENDAED ITEMS AND CONSENT AGENDA:

Deborah Andrea, City Clerk, read the public comments submitted by the following:

Noam Brown wrote that the public comment cards had not been available online the entire week leading up to the meeting, the email address for the City Clerk was not listed in the "how to make a public comment" section and that the two minutes should be readily available and easily accessible to the public.

Michael Smollon wrote that his tires had blown out after hitting the choker curbs at 6th Avenue South because the choker curbs were less than the nine feet required by FDOT.

Allen Mentser wrote that he was having lien issues with Code Compliance and had not heard back from staff.

Richard Guercio wrote to request that the Commission take action in response to Commissioner Hardy's undignified behavior.

APPROVAL OF MINUTES:

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

- A. Regular Meeting – June 2, 2020
- B. Special Meeting – June 9, 2020
- C. Budget Work Session #1 – June 9, 2020

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

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

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

- A. Agreement with ADP for the payroll processing and time keeping services
- B. Resolution No. 22-2020 – Hurricane Dorian Federally Declared Disaster 4468 Subaward and Grant Agreement Z1571
- C. Standard Insurance Policies for FY 2020/21 Employee Health and Welfare Benefits
- D. Task Order No. 4 with RADISE International, LC for geotechnical engineer services for Test Wells 17A and 18A Project
- E. Agreement and Work Order No. 1 with Insituform Technologies, LLC for a subaqueous watermain crossing rehabilitation by Insituform
- F. Task Order No. 6 with Stantec Consulting Services, Inc. for hydrogeologic services
- G. First Amendment to Settlement Agreement to extend the deadlines for the development of properties located at and 7 North B Street, 15 North B Street and 1602 Lake Avenue

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

PUBLIC HEARINGS:

- A. Ordinance No. 2020-09 – First Reading and First Public Hearing – Amend the Comprehensive Plan to include an updated water supply plan and transmit the plan to the State of Florida for review

Action: Motion made by Vice Mayor Amoroso and seconded by Commissioner Maxwell to approve Ordinance No. 2020-09 on first reading and transmit the plan to the State of Florida for review.

City Attorney Goddeau read the ordinance by title only:

ORDINANCE NO. 2020-09 OF THE CITY OF LAKE WORTH BEACH, FLORIDA, AMENDING POLICIES IN THE INFRASTRUCTURE ELEMENT OF THE CITY'S COMPREHENSIVE PLAN AND ADOPTING THE 2020 WATER SUPPLY PLAN BY REFERENCE; PROVIDING FOR SEVERABILITY, CONFLICTS AND AN EFFECTIVE DATE. BY INCORPORATING A WATER SUPPLY PLAN AND AMENDING THE INFRASTRUCTURE ELEMENT; PROVIDING FOR SEVERABILITY, CONFLICTS AND AN EFFECTIVE DATE.

City Clerk Andrea stated that there were no public comment cards.

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

UNFINISHED BUSINESS:

There were no Unfinished Business items on the agenda.

NEW BUSINESS:

- A. (moved from NB-C) Resolution No. 25-2020 -- amending and supplementing Resolution No. 20-2020 authorizing the issuance of Non-Ad Valorem Revenue Bonds, Series 2020A and Taxable Series 2020B

City Attorney Goddeau did not read the resolution.

RESOLUTION NO. 25-2020 – A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF LAKE WORTH BEACH, FLORIDA, AMENDING AND SUPPLEMENTING RESOLUTION NO. 20-2020 OF THE CITY; AUTHORIZING THE ISSUANCE OF NOT EXCEEDING \$32,000,000 IN AGGREGATE PRINCIPAL AMOUNT OF CITY OF LAKE WORTH BEACH, FLORIDA NON-AD VALOREM REVENUE BONDS, SERIES 2020A AND TAXABLE SERIES 2020B, TO PROVIDE FUNDS FOR THE PURPOSE OF FINANCING THE ACQUISITION OF CERTAIN CAPITAL IMPROVEMENTS IN AND FOR THE CITY AND FINANCING CERTAIN COSTS OF THE CITY ; MAKING CERTAIN OTHER COVENANTS AND AGREEMENTS IN CONNECTION WITH THE ISSUANCE OF SUCH BONDS; PROVIDING CERTAIN TERMS AND DETAILS OF SUCH BONDS, INCLUDING AUTHORIZING A NEGOTIATED SALE OF SAID BONDS AND THE EXECUTION AND DELIVERY OF A BOND PURCHASE CONTRACT WITH RESPECT THERETO UPON COMPLIANCE WITH CERTAIN PARAMETERS; APPOINTING THE PAYING AGENT AND REGISTRAR WITH RESPECT TO SAID BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF AN OFFICIAL STATEMENT WITH RESPECT THERETO; AUTHORIZING THE EXECUTION AND DELIVERY OF A CONTINUING DISCLOSURE CERTIFICATE; AUTHORIZING THE PURCHASE OF BOND INSURANCE ABD THE EXECUTION AND DELIVERY OF AN INSURANCE AGREEMENT WITH RESPECT THERETO; AND PROVIDING AN EFFECTIVE DATE.

Action: Motion made by Commissioner Maxwell and seconded by Vice Mayor Amoroso to approve Resolution No. 25-2020 - City of Lake Worth Beach Non-Ad Valorem Revenue Bonds, Series 2020A and Taxable Series 2020B

Bruce Miller, Financial Services Director, explained that the intent of the change regarding the amendment to Resolution 25-2020 was to satisfy the recommendation of both Bond Counsel and Bond Underwriters. He stated that the original borrowing strategy was to include both the Stormwater and the Sanitation Enterprise Fund’s capital requests in the “Combined Utility Fund” borrowing, which also included the Electric, Water and Wastewater Enterprise Funds, however, the recommendation was subsequently made to remove Stormwater and Sanitation projects from the Combined Utility Borrowing, and add them to the Working Capital Borrowing. He said that based on the change, it was recommended to increase the not-to-exceed borrowing limit from \$27 million to \$32 million, thereby allowing additional borrowing capacity for Stormwater and Sanitation projects, which included Neighborhood Road Program Districts 3 and 4, Park of Commerce Projects, repair, lining and valves for outfall pipes, lift station improvements and heavy truck replacements. He iterated that the recommended amendment would not change the overall debt profile of the City since the overall borrowing amounts, or projects, were not changing, only the debt issuance that the projects would include. He said that the increase in annual debt service would be approximately \$380,000, with a similar decrease in the combined utility bond annual debt service.

Comments/requests summary:

1. Commissioner Robinson asked if the Commission would know how the money would be spent specifically or if it would be given in a lump sum to the departments and

expressed concern about repaying the debt.

Mr. Miller replied that the borrowing was for projects that had already been approved by the Commission for Capital projects for FY 2020. He explained that \$5 million was being shifted to a different bond.

Commissioner Robinson asked why the additional \$5 million was needed.

Mr. Miller said that the \$5 million had to be removed from the Utility Bond and added to the Working Capital Bond.

2. Commissioner Hardy said that there was tremendous uncertainty in the economy and asked if all projects should be put on hold.

Mr. Miller responded that the City could pay debt service even if the Penny Sales Tax Revenue declined 40%. He said that the working capital piece was based on the uncertainty of the effect of the pandemic on the City's cash flow and had morphed into an opportunity for the City to repay itself for having paid cash for projects over the years. He stated that \$16 million of the funds was to repay the City and would be working capital. He said that the majority of the projects were prioritized and the Penny Sales Tax could only be used for certain capital items.

Commissioner Hardy asked how the projects had been formally prioritized.

Mr. Miller said that the ranking was done administratively, not by the Commission.

Commissioner Hardy said that money had been allocated for certain projects, but since it was unknown what Penny Sales Tax funds would be available, the projects should be put on hold until the economy recovered.

Juan Ruiz, Assistant City Manager, clarified that the majority of the spending was to be spent over five years, the plan had elasticity to spread projects out, but some like the Motor Pool, were in dire straits, there were years of deferred capital projects that equaled \$1.2 million and the City could handle the debt. He stated that the City would track the Sales Tax funds and could make any necessary adjustments; the borrowing would be for five years of projects.

Mr. Miller reported that the true bonding of the projects would be discussed in the future; the current discussion was for working capital and for moving the sanitation and stormwater projects therein. He said that the funds could be reprioritized as long as they were used for a similar purpose; the sales tax proceeds were not involved in the bond being discussed.

3. Commissioner Robinson expressed concern about repaying the money and raising the water and sewer rates.
4. Mayor Triolo said that the streets still needed to be fixed even during a pandemic; basic public safety had to be maintained.

City Clerk Andrea stated that there were no public comment cards.

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

B. (reordered from NB-A) Resolution No. 23-2020 – urging the Palm Beach County Board of County Commissioners (PBCBCC) to rename “Dixie Highway”

City Attorney Goddeau did not read the resolution.

RESOLUTION NO. 23-2020 OF THE CITY OF LAKE WORTH BEACH URGING THE PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS TO RENAME “DIXIE HIGHWAY” AND CEASE UPHOLDING THE STATE OF FLORIDA’S SHAMEFUL AND RACIST HISTORY IN THE CONFEDERACY, SLAVERY, AND WHITE SUPREMACY AND PROMOTE INSTEAD A NEW ERA OF HEALING AND RACIAL EQUALITY.

Action: Motion made by Commissioner Hardy and seconded by Commissioner Robinson to approve Resolution No. 23-2020 urging the Palm Beach County Board of County Commissioners to rename “Dixie Highway”.

Comments/requests summary:

1. Commissioner Hardy explained that the issue was long overdue and spoke about the origin of “Dixie”, which had a lot of racial baggage. He opined that it was inappropriate to have a highway running through such a diverse City with such a name. He named several municipalities that had voted to rename Dixie Highway. He asked that the Commission vote to send the resolution to the PBCBCC requesting that they rename Dixie Highway.
2. Mayor Triolo said that Dixie Highway was an FDOT road; Riviera Beach had renamed Old Dixie Highway and asked who would decide about the renaming.

City Manager Bornstein responded that Old Dixie Highway was an FDOT road and they would make the decision.

3. Commissioner Robinson said that Dixie Highway had many different names throughout the State and it was time to take a leadership position and recognize that the Confederacy should not be celebrated for trying to destroy the Country. He spoke in favor of an action-type of name such as Liberty Highway.

City Clerk Andrea read the public comments submitted by the following:

Audrey Locker wrote in favor of renaming Dixie Highway.

Jae Kanella wrote in support of renaming Dixie Highway.

Nicole Morse wrote in support of renaming Dixie Highway.

Wes Blackman wrote in opposition to renaming Dixie Highway.

Sean Oliver wrote in opposition to renaming Dixie Highway.

Noam Brown wrote in favor of renaming Dixie Highway.

Echo Steiner wrote in support of renaming Dixie Highway.

Ruby Bell wrote in opposition to renaming Dixie Highway.

Melodie Malfa wrote in favor of renaming Dixie Highway.

Alistaire Leahy wrote in favor of renaming Dixie Highway.

Jonathan Leahy wrote in support of renaming Dixie Highway.

Evan Leahy wrote in favor of renaming Dixie Highway.

Jaspar Leahy wrote in favor of renaming Dixie Highway.

Lourdes Thomas-Leahy wrote in support of renaming Dixie Highway.

Melissa Winchester wrote in favor of renaming Dixie Highway.

Michael Allison wrote in opposition to renaming Dixie Highway.

Richard Guercio wrote in opposition to renaming Dixie Highway.

Flavia Franco wrote in favor of renaming Dixie Highway.

Siena M. wrote in favor of renaming Dixie Highway.

Suki deJong wrote in support of renaming Dixie Highway.

Annelyn Martinez wrote in favor of renaming Dixie Highway.

KaShamba Miller-Anderson wrote in favor of renaming Dixie Highway.

Penny Darling wrote in favor of renaming Dixie Highway.

Andrea Trainor wrote in favor of renaming Dixie Highway.

Nick Paliughi wrote in favor of renaming Dixie Highway.

Jorge Sigler wrote in support of renaming Dixie Highway (his comment was not read due to submission after the deadline).

4. Commissioner Maxwell said that the initiative was well intentioned and spoke about the wall on Wingfield Street that had been erected to separate the black and white residents. He said that he learned that the Community had to be asked and the wall was still standing as they had not decided. He opined that the renaming was a top down decision and many members of the Community did not support the renaming of Dixie Highway.

Action: Amended Motion made by Commissioner Maxwell and seconded by Vice Mayor Amoroso to take the renaming back to the Community to get their support and then bring it to the PBCBCC.

City Attorney Goddeau explained that there could be discussion on an amended motion.

5. Vice Mayor Amoroso asked if the item would have to go on the ballot.

City Attorney Goddeau stated that the Supervisor of Elections (SOE) would not allow any ballot initiatives until the March 2021 election.

6. Commissioner Hardy opined that the SOE did not have the constitutional right to determine when a City could have initiatives on the ballot. He said that Commissioner Maxwell did not want to vote on certain issues and would prefer to have them put on the ballot and that the issue should be put on the November ballot when turnout was highest.

Mayor Triolo said that a Commissioner should not speak for another Commissioner.

7. Commissioner Maxwell expressed disappointment that Commissioner Hardy was speaking for other Commissioners. He stated that he did not suggest that the issue should be put on ballot, that it should be brought to the Community. He said that Commissioner Hardy had brought divisiveness to the City and was campaigning from the dais.

8. Commissioner Robinson said that the citizens had spoken four to one in favor of renaming Dixie Highway and that leadership was lacking to move forward on various issues. He opined that the wall was an embarrassment.

Mayor Triolo explained that PBSO was going to come in with a fence in that area and the community did not want that.

9. Commissioner Hardy said it had not been determined how discussions with the community would take place nor how decisions would be made.

Mayor Triolo said that just because someone said something was true did not make it true.

Commissioner Hardy stated that African-Americans were afraid to speak up when suffering indignities and had to put up with racial issues.

10. Mayor Triolo said that she had not had an opportunity to speak on the issue. She stated that there were financial ramifications of changing the name and she said if there were grants to help the business community should the name be changed.

Vote on amended motion: Voice vote showed: AYES: Mayor Triolo, Vice Mayor Amoroso and Commissioner Maxwell. NAYS: Commissioners Hardy and Robinson.

City Attorney Goddeau explained that the Commissioner Maxwell's motion amended the original motion to add that the Commission would move forward based on engagement with the community.

Vote on original motion as amended: Voice vote showed: AYES: Mayor Triolo, Vice Mayor Amoroso and Commissioner Maxwell.
NAYS: Commissioners Hardy and Robinson.

The meeting recessed at 8:30 PM and reconvened at 8:43 PM.

C. (reordered from NB-B) Resolution No. 24-2020 – presenting a request in support of body cameras and the funding thereof to the Palm Beach County Board of County Commissioners

City Attorney Goddeau did not read the resolution.

RESOLUTION 24-2020 OF THE CITY OF LAKE WORTH BEACH URGING THE PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS TO PROVIDE FUNDING TO AND COORDINATION WITH THE PALM BEACH COUNTY SHERIFF'S OFFICE FOR THE IMPLEMENTATION AND USE OF BODY WORN CAMERAS.

Action: Motion made by Vice Mayor Amoroso and seconded by Commissioner Maxwell to approve Resolution No. 24-2020 presenting a request in support of body cameras and the funding thereof to the Palm Beach County Board of County Commissioners.

Action: Amended Motion by Commissioner Hardy and seconded by Commissioner Robinson to ask the Sheriff to request funds from PBCBCC and commit to funding the cameras from his own budget should the PBCBCC not provide the funding.

Comments/requests summary:

1. Commissioner Robinson stated that the Sheriff's office should fund the body cameras and not get money from the PBCBCC.

City Clerk Andrea read the comment card submitted by the following:

Ruby Bell wrote in opposition to requesting funding for body worn cameras.

2. Commissioner Maxwell said that resolution should not be clouded by amending the resolution.

3. Commissioner Hardy said that the resolution would not move the issue forward in a meaningful way because the Sheriff would present a budget to the PBCBCC for approval or amendment. He stated that the PBCBCC did not have the authority to tell the Sheriff how to spend the money and he questioned the resolution. He said that the Sheriff had not requested the money and the Commission would have to engage the Sheriff about the issue.

Mayor Triolo reported that other municipalities agreed with a request for body cameras and it would be more powerful for them to work together.

Vote on amended motion: Voice vote showed: AYES: Commissioners Hardy and Robinson. NAYS: Mayor Triolo, Vice Mayor Amoroso and Commissioner Maxwell.

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

CITY ATTORNEY'S REPORT:

City Attorney Goddeau did not provide a report.

CITY MANAGER'S REPORT:

City Manager Bornstein did not provide a report.

ADJOURNMENT:

Action: Motion made by Commissioner Maxwell and seconded by Vice Mayor Amoroso to adjourn the meeting at 8:55 PM.

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

Pam Triolo, Mayor

ATTEST:

Deborah M. Andrea, CMC, City Clerk

Minutes Approved: August 18, 2020

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

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

The meeting was called to order by Mayor Triolo on the above date at 6:02 PM by teleconference from City Hall, 7 North Dixie Highway, Lake Worth Beach, Florida.

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

INVOCATION OR MOMENT OF SILENCE: led by Commissioner Herman Robinson.

PLEDGE OF ALLEGIANCE: led by Vice Mayor Andy Amoroso.

AGENDA - Additions/Deletions/Reordering:

A proclamation in memory of Congressman Lewis was added as Presentation B.

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

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

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

A. Proclamation for Patrick Livingston
Mayor Triolo read the proclamation in honor of Patrick Livingston and expressed gratitude for his work on behalf of the community.

Mr. Livingston thanked the Commission for their support and encouragement.

Commissioner Maxwell gave kudos to Mr. Livingston for his hard work over the years.

B. (added) Proclamation in honor of Representative John Lewis
Mayor Triolo read the proclamation in honor of Rep. Lewis.

COMMISSION LIAISON REPORTS AND COMMENTS:

Commissioner Hardy: said that more could be done in the wake of Rep. Lewis' passing; Rep. Lewis' advice should be taken regarding voting rights.

Commissioner Robinson: stated that it was still dangerous in public and urged everyone to wear masks and social distance. He said that leadership was needed to show how serious the issue was. He said that Rep. Lewis' words should be lived by.

Vice Mayor Amoroso: thanked Ed Liberty, Electric Utility Director, and his staff for going above and beyond working with City residents and the County. He said that the 2020 Census was very important and LWB was last in the challenge. He stated that food would be distributed as long as it was needed.

Commissioner Maxwell: thanked staff for putting the proclamation together for Rep. Lewis. He spoke about how Rep. Lewis was able to forgive those who had hurt him in the past. He said that the City had done a great job pushing out information regarding COVID-19, but now the situation was getting worse rather than better. He stated the necessity to wear masks and self-distance; there should be a direct mail campaign to every resident in the City featuring a photograph of the Commissioners wearing masks with a message to wear masks.

Mayor Triolo: said that there would be a lot of projects coming to LWB from the Transportation Planning Agency (TPA) and thanked Jamie Brown, Public Works Director, and Felipe Lofaso, Public Works Assistant Director, for putting the information together and submitting the projects. She reported that there would be ADA compliance for the sidewalks and other enhancements in the works. She urged everyone to complete the Census because everything was dependent on being properly counted; the City needed a correct number to receive needed funding.

PUBLIC PARTICIPATION OF NON-AGENDAED ITEMS AND CONSENT AGENDA:

Deborah Andrea, City Clerk, read the public comments submitted by the following:

Katie Mcgiveron wrote that she was very proud to be a long-time resident of Lake Worth Beach, which was a diverse city, and she resented Commissioner Hardy saying that it was racially intolerant and divided as a way to get in front of the news media.

Peggy Fisher wrote that the Commissioners should be united in helping the residents and businesses of Lake Worth Beach at this difficult time and divisiveness served no purpose and overshadowed the important business of the City.

APPROVAL OF MINUTES:

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

- A. Regular Meeting - June 16, 2020
- B. Special Meeting - June 18, 2020
- C. Special Meeting - June 23, 2020
- D. Budget Work Session #2 - June 25, 2020

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

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

Action: Motion made by Commissioner Maxwell and seconded by Commissioner Robinson to approve the Consent Agenda.

- A. Ratification of grant applications to Florida Department of Economic Opportunity Rebuild Florida Infrastructure Repair Program
- B. Work Order #4 for The Paving Lady for milling and paving services
- C. Ratifying the Expenditure of \$173,648.94 to make emergency repairs to three homes on North D Street and 3rd Avenue due to a major sewer back up incident
- D. 2nd Agreement Extension Request from 14 S East Coast, LLC for property located at 14 S. East Coast Street, Lake Worth Beach, Florida
- E. Resolution No. 26-2020 - establish the Proposed Tentative Voter Approved Debt Rate for Fiscal Year 2020-2021 and schedule the first public hearing for September 10, 2020 and the second public hearing for September 24, 2020
- F. Resolution No. 27-2020 - Directing the Preparation of the Preliminary Stormwater Assessment Roll for Fiscal Year 2020-2021 and scheduling the final public hearing for September 10, 2020
- G. Resolution No. 28-2020 - Directing the Preparation of the Preliminary Refuse Assessment Roll for Fiscal Year 2020-2021 and scheduling the final public hearing for September 10, 2020
- H. Resolution No. 29-2020 - establish the Proposed Tentative Millage Rate for Fiscal Year 2020-2021 and schedule the first public hearing for September 10, 2020 and the second public hearing for September 24, 2020

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

PUBLIC HEARINGS:

- A. Resolution No. 19-2020 – adopting the final assessment roll for non-ad valorem assessments levied for Chronic Nuisance Services

City Attorney Torcivia did not read the resolution.

RESOLUTION NO. 19-2020 OF THE CITY OF LAKE WORTH BEACH, FLORIDA, RELATED TO THOSE NON-AD VALOREM ASSESSMENTS WHICH MAY BE LEVIED FOR THE COST OF PROVIDING LOT CLEARING, BOARDING AND SECURING, AND DEMOLITION SERVICES TO ELIMINATE NUISANCE CONDITIONS ON PRIVATE REAL PROPERTY WITHIN THE INCORPORATED AREA OF THE CITY; APPROVING THE ASSESSMENT ROLL FOR FISCAL YEAR 2020 AND FOR OTHER PURPOSES; PROVIDING FOR CONFLICTS, SEVERABILITY AND AN EFFECTIVE DATE.

Action: Motion made by Commissioner Maxwell and seconded by Commissioner Hardy to approve Resolution No. 19-2020 – adopting the final assessment roll for non-ad valorem assessments levied for Chronic Nuisance Services.

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

Suhan Junad wrote to request that the item be postponed because the notice was incorrect.

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

UNFINISHED BUSINESS:

There were no Unfinished Business items on the agenda.

NEW BUSINESS:

A. Engaging the Florida Municipal Power Agency (FMPA) and Florida Power and Light (FPL) to determine whether, and for what price, FMPA and its members would release the City from its obligations to them, and whether FPL might be willing to purchase the City's electric utility

Action: Motion made by Commissioner Hardy and seconded by Commissioner Robinson to engage FMPA and ascertain its willingness, and the willingness of its members, to release the City of Lake Worth Beach from its obligations to them for an agreed upon price and to engage FPL and ascertain its willingness to purchase the City's electric utility.

Comments/requests summary:

1. Commissioner Robinson proposed discussing the issue at a work session.
2. Commissioner Hardy thanked staff for getting the item on the agenda. He said that the City should start a conversation because of rates and also to determine the benefit to the City. He stated that there was a question of whether the City reached rate parity with FPL; LWBEU's commercial rates were much higher than FPL's.

Mayor Triolo asked if Commissioner Hardy had reached out to Florida Municipal Electric Association (FMEA), FMPA or FPL on his own and if he had read the minutes from the Commission and EUAB meetings from 2011 regarding the issue.

Commissioner Hardy stated that he had called them all and spoken on his own behalf, not representing the Commission and he was familiar with the history of the question.

Commissioner Robinson opined that the Commissioners should reach out to people with whom the City was doing business to get answers and explore possibilities to move forward. He said that a work session would be necessary.

Commissioner Hardy said that there were customers who did not have a say in the electric utilities because they were not City residents and could not vote in LWB. He showed a rate comparison from the FMEA website by month that depicted higher electric rates for LWBEU than FPL.

Mayor Triolo stated that she had felt the same way when she moved to LWB and that the numbers from FPL did not include credit card charges, which the City did not charge to its customers.

Mr. Liberty corrected some misconceptions; the 2019 data showed FPL residential rates of \$104 versus LWB rates of \$108. He said that the FPL bill would be \$107.25 when the credit card fees were included. He stated that FPL had many different classes of commercial rates that LWB did not have and it would be difficult to compare the two because LWB customers received services bundled in their bills.

Commissioner Hardy said that both residential and commercial LWBEU customers paid more than FPL customers. He stated that the EU study valued the asset, but the operating profit had increased due to Mr. Liberty's good work and would now be more valuable to an outsider. He said that the EU was less valuable to the City because its contribution to the General Fund was being reduced. He stated that both FMPA and FPL should be approached to find out the benefits to the City.

Mayor Triolo stated that she, Vice Mayor Amoroso and Commissioner Maxwell had favored selling the EU years ago and had the EUAB investigate whether to sell the EU, upgrade the EU or purchase power. She said that they examined Vero Beach's sale, which was to net them \$183 million; after they paid off their obligations, they were left with \$40 million.

Commissioner Hardy asked what the buyout would be for the City and said the only way to know would be for the FMPA to value the EU.

Mayor Triolo said that the EU contributed \$4.5 million to the General Fund as well as other contributions for a total of \$8 million.

City Attorney Torcivia stated that the item had passed the 30-minute discussion threshold and must go to work session.

Action: Motion made by Commissioner Hardy and seconded by Commissioner Robinson to extend the discussion.

The meeting recessed at 7:28 PM and reconvened at 7:33 PM.

Vote to extend: Voice vote showed: AYES: Commissioners Hardy and Robinson. NAYS: Mayor Triolo, Vice Mayor Amoroso and Commissioner Maxwell.

Discussion ensued regarding the rules and procedures of the Commission meetings.

Action: Motion made by Commissioner Maxwell and seconded by Commissioner Hardy to call the question.

Vote on question: Voice vote showed: AYES: Mayor Triolo, Vice Mayor Amoroso and Commissioner Maxwell. NAYS: Commissioner Hardy and Robinson.

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

Megan Williams wrote in favor of selling the LWBEU to FPL.

Jeff Williams wrote in support of FPL buying the LWBEU.

Ruby Bell wrote in opposition to selling the LWBEU to FPL.

Edwin Contreras wrote in opposition to the sale of the LWBEU to FPL.

Greg Rice wrote in opposition to selling the LWBEU to FPL.

Ryan Oblander wrote in favor of having a conversation with FPL and FMPA regarding a sale of the LWBEU.

Martin Welfeld wrote in opposition to selling the LWBEU.

Vote on original motion: Voice vote showed: AYES: Commissioners Hardy and Robinson. NAYS: Mayor Triolo, Vice Mayor Amoroso and Commissioner Maxwell.

B. Resolution 30-2020 in support of the Lake Worth Beach Electric Utility

City Attorney Torcivia did not read the resolution.

RESOLUTION NO. 30-2020 OF THE CITY OF LAKE WORTH BEACH ACKNOWLEDGING THE IMPORTANCE AND VALUE OF THE LAKE WORTH BEACH ELECTRIC UTILITY TO THE CITY, ITS IMPACT ON THE SUSTAINABILITY AND VIABILITY OF THE CITY AND STATING THE OWNERSHIP WITH THE RESIDENTS OF THE CITY

Action: Motion made by Commissioner Maxwell and seconded by Commissioner Hardy to approve Resolution No. 30-2020 in support of the Lake Worth Beach Electric Utility.

Action: Subsidiary Motion made by Commissioner Hardy and seconded by Commissioner Robinson to approve Resolution No. 30-2020 and strike lines 53-60, turn Section 4 into Section 5 and have Section 4 read “to revisit in two years”.

Vote on subsidiary motion: Voice vote showed: AYES: Commissioners Hardy and Robinson. NAYS: Mayor Triolo, Vice Mayor Amoroso and Commissioner Maxwell.

Comments/requests summary:

1. Commissioner Maxwell thanked the EUAB for their hard work. He said that the City had invested a lot to get the rates on par with FPL and to harden and improve the system. He stated that the resolution was necessary to clarify that the Commission had no intention to speak with FPL. He opined that it was not fair for a Commissioner who was leaving soon to throw the issue on the table and then leave it unresolved.
2. Commissioner Hardy said that FMPA and FPL had not been approached to see what the LWBEU would be worth to them. He opined that the Commission did not want to get the information and the City lost potential residents because the EU had a bad reputation.

3. Mayor Triolo apologized to the utility workers who were working hard to improve and harden the system. She stated that the City had great relationships with FPL and FMPA and it was disingenuous to threaten staff with losing their jobs during a pandemic.

Vote on original motion:

Voice vote showed: AYES: Mayor Triolo, Vice Mayor Amoroso and Commissioner Maxwell.
NAYS: Commissioners Hardy and Robinson.

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

Peggy Fisher wrote in opposition to the resolution.

Ryan Oblander wrote in favor of the resolution.

C. Enacting a new moratorium on utility shutoffs

Action:

Motion made by Commissioner Hardy and seconded by Commissioner Robinson to enact a moratorium on utility shutoffs retroactive to July 17th, 2020, to develop criteria for evaluating whether the moratorium should be lifted and to establish that the moratorium should be lifted only when the criteria for doing so have been met.

Comments/requests summary:

1. Commissioner Hardy said that a moratorium was enacted in March because people needed to wash their hands, cook, have a/c and stay home; all of those reasons still applied. He stated that a payment plan had been put in place and the moratorium ended because other electric utilities were ending theirs and the City's profit was reduced. He said that alternative means of recovering revenue should be explored as well as continuing the moratorium.

City Manager Bornstein asked when the City had enacted its moratorium.

Mr. Liberty replied that the moratorium began on March 18.

City Manager Bornstein stated that FPL never did a press release about disconnections and it was difficult to know what their policies were.

2. Commissioner Robinson asked how the payment plan was going.

Mr. Liberty stated that 300 customers would have been cut when the moratorium ended, but people were looking to get caught up and go on the payment plan. He said that staff called every customer who was subject to service cuts and put door hangers at their homes as well as mailing the information. He said that there was evidence that customers either had the ability to pay or opted to go on the payment plan to defer payment over time. He reported that 96 customers had gone on the County's assistance plan and 300 others were being reviewed; the problem was not knowing how many customers were still in the residences, some would call and agree to go on the plan and those that never called were not in the home. He said that cuts would begin when all attempts to reach the customer had been exhausted.

Commissioner Robinson commended Mr. Liberty for the extra efforts being made to contact customers. He spoke against adjusting the moratorium. He mused if there was more than one visit with the door hangers to see if a property was occupied and if a Go Fund Me could be created for families to help them pay their bills.

3. Mayor Triolo asked what the cost was operationally through the rest of the year.

Mr. Liberty responded that the current aging report showed that \$931,000 or 12.9% of revenue for all utilities was in arrears. He said that there was evidence that people could afford to pay, but it could not be determined if a house was vacant for some who had not paid. He said that the customer base and energy use had been growing.

Commissioner Robinson suggested that the virus had to be considered and the numbers should be revisited on a monthly basis.

Mayor Triolo said that the utility bills covered water and refuse as well as electric.

4. Commissioner Maxwell said that the City had flexibility as a citizen-owned utility to have compassion. He stated that his biggest concern with a moratorium was the length of time for the repayment plan; he said that a mixed message was being sent and asked if the moratorium were extended, would the payment plan be revisited and if anything could be done differently to determine if some residences were vacant.

Mr. Liberty said that registered letters could be sent, but expressed doubt about the value as some residents might not accept them. He stated that there had been 1,963 people on the cut list on June 30 and the current number was 914 from whom the City had not heard; the City would know within a few hours after disconnection if the customer was still at the residence.

Commissioner Maxwell stated that it was a tough situation, but some customers were not communicating with the City even after all the outreach.

5. Commissioner Hardy said that the threat of disconnection could be useful, but the impact to the customer was unknown. He stated that the impact of the moratorium was a smaller profit to the City but could be quite catastrophic for a customer. He opined that customers were not answering the phone because they did not have the money to pay and were afraid of the conversation. He asked if staff could be given leeway to work with customers on a case by case basis formally and in writing.

City Manager Bornstein responded that he had the authority to direct staff if the Commission gave that direction.

Mayor Triolo stated that the City had historically run policies parallel with FPL and asked if the Commission could re-evaluate the effect of the situation on the community when FPL resumed normal operations.

6. Vice Mayor Amoroso said that staff had gone above and beyond to contact the customers but there would come a point where some people would not respond or be able to pay their bill. He reported that there was misinformation about customers

having to pay their utility bills and that the payment of utility bills should be a priority. He asked how long the City would set customers up for failure, especially when they did not return the phone calls.

Mr. Liberty announced that the number of people on the cut list had been reduced by half since June 30 as they migrated onto the payment plan or made some payment.

Action: Motion made by Commissioner Hardy to extend the discussion. **Motion failed for lack of a second.**

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

Ruby Bell wrote in opposition to enacting another moratorium.

Ryan Oblander wrote in favor of extending the moratorium.

7. Commissioner Maxwell thanked Mr. Liberty for the update on the cut list numbers which made it easier to decide how to vote.
8. Mayor Triolo requested that the City's continue the current policy through the end of the month and then re-evaluate after that point. She said that the City would have many issues with which to grapple and there was only so much that could be done with its limited financial resources.

Commissioner Robinson spoke in favor of extending the payback period to 24 months.

Vice Mayor Amoroso stated that people were not stepping up to get help; there was only so much that staff could do.

Action: Amended Motion made by Commissioner Hardy and seconded by Vice Mayor Amoroso to direct staff to employ more flexibility than was provided for in the payment plan resolution and the utility shut off resolution through the end of July.

Mr. Liberty stated that staff would be greatly burdened and put in a difficult position; the customer should speak to the agency that could help with payments.

Commissioner Hardy explained that the motion was to formally sanction what staff was already doing.

Mayor Triolo stated that it might be easier to extend the moratorium through July 31. She suggested that FPL's policies should be monitored.

Mr. Liberty stated that no customers on the cut list had had their service cut.

Commissioner Maxwell suggested using a robocall that would be transferred to a staff member when someone picked up, to free up the resources.

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

The meeting recessed at 9:30 PM and reconvened at 9:40 PM.

D. Discussion of how the City of Lake Worth Beach can assist residential families likely to face eviction when the Governor's eviction moratorium ends

Comments/request summary:

1. Commissioner Hardy expressed regret for the many undocumented residents who were ineligible for benefits or assistance. He said that resources should be identified that were not Federally related. He stated that everything had proceeded with evictions except the Writs of Possession.

City Clerk Andrea read the comment card submitted by the following:

Ruby Bell wrote in opposition to the City assisting residents.

2. Vice Mayor Amoroso said that he had been directing callers to the appropriate agencies for assistance and Code officers did that as well.
3. Commissioner Maxwell suggested having a website with resources.

Vice Mayor Amoroso stated that there was a book being created with resources just for LWB residents.

Mayor Triolo said that residents called her often and stated that there should be an updated list of resources. She stated that perhaps Commissioner Hardy could help the City when he was at the State house.

Commissioner Hardy said that the City should take a more active approach since many residents did not have internet access. He suggested using navigators to catalog available resources then reach out to those in need. He stated that there were three cities that had agreements with Legal Aid to fund tenant disputes and hoped that LWB could do the same. He said that he would bring some ideas to vote on back to the next meeting.

CITY ATTORNEY'S REPORT:

City Attorney Torcivia did not provide a report.

CITY MANAGER'S REPORT:

City Manager Bornstein gave the following report:

- A contract was being negotiated with REAL per the Commission's direction
- A draft of the contract would be presented to the Commission

ADJOURNMENT:

Action: Motion made by Vice Mayor Amoroso and seconded by Commissioner Maxwell to adjourn the meeting at 9:58 PM.

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

Pam Triolo, Mayor

ATTEST:

Deborah M. Andrea, CMC, City Clerk

Minutes Approved: August 18, 2020

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

**MINUTES
CITY OF LAKE WORTH BEACH
SPECIAL CITY COMMISSION MEETING - LDRS & COMP PLAN
BY TELECONFERENCE
TUESDAY, JULY 28, 2020
IMMEDIATELY FOLLOWING THE ELECTRIC UTILITY MEETING**

The meeting was called to order by Mayor Triolo on the above date at 6:06 PM by teleconference from City Hall, 7 North Dixie Highway, Lake Worth Beach, Florida.

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

AGENDA - Additions/Deletions/Reordering:

Deborah Andrea, City Clerk, announced that New Business Item C, Designation of voting delegate during the Florida League of Cities Virtual Annual Conference on August 14, 2020, was added to the agenda.

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

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

PUBLIC HEARINGS:

- A. Ordinance No. 2020-05 – Second Reading - Amend Future Land Use Element of the City’s Comprehensive Plan

City Attorney Goddeau read the ordinance by title only:

ORDINANCE NO. 2020-05 OF THE CITY OF LAKE WORTH BEACH, FLORIDA, AMENDING POLICIES IN THE FUTURE LAND USE ELEMENT OF THE CITY’S COMPREHENSIVE PLAN RELATING TO THE MIXED USE EAST, DOWNTOWN MIXED USE, AND TRANSIT ORIENTED DEVELOPMENT FUTURE LAND USE (FLU) DESIGNATIONS, INCLUDING MODIFICATIONS TO THE FLU DEVELOPMENT REQUIREMENTS, LIMITATIONS, AND GENERAL LOCATION DESCRIPTIONS; PROVIDING FOR THE REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE

Action: Motion made by Commissioner Maxwell and seconded by Vice Mayor Amoroso to approve Ordinance No. 2020-05 amending the Future Land Use Element of the City’s Comprehensive Plan.

Mayor Triolo stated that this was the second reading of the ordinance and asked if there was any new information.

City Clerk Andrea said that there were no public comment cards.

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

B. Ordinance No. 2020-06 – Second Reading - Amend Future Land Use Map (FLUM) of the City’s Comprehensive Plan

City Attorney Goddeau read the ordinance by title only:

ORDINANCE NO. 2020-06 OF THE CITY OF LAKE WORTH BEACH, FLORIDA, AMENDING THE CITY’S COMPREHENSIVE PLAN FUTURE LAND USE MAP (FLUM) THROUGH A LARGE SCALE MAP AMENDMENT FROM THE FUTURE LAND USE (FLU) DESIGNATIONS OF MIXED USE EAST AND MIXED USE-WEST TO THE TRANSIT ORIENTED DEVELOPMENT FLU DESIGNATION ON PROPERTY GENERALLY LOCATED ALONG THE LAKE WORTH ROAD CORRIDOR BETWEEN BOUTWELL ROAD AND NORTH A STREET AND MORE FULLY DESCRIBED IN EXHIBIT A; PROVIDING THAT CONFLICTING ORDINANCES ARE REPEALED; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE

Action: Motion made by Commissioner Maxwell and seconded by Vice Mayor Amoroso to approve Ordinance No. 2020-06 amending the Future Land Use Map (FLUM) of the City’s Comprehensive Plan.

Comments/requests summary:

1. Commissioner Hardy asked what the maximum density was of the area.

William Waters, Community Sustainability Director, replied that the maximum density through the City’s incentives was 100 units per acre. He iterated that approval would allow for the completion of the entitlement process for The Bohemian project.

2. Commissioner Robinson asked for assurances that any residents being annexed into the City would be notified.

City Clerk Andrea stated that there were no public comment cards.

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

NEW BUSINESS:

A. Ordinance No. 2020-11 – First Reading - Amend the City’s Code of Ordinances Chapter 23 Land Development Regulations

City Attorney Goddeau read the ordinance by title only.

ORDINANCE 2020-11 - AN ORDINANCE OF THE CITY OF LAKE WORTH BEACH, FLORIDA, AMENDING CHAPTER 2 “ADMINISTRATION,” DIVISION 1 “IN GENERAL,” SECTIONS 2-4, 2-7, 2-10.2 AND 2-11.3 RELATED TO APPLICATION FEES; AND AMENDING CHAPTER 23 “LAND DEVELOPMENT REGULATIONS, BY AMENDING ARTICLE 1 “GENERAL PROVISIONS,” DIVISION 1, “GENERALLY,” SECTIONS 23.1-5 AND 23.1-6 RELATED TO OFFICIAL MAPS; ARTICLE 1 “GENERAL PROVISIONS,” DIVISION 2, “DEFINITIONS,” SECTION 23.1-12 - DEFINITIONS; ARTICLE 2 “ADMINISTRATION” DIVISION 3, “PERMITS,” SEC. 23.2-30. – SITE PLAN REVIEW; ARTICLE 3, “ZONING DISTRICTS” SEC. 23.3-2. –OFFICIAL ZONING MAP; ARTICLE 4, “DEVELOPMENT STANDARDS” - SECTION 23.4-4. – FENCES, WALLS AND GATES; ARTICLE 4, “DEVELOPMENT STANDARDS” SECTION 23.4-10 – OFF-STREET PARKING; ARTICLE 4, “DEVELOPMENT STANDARDS” SECTION 23.4-19 – OUTDOOR STORAGE; ARTICLE 4 “DEVELOPMENT ARTICLE 6 “ENVIRONMENTAL REGULATIONS”, SECTION 23.6-1(C)(3) LANDSCAPE REGULATIONS OF THE CITY’S CODE OF ORDINANCES; AND PROVIDING FOR SEVERABILITY, THE REPEAL OF LAWS IN CONFLICT, CODIFICATION, AND AN EFFECTIVE DATE

Action: Motion made by Vice Mayor Amoroso and seconded by Commissioner Maxwell to approve Ordinance No. 2020-11 on first reading and schedule the second reading and public hearing for August 18, 2020.

Mayor Triolo thanked staff for bringing the amendments back in pieces to make them easier to deal with.

Commissioner Robinson stated that the rear alleys should be used for parking.

Erin Sita, Community Sustainability Assistant Director, stated that the ordinance was part of a series of amendments in 2020 to address code updates prioritized by the City Commission at the March 5, 2020 workshop and had been unanimously approved by HRPB and PZB. She summarized the following proposed amendments to Chapter 2 “Administration” and Chapter 23 “Land Development Regulations”:

1. Chapter 2, Division 1, “In-General,” Sections 2-4, 2-7, 2-10.2 AND 2-11.3 – propose to reference the City’s official schedule of fees and charges for privately initiated changes to the either the City’s Comprehensive Plan or Future Land Use Map (FLUM) as well as voluntary annexations and other zoning requests;
2. Article 1- Section 23.1-5 and 6 - General Provisions – provide for the City to have both its official zoning map and official future land use map managed digitally;
3. Article 1- Section 23.1-12 – Definitions – provide clarity and with regard to building lot coverage, overall lot coverage and permeable and impermeable surfaces;
4. Article 2 - Section 23.2-20 – Site Plan Review – clarify the distinction between major site plans and minor site plans as well as the process to amendment same;
5. Article 3 - Section 23.3-2 – Official Zoning Map – provide for the City to have both its official zoning map and official future land use map managed digitally;
6. Article 4 - Section 23.4-4 – Fences, Walls and Gates – provide additional regulations regarding types of perimeter fences, materials and locations for all zoning districts as well as clarity with regard to visibility triangles;
7. Article 4 - Section 23.4-10 – Off Street Parking – provide for clarity with regard to acceptable materials allowed for off street parking;

8. Article 4 - Section 23.4-19 – Outdoor Storage – provide for clarity on where outdoor storage may occur and storm water requirements for outdoor storage;
9. Article 6 - Section 23.6-1 – Landscape Regulations – provide for dealing with dumpster landscaping and non-conforming dumpster conditions.

Comments/requests summary:

1. Commissioner Hardy expressed appreciation for the hard work that had been done. He asked about the setbacks for call boxes and electronic gates and if there were issues at The One with stacking.

Ms. Sita replied that staff proposed a 25-foot setback to be compatible with the City's urban environment.

Mr. Waters said that The One had a setback and the standard would be established for all types of gates with one car length being the standard, but more could be used if desired.

Commissioner Hardy spoke in opposition to using property for car related issues and requiring separate entrances for residents and guests, which were less productive uses of the property.

Mr. Waters explained that some standards were in response to Palm Beach County Fire Rescue (PBCFR) as a life safety issue and would give the City legal standing when going against PBCFR.

2. Commissioner Robinson asked if artificial turf was part of the ordinance.

Ms. Sita responded that the issue would be a part of the landscape code amendments to follow.

3. Vice Mayor Amoroso thanked staff for their hard work on the amendments and asked if new construction would use alleys for parking.

Mr. Waters replied that it was encouraged to have parking in the back, but many alleys were not improved and could not be accessed for parking.

Commissioner Hardy opined that rear loading should be used whenever possible.

City Clerk Andrea stated that there were no public comment cards.

Vote: Voice vote showed: AYES: Mayor Triolo, Vice Mayor Amoroso and Commissioners Maxwell and Robinson. NAYS: Commissioner Hardy.

- B. Ordinance No. 2020-12 – First Reading - Amend the City's Code of Ordinances Chapter 23 Land Development Regulations

City Attorney Goddeau read the ordinance by title only.

ORDINANCE 2020-12 - AN ORDINANCE OF THE CITY OF LAKE WORTH BEACH, FLORIDA, AMENDING CHAPTER 23 “LAND DEVELOPMENT REGULATIONS, BY AMENDING ARTICLE 1 “GENERAL PROVISIONS,” DIVISION 2, “DEFINITIONS,” SECTION 23.1-12 - DEFINITIONS; ARTICLE 3 “ZONING DISTRICTS,” DIVISION 1, “GENERALLY,” SECTION 23.3-6 – USE TABLES; AND ARTICLE 4 “DEVELOPMENT STANDARDS,” SECTION 23.4-12 – ADMINISTRATIVE USES AND CONDITIONAL USES OF THE CITY’S CODE OF ORDINANCES; AND PROVIDING FOR SEVERABILITY, THE REPEAL OF LAWS IN CONFLICT, CODIFICATION, AND AN EFFECTIVE DATE

Action: Motion made by Commissioner Maxwell and seconded by Vice Mayor Amoroso to approve Ordinance No. 2020-12 on first reading and to schedule the second reading and public hearing for August 18, 2020.

Ms. Sita explained that this was the second set of ordinances for use and that the ordinance was part of a series of amendments in 2020 to address code updates prioritized by the City Commission at the March 5, 2020 workshop and had been approved by HRPB and PZB unanimously. She laid out the following proposed amendments to Chapter 23 “Land Development Regulations” regarding uses, which were all focused on uses, performance standard for uses, and the permitted use table overhaul:

1. Article 1- Section 23.1-12 – Definitions – clarified existing use definitions, consolidated groups of uses with a new corresponding definition and included new uses;
2. Article 3 - Section 23.3-6 – Use Tables – provide for a major overhaul of the current permitted use tables including consolidation of uses, clarifying level of review, adding several new uses and deleting redundant or unnecessary uses;
3. Article 4 - Section 23.4-13 – Administrative Uses and Conditional Uses – provide additional performance standards for vehicular and industrial uses as well as new standards for specialty storage, money business services, and breweries, distilleries, micro-breweries, micro-distilleries, specialty breweries and specialty distilleries.

Ms. Sita explained the columns that were being deleted from the use tables for clarity.

Comments/requests summary:

1. Commissioner Hardy said that money business services were necessary for undocumented or poor residents and asked for the regulations to be explained.

Ms. Sita stated that the services had higher crime and could exploit people; the intent was to separate money business services from convenience stores and would require cameras due to the higher crime.

Commissioner Hardy asked about the differences in distance requirements for accessory uses and principal uses and how the requirement would apply for an accessory use.

Ms. Sita responded that the City had more accessory uses and the requirement would apply for a retail store with convenience items. She stated that principal uses would

include money businesses such as a check cashing store. She explained that 400 feet was selected because it was the length of the City's blocks.

Mr. Waters stated that a distance waiver process was available for an applicant to present to the appropriate board.

Commissioner Hardy opined that it was unclear that some of the services would be nuisances.

Mr. Waters affirmed that there were many complaints and non-conformance after hours; the distance requirement was implemented to deal with those issues.

Commissioner Hardy asked if there had been a study or close analysis of the complaints. He said that he would not support the ordinance until more outreach was done. He asked why breweries/distilleries were not allowed everywhere in the City.

Mr. Waters replied that the capacity would affect where the businesses could go; it would depend on the capacity of the business and the size of manufacturing involved.

Commissioner Hardy objected to overly regulating the businesses. He said that the average person would not have an issue with a brewery downtown.

City Attorney Goddeau explained the differences between microbreweries and distilleries.

2. Commissioner Robinson said that distribution could be regulated by hours. He expressed regret for limiting the way the money services could be used and said that there should not be a loophole to allow pawn shops.

Mr. Waters said that there was a much higher likelihood of crime late at night because some people did not have bank accounts, were walking around with large amounts of cash and being robbed.

City Attorney Goddeau responded that the regulations were to protect customers, not to regulate the businesses.

Ms. Sita stated that those types of businesses would not be downtown, but on Dixie Highway or Mixed Use West.

Mayor Triolo asked Mr. Waters if he had a time constraint.

Mr. Waters replied that there were five projects waiting the approval of the ordinance.

3. Commissioner Maxwell asked to consider a vote.
4. Commissioner Hardy said that some crime was not being reported, but people were bringing cash to money business services anyway because they had to; the residents should be asked how the regulations would affect them.

Action: Subsidiary motion made by Commissioner Hardy to strike lines 726-751 and move that section to a work session. **Motion failed for lack of a second.**

City Clerk Andrea stated that there were no public comment cards.

Vote: Voice vote showed: AYES: Mayor Triolo, Vice Mayor Amoroso and Commissioners Maxwell and Robinson. NAYS: Commissioner Hardy.

C. (added) Designation of voting delegate during the Florida League of Cities Virtual Annual Conference on August 14, 2020

Mayor Triolo inquired if any of the Commissioners would be attending the meeting.

Vice Mayor Amoroso replied that he served on the Board and would attend the conference.

Action: Motion made by Commissioner Maxwell and seconded by Vice Mayor Amoroso to designate Vice Mayor Amoroso as the voting delegate during the Florida League of Cities Virtual Annual Conference on August 14, 2020.

Vote: Voice vote showed: AYES: Mayor Triolo, Vice Mayor Amoroso and Commissioners Maxwell and Robinson. NAYS: Commissioner Hardy.

ADJOURNMENT:

Action: Motion made by Commissioner Maxwell and seconded by Vice Mayor Amoroso to adjourn the meeting at 7:11 PM.

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

Pam Triolo, Mayor

ATTEST:

Deborah M. Andrea, CMC, City Clerk

Minutes Approved: August 18, 2020

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

EXECUTIVE BRIEF REGULAR MEETING

AGENDA DATE: August 18, 2020

DEPARTMENT: Financial Services

TITLE:

Resolution No. 31-2020 – COVID-19 Federally Funded Subaward and Grant Agreement Z2079

SUMMARY:

This resolution approves the COVID-19 DR 4486 Federally Funded Subaward and Grant Agreement Contract Number Z2079 between the State of Florida and the City that provides for the reimbursement of eligible expenses for emergency protective measures taken by the City to respond to the COVID-19 pandemic. The exact funding amount will be determined by project worksheets to be developed for this purpose.

BACKGROUND AND JUSTIFICATION:

On January 20, 2020, a Public Health Emergency was declared for COVID-19 to establish that exigent and emergency conditions exist. FEMA-4486-DR-FL was issued as a result of the endangerment to public health public health presented by the COVID-19 pandemic in the State of Florida. . Public assistance has been provided through the issuance of Subaward and Grant Agreement Z2079 to respond to the COVID-19 outbreak on a local level to protect property and public health and safety and/or to lessen or avert the threats caused by emergency situations stemming from the novel coronavirus pandemic.

Resolution No. 31-2020 approves and authorizes the Mayor to execute the Federally Funded Subaward and Grant Agreement Z2079 between the State of Florida Division of Emergency Management (the “Division”) and the City. This Agreement sets forth the terms and conditions for reimbursement of eligible expenses incurred by the City for emergency protective measures to respond to the COVID-19 outbreak on a local level. The actual amount of eligible public assistance, which is estimated to be approximately \$900,000, will be determined by completion of project worksheets by the City and approval of the Division. The Agreement will be modified accordingly.

MOTION:

Move to approve/disapprove Resolution No. 31-2020 approving the COVID-19 Federally Funded Subaward and Grant Agreement Z2079.

ATTACHMENT(S):

Fiscal Impact Analysis – not applicable
Resolution 31-2020
Federally Funded Subaward and Grant Agreement Z2079

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RESOLUTION NO. 31-2020 OF THE CITY OF LAKE WORTH BEEACH, FLORIDA, APPROVING THE FEDERALLY FUNDED SUBAWARD AND GRANT AGREEMENT NUMBER Z2079 BETWEEN THE STATE OF FLORIDA AND THE CITY; AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT AND ALL OTHER RELATED DOCUMENTS; PROVIDING FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES

WHEREAS, on January 20, 2020, President Trump issued a Nationwide Emergency Declaration and the Secretary of Health and Human Services issued a declaration of a Public Health Emergency for COVID-19 to establish that exigent and emergency circumstances currently exist; and

WHEREAS, Public Assistance funding was authorized under this emergency presidential declaration; and

WHEREAS, the State of Florida has undertaken to make these Public Assistance Program funds available to eligible jurisdictions under this presidential emergency declaration in accordance with the stipulations of the Agreement between FEMA and the State; and

WHEREAS, the COVID-19 Federally Funded Subaward and Grant Agreement Z2079 has been prepared by the State for the reimbursement of eligible costs incurred by the City to respond to the COVID-19 outbreak on a local level to protect property and public health and safety and/or to lessen or avert the threats caused by emergency situations stemming from the novel coronavirus pandemic; and

WHEREAS, the amount of public assistance will be determined by the future submission of project worksheets as approved by the State; and

WHEREAS, the Federally Funded Subaward and Grant Agreement Z2079 will be then be modified to include the value of eligible expenses related to the project scope of work; and

WHEREAS, the federal contribution, the state contribution and local cost share toward the reimbursement of eligible expenses in the approved project scope of work will also be determined for inclusion in the modified Agreement.

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

45 SECTION 1: The City Commission of the City of Lake Worth Beach, Florida, hereby
46 approves the COVID-19 Federally Funded Subaward and Grant Agreement Z2079
47 between the State of Florida and the City.

48
49 SECTION 2: The City Commission of the City of Lake Worth Beach, Florida, hereby
50 authorizes the Mayor as Authorized Agent to execute the original COVID-19 Federally
51 Funded Subaward and Grant Agreement Z2079 between the State of Florida and the City
52 that sets forth the terms and conditions for the reimbursement of eligible costs related the
53 City's response to the COVID-19 outbreak.

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

58
59 SECTION 4: This resolution shall become effective upon adoption.
60

61 The passage of this resolution was moved by Commissioner _____,
62 seconded by Commissioner _____, and upon being put to a vote, the
63 vote was as follows:

- 64 Mayor Pam Triolo
- 65 Vice Mayor Andy Amoroso
- 66 Commissioner Scott Maxwell
- 67 Commissioner Omari Hardy
- 68 Commissioner Herman Robinson

69
70 The Mayor thereupon declared this resolution duly passed and adopted on the 18th
71 day of August, 2020.

72 LAKE WORTH BEACH CITY COMMISSION

73
74
75 By: _____
76 Pam Triolo, Mayor

77
78 ATTEST:
79
80
81 _____
82 Deborah M. Andrea, CMC, City Clerk

FEDERALLY-FUNDED SUBAWARD AND GRANT AGREEMENT

2 C.F.R. §200.92 states that a “subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract.”

As defined by 2 C.F.R. §200.74, “pass-through entity” means “a non-Federal entity that provides a subaward to a Sub-Recipient to carry out part of a Federal program.”

As defined by 2 C.F.R. §200.93, “Sub-Recipient” means “a non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program.”

As defined by 2 C.F.R. §200.38, “Federal award” means “Federal financial assistance that a non-Federal entity receives directly from a Federal awarding agency or indirectly from a pass-through entity.”

As defined by 2 C.F.R. §200.92, “subaward” means “an award provided by a pass-through entity to a Sub-Recipient for the Sub-Recipient to carry out part of a Federal award received by the pass-through entity.”

The following agreement is made and information is provided pursuant to 2 C.F.R. §200.331(a)(1):

Sub-Recipient's name:	<u>Lake Worth, City of</u>
Sub-Recipient's unique entity identifier:	<u>076040070</u>
Federal Award Date:	<u>March 13, 2020</u>
Subaward Period of Performance Start and End Date (Cat A-B):	<u>01/20/2020 – Attachment B</u>
Subaward Period of Performance Start and End Date (Cat C-G):	<u>01/20/2020 – Attachment B</u>
Amount of Federal Funds Obligated by this Agreement:	<u></u>
Total Amount of Federal Funds Obligated to the Sub-Recipient by the pass-through entity to include this Agreement:	<u></u>
Total Amount of the Federal Award committed to the Sub-Recipient by the pass-through entity:	<u></u>
Federal award project description (see FFATA):	<u>Grant to eligible Sub-recipient as determined by FEMA</u>
Name of Federal awarding agency:	<u>Dept. of Homeland Security (DHS) Federal Emergency Management Agency (FEMA)</u>
Name of pass-through entity:	<u>Florida Division of Emergency Management (FDEM)</u>
Contact information for the pass-through entity:	<u>2555 Shumard Oak Blvd. Tallahassee, FL 32399-2100</u>
Catalog of Federal Domestic Assistance (CFDA) Number and Name:	<u>97.036 Public Assistance</u>
Indirect cost rate for the Federal award:	<u>See by 44 C.F.R. 207.5(b)(4)</u>

THIS AGREEMENT is entered into by the State of Florida, Division of Emergency Management, with headquarters in Tallahassee, Florida (hereinafter referred to as the "Division"), and

Lake Worth, City of (hereinafter referred to as the "Sub-Recipient").

For the purposes of this Agreement, the Division serves as the pass-through entity for a Federal award, and the Sub-Recipient serves as the recipient of a subaward.

THIS AGREEMENT IS ENTERED INTO BASED ON THE FOLLOWING REPRESENTATIONS:

A. The Sub-Recipient represents that it is fully qualified and eligible to receive these grant funds to provide the services identified herein;

B. The Sub-Recipient, by its decision to participate in this grant program, bears the ultimate responsibility for ensuring compliance with all applicable State and Federal laws, regulations and policies, and bears the ultimate consequences of any adverse decisions rendered by the Division, the Federal Awarding Agency, or any other State and Federal agencies with audit, regulatory, or enforcement authority;

C. The State of Florida received these grant funds from the Federal government, and the Division has the authority to subgrant these funds to the Sub-Recipient upon the terms and conditions outlined below;

D. The Division, as the pass-through entity and fiduciary of such Federal funding, reserves the right to demand that the Sub-Recipient comply with all applicable State and Federal laws, regulations and policies, terminate reimbursements and take any and all other actions it deems appropriate to protect those funds for which it is responsible, including debt collections; and

E. The Division has statutory authority to disburse the funds under this Agreement.

THEREFORE, the Division and the Sub-Recipient agree to the following:

(1) APPLICATION OF STATE LAW TO THIS AGREEMENT

2 C.F.R. §200.302 provides: "Each state must expend and account for the Federal award in accordance with state laws and procedures for expending and accounting for the state's own funds." Therefore, section 215.971, Florida Statutes, entitled "Agreements funded with federal or state assistance", applies to this Agreement.

(2) LAWS, RULES, REGULATIONS AND POLICIES

Performance under this Agreement is subject to 2 C.F.R. Part 200, entitled "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards." For this event, FEMA recognizes that noncompetitive procurements may be necessary to save lives, to protect property and public health, and to ensure public safety, as well as to lessen or avert the threat of a catastrophe. The President's unprecedented Nationwide Emergency Declaration and the Secretary of Health and Human Services' (HHS) declaration of a Public Health Emergency for COVID-19 establish that exigent and emergency circumstances currently exist.

a. For the duration of the Public Health Emergency, which began January 27, 2020 as determined by HHS, local governments, tribal governments, nonprofits, and other non-state entities may proceed with new and existing noncompetitively procured contracts in order to protect property and public health and safety, or to lessen or avert the threats created by emergency situations for 1) Emergency protective measures under FEMA's Public Assistance Program and 2) Use of FEMA non-disaster grant funds by non-state recipients and sub-recipients to respond to or address COVID-19. These noncompetitive contracts must comply with Federal guidance addressing exigency and emergency procurement.

b. As required by section 215.971(1), Florida Statutes, this Agreement includes:

- i. A provision specifying a scope of work that clearly establishes the tasks that the Sub-Recipient is required to perform.
- ii. A provision dividing the agreement into quantifiable units of deliverables that must be received and accepted in writing by the Division before payment. Each deliverable must be directly related to the scope of work and specify the required minimum level of service to be performed and the criteria for evaluating the successful completion of each deliverable.
- iii. A provision specifying the financial consequences that apply if the Sub-Recipient fails to perform the minimum level of service required by the agreement.
- iv. A provision specifying that the Sub-Recipient may expend funds only for allowable costs resulting from obligations incurred during the specified agreement period.
- v. A provision specifying that any balance of unobligated funds which has been advanced or paid must be refunded to the Division.
- vi. A provision specifying that any funds paid in excess of the amount to which the Sub-Recipient is entitled under the terms and conditions of the agreement must be refunded to the Division.

c. In addition to the foregoing, the Sub-Recipient and the Division shall be governed by all applicable State and Federal laws, rules and regulations, including those identified in Attachment B to this Agreement ("Program Statutes and Regulations"). Any express reference in this Agreement to a particular statute, rule, or regulation in no way implies that no other statute, rule, or regulation applies.

(3) CONTACT

a. In accordance with section 215.971(2), Florida Statutes, the Division's Grant Manager shall be responsible for enforcing performance of this Agreement's terms and conditions and shall serve as the Division's liaison with the Sub-Recipient. As part of his/her duties, the Grant Manager for the Division shall:

- i. Monitor and document Sub-Recipient performance; and,

ii. Review and document all deliverables for which the Sub-Recipient requests payment.

b. The Division's Grant Manager for this Agreement is:

Kim Schoffel
Title Program Supervisor
Bureau of Recovery
Florida Division of Emergency Management
2555 Shumard Oak Blvd.
Tallahassee, FL 32399-2100
Telephone: (850) 815-4448
Email: Kim.Schoffel@em.myflorida.com

c. The name and address of the Representative of the Sub-Recipient responsible for the administration of this Agreement is:

Telephone: _____
Email: _____

d. In the event that different representatives or addresses are designated by either party after execution of this Agreement, notice of the name, title, and address of the new representative will be provided to the other party in writing via letter or electronic email. It is the Sub-Recipient's responsibility to authorize its users in the Recipient's grants management system. Only the Authorized or Primary Agents identified in Attachment D to this Agreement ("Designation of Authority") may authorize addition or removal of agency users.

(4) TERMS AND CONDITIONS

This Agreement contains all the terms and conditions agreed upon by the parties.

(5) EXECUTION

This Agreement may be executed in any number of counterparts, of which may be taken as an original.

(6) MODIFICATION

Either party may request modification of the provisions of this Agreement. Changes which are agreed upon shall be valid only when in writing, signed by each of the parties, and attached to the original of this Agreement.

(7) SCOPE OF WORK

The Sub-Recipient shall perform the work in accordance with Attachment A to this Agreement (“Budget and Scope of Work”).

(8) PERIOD OF AGREEMENT/PERIOD OF PERFORMANCE

The Period of Agreement establishes a timeframe for all Sub-Recipient contractual obligations to be completed. This agreement will begin upon execution by both parties and shall end upon closeout of the Sub-Recipient’s account for this disaster by the Federal Awarding Agency, unless terminated earlier as specified elsewhere in this Agreement. This Agreement survives and remains in effect after termination for the herein referenced State and Federal audit requirements and the referenced required records retention periods.

The Period of Performance is the timeframe during which the Sub-Recipient may incur new obligations to carry out the work authorized under this Agreement. In accordance with 2 C.F.R. §200.309, the Sub-Recipient may receive reimbursement under this Agreement only for allowable costs incurred during the period of performance. In accordance with section 215.971(1)(d), Florida Statutes, the Sub-Recipient may expend funds authorized by this Agreement only for allowable costs resulting from obligations incurred during the specified agreement period. The C.F.R. requirement is more restrictive and will take precedence over the State requirement. The period of performance for this agreement begins with the first day of the Incident Period for the disaster applicable to the agreement and **ends six (6) months from the date of declaration for Emergency Work (Categories A & B) or eighteen (18) months from the date of declaration for Permanent Work (Categories C-G)**, unless terminated earlier in accordance with the provisions of Paragraph (17) of this Agreement or extended in accordance with Attachment G Paragraph 5. If any extension request is denied by the Recipient, or is not sought by the Sub-Recipient, reimbursement is only available for eligible project costs incurred up to the latest approved extension. Failure to complete a project is adequate cause for the termination of funding for that project and requires reimbursement to the Recipient of any and all project costs.

(9) FUNDING

a. This is a cost-reimbursement Agreement, subject to the availability of funds. The amount of total available funding for this subgrant is limited to the amount obligated by the Federal Awarding Agency for all projects approved for this Sub-recipient for DR-4486.

b. The State of Florida's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature, and subject to any modification in accordance with either Chapter 216, Florida Statutes, or the Florida Constitution.

c. Pursuant to section 252.37, Florida Statutes, unless otherwise specified in the General Appropriations Act, whenever the State accepts financial assistance from the Federal Government or its agencies under the Federal Public Assistance Program and such financial assistance is conditioned upon

a requirement for matching funds, the State shall provide the entire match requirement for state agencies and one-half of the required match for grants to Local governments. The affected Local government shall be required to provide one-half of the required match prior to receipt of such financial assistance.

d. The Executive Office of the Governor may approve a waiver, subject to the requirement for legislative notice and review under section 216.177, Florida Statutes, of all or a portion of the required match for public assistance projects for Local governments if the Executive Office of the Governor determines that such a match requirement cannot be provided, or that doing so would impose a documented hardship on the Local government, and if the Local government applies for the waiver within the first 18 months after the disaster is declared.

e. The Division will reimburse the Sub-Recipient only for allowable costs incurred by the Sub-Recipient. The Recipient will provide funds on a cost reimbursement basis to the Sub-Recipient for eligible activities approved by the Recipient and the Federal Awarding Agency, as specified in Attachment A of this Agreement (“Budget and Scope of Work”), which also outlines the maximum reimbursement amount for each deliverable.

f. As required by 2 C.F.R. §200.415(a), any request for payment under this Agreement must include a certification, signed by an official who is authorized to legally bind the Sub-Recipient, which reads as follows: “By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812).” The Sub-Recipient must complete Attachment “D” by designating at least three agents to execute any Requests for Reimbursement, certifications, or other necessary documentation on behalf of the Sub-Recipient. Attachment D must be completed electronically and submitted via email to rpa.help@em.myflorida.com. After execution of this Agreement, the authorized, primary, and secondary Agent may request changes to contacts via email to the State assigned team.

g. In the event the Sub-Recipient contacts have not been updated regularly and all three (3) Agents have separated from the Sub-Recipient’s agency, a designation of authority form will be needed to change contacts. NOTE: This is very important because if contacts are not updated, notifications made from the grants management system may not be received and could result in failure to meet time periods to appeal a Federal determination.

h. The Division will review all requests for reimbursement by comparing the documentation provided by the Sub-Recipient in the grants management system against a performance measure, outlined in Attachment A of this Agreement (“Budget and Scope of Work”), that clearly delineates:

- i. The required minimum acceptable level of service to be performed; and,
- ii. The criteria for evaluating the successful completion of each deliverable.

i. The performance measure required by section 215.971(1)(b), Florida Statutes, remains consistent with the requirement for a “performance goal”, which is defined in 2 C.F.R. §200.76 as,

“a target level of performance expressed as a tangible, measurable objective, against which actual achievement can be compared.” It also remains consistent with the requirement, contained in 2 C.F.R. §200.301, that the Division and the Sub-Recipient “relate financial data to performance accomplishments of the Federal award.”

j. If authorized by the Federal Awarding Agency, then the Division will reimburse the Sub-Recipient for overtime expenses in accordance with 2 C.F.R. §200.430 (“Compensation—personal services”) and 2 C.F.R. §200.431 (“Compensation—fringe benefits”). If authorized by the Federal Awarding Agency, and if the Sub-Recipient seeks reimbursement for overtime expenses for periods when no work is performed due to vacation, holiday, illness, failure of the employer to provide sufficient work, or other similar cause (see 29 U.S.C. §207(e)(2)), then the Division will treat the expense as a fringe benefit. 2 C.F.R. §200.431(a) defines fringe benefits as “allowances and services provided by employers to their employees as compensation in addition to regular salaries and wages.” Fringe benefits are allowable under this Agreement as long as the benefits are reasonable and are required by law, Sub-Recipient-Employee agreement, or an established policy of the Sub-Recipient in affect at the time of the disaster event. 2 C.F.R. §200.431(b) provides that the cost of fringe benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as for annual leave, family-related leave, sick leave, holidays, court leave, military leave, administrative leave, and other similar benefits, are allowable if all of the following criteria are met:

- i. They are provided under established written leave policies;
- ii. The costs are equitably allocated to all related activities, including Federal awards; and,
- iii. The accounting basis (cash or accrual) selected for costing each type of leave is consistently followed by the non-Federal entity or specified grouping of employees.

k. If authorized by the Federal Awarding Agency, then the Division will reimburse the Sub-Recipient for travel expenses in accordance with 2 C.F.R. §200.474. As required by the Reference Guide for State Expenditures, reimbursement for travel must be in accordance with section 112.061, Florida Statutes, which includes submission of the claim on the approved state travel voucher. If the Sub-Recipient seeks reimbursement for travel costs that exceed the amounts stated in section 112.061(6)(b), Florida Statutes (at the time of the execution of this agreement: \$6 for breakfast, \$11 for lunch, and \$19 for dinner), then the Sub-Recipient must provide documentation that:

- i. The costs are reasonable and do not exceed charges normally allowed by the Sub-Recipient in its regular operations as a result of the Sub-Recipient’s written travel policy; and,
- ii. Participation of the individual in the travel is necessary to the Federal award.

l. The Division’s Grant Manager, as required by section 215.971(2)(c), Florida Statutes, shall reconcile and verify all funds received against all funds expended during the grant agreement period

and produce a final reconciliation report. The final report must identify any funds paid in excess of the expenditures incurred by the Sub-Recipient.

m. As defined by 2 C.F.R. §200.53, the term “improper payment” means or includes:

- i. Any payment that should not have been made or that was made in an incorrect amount (including overpayments and underpayments) under statutory, contractual, administrative, or other legally applicable requirements; and,
- ii. Any payment to an ineligible party, any payment for an ineligible good or service, any duplicate payment, any payment for a good or service not received (except for such payments where authorized by law), any payment that does not account for credit or applicable discounts, and any payment where insufficient or lack of documentation prevents a reviewer from discerning whether a payment was proper.

(10) RECORDS

a. As required by 2 C.F.R. §200.336, the Federal awarding agency, Inspectors General, the Comptroller General of the United States, and the Division, or any of their authorized representatives, shall enjoy the right of access to any documents, papers, or other records of the Sub-Recipient which are pertinent to the Federal award, in order to make audits, examinations, excerpts, and transcripts. The right of access also includes timely and reasonable access to the Sub-Recipient’s personnel for the purpose of interview and discussion related to such documents. Finally, the right of access is not limited to the required retention period but lasts as long as the records are retained.

b. As required by 2 C.F.R. §200.331(a)(5), the Division, the Chief Inspector General of the State of Florida, the Florida Auditor General, or any of their authorized representatives, shall enjoy the right of access to any documents, financial statements, papers, or other records of the Sub-Recipient which are pertinent to this Agreement, in order to make audits, examinations, excerpts, and transcripts. The right of access also includes timely and reasonable access to the Sub-Recipient’s personnel for the purpose of interview and discussion related to such documents.

c. As required by Florida Department of State’s record retention requirements (Chapter 119, Florida Statutes) and by 2 C.F.R. §200.333, the Sub-Recipient shall retain sufficient records to show its compliance with the terms of this Agreement, as well as the compliance of all subcontractors or consultants paid from funds under this Agreement, for a period of five (5) years from the date of submission of the final expenditure report. The following are the only exceptions to the five (5) year requirement:

- i. If any litigation, claim, or audit is started before the expiration of the five (5)-year period, then the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.
- ii. When the Division or the Sub-Recipient is notified in writing by the Federal Awarding Agency, cognizant agency for audit, oversight agency for audit,

cognizant agency for indirect costs, or pass-through entity to extend the retention period.

- iii. Records for real property and equipment acquired with Federal funds must be retained for 5 years after final disposition.
- iv. When records are transferred to or maintained by the Federal Awarding Agency or pass-through entity, the (five) 5-year retention requirement is not applicable to the Sub-Recipient.
- v. Records for program income transactions after the period of performance. In some cases, recipients must report program income after the period of performance. Where there is such a requirement, the retention period for the records pertaining to the earning of the program income starts from the end of the non-Federal entity's fiscal year in which the program income is earned.
- vi. Indirect cost rate proposals and cost allocations plans. This paragraph applies to the following types of documents and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

d. In accordance with 2 C.F.R. §200.334, the Federal Awarding Agency must request transfer of certain records to its custody from the Division or the Sub-Recipient when it determines that the records possess long-term retention value.

e. In accordance with 2 C.F.R. §200.335, the Division must always provide or accept paper versions of Agreement information to and from the Sub-Recipient upon request. If paper copies are submitted, then the Division must not require more than an original and two copies. When original records are electronic and cannot be altered, there is no need to create and retain paper copies. When original records are paper, electronic versions may be substituted through the use of duplication or other forms of electronic media provided that they are subject to periodic quality control reviews, provide reasonable safeguards against alteration, and remain readable.

f. As required by 2 C.F.R. §200.303, the Sub-Recipient shall take reasonable measures to safeguard protected personal identifiable information and other information the Federal Awarding Agency or the Division designates as sensitive or the Sub-Recipient considers sensitive consistent with applicable Federal, State, Local, and Tribal laws regarding privacy and obligations of confidentiality.

g. Florida's Government in the Sunshine Law (Section 286.011, Florida Statutes) provides the citizens of Florida with a right of access to governmental proceedings and mandates three, basic requirements: (1) meetings of public boards or commissions must be open to the public; (2) reasonable notice of such meetings must be given; and, (3) minutes of the meetings must be taken and promptly recorded. The mere receipt of public funds by a private entity, standing alone, is insufficient to bring that entity within the ambit of the open government requirements. However, the Government in the

Sunshine Law applies to private entities that provide services to governmental agencies and that act on behalf of those agencies in the agencies' performance of their public duties. If a public agency delegates the performance of its public purpose to a private entity, then, to the extent that private entity is performing that public purpose, the Government in the Sunshine Law applies. For example, if a volunteer fire department provides firefighting services to a governmental entity and uses facilities and equipment purchased with public funds, then the Government in the Sunshine Law applies to board of directors for that volunteer fire department. Thus, to the extent that the Government in the Sunshine Law applies to the Sub-Recipient based upon the funds provided under this Agreement, the meetings of the Sub-Recipient's governing board or the meetings of any subcommittee making recommendations to the governing board may be subject to open government requirements. These meetings shall be publicly noticed, open to the public, and the minutes of all the meetings shall be public records, available to the public in accordance with Chapter 119, Florida Statutes.

h. Florida's Public Records Law provides a right of access to the records of the State and Local governments as well as to private entities acting on their behalf. Unless specifically exempted from disclosure by the Legislature, all materials made or received by a governmental agency (or a private entity acting on behalf of such an agency), in conjunction with official business which are used to perpetuate, communicate, or formalize knowledge, qualify as public records subject to public inspection. The mere receipt of public funds by a private entity, standing alone, is insufficient to bring that entity within the ambit of the public record requirements. However, when a public entity delegates a public function to a private entity, the records generated by the private entity's performance of that duty become public records. Thus, the nature and scope of the services provided by a private entity determine whether that entity is acting on behalf of a public agency and is therefore subject to the requirements of Florida's Public Records Law.

i. The Sub-Recipient shall maintain all records for the Sub-Recipient and for all subcontractors or consultants to be paid from funds provided under this Agreement, including documentation of all program costs, in a form sufficient to determine compliance with the requirements and objectives of Attachments A and B to this Agreement ("Budget and Scope of Work" and "Program Statutes and Regulations" respectively), and all other applicable laws and regulations.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: (850) 815-4156, Records@em.myflorida.com, or 2555 Shumard Oak Boulevard, Tallahassee, FL 32399.

(11) AUDITS

a. The Sub-Recipient shall comply with the audit requirements contained in 2 C.F.R. Part 200, Subpart F.

b. In accounting for the receipt and expenditure of funds under this Agreement, the Sub-Recipient shall follow Generally Accepted Accounting Principles (“GAAP”). As defined by 2 C.F.R. §200.49, GAAP “has the meaning specified in accounting standards issued by the Government Accounting Standards Board (GASB) and the Financial Accounting Standards Board (FASB).”

c. When conducting an audit of the Sub-Recipient’s performance under this Agreement, the Division shall use Generally Accepted Government Auditing Standards (“GAGAS”). As defined by 2 C.F.R. §200.50, GAGAS, “also known as the Yellow Book, means generally accepted government auditing standards issued by the Comptroller General of the United States, which are applicable to financial audits.”

d. If an audit shows that all or any portion of the funds disbursed were not spent in accordance with the conditions of this Agreement, the Sub-Recipient shall be held liable for reimbursement to the Division of all funds not spent in accordance with these applicable regulations and Agreement provisions within thirty days after the Division has notified the Sub-Recipient of such non-compliance.

e. The Sub-Recipient shall have all audits completed by an independent auditor, which is defined in section 215.97(2)(i), Florida Statutes, as “an independent certified public accountant licensed under chapter 473.” The independent auditor shall state that the audit complied with the applicable provisions noted above. The audit must be received by the Division no later than nine months from the end of the Sub-Recipient’s fiscal year.

f. The Sub-Recipient shall send copies of reporting packages for audits conducted in accordance with 2 C.F.R. Part 200, by or on behalf of the Sub-Recipient, to the Division at the following address:

DEMSingle_Audit@em.myflorida.com

OR

Office of the Inspector General
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399-2100

g. The Sub-Recipient shall send the Single Audit reporting package and Form SF-SAC to the Federal Audit Clearinghouse by submission online at:

<http://harvester.census.gov/fac/collect/ddeindex.html>

h. The Sub-Recipient shall send any management letter issued by the auditor to the Division at the following address:

DEMSingle_Audit@em.myflorida.com

OR

Office of the Inspector General
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399-2100

(12) REPORTS

a. Consistent with 2 C.F.R. §200.328, the Sub-Recipient shall provide the Division with quarterly reports and any applicable close-out reports. These reports shall include the current status and progress by the Sub-Recipient and, as applicable, all subcontractors in completing the work described in the Scope of Work and the expenditure of funds under this Agreement, in addition to any other information requested by the Division.

	Reporting Time Period	Subgrantee Report Submittal Deadline
Quarter 1 (Q1)	October 1 – December 31	January 15
Quarter 2 (Q2)	January 1 – March 31	April 15
Quarter 3 (Q3)	April 1 – June 30	July 15
Quarter 4 (Q4)	July 1 – September 30	October 15

b. Quarterly reports are due to the Division no later than fifteen (15) days after the end of each quarter of the program year and shall be sent each quarter until submission of the administrative close-out report. The ending dates for each quarter of the program year are March 31, June 30, September 30 and December 31.

c. The closeout report is due sixty (60) days after termination of this Agreement or sixty (60) days after completion of the activities contained in this Agreement, whichever first occurs.

d. If all required reports and copies are not sent to the Division or are not completed in a manner acceptable to the Division, then the Division may withhold further payments until they are completed or may take other action as stated in Paragraph (16) REMEDIES. "Acceptable to the Division" means that the work product was completed in accordance with Attachment A to this Agreement ("Budget and Scope of Work").

e. The Sub-Recipient shall provide additional program updates or information that may be required by the Division.

f. The Sub-Recipient shall provide additional reports and information as required by the Federal Awarding Agency or the Division.

(13) MONITORING

a. The Division shall monitor the performance of the Sub-Recipient under this Agreement, as well as that of its subcontractors and/or consultants who are paid from funds provided under this Agreement, to ensure that time schedules are being met, the Schedule of Deliverables and Scope of Work are being accomplished within the specified time periods, and other performance goals are being achieved.

A review shall be done for each function or activity in Attachment A to this Agreement ("Budget and Scope of Work") and reported in the quarterly report.

b. In addition to reviews of audits, monitoring procedures may include, but not be limited to, on-site visits by Division staff, limited scope reviews, and/or other procedures. The Sub-Recipient agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by the Division. In the event that the Division determines that an audit of the Sub-Recipient is appropriate, the Sub-Recipient agrees to comply with any additional instructions provided by the Division to the Sub-Recipient regarding such audit. The Sub-Recipient further agrees to comply and cooperate with any inspections, reviews, investigations or audits deemed necessary by the Florida Chief Financial Officer or Auditor General. In addition, the Division will monitor the performance and financial management by the Sub-Recipient throughout the contract term to ensure timely completion of all tasks.

(14) LIABILITY

a. Unless Sub-Recipient is a State agency or subdivision, as defined in section 768.28(2), Florida Statutes, the Sub-Recipient is solely responsible to parties it deals with in carrying out the terms of this Agreement. As authorized by section 768.28(19), Florida Statutes, Sub-Recipient shall hold the Division harmless against all claims of whatever nature by third parties arising from the work performance under this Agreement. For purposes of this Agreement, Sub-Recipient agrees that it is not an employee or agent of the Division but is an independent contractor.

b. As required by section 768.28(19), Florida Statutes, any Sub-Recipient which is a State agency or subdivision, as defined in section 768.28(2), Florida Statutes, agrees to be fully responsible for its negligent or tortious acts or omissions which result in claims or suits against the Division and agrees to be liable for any damages proximately caused by the acts or omissions to the extent set forth in section 768.28, Florida Statutes. Nothing herein is intended to serve as a waiver of sovereign immunity by any Sub-Recipient to which sovereign immunity applies. Nothing herein shall be construed as consent by a State agency or subdivision of the State of Florida to be sued by third parties in any matter arising out of any contract.

(15) DEFAULT

If any of the following events occur ("Events of Default"), all obligations on the part of the Division to make further payment of funds shall terminate and the Division has the option to exercise any of its remedies as set forth in Paragraph (16); however, the Division may make payments or partial payments after any Events of Default without waiving the right to exercise such remedies, and without becoming liable to make any further payment if:

a. Any warranty or representation made by the Sub-Recipient in this Agreement or any previous agreement with the Division is or becomes false or misleading in any respect, or if the Sub-Recipient fails to keep or perform any of the obligations, terms or covenants in this Agreement or any

previous agreement with the Division and has not cured them in timely fashion, or is unable or unwilling to meet its obligations under this Agreement;

b. Material adverse changes occur in the financial condition of the Sub-Recipient at any time during the term of this Agreement, and the Sub-Recipient fails to cure this adverse change within thirty days from the date written notice is sent by the Division;

c. Any reports required by this Agreement have not been submitted to the Division or have been submitted with incorrect, incomplete or insufficient information; or

d. The Sub-Recipient has failed to perform and complete on time any of its obligations under this Agreement.

(16) REMEDIES

If an Event of Default occurs, then the Division shall, after thirty (30) days of providing written notice to the Sub-Recipient and upon the Sub-Recipient's failure to cure within those thirty (30) days, exercise any one or more of the following remedies, either concurrently or consecutively:

a. Terminate this Agreement, provided that the Sub-Recipient is given at least thirty (30) days prior written notice of the termination. The notice shall be effective when placed in the United States, first class mail, postage prepaid, by registered or certified mail-return receipt requested, to the address in paragraph (3) herein.

b. Begin an appropriate legal or equitable action to enforce performance of this Agreement.

c. Withhold or suspend payment of all or any part of a request for payment.

d. Require that the Sub-Recipient refund to the Division any monies used for ineligible purposes under the laws, rules and regulations governing the use of these funds.

e. Exercise any corrective or remedial actions, to include but not be limited to:

i. Request additional information from the Sub-Recipient to determine the reasons for or the extent of non-compliance or lack of performance;

ii. Issue a written warning to advise that more serious measures may be taken if the situation is not corrected;

iii. Advise the Sub-Recipient to suspend, discontinue or refrain from incurring costs for any activities in question; or

iv. Require the Sub-Recipient to reimburse the Division for the amount of costs incurred for any items determined to be ineligible;

f. Exercise any other rights or remedies which may be available under law.

Pursuing any of the above remedies will not stop the Division from pursuing any other remedies in this Agreement or provided at law or in equity. If the Division waives any right or remedy in this Agreement or fails to insist on strict performance by the Sub-Recipient, it will not affect, extend or waive any other right or remedy of the Division, or affect the later exercise of the same right or remedy by the Division for any other default by the Sub-Recipient.

(17) TERMINATION

a. The Division may terminate this Agreement for cause after thirty (30) days written notice. Cause can include misuse of funds, fraud, lack of compliance with applicable rules, laws and regulations, failure to perform on time, and refusal by the Sub-Recipient to permit public access to any document, paper, letter, or other material subject to disclosure under Chapter 119, Florida Statutes, as amended.

b. The Division may terminate this Agreement for convenience or when it determines, in its sole discretion, that continuing the Agreement would not produce beneficial results in line with the further expenditure of funds, by providing the Sub-Recipient with thirty (30) days prior written notice.

c. The parties may agree to terminate this Agreement for their mutual convenience through a written amendment of this Agreement. The amendment will state the effective date of the termination and the procedures for proper closeout of the Agreement.

d. In the event that this Agreement is terminated, the Sub-Recipient will not incur new obligations for the terminated portion of the Agreement after the Sub-Recipient has received the notification of termination. The Sub-Recipient will cancel as many outstanding obligations as possible. Costs incurred after receipt of the termination notice will be disallowed. The Sub-Recipient shall not be relieved of liability to the Division because of any breach of Agreement by the Sub-Recipient. The Division may, to the extent authorized by law, withhold payments to the Sub-Recipient for the purpose of set-off until the exact amount of damages due the Division from the Sub-Recipient is determined.

(18) PROCUREMENT

a. The Sub-Recipient shall ensure that any procurement involving funds authorized by the Agreement complies with all applicable Federal and State laws and regulations, to include 2 C.F.R. §§200.318 through 200.326 as well as Appendix II to 2 C.F.R. Part 200 (entitled "Contract Provisions for Non-Federal Entity Contracts Under Federal Awards"). For this event, FEMA recognizes that noncompetitive procurements may be necessary to save lives, to protect property and public health and to ensure public safety, as well as to lessen or avert the threat of a catastrophe." The President's unprecedented Nationwide Emergency Declaration and the Secretary of Health and Human Services' (HHS) declaration of a Public Health Emergency for COVID-19 establish that exigent and emergency circumstances currently exist. For the duration of the Public Health Emergency, which began January 27, 2020 as determined by HHS, local governments, tribal governments, nonprofits, and other non-state entities may proceed with new and existing noncompetitively procured contracts in order to protect property and public health and safety, or to lessen or avert the threats created by emergency situations for 1) Emergency protective measures under FEMA's Public Assistance Program and 2) Use of FEMA non-disaster grant funds by non-state recipients and sub-recipients to respond to or address COVID-19.

b. If the Sub-Recipient contracts with any contractor or vendor for performance of

any portion of the work required under this Agreement, the Sub-Recipient must incorporate into its contract with such contractor or vendor an indemnification clause holding the Federal Government, its employees and/or their contractors, the Division, its employees and/or their contractors, and the Sub-Recipient and its employees and/or their contractors harmless from liability to third parties for claims asserted under such contract.

c. The Sub-Recipient shall monitor and document, in the Attachment J of this Agreement (“Quarterly Report”), the contractor’s progress in performing its work on its behalf under this Agreement in addition to its own progress.

d. The Sub-Recipient shall ensure all contracts conform to sections 287.057 and 288.703, Florida Statutes.

e. The Sub-Recipient may request guidance concerning procurement activity from the Division, but shall also use its own judgment to determine compliance with all applicable rules and statutes.

(19) PAYMENTS

a. Requests for Reimbursement (RFR) serve as invoices for the purposes of section 215.422, Florida Statutes and shall include the supporting documentation for all costs of the project or services in detail sufficient for a proper pre-audit and post-audit thereof. The final RFR shall be submitted within thirty (30) days after the expiration date of the agreement or completion of applicable Project, whichever occurs first.

b. Any advance payment made under this Agreement is subject to 2 C.F.R. §200.305 and, as applicable, section 216.181(16), Florida Statutes. All advances are required to be held in an interest-bearing account unless otherwise governed by a program specific waiver. If an advance payment is requested, the budget data upon which the request is based, and a justification statement shall be submitted along with this agreement at the time of execution by completing Attachment H of this Agreement (“Justification of Advance Payment”). The request will specify the amount of advance payment needed and provide an explanation of the necessity for and proposed use of these funds. Any advance funds not expended within the first ninety (90) days of the contract term must be returned to the Division Cashier within thirty (30) days, along with any interest earned on the advance. No advance shall be accepted for processing if a reimbursement has been paid prior to the submittal of a request for advanced payment. After the initial advance, if any, payment shall be made on a reimbursement basis as needed.

c. If the necessary funds are not available to fund this Agreement, as a result of action by the United States Congress, the Federal Office of Management and Budgeting, the State Chief Financial Officer or under subparagraph (9)b of this Agreement, all obligations on the part of the Division to make any further payment of funds shall terminate, and the Sub-Recipient shall submit its closeout report within thirty (30) days of receiving notice from the Division.

(20) EXPEDITED PROJECTS

The Division and the Federal Awarding Agency have established an Expedited Projects Program in order to help affected counties, municipalities, and private-non-profits recover from COVID-19. This program provides funding for 50% of the eligible scope of work for project versions of selected Expedited Category B projects. These amounts will be subject to the cost sharing requirements applicable for the disaster.

a. PROGRAM REQUIREMENTS

Each eligible Sub-Recipient can request to include Category B: Emergency Protective Measures projects in this expedited program. The work claimed must have been performed during the Public Health Emergency.

FEMA makes the final eligibility determination regarding project work and costs under the Expedited Program. In order to be eligible for this funding, these projects must be a “large” project with eligible scope of work totaling \$131,100 or more.

b. FUNDING

Funding will be provided at 50% of estimated costs incurred through an eligible scope of work for included projects, during the periods of performance. Any and all expedited projects will ultimately require a full validation through the grants management process for all costs incurred.

c. PARTICIPATION NOTIFICATION

The Sub-Recipient is responsible for notifying the State Public Assistance Officer (SPA0) of its intent to participate in the program. The Sub-Recipient notifies the SPA0 by submitting the notification of their intention to participate via email to ExpeditedProjects@em.myflorida.com and the SPA0 will then notify FEMA. Once that email correspondence is made, the project development will be tracked through Grants Portal and all payments will be made using the workflows in FDEM’s Grants Management System.

(21) REPAYMENTS

a. All refunds or repayments due to the Division under this agreement are due no later than thirty (30) days from notification by the Division of funds due.

b. As a condition of funding under this Agreement, the Sub-Recipient agrees that the Recipient may withhold funds otherwise payable to the Sub-Recipient from any disbursement to the Recipient, by the Federal Awarding Agency or any other source, upon a determination by the Recipient or the Federal Awarding Agency that funds exceeding the eligible costs have been disbursed to the Sub-Recipient pursuant to this Agreement or any other funding agreement administered by the Recipient. The Sub-Recipient understands and agrees that the Recipient may offset any funds due and payable to the Sub-Recipient until the debt to the State is satisfied. In such event, the Recipient will notify the Sub-Recipient via the entry of notes in its grants management system.

c. All refunds or repayments due to the Division under this Agreement are to be made payable to the order of “Division of Emergency Management”, must include the invoice number and the

applicable Disaster and Project number(s) that are the subject of the invoice, and be mailed directly to the following address:

Division of Emergency Management
Cashier
2555 Shumard Oak Boulevard
Tallahassee FL 32399-2100

d. In accordance with section 215.34(2), Florida Statutes, if a check or other draft is returned to the Division for collection, the Sub-Recipient shall pay the Division a service fee of \$15.00 or 5% of the face amount of the returned check or draft; whichever is greater.

(22) MANDATED CONDITIONS

a. The validity of this Agreement is subject to the truth and accuracy of all the information, representations, and materials submitted or provided by the Sub-Recipient in this Agreement, in any later submission or response to a Division request, or in any submission or response to fulfill the requirements of this Agreement. All of the said information, representations, and materials are incorporated by reference. The inaccuracy of the submissions or any material changes shall, at the option of the Division and with thirty (30) days written notice to the Sub-Recipient, cause the termination of this Agreement and the release of the Division from all its obligations to the Sub-Recipient.

b. This Agreement shall be construed under the laws of the State of Florida, and venue for any actions arising out of this Agreement shall be in the Circuit Court of Leon County. If any provision of this Agreement is in conflict with any applicable statute or rule, or is unenforceable, then the provision shall be null and void to the extent of the conflict, and shall be severable, but shall not invalidate any other provision of this Agreement.

c. Any power of approval or disapproval granted to the Division under the terms of this Agreement shall survive the term of this Agreement.

d. The Sub-Recipient agrees to comply with the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. Section 12101 et seq.), which prohibits discrimination by public and private entities on the basis of disability in employment, public accommodations, transportation, State and Local government services, and telecommunications.

e. Those who have been placed on the convicted vendor list following a conviction for a public entity crime or on the discriminatory vendor list may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with a public entity, and may not transact business with any public entity in excess of

\$25,000.00 for a period of 36 months from the date of being placed on the convicted vendor list or on the discriminatory vendor list.

f. Any Sub-Recipient which receives funds under this Agreement from the Federal government, certifies, to the best of its knowledge and belief, that it and its principals:

- i. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by a Federal department or agency;
- ii. Have not, within a five (5)-year period preceding this proposal, been convicted of or had a civil judgment rendered against them for fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or Local) transaction or contract under public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- iii. Are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State or Local) with commission of any offenses enumerated in paragraph (22) f. ii. of this certification; and,
- iv. Have not, within a five (5)-year period preceding this Agreement, had one or more public transactions (Federal, State or Local) terminated for cause or default.

g. If the Sub-Recipient is unable to certify to any of the statements in this certification, then the Sub-Recipient shall attach an explanation to this Agreement.

h. In addition, the Sub-Recipient shall send to the Division (by email to the assigned grant manager) the completed Attachment C of this Agreement (“Certification Regarding Debarment”) for the Sub-Recipient and a screenshot reflecting such self-check via the Federal System for Award Management (SAM) clearinghouse through the website www.sam.gov. Sub-Recipient shall also perform this check for any and all intended contractor or subcontractor which Sub-Recipient plans to fund under this Agreement. A screenshot of the clearinghouse results for each intended contractor or subcontractor should be maintained by the Sub-Recipient and provided to the Division upon request. The check must be completed before the Sub-Recipient enters into a contract covering the scope of work outlined in the PWs with any contractor or subcontractor.

i. The Division reserves the right to unilaterally cancel this Agreement if the Sub-Recipient refuses to allow public access to all documents, papers, letters or other material subject to the provisions of Chapter 119, Florida Statutes, which the Sub-Recipient created or received under this Agreement.

j. If the Sub-Recipient is allowed to temporarily invest any advances of funds under this Agreement, any interest income shall either be returned to the Division or be applied against the Division’s obligation to pay the contract amount unless otherwise governed by program specific waiver.

k. The State of Florida will not intentionally award publicly funded contracts to any contractor who knowingly employs unauthorized alien workers, constituting a violation of the employment provisions contained in 8 U.S.C. Section 1324a(e) [Section 274A(e) of the Immigration and Nationality Act (“INA”)]. The Division shall consider the employment by any contractor of unauthorized aliens a violation of Section 274A(e) of the INA. Such violation by the Sub-Recipient of the employment provisions contained in Section 274A(e) of the INA shall be grounds for unilateral cancellation of this Agreement by the Division.

l. Section 287.05805, Florida Statutes, requires that any state funds provided for the purchase of or improvements to real property are contingent upon the contractor or political subdivision granting to the state a security interest in the property at least to the amount of state funds provided for at least 5 years from the date of purchase or the completion of the improvements or as further required by law. This provision is only applicable to subrecipients receiving a state cost share.

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

(23) LOBBYING PROHIBITION

a. 2 C.F.R. §200.450 prohibits reimbursement for costs associated with certain lobbying activities.

b. Section 216.347, Florida Statutes, prohibits “any disbursement of grants and aids appropriations pursuant to a contract or grant to any person or organization unless the terms of the grant or contract prohibit the expenditure of funds for the purpose of lobbying the Legislature, the judicial branch, or a state agency.”

c. No funds or other resources received from the Division under this Agreement may be used directly or indirectly to influence legislation or any other official action by the Florida Legislature or any State agency.

d. The Sub-Recipient certifies, by its signature to this Agreement, that to the best of his or her knowledge and belief:

i. No Federal appropriated funds have been paid or will be paid, by or on behalf of the Sub-Recipient, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.

- ii. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the Sub-Recipient shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.
- iii. The Sub-Recipient shall require that this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all Sub-Recipients shall certify and disclose accordingly.
- iv. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

(24) COPYRIGHT, PATENT AND TRADEMARK

EXCEPT AS PROVIDED BELOW, ANY AND ALL PATENT RIGHTS ACCRUING UNDER OR IN CONNECTION WITH THE PERFORMANCE OF THIS AGREEMENT ARE HEREBY RESERVED TO THE STATE OF FLORIDA; AND, ANY AND ALL COPYRIGHTS ACCRUING UNDER OR IN CONNECTION WITH THE PERFORMANCE OF THIS AGREEMENT ARE HEREBY TRANSFERRED BY THE SUB-RECIPIENT TO THE STATE OF FLORIDA.

a. If the Sub-Recipient has a pre-existing patent or copyright, the Sub-Recipient shall retain all rights and entitlements to that pre-existing patent or copyright unless the Agreement provides otherwise.

b. If any discovery or invention is developed in the course of or as a result of work or services performed under this Agreement, or in any way connected with it, the Sub-Recipient shall refer the discovery or invention to the Division for a determination whether the State of Florida will seek patent protection in its name. Any patent rights accruing under or in connection with the performance of this Agreement are reserved to the State of Florida. If any books, manuals, films, or other copyrightable material are produced, the Sub-Recipient shall notify the Division. Any copyrights accruing under or in connection with the performance under this Agreement are transferred by the Sub-Recipient to the State of Florida.

c. Within thirty (30) days of execution of this Agreement, the Sub-Recipient shall disclose all intellectual properties relating to the performance of this Agreement which he or she knows or should know could give rise to a patent or copyright. The Sub-Recipient shall retain all rights and entitlements to any pre-existing intellectual property which is disclosed. Failure to disclose will indicate that no such

property exists. The Division shall then, under Paragraph (24) b., have the right to all patents and copyrights which accrue during performance of the Agreement.

d. If the Sub-Recipient qualifies as a state university under Florida law, then, pursuant to section 1004.23, Florida Statutes, any invention conceived exclusively by the employees of the Sub-Recipient shall become the sole property of the Sub-Recipient. In the case of joint inventions, that is inventions made jointly by one or more employees of both parties hereto, each party shall have an equal, undivided interest in and to such joint inventions. The Division shall retain a perpetual, irrevocable, fully-paid, nonexclusive license, for its use and the use of its contractors of any resulting patented, copyrighted or trademarked work products, developed solely by the Sub-Recipient, under this Agreement, for Florida government purposes.

(25) LEGAL AUTHORIZATION

The Sub-Recipient certifies that it has the legal authority to receive the funds under this Agreement and that its governing body has authorized the execution and acceptance of this Agreement. The Sub-Recipient also certifies that the undersigned person has the authority to legally execute and bind Sub-Recipient to the terms of this Agreement.

(26) NONDISCRIMINATION BY CONTRACTORS

Pursuant to 44 C.F.R. §§ 7 and 16, and 44 C.F.R. § 206.11, the Sub-Recipient must undertake an active program of nondiscrimination in its administration of disaster assistance under this Agreement. The Sub-Recipient is also subject to the requirements in the General Services Administrative Consolidated List of Debarred, Suspended and Ineligible Contractors, in accordance with 44 C.F.R. § 17.

(27) ASSURANCES

The Sub-Recipient shall comply with any Statement of Assurances incorporated as Attachment E to this Agreement (“Statement of Assurances”).

(28) DUPLICATION OF BENEFITS PROHIBITED

a. The Sub-Recipient understands it may not receive funding under this Agreement to pay for damage covered by insurance, nor may the Sub-Recipient receive any other duplicate benefits from any source whatsoever.

b. The Sub-Recipient agrees to reimburse the Recipient if it receives any duplicate benefits, from any source, for any damage identified on the applicable Project Worksheets, for which the Sub-Recipient has received payment from the Recipient.

c. The Sub-Recipient agrees to notify the Recipient in writing within thirty (30) days of the date it becomes aware of the possible availability of, applies for, or receives funds, regardless of the source, which could reasonably be considered as duplicate benefits.

d. In the event the Recipient determines the Sub-Recipient has received duplicate

benefits, the Sub-Recipient gives the Grantee/ Recipient the express authority to offset the amount of any such duplicate benefits by withholding them from any other funds otherwise due and payable to the Sub-Recipient, and to use such remedies as may be available administratively or at law to recover such benefits.

(29) ATTACHMENTS

- a. All attachments to this Agreement are incorporated as if set out fully.
- b. In the event of any inconsistencies or conflict between the language of this Agreement and the attachments, the language of the attachments shall control, but only to the extent of the conflict or inconsistency.
- c. This Agreement has the following attachments:
 - i. Exhibit 1 – Funding Sources
 - ii. Attachment A – Budget and Project List
 - iii. Attachment B – Scope of Work, Deliverables, and Financial Consequences
 - iv. Attachment C – Certification Regarding Debarment
 - v. Attachment D – Designation of Authority
 - vi. Attachment E – Statement of Assurances
 - vii. Attachment F – Election to Participate in PA Alternative Procedures (PAAP)
 - viii. Attachment G – Public Assistance Program Guidance
 - ix. Attachment H – Federal Funding Accountability and Transparency Act (FFATA) Reporting
 - x. Attachment I – Mandatory Contract Provisions
 - xi. Attachment J – DHS OIG Audit Issues and Acknowledgement
 - xii. Attachment K – Justification for Advance Payment

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

SUB-RECIPIENT: _____ Lake Worth, City of _____

By: _____

Name: _____

Title: _____

Date: _____

FEID# _____ 59-6000358 _____

**STATE OF FLORIDA
DIVISION OF EMERGENCY MANAGEMENT**

By: _____
Jared Moskowitz, Director

Date: _____

EXHIBIT – 1
FUNDING SOURCES

THE FOLLOWING FEDERAL RESOURCES ARE AWARDED TO THE SUB-RECIPIENT UNDER THIS AGREEMENT:

Federal Program

Federal agency: Federal Emergency Management Agency: Public Assistance Program

Catalog of Federal Domestic Assistance: 97.036

Amount of Federal Funding: \$ _____

THE FOLLOWING COMPLIANCE REQUIREMENTS APPLY TO THE FEDERAL RESOURCES AWARDED UNDER THIS AGREEMENT:

- 2 C.F.R. Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
- 44 C.F.R. Part 206
- The Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, as amended, 42 U.S.C. 5121 et seq., and Related Authorities
- FEMA Public Assistance Program and Policy Guide, 2018 V3.1- effective for all emergencies and major disasters declared on or after August 23, 2017.
 - Link here: <https://www.fema.gov/media-library/assets/documents/111781>

Federal Program:

1. Sub-Recipient is to use funding to perform eligible activities in accordance with the Stafford Act, FEMA Public Assistance Program and Policy Guide, 2018 V3.1 and approved Project Worksheet(s) (PW). Eligible work is classified into the following categories:
 - Emergency Work**
 - Category A: Debris Removal
 - Category B: Emergency Protective Measures
 - Permanent Work**
 - Category C: Roads and Bridges
 - Category D: Water Control Facilities
 - Category E: Public Buildings and Contents
 - Category F: Public Utilities
 - Category G: Parks, Recreational, and other Facilities
2. Sub-Recipient is subject to all administrative and financial requirements as set forth in this Agreement or will be in violation of the terms of the Agreement.

Attachment A
Budget and Project List

Budget:

The Budget of this Agreement is initially determined by the amount of any Project Worksheet(s) (PW) that the Federal Emergency Management Administration (FEMA) has obligated for a Sub-Recipient at the time of execution. Subsequent PWs or revisions thereof will increase or decrease the Budget of this Agreement. The PW(s) that have been obligated at the time of execution are:

DR-4486		Sub-Recipient: Lake Worth, City of									
PW #	Cat	Project Title	Federal Share	Fed %	State Share	State %	Local Share	Local %	Total Eligible Amount	POP Start Date	POP End Date
		DR-4486 Total:	\$0.00		\$0.00		\$0.00		\$0.00		

Attachment B

SCOPE OF WORK, DELIVERABLES and FINANCIAL CONSEQUENCES

Scope of Work

FEMA has sole authority for determining eligibility of project activities and reasonableness of associated costs. The sub-recipient is required to complete all eligible Projects and submit appropriate supporting documentation for emergency protective measures, debris removal, repair or replacement of Disaster damaged facilities, as approved by FEMA.

When FEMA has obligated funding for a Sub-Recipient's PW, the Division notifies the Sub-Recipient with a copy of the PW (or P2 Report). A Sub-Recipient may receive more than one PW and each will contain a separate Project. Budget and Project List – Attachment A of this Agreement will be modified quarterly, as necessary, to incorporate new PWs or PW versions. **For the purpose of this Agreement, each Project will be monitored, completed and reimbursed independently of the other Projects which are made part of this Agreement.**

Incident End Date

As of 5/21/2020 the incident is ongoing. The parties hereby agree that the end date of the incident, as determined by FEMA at a future date, will be established as the end date for this incident. Any documents or memoranda issued by FEMA establishing the end date for this incident is hereby incorporated by reference, and the parties agree to include any such documents into this agreement without any need to execute an amendment to this agreement. The parties do not agree to change any other terms in this agreement without express written approval.

Deliverables

For the purposes of this agreement, each project will be a standalone deliverable but may be compensated incrementally based on the Sub-recipient's expenditures. The required performance level is satisfactory completion of the project as identified in the Scope of Work, the approved PW, and subsequent PW versions, if applicable.

Large Project Deliverables

Reimbursement requests will be submitted separately for each Large Project. Reimbursement for Large Project costs shall be based on the percentage of completion of the individual Project. Any request for reimbursement shall provide adequate, well organized and complete source documentation to support all costs related to the Project, and shall be clearly identified by the Project Number as generated by FEMA. Requests which do not conform will be returned to the Sub-Recipient prior to acceptance for payment.

Reimbursement up to 95% of the total eligible amount will be paid upon acceptance and is contingent upon:

- Timely submission of Quarterly Reports (due 15 days after end of each quarter).
- Timely submission of invoices (Requests for Reimbursement) and supported by documentation for all costs of the project or services in detail sufficient for a proper pre-audit and post-audit thereof. The final invoice shall be submitted within sixty (60) days after the expiration of the agreement or completion of the project, whichever occurs first. An explanation of any circumstances prohibiting the submittal of quarterly invoices shall be submitted to the Division Grant Manager as part of the Sub-Recipient's quarterly reporting as referenced in Paragraph 7 of this agreement. Adjustments to the invoicing schedule must be approved in advance in writing by the Division Grant Manager.
- Timely submission of Request for Final Inspection (within ninety (90) days of project completion – for each project).
- Sub-Recipient shall include a sworn Affidavit or American Institute of Architects (AIA) forms G702 and G703, as required below.
 - A. Affidavit. The Sub-Recipient is required to submit an Affidavit signed by the Sub-Recipient's project personnel with each reimbursement request attesting to the following:

the percentage of completion of the work that the reimbursement request represents, that disbursements or payments were made in accordance with all of the Agreement and regulatory conditions, and that reimbursement is due and has not been previously requested.

- B. AIA Forms G702 and G703. For construction projects where an architectural, engineering or construction management firm provides construction administration services, the Sub-Recipient shall provide a copy of the American Institute of Architects (AIA) form G702, Application and Certification for Payment, or a comparable form approved by the Division, signed by the contractor and inspection/certifying architect or engineer, and a copy of form G703, Continuation Sheet, or a comparable form approved by the Division.

Five percent (5%) of the total eligible amount (including Federal, State and Local shares) for each payment request will be retained until the final Request for Reimbursement (or backup for advance expenditure) has been verified as acceptable by the Division's Grant Manager, which must include dated certification that the Project is 100% complete. Further, all required documentation must be available in FDEM Grants Management System prior to release of the retained amount, to include permits, policies & procedures, procurement and insurance documents. At such time all required activities and documentation requirements have been verified as performed and met, the Sub-Recipient may request the total retained amount.

Small Projects Deliverables

Small projects will be paid upon obligation of the Project Worksheet and execution of the subgrant agreement. Sub-Recipient must initiate the Small Project Closeout in FDEM Grants Management System within thirty (30) days of completion of the project work, or no later than the period of performance end date. Small Project Closeout is initiated by logging into FDEM Grants Management System, selecting the Sub-Recipient's account, then selecting 'Create New Request', and selecting 'New Small Project Completion/Closeout'. Complete the form and 'Save'. The final action is to advance the form to the next queue for review.

Financial Consequences:

For any Project (PW) that the Sub-Recipient fails to complete in compliance with Federal, State and Local requirements, the Division shall withhold a portion of the funding up to the full amount.

2 CFR 200.338 and section 215.971, Florida Statutes, requires the Division, as the recipient of Federal funding, to apply financial consequences, including withholding a portion of funding up to the full amount in the event that the Sub-Recipient fails to be in compliance with Federal, State, and Local requirements, or satisfactorily perform required activities/tasks. The Division shall apply the following financial consequences in these specifically identified events:

Work performed outside the Period of Performance –

Based on 2 C.F.R. Section 200.309, a Sub-Recipient may be reimbursed for eligible costs incurred for work performed within the period of performance. Costs incurred as a result of work performed outside of the period of performance will be deemed not allowable and ineligible for reimbursement by the Division.

If the Sub-Recipient does not anticipate finishing the work within the original period of performance, it must request a time extension and support that the work cannot be timely completed due to extenuating circumstances beyond the Sub-Recipient's control (Attachment G).

Additionally, if the project is not completed within the period of performance and a time extension request was not granted, the Division will coordinate with the Federal Awarding Agency to adjust the costs obligated amount to reflect the actual allowable costs incurred during the period of performance.

Failure to submit quarterly reports timely – Pursuant to 2 C.F.R. Section 328, the Division is responsible for oversight of the operations of the Federal award supported activities. Section 215.971, Florida Statutes provides the Division must monitor the activities performed under Federal awards to assure compliance with applicable Federal and State requirements and gain assurances that performance expectations are

being achieved. Paragraph (12) of the subgrant agreement requires the Sub-Recipient to submit a quarterly report that identifies the progress made on the project and will at a minimum include details regarding the status of all work in progress, work that has been completed, and work that has yet to begin. All work must be performed and completed in accordance with the Scope of Work. The report will also provide a detailed breakdown that supports the expenditure of funds under this Agreement, as well as any other information requested by the Division. These reports are due to the Division no later than 15 days after the end of each quarter of the program year and shall be sent each quarter until submission of the administrative close-out report. In the event that a Sub-Recipient fails to timely submit this report, the Division will enforce the following:

- Withhold 0.1 percent of the entire eligible amount obligated every day the report is late
OR
- Withhold \$500.00, whichever is less.

The Division retains the right to impose financial consequences for instances of non-performance or non-compliance not specifically addressed in this section.

Attachment C

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY
and VOLUNTARY EXCLUSION**

With respect to any Sub-recipient of the State, which receives funds under this Agreement from the Federal government, to the best of its knowledge and belief, that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
2. Have not within the five-year period preceding entering into this Agreement had one or more public transactions (Federal, State, or Local) terminated for cause or default; and
3. Have not within the five-year period preceding entering into this proposal been convicted of or had a civil judgment rendered against them for:
 - a) the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or Local) transaction or a contract under public transaction, or
 - b) violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property.

The Sub-recipient understands and agrees that the language of this certification must be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, contracts under grants, loans, and cooperative agreements) and that all contractors and sub-contractors must certify and disclose accordingly.

The Sub-recipient further understands and agrees that this certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into.

Sub-recipient further understands that submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352. Any person who fails to file the required certification is subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

_____	_____
By: _____	_____
Signature	Sub-Recipient's Name
_____	_____
Name and Title	DEM Contract Number
_____	_____
Street Address	

City, State, Zip	

Date	

Attachment D

DESIGNATION OF AUTHORITY

The **Designation of Authority Form** is submitted with each new disaster or emergency declaration to provide the authority for the Sub-Recipient's Primary Agent and Alternate Agent to access the FDEM Grants Management System in order to enter notes, review notes and documents, and submit the documentation necessary to work the new event. The Designation of Authority Form is originally submitted as Attachment "D" to the PA Funding Agreement for each disaster or emergency declaration. Subsequently, the Primary or Alternate contact should review the agency contacts at least quarterly. The Authorized Representative can request a change in contacts via email to the State team; a note should be entered in FDEM Grants Management System if the list is correct. Contacts should be removed as soon as they separate, retire, or are reassigned by the Agency. A new form will only be needed if all authorized representatives have separated from your agency. Note that if a new Designation form is submitted, all Agency Representatives currently listed as contacts that are not included on the updated form will be deleted from FDEM Grants Management System as the contacts listed are replaced in the system, not supplemented. All users must log in on a monthly basis to keep their accounts from becoming locked.

Instructions for Completion

Complete the form in its entirety, listing the name and information for all representatives who will be working in the FDEM Grant Management System. Users will be notified via email when they have been granted access. The user must log in to the FDEM Grants Management System within twelve (12) hours of being notified or their account will lock them out. Each user must log in within a sixty (60) day time period or their account will lock them out. In the event you try to log in and your account is locked, submit a ticket using the Access Request link on the home page.

The form is divided into twelve blocks; each block must be completed where appropriate.

Block 1: "Authorized Agent" – This should be the highest authority in your organization who is authorized to sign legal documents on behalf of your organization. (Only one Authorized Agent is allowed, and this person will have full access/authority unless otherwise requested).

Block 2: "Primary Agent" – This is the person designated by your organization to receive all correspondence and is our main point of contact. This contact will be responsible for answering questions, uploading documents, and submitting reports/requests in FDEM Grants Management System. The Primary Agent is usually not the Authorized Agent but should be responsible for updating all internal stakeholders on all grant activities. (Only one Primary Agent is allowed, and this contact will have full access).

Block 3: "Alternate Agent" – This is the person designated by your organization to be available when the Primary is not. (Only one Alternate Agent is allowed, and this contact will have full access).

Block 4, 5, and 6: "Other" (Finance/Point of Contact, Risk Management-Insurance, and Environmental-Historic). Providing these contacts is essential in the coordination and communication required between State and Local subject matter experts. We understand that the same agent may be identified in multiple blocks, however we ask that you enter the name and information again to ensure we are communicating with the correct individuals.

Block 7 – 12: "Other" (Read Only Access) – There is no limit on "Other" contacts, but we ask that this be restricted to those that are going to actually need to log in and have a role in reviewing the information. This designation is only for situational awareness purposes as individuals with the "Other Read-Only" designation cannot take any action in FDEM Grants Management System.

**DESIGNATION OF AUTHORITY (AGENTS)
FEMA/GRANTEE PUBLIC ASSISTANCE PROGRAM
FLORIDA DIVISION OF EMERGENCY MANAGEMENT**

Sub-Grantee:

Box 1: Authorized Agent (Full Access)

Box 2: Primary Agent (Full Access)

Agent's Name
Signature
Organization / Official Position
Mailing Address
City, State, Zip
Daytime Telephone
E-mail Address

Agent's Name
Signature
Organization / Official Position
Mailing Address
City, State, Zip
Daytime Telephone
E-mail Address

Box 3: Alternate Agent (Full Access)

Box 4: Other-Finance/Point of Contact (Full Access)

Agent's Name
Signature
Organization / Official Position
Mailing Address
City, State, Zip
Daytime Telephone
E-mail Address

Official's Name
Signature
Organization / Official Position
Mailing Address
City, State, Zip
Daytime Telephone
E-mail Address

Box 5: Other-Risk Mgmt-Insurance (Full Access)

Box 6: Other-Environmental-Historic (Full Access)

Agent's Name
Signature
Organization / Official Position
Mailing Address
City, State, Zip
Daytime Telephone
E-mail Address

Agent's Name
Signature
Organization / Official Position
Mailing Address
City, State, Zip
Daytime Telephone
E-mail Address

The above Primary and Alternate Agents are hereby authorized to execute and file an Application for Public Assistance on behalf of the Sub-grantee for the purpose of obtaining certain Grantee and Federal financial assistance under the Robert T. Stafford Disaster Relief & Emergency Assistance Act, (Public Law 93-288 as amended) or otherwise available. These agents are authorized to represent and act for the Sub-Grantee in all dealings with the State of Florida, Grantee, for all matters pertaining to such disaster assistance previously signed and executed by the Grantee and Sub-grantee. Additional contacts may be placed on page 2 of this document for read only access by the above Authorized Agents.

Sub-Grantee Authorized Agent Signature

Date

**DESIGNATION OF AUTHORITY (AGENTS)
FEMA/GRANTEE PUBLIC ASSISTANCE PROGRAM
FLORIDA DIVISION OF EMERGENCY MANAGEMENT**

Sub-Grantee:		Date:	
Box 7: Other (Read Only Access)		Box 8: Other (Read Only Access)	
Agent's Name		Agent's Name	
Signature		Signature	
Organization / Official Position		Organization / Official Position	
Mailing Address		Mailing Address	
City, State, Zip		City, State, Zip	
Daytime Telephone		Daytime Telephone	
E-mail Address		E-mail Address	
Box 9: Other (Read Only Access)		Box 10: Other (Read Only Access)	
Agent's Name		Official's Name	
Signature		Signature	
Organization / Official Position		Organization / Official Position	
Mailing Address		Mailing Address	
City, State, Zip		City, State, Zip	
Daytime Telephone		Daytime Telephone	
E-mail Address		E-mail Address	
Box 11: Other (Read Only Access)		Box 12: Other (Read Only Access)	
Agent's Name		Agent's Name	
Signature		Signature	
Organization / Official Position		Organization / Official Position	
Mailing Address		Mailing Address	
City, State, Zip		City, State, Zip	
Daytime Telephone		Daytime Telephone	
E-mail Address		E-mail Address	
Sub-Grantee's Fiscal Year (FY) Start: Month:		Day:	
Sub-Grantee's Federal Employer's Identification Number (EIN)		-	
Sub-Grantee's Grantee Cognizant Agency for Single Audit Purposes: Florida Division of Emergency Management			
Sub-Grantee's: FIPS Number (If Known)		- -	

NOTE: This form should be reviewed and necessary updates should be made each quarter to maintain efficient communication and continuity throughout staff turnover. Updates may be made by email to the state team assigned to your account. A new form will only be needed if all authorized representatives have separated from your agency. Be aware that submitting a new Designation of Authority affects the contacts that have been listed on previous Designation forms in that the information in FloridaPA.org will be updated and the contacts listed above will replace, not supplement, the contacts on the previous list.

Attachment E

STATEMENT OF ASSURANCES

- 1) The Sub-Recipient hereby certifies compliance with all Federal statutes, regulations, policies, guidelines, and requirements, including but not limited to OMB Circulars No. A-21, A-87, A-110, A-122, and A-128; E.O. 12372; and Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200; that govern the application, acceptance and use of Federal funds for this Federally-assisted project.
- 2) Additionally, to the extent the following provisions apply to this Agreement, the Sub-Recipient assures and certifies that:
 - a. It possesses legal authority to apply for the grant, and to finance and construct the proposed facilities; that a resolution, motion, or similar action has been duly adopted or passed as an official act of the Sub-Recipient's governing body, authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the Sub-Recipient to act in connection with the application and to provide such additional information as may be required.
 - b. To the best of its knowledge and belief the disaster relief work described on each Federal Emergency Management Agency (FEMA) Project Application for which Federal Financial assistance is requested is eligible in accordance with the criteria contained in 44 C.F.R. § 206, and applicable FEMA policy documents.
 - c. The emergency or disaster relief work therein described for which Federal Assistance is requested hereunder does not, or will not, duplicate benefits available for the same loss from another source.
- 3) The Sub-Recipient further assures it will:
 - a. Have sufficient funds available to meet the non-Federal share of the cost for construction projects. Sufficient funds will be available when construction is completed to assure effective operation and maintenance of the facility for the purpose constructed, and if not, it will request a waiver from the Governor to cover the cost.
 - b. Refrain from entering into a construction contract(s) for the project or undertake other activities until the conditions of the grant program(s) have been met, all contracts meet Federal, State, and Local regulations.
 - c. Provide and maintain competent and adequate architectural engineering supervision and inspection at the construction site to ensure that the completed work conforms to the approved plans and specifications, and will furnish progress reports and such other information as the Federal grantor agency may need.
 - d. Cause work on the project to be commenced within a reasonable time after receipt of notification from the approving Federal agency that funds have been approved and will see that work on the project will be done to completion with reasonable diligence.
 - e. Not dispose of or encumber its title or other interests in the site and facilities during the period of Federal interest or while the Government holds bonds, whichever is longer.
 - f. Provide without cost to the United States and the Grantee/Recipient all lands, easements and rights-of-way necessary for accomplishment of the approved work and will also hold and save the United States and the Grantee/Recipient free from damages due to the approved work or Federal funding.
 - g. Establish safeguards to prohibit employees from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.

- h. Assist the Federal grantor agency in its compliance with Section 106 of the National Historic Preservation Act of 1966 as amended, Executive Order 11593, and the Archeological and Historical Preservation Act of 1966 by:
 - i. Consulting with the State Historic Preservation Officer on the conduct of investigations, as necessary, to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (see 36 C.F.R. Part 800.8) by the activity, and notifying the Federal grantor agency of the existence of any such properties; and,
 - ii. By complying with all requirements established by the Federal grantor agency to avoid or mitigate adverse effects upon such properties.
- i. Give the sponsoring agency or the Comptroller General, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the grant.
- j. With respect to demolition activities:
 - i. Create and make available documentation sufficient to demonstrate that the Sub-Recipient and its demolition contractor have sufficient manpower and equipment to comply with the obligations as outlined in this Agreement;
 - ii. Return the property to its natural state as though no improvements had been contained thereon;
 - iii. Furnish documentation of all qualified personnel, licenses, and all equipment necessary to inspect buildings located in Sub-Recipient's jurisdiction to detect the presence of asbestos and lead in accordance with requirements of the U.S. Environmental Protection Agency, the Florida Department of Environmental Protection, and the appropriate County Health Department;
 - iv. Provide documentation of the inspection results for each structure to indicate safety hazards present, health hazards present, and/or hazardous materials present;
 - v. Provide supervision over contractors or employees employed by the Sub-Recipient to remove asbestos and lead from demolished or otherwise applicable structures;
 - vi. Leave the demolished site clean, level, and free of debris;
 - vii. Notify the Grantee/Recipient promptly of any unusual existing condition which hampers the contractors work;
 - viii. Obtain all required permits;
 - ix. Provide addresses and marked maps for each site where water wells and septic tanks are to be closed, along with the number of wells and septic tanks located on each site, and provide documentation of such closures;
 - x. Comply with mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act;
 - xi. Comply with all applicable standards, orders, or requirements issued under Section 112 and 306 of the Clean Air Act, Section 508 of the Clean Water Act, Executive Order 11738, and the U.S. Environmental Protection Agency regulations. (This clause must be added to any subcontracts); and,
 - xii. Provide documentation of public notices for demolition activities.
- k. Require facilities to be designed to comply with the "American Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by the Physically Handicapped," Number A117.1-1961, as modified. The Sub-Recipient will be

responsible for conducting inspections to ensure compliance with these specifications by the contractor.

- l. Provide an Equal Employment Opportunity Program, if required to maintain one, where the application is for \$500,000⁰⁰ or more.
- m. Return overpaid funds within the forty-five (45) day requirement, and if unable to pay within the required time period, begin working with the Grantee/Recipient in good faith to agree upon a repayment date.
- n. In the event a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due process hearing on the Grounds of race, color, religion, national origin, sex, or disability against a recipient of funds, forward a copy of the finding to the Office for Civil Rights, Office of Justice Programs.

4) The Sub-Recipient agrees it will comply with the:

- a. Requirements of all provisions of the Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 which provides for fair and equitable treatment of persons displaced as a result of Federal and Federally assisted programs.
- b. Provisions of Federal law found at 5 U.S.C. § 1501, et. seq. which limit certain political activities of employees of a State or Local unit of government whose principal employment is in connection with an activity financed in whole or in part by Federal grants.
- c. Provisions of 18 U.S.C. §§ 594, 598, and 600-605 relating to elections, relief appropriations, and employment, contributions, and solicitations.
- d. Minimum wage and maximum hour's provisions of the Federal Fair Labor Standards Act.
- e. Contract Work Hours and Safety Standards Act of 1962, requiring that mechanics and laborers (including watchmen and guards) employed on Federally assisted contracts be paid wages of not less than one and one-half times their basic wage rates for all hours worked in excess of forty hours in a work week.
- f. Federal Fair Labor Standards Act, requiring that covered employees be paid at least the minimum prescribed wage, and also that they be paid one and one-half times their basic wage rates for all hours worked in excess of the prescribed workweek.
- g. Anti-Kickback Act of 1986, which outlaws and prescribes penalties for "kick-backs" of wages in Federally financed or assisted construction activities.
- h. Requirements imposed by the Federal sponsoring agency concerning special requirements of law, program requirements, and other administrative requirements. It further agrees to ensure that the facilities under its ownership, lease or supervision which are utilized in the accomplishment of the project are not listed on the Environmental Protection Agency's (EPA) list of Violating Facilities and that it will notify the Federal grantor agency of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be used in the project is under consideration for listing by the EPA.
- i. Flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, which requires that on and after March 2, 1975, the purchase of flood insurance in communities where such insurance is available, as a condition for the receipt of any Federal financial assistance for construction or acquisition purposes for use in any area that has been identified by the Secretary of the Department of Housing and Urban Development as an area having special flood hazards. The phrase "Federal financial assistance" includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance.

- j. Insurance requirements of Section 314, PL 93-288, to obtain and maintain any other insurance as may be reasonable, adequate, and necessary to protect against further loss to any property which was replaced, restored, repaired, or constructed with this assistance. Note that FEMA provides a mechanism to modify this insurance requirement by filing a request for an insurance commissioner certification (ICC). The State's insurance commissioner cannot waive Federal insurance requirements but may certify the types and extent of insurance reasonable to protect against future loss to an insurable facility.
- k. Applicable provisions of Title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, the Juvenile Justice and Delinquency Prevention Act, or the Victims of Crime Act, as appropriate; the provisions of the current edition of the Office of Justice Programs Financial and Administrative Guide for Grants, M7100.1; and all other applicable Federal laws, orders, circulars, or regulations, and assure the compliance of all its Sub-Recipients and contractors.
- l. Provisions of 28 C.F.R. applicable to grants and cooperative agreements including Part 18, Administrative Review Procedure; Part 20, Criminal Justice Information Systems; Part 22, Confidentiality of Identifiable Research and Statistical Information; Part 23, Criminal Intelligence Systems Operating Policies; Part 30, Intergovernmental Review of Department of Justice Programs and Activities; Part 42, Nondiscrimination/Equal Employment Opportunity Policies and Procedures; Part 61, Procedures for Implementing the National Environmental Policy Act; Part 63, Floodplain Management and Wetland Protection Procedures; and Federal laws or regulations applicable to Federal Assistance Programs.
- m. Lead-Based Paint Poison Prevention Act which prohibits the use of lead-based paint in construction of rehabilitation or residential structures.
- n. Energy Policy and Conservation Act and the provisions of the State Energy Conservation Plan adopted pursuant thereto.
- o. Non-discrimination requirements of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, or Victims of Crime Act (as appropriate); Section 504 of the Rehabilitation Act of 1973, as amended; Subtitle A, Title II of the Americans with Disabilities Act (ADA) (1990); Title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975; Department of Justice Non-Discrimination Regulations; and Department of Justice regulations on disability discrimination, and assure the compliance of all its Sub-Recipients and contractors.
- p. Provisions of Section 311, P.L. 93-288, and with the Civil Rights Act of 1964 (P.L. 83-352) which, in Title VI of the Act, provides that no person in the United States of America, Grantees/Recipients shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Sub-Recipient receives Federal financial assistance and will immediately take any measures necessary to effectuate this agreement. If any real property or structure is provided or improved with the aid of Federal financial assistance extended to the Sub-Recipient, this assurance shall obligate the Sub-Recipient or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.
- q. Provisions of Title IX of the Education Amendments of 1972, as amended which prohibits discrimination on the basis of gender.
- r. Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, relating to nondiscrimination on the basis of alcohol abuse or alcoholism.
- s. Provisions of 523 and 527 of the Public Health Service Act of 1912 as amended, relating to confidentiality of alcohol and drug abuse patient records.

- t. Provisions of all appropriate environmental laws, including but not limited to:
 - i. The Clean Air Act of 1955, as amended;
 - ii. The Clean Water Act of 1977, as amended;
 - iii. The Endangered Species Act of 1973;
 - iv. The Intergovernmental Personnel Act of 1970;
 - v. Environmental standards which may be prescribed pursuant to the National Environmental Policy Act of 1969;
 - vi. The Wild and Scenic Rivers Act of 1968, related to protecting components or potential components of the national wild and scenic rivers system;
 - vii. The Fish and Wildlife Coordination Act of 1958;
 - viii. Environmental standards which may be prescribed pursuant to the Safe Drinking Water Act of 1974, regarding the protection of underground water sources;
 - ix. The provisions of the Coastal Barrier Resources Act (P.L. 97-348) dated October 19, 1982 which prohibits the expenditure of newest Federal funds within the units of the Coastal Barrier Resources System.
- u. The provisions of all Executive Orders including but not limited to:
 - i. Executive Order 11246 as amended by Executive Orders 11375 and 12086, and the regulations issued pursuant thereto, which provide that no person shall be discriminated against on the basis of race, color, religion, sex or national origin in all phases of employment during the performance of Federal or Federally assisted construction contracts; affirmative action to insure fair treatment in employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff/termination, rates of pay or other forms of compensation; and election for training and apprenticeship.
 - ii. EO 11514 (NEPA).
 - iii. EO 11738 (violating facilities).
 - iv. EO 11988 (Floodplain Management).
 - v. EO 11990 (Wetlands).
 - vi. EO 12898 (Environmental Justice).

For Grantees/Recipients other than individuals, the provisions of the DRUG-FREE WORKPLACE as required by the Drug-Free Workplace Act of 1988. This assurance is given in consideration of and for the purpose of obtaining Federal grants, loans, reimbursements, advances, contracts, property, discounts and/or other Federal financial assistance extended to the Sub-Recipient by FEMA. The Sub-Recipient understands that such Federal Financial assistance will be extended in reliance on the representations and agreements made in this Assurance and that both the United States and the Grantee/Recipient have the joint and several right to seek judicial enforcement of this assurance. This assurance is binding on the Sub-Recipient, its successors, transferees, and assignees.

FOR THE SUBGRANTEE/SUB-RECIPIENT:

Signature

Printed Name and Title Date

Public Assistance Alternative Procedures for Permanent Work Pilot (Version 4) FEMA Recovery Policy FP 104-009-7

BACKGROUND

Section 428 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, (Stafford Act)¹ authorizes FEMA to award Public Assistance (PA) funding based on fixed estimates. This version 4 of the *Public Assistance Alternative Procedures for Permanent Work Pilot* (Pilot) policy supersedes version 3 and the Alternative Procedures Project language in Chapter 2.VII.G of the *Public Assistance Program and Policy Guide*² (PAPPG). All other portions of the PAPPG apply except where specifically stated otherwise.

PURPOSE

The purpose of this policy is to define the framework and requirements to ensure appropriate and consistent implementation.

PRINCIPLES

- A. Increase flexibility in the administration of such assistance by allowing Applicants to use funds in a manner that best meets their specific needs for recovery, long-term resiliency, and future preparedness.
- B. Simplify the delivery of assistance and reduce administrative costs associated with PA projects.

REQUIREMENTS

A. FIXED-COST OFFER ACCEPTANCE

Outcome: Enable Applicants to drive their own recovery.

1. FEMA and the Recipient will work with the Applicant to formulate disaster-related damage into projects and reach agreement on the eligible scopes of work (SOW) for all Permanent Work projects. Once agreement is reached on the disaster-related damage and eligible SOW, FEMA or the Applicant will develop a cost estimate in accordance with Section G, *Cost Estimates*.
2. After the cost estimate is developed by FEMA or developed by the Applicant and validated by FEMA as being reasonable and eligible based on the work required to address the disaster-related damage, FEMA will transmit a fixed-cost offer via its Grants Manager/Portal to the Applicant for acceptance.

¹ Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121, *et seq.*, as amended.

² www.fema.gov/media-library/assets/documents/111781

3. The total fixed-cost amount is established based on the aggregate of:
 - a. The estimated cost to restore disaster damaged facilities to pre-disaster design (size and capacity) and function in accordance with eligible codes and standards; and
 - b. The estimated cost for cost-effective hazard mitigation measures associated with the actual restoration SOW to be implemented.
4. If the Applicant accepts the fixed-cost offer for a Large Project, it is considered a Pilot Project and the Applicant will:
 - a. Not be required to rebuild the facilities back to what existed prior to the disaster.
 - b. Be allowed to share funds across all of its Pilot Projects.
 - c. Not be required to track costs to specific work items.
 - d. Not be required to track costs or work to specific Pilot Projects since funds can be shared across all of its Pilot Projects.
 - e. Be allowed to retain and use excess funds to reduce risk and improve future disaster operations (subject to timely closeout).
 - f. Be eligible for cost-effective hazard mitigation on replacement projects.

B. DEADLINES

Outcome: Increase speed of recovery through timely agreement on fixed-cost offers.

1. Applicants have no more than 18 months from the disaster declaration date to:
 - a. Determine the actual SOW and hazard mitigation measures to be implemented; and
 - b. Accept a fixed-cost offer for each project (also subject to 30-day deadline from receipt, see B.2).
2. Each time FEMA transmits a fixed-cost offer, the Recipient and Applicant will have a combined total of 30 calendar days from the date of FEMA's transmittal of the fixed-cost offer to accept the offer (not to exceed the 18-month deadline). Any projects without accepted fixed-cost offers by the 30-day and 18-month deadlines will be processed using standard PA policies and procedures and funded in accordance with Title 44 Code of Federal Regulations §206.205.
3. Time extensions to accept fixed-cost offers must be approved by FEMA's Assistant Administrator for Recovery.

C. HAZARD MITIGATION

Outcome: Promote resiliency through inclusion of hazard mitigation.

1. When the Applicant is restoring a facility to pre-disaster function, size, capacity, and location, FEMA evaluates the proposed hazard mitigation SOW and cost-effectiveness based on the criteria in Chapter 2.VII.C of the PAPPG.
2. When the Applicant is restoring the function, but changing the pre-disaster capacity of a facility (Improved Project), the proposed hazard mitigation SOW is developed based on the actual SOW to be implemented; however, the cost-effectiveness is evaluated based on the fixed-cost amount accepted for the pre-disaster restoration SOW. If the capacity is

increased, the proposed hazard mitigation SOW and cost is limited to the SOW and cost necessary to mitigate to the pre-disaster capacity of the damaged facility.

3. Applicants must complete the approved hazard mitigation in order to retain the fixed-cost amount accepted for hazard mitigation.

D. USE OF FUNDS

Outcome: Increase effectiveness of assistance through increased flexibility and expanded use of funds.

1. Applicants may use fixed-cost funds, including any excess funds across all Pilot Projects.
2. Applicants may request to use fixed-cost funds for any of the activities defined as eligible under the *Use of Fixed-Cost Funds* column in the table below. Once FEMA approves and the Applicant completes the SOW associated with these activities, the Applicant may use any excess funds for the expanded list of eligible activities listed under the *Use of Excess Funds* column.
3. Any excess funds remaining after the approved SOW is complete may be used for cost-effective activities that reduce the risk of future damage, hardship, or suffering from a major disaster, and activities that improve future PA operations or planning. The Applicant must submit a proposed SOW for use of any excess funds, along with a project timeline to the Recipient within 90 days of the date the last Alternative Procedures Project was completed. The Recipient must forward the request to FEMA within 180 days of date the last Alternative Procedures Project was completed. FEMA will evaluate the proposed use of excess funds for reasonableness to ensure prudent use of funds. FEMA will also evaluate the submitted project timeline and approve an appropriate deadline for project completion, not to exceed the overall disaster period of performance.
4. The following table lists examples of eligible and ineligible types of work and costs when using fixed-cost funds and excess funds.

Type of Work or Cost (all work or costs listed must otherwise be eligible for PA)	Use of Fixed-Cost Funds	Use of Excess Funds
Restoration of disaster-damaged facilities and equipment	Eligible	Eligible
Restoration of disaster-damaged facilities in undeclared areas within the same State or Tribal area	Ineligible	Eligible
Alternate Projects (e.g., purchasing equipment, constructing new facilities, improvements to undamaged facilities such as shelters and emergency operation centers) in declared areas	Eligible	Eligible
Cost-effective hazard mitigation measures for undamaged facilities	Ineligible	Eligible
Covering future insurance premiums, including meeting obtain and maintain (O&M) insurance requirements, on damaged or undamaged facilities	Ineligible	Eligible

Work on facilities that are ineligible due to a failure to meet previous O&M requirements	Ineligible	Ineligible
Conducting or participating in training for response or recovery activities, including Federal grants management or procurement courses	Ineligible	Eligible
Planning for future disaster response and recovery operations, such as developing or updating plans (e.g., Debris Management Plans, Hazard Mitigation Plans, Pre-disaster Recovery Plans, Emergency Management/Operation Plans), integrating these plans into other plans, preparedness activities, exercises, and outreach	Ineligible	Eligible
Salaries for PA or emergency management staff. This may include but is not limited to staff performing PA grant administration, monitoring, and closeout activities for other PA disaster grants, and staff developing or updating disaster plans	Ineligible	Eligible
Paying down debts	Ineligible	Ineligible
Covering operating expenses	Ineligible	Ineligible
Covering budget shortfalls	Ineligible	Ineligible
Covering the non-Federal cost share of FEMA projects or other Federal awards	Ineligible	Ineligible

E. SCOPE OF WORK CHANGES

Outcome: Reduce administrative burden by simplifying requirements for changes to a SOW.

1. Once the SOW is approved and a fixed-cost offer is accepted:
 - a. The Applicant must notify FEMA prior to making SOW changes that involve:
 - i. Buildings or structures that are 45 years of age or older;
 - ii. Ground disturbing activities; or
 - iii. Work in or near waterways.
 - b. With exception of buildings or structures that are 45 years of age or older, the Applicant does not need to notify FEMA when it intends to make changes that substantially conform to the approved SOW. Changes that substantially conform include items, such as:
 - i. Substitutions in material type (e.g., pre-cast concrete vs. steel beam, stainless steel vs. galvanized fasteners); or
 - ii. Interior floor plan reconfigurations (e.g., adding, moving, or removing rooms/features).
 - c. If the Applicant wishes to change the SOW to the extent that it changes the hazard mitigation, such changes must be approved within the 18-month deadline and the fixed-cost offer amount will be adjusted to reflect the revised hazard mitigation SOW.

F. ENVIRONMENTAL AND HISTORIC PRESERVATION

Outcome: Ensure all projects are compliant with environmental and historic preservation (EHP) laws, regulations, and executive orders.

1. FEMA will conduct EHP compliance reviews on the actual SOW to be implemented. EHP review needs to occur prior to FEMA approval and prior to the Applicant starting any work that has potential to impact the environment, historic properties, or archaeological resources. This includes, but is not limited to, demolition, site preparation, and ground disturbing activities.
2. The Applicant must comply with all applicable EHP laws, regulations, and Executive Orders in accordance with the FEMA Directive 108-1, *Environmental Planning and Historic Preservation Responsibilities and Program Requirements*, and accompanying Instruction. Non-compliance with EHP conditions and requirements may result in the deobligation of funds.

G. COST ESTIMATES

Outcome: Develop fixed-costs based on accurate cost estimates.

1. FEMA or the Applicant may develop cost estimates as follows:
 - a. FEMA will prepare its estimates using the Cost Estimating Format (CEF) and will include the CEF contingency factor "Applicant Reserve for Change Orders."
 - b. Applicant-submitted estimates must comply with Chapter 3.II.D of the PAPPG. FEMA will evaluate Applicant-submitted estimates using the *Public Assistance: Reasonable Cost Evaluation Job Aid*. This Job Aid includes a checklist in Appendix A: *Validation of Applicant-Provided Cost Estimates*, which FEMA will use to review and validate cost estimates.
 - c. The estimate must be based on the current phase of design or construction inclusive of any known costs.
 - d. If eligible work has been completed at the time the cost estimate is developed that portion of the fixed amount will be based on the actual cost.
 - e. The cost estimate must include a reduction to account for any anticipated insurance proceeds based on the Applicant's insurance policy, or if known, the actual insurance proceeds.
2. A FEMA-funded, independent panel of cost estimating experts may review project estimates. The review will be limited to issues pertaining to the estimated cost and the panel will not make decisions related to the eligibility of work. However, it may make determinations about whether cost elements are required to execute the SOW. The panel may review cost documentation for completed work, if necessary.
 - a. FEMA may request the independent panel review for any cost estimate.
 - b. Applicants may request the panel review the estimate for any project with an estimated Federal share of at least \$5 million.
 - c. All project estimates with an estimated Federal share of \$25 million or greater will be reviewed by the independent panel.

- d. The panel will complete its review before FEMA transmits the fixed-cost offer.

H. INSURANCE

Outcome: Ensure FEMA assistance does not duplicate insurance proceeds.

1. Fixed-cost amounts will be reduced to avoid duplication with insurance proceeds in accordance with Chapter 2.V.P.1 of the PAPPG. This includes any necessary adjustments at closeout.
2. All insurable facilities for which funds are used (including excess funds) are subject to O&M requirements in accordance with Chapter 2.VII.A of the PAPPG. If the Applicant does not comply with the O&M requirement, FEMA will deobligate the fixed amounts related to the non-compliance and the facilities for which the Applicant failed to comply will not be eligible for future PA funding.

I. CLOSEOUT REQUIREMENTS

Outcome: Reduce the administrative costs associated with closeout by simplifying closeout documentation requirements and incentivize timely closeout.

1. Work must be completed by the end of the latest Pilot Project period of performance and the Recipient must certify that all incurred costs are associated with the approved SOW and that the Applicant completed all work in accordance with FEMA regulations and policies. The Recipient must submit its certification to FEMA within 180 days of the Applicant completing its last Pilot Project or the latest Pilot Project deadline, whichever occurs first, in order for the Applicant to retain and use any excess funds.
2. The closeout certification must include a final report of Pilot Project costs and documentation to support the following:
 - a. Summary of actual work completed;
 - b. Mitigation measures achieved, if applicable;
 - c. Compliance with EHP requirements;
 - d. Compliance with the O&M insurance requirement;
 - e. Summary of total actual costs to complete the Pilot Projects;
 - f. Compliance with Federal procurement procedures; and
 - g. Actual insurance proceeds received.
3. Applicants do not need to track costs to specific work items. Applicants only need to substantiate and certify that all claimed costs are related to the overall work deemed eligible for the Pilot Projects.
4. Applicants must comply with the requirements of 2 CFR Part 200, including document retention.

J. APPEALS

FEMA will not consider appeals on a Pilot Project unless it is related to a cost adjustment made by FEMA after the fixed-cost offer is accepted (i.e., related to insurance, non-compliance, or an audit). Any disagreement on damage, SOW, or cost must be resolved

prior to accepting a fixed-cost offer. Additionally, time extension denials on a Pilot Project are not appealable.

K. AUDITS

The U.S. Department of Homeland Security’s Office of Inspector General and the U.S. Government Accountability Office have authority to audit any project. Once the Applicant signs the fixed-cost offer, FEMA may still adjust funding due to audit findings.

L. PILOT POLICY VERSUS STANDARD PA POLICY

The following table summarizes the differences between the Alternative Procedures Pilot policy and the standard PA policy:

Alternative Procedures Policy	Standard Policy
Fixed-cost project with use of excess funds.	Actual cost project. No retention of excess funds associated with the approved estimate.
May use funds across all Pilot projects.	Can only use funds toward the specific work identified in each specific project.
After FEMA approves a SOW, approval is only required for changes that involve buildings or structures aged 45 years or older, ground disturbing activities, or work in or near water.	After FEMA approves a SOW, approval is required for any change to the SOW.
Do not need to track costs associated with changes to the SOW.	Must track costs associated with all changes to the SOW.
Do not need to track costs to specific work items. Only need to track the total costs associated with the Pilot Projects.	Must track costs specific to each work item within each individual project.
Do not need to track work to specific Pilot Projects. Only need to substantiate that the work is related to the approved SOW covered in the Pilot Projects.	Must track all work to each individual project.

 Keith Turi
 Assistant Administrator, Recovery Directorate

 August 29, 2019
 Date

ADDITIONAL INFORMATION

REVIEW CYCLE

This policy will be reviewed, reissued, revised or rescinded by the Assistant Administrator of Recovery within 4 years of the date of signature on this policy.

AUTHORITIES

Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121, *et seq.*, as amended.

QUESTIONS

Direct questions to Tod Wells, Acting Director, Public Assistance Division, at Tod.Wells@fema.dhs.gov.

Attachment G

PUBLIC ASSISTANCE PROGRAM GUIDANCE

1. GRANTEE'S/RECIPIENT'S WEB-BASED PROJECT MANAGEMENT SYSTEM

Sub-Recipients must use the Grantee's/Recipient's web-based project management system, to access and exchange project information with the State throughout the project's life. This includes processing advances, reimbursement requests, quarterly reports, final inspection schedules, change requests, time extensions, and other services as identified in the Agreement. Training on this system will be supplied by the Recipient upon request by the Sub-Recipient. The Sub-Recipient is required to have working knowledge of the FDEM Grants Management System.

2. PROJECT DOCUMENTATION

The Sub-Recipient must maintain all source documentation supporting the project costs. To facilitate closeout and audits, the Applicant should **file all documentation pertaining to each project with the corresponding PW as the permanent record of the project**. In order to validate Large Project Requests for Reimbursement (RFRs), all supporting documents should be uploaded to the FDEM Grants Management System website. Contact the grant manager with questions about how and where to upload documents, and for assistance linking common documents that apply to more than one (1) PW.

The Sub-Recipient must retain sufficient records to show its compliance with the terms of this Agreement, including documentation of all program costs, in a form sufficient to determine compliance with the requirements and objectives under this Agreement and all other applicable laws and regulations, for a period of five (5) years from the date of the Sub-Recipient account closeout by FEMA.

The five (5) year period is extended if any litigation, claim or audit is started before the five (5) year period expires, and extends beyond the five (5) year period. The records must then be retained until all litigation, claims, or audit findings involving the records have been resolved.

Records for the disposition of non-expendable personal property valued at \$5,000⁰⁰ or more at the time it is acquired must be retained for five (5) years after final account closeout.

Records relating to the acquisition of real property must be retained for five (5) years after final account closeout.

3. PROJECT AMENDMENTS

Project Amendments may be requested by the Sub-Grantee/Sub-Recipient, in FDEM Grants Management System, on both small and large projects, to:

- 1) New Time Extension;
 - a) Requests for Time Extensions within the Grantee/Sub-Recipient's authority
 - b) Requests for Time Extensions not within the Grantee/Sub-Recipient's authority
- 2) New Project Amendment;
 - a) Requests for Alternate Projects; and/or
 - b) Requests for Improved Projects; and/or
 - c) Requests for Mitigation Opportunities; and/or
 - d) Requests for Revised Scope of Work; and/or
 - e) Significant Cost Variance (>20%); and/or
 - f) Use of Eligible Excess Funds
- 3) New Project Appeal

- a) Applicant Appeal
 - i) Request First Appeal; and/or
 - ii) Request Second Appeal; and/or
 - iii) Request Appeal via Arbitration
- b) Project Appeal
 - i) Large Project Appeal
 - (1) Request First Appeal; and/or
 - (2) Request Second Appeal; and/or
 - (3) Request Appeal via Arbitration
 - ii) Small Project Appeal
 - (1) Small Project Netting

4. PROJECT RECONCILIATION AND CLOSEOUT

The purpose of closeout is for the Sub-Recipient to certify that all work has been completed. To ensure a timely closeout process, the Sub-Recipient should notify the Recipient within sixty (60) days of Project completion.

The Sub-Recipient should include the following information with its closeout request:

- Certification that project is complete;
- Date of project completion; and,
- Copies of any Recipient time extensions.

Large Projects

With exception of Fixed Cost Estimate Subawards, Alternate Projects and Improved Projects where final costs exceed FEMA's original approval, the final eligible amount for a Large Project is the actual documented cost of the completed, eligible SOW. Therefore, upon completion of each Large Project that FEMA obligated based on an estimated amount; the Sub-Recipient should provide the documentation to support the actual costs. If the actual costs significantly differ from the estimated amount, the Sub-Recipient should provide an explanation for the significant difference.

FEMA reviews the documentation and, if necessary, obligates additional funds or reduces funding based on actual costs to complete the eligible SOW. If the project included approved hazard mitigation measures; FEMA does not re-evaluate the cost-effectiveness of the HMP based on the final actual cost. If during the review, FEMA determines that the Sub-Recipient performed work that was not included in the approved SOW, FEMA will designate the project as an Improved Project, cap the funding at the original estimated amount, and review the additional SOW for EHP compliance.

For Fixed Cost Estimate Subawards, the Applicant must provide documentation to support that it used the funds in accordance with the eligibility criteria described in the PAPPG and guidance provided at <http://www.fema.gov/alternative-procedures> and in the referenced disaster specific guidance attached hereto.

Once FEMA completes the necessary review and funding adjustments, FEMA closes the project.

Small Projects

Once FEMA obligates a Small Project, FEMA does not adjust the approved amount of an individual Small Project. This applies even when FEMA obligates the PW based on an estimate and actual costs for

completing the eligible SOW differ from the estimated amount. FEMA only adjusts the approved amount on individual Small Projects if one of the following conditions applies:

- The Sub-Recipient did not complete the approved SOW;
- The Sub-Recipient requests additional funds related to an eligible change in SOW;
- The PW contains inadvertent errors or omissions; or,
- Actual insurance proceeds differ from the amount deducted in the PW.

In these cases, FEMA only adjusts the specific cost items affected.

If none of the above applies, the Sub-Recipient may request additional funding if the total actual cost of all of its Small Projects combined exceeds the total amount obligated for all of its Small Projects. In this case, the Sub-Recipient must request the additional funding through the appeal process, within sixty (60) days of completion of its last Small Project. FEMA refers to this as a net small project overrun appeal. The appeal must include actual cost documentation for all Small Projects that FEMA originally funded based on estimate amounts.

To ensure that all work has been performed within the scope of work specified on the Project Worksheets, the Recipient will conduct final inspections on Large Projects, and may, at its sole discretion, select one or more Small Projects to be inspected. Costs determined to be outside of the approved scope of work and/or outside of the approved performance period cannot be reimbursed.

For COVID-19 DR-4486, projects that are under \$131,100.00 are considered small projects. In coordination with FEMA, the Division will accept a self-certification of small projects in lieu of project documentation for permanent work projects (Categories C-G). The self-certification will require the applicant to certify that the damaged facility is eligible, the scope of work is eligible, and that the funds will be expended in accordance with State and Federal law. A copy of the self-certification is attached hereto.

This self-certification will be completed during project development in Grants Portal prior to obligation. Once the project is obligated, the Division will reimburse the project without a request for reimbursement. However, in order to close out the project, the applicant must provide before and after photos of the project.

5. TIME EXTENSIONS

FEMA only provides PA funding for work completed and costs incurred within regulatory deadlines. The deadline for **Emergency Work** is six (6) months from the declaration date. The deadline for **Permanent Work** is eighteen (18) months from the declaration date.

Deadlines for Completion of Work	
Type of Work	Months
Emergency Work	6
Permanent Work	18

If the Applicant determines it needs additional time to complete the project, including direct administrative tasks related to the project, it must submit a written request for a Time Extension to the Recipient with the following information:

- Documentation substantiating delays beyond its control;
- A detailed justification for the delay;
- Status of the work; and,
- The project timeline with the projected completion date.

Within its discretion, set out by 44 C.F.R. §206.204, the Division will grant a time extension for all emergency work, or Category A (debris removal) and B (emergency protective measures) work, by three (3) months. This extends the period of performance for all applicants designated for Category A and B work.

This time extension does not apply to Permanent Work projects. For Permanent Work projects, the applicant will need to submit a time extension request via the FDEM Grants Management System once the project is obligated by FEMA. If the Division grants the time extension request, the grant will be retroactive.

It may extend Emergency Work projects by six (6) months and Permanent Work projects by thirty (30) months. FEMA has authority to extend individual project deadlines beyond these timeframes if extenuating circumstances justify additional time. This applies to all projects with the exception of those projects for temporary facilities.

FEMA generally considers the following to be extenuating circumstances beyond the Applicant's control:

- Permitting or EHP compliance related delays due to other agencies involved
- Environmental limitations (such as short construction window)
- Inclement weather (site access prohibited or adverse impact on construction)

FEMA generally considers the following to be circumstances within the control of the Applicant and not justifiable for a time extension:

- Permitting or environmental delays due to Applicant delays in requesting permits
- Lack of funding
- Change in administration or cost accounting system
- Compilation of cost documentation

Although FEMA only provides PA funding for work performed on or before the approved deadline, the Applicant must still complete the approved SOW for funding to be eligible. FEMA de-obligates funding for any project that the Applicant does not complete. If the Applicant completes a portion of the approved SOW and the completed work is distinct from the uncompleted work, FEMA only de-obligates funding for the uncompleted work. For example, if one project includes funds for three facilities and the Applicant restores only two of the three facilities, FEMA only de-obligates the amount related to the facility that the Applicant did not restore.

Time Extension requests should be submitted prior to current approved deadline, be specific to one project, and include the following information with supporting documentation:

- Dates and provisions of all previous time extensions
- Construction timeline/project schedule in support of requested time
- Basis for time extension request:
 - Delay in obtaining permits
 - Permitting agencies involved and application dates
 - Environmental delays or limitations (e.g., short construction window, nesting seasons)
 - Dates of correspondence with various agencies
 - Specific details
- Inclement weather (prolonged severe weather conditions prohibited access to the area, or adversely impacted construction)
 - Specific details
- Other reason for delay
 - Specific details

Submission of a Time Extension request does not automatically grant an extension to the period of performance. Without an approved Time Extension from the State of FEMA (as applicable), any expenses incurred outside the P.O.P. are ineligible.

6. INSURANCE

The Sub-Recipient understands and agrees that disaster funding for insurable facilities provided by FEMA is intended to supplement, not replace, financial assistance from insurance coverage and/or other sources. Actual or anticipated insurance proceeds must be deducted from all applicable FEMA Public Assistance grants in order to avoid a duplication of benefits. The Sub-Recipient further understands and agrees that if Public Assistance funding is obligated for work that is subsequently determined to be covered by

insurance and/or other sources of funding, FEMA must de-obligate the funds per Stafford Act Sections 101 (b)(4) and 312 (c).

As a condition of funding under this Agreement, pursuant to 44 C.F.R. §§ 206.252-253, for damaged facilities, the Sub-Recipient understands it must, and it agrees to, maintain such types of insurance as are reasonable and necessary to protect against future loss for the anticipated life of the restorative work or the insured facility, whichever is lesser. Except that the Recipient acknowledges FEMA does not require insurance to be obtained and maintained for projects where the total eligible damage is less than \$5,000⁰⁰.

In addition to the preceding requirements, the Sub-Recipient understands it is required to obtain and maintain insurance on certain permanent work projects in order to be eligible for Public Assistance funding in future disasters pursuant to § 311 of the Stafford Act. As stated in the Stafford Act, "Such coverage must at a minimum be in the amount of the eligible project costs." Further, the Stafford Act, requires a Sub-Recipient to purchase and maintain insurance, where that insurance is "reasonably available, adequate or necessary to protect against future loss" to an insurable facility as a condition for receiving disaster assistance funding. The Public Assistance Program and Policy Guide further states, "If the Applicant does not comply with the requirement to obtain and maintain insurance, FEMA will deny or de-obligate PA funds from the current disaster." If the State Insurance Commissioner certifies that the type and extent of insurance is not "reasonably available, adequate or necessary to protect against future loss" to an insurable facility, the Regional Administrator may modify or waive the requirement in conformity with the certification.

The Sub-Recipient understands and agrees it is responsible for being aware of, and complying with, all insurance considerations contained in the Stafford Act and in 44 C.F.R. §§ 206.252-253.

The Sub-Recipient agrees to notify the Recipient in writing within thirty (30) days of the date it becomes aware of any insurance coverage for the damage identified on the applicable Project Worksheets and of any entitlement to compensation or indemnification from such insurance. The Sub-recipient further agrees to provide all pertinent insurance information, including but not limited to copies of all policies, declarations pages, insuring agreements, conditions, and exclusions, Statement of Loss, and Statement of Values for each insured damaged facility.

The Sub-Recipient understands and agrees that it is required to pursue payment under its insurance policies to the best of its ability to maximize potential coverage available.

7. COMPLIANCE WITH PLANNING/PERMITTING REGULATIONS AND LAWS

The Sub-Recipient is responsible for the implementation and completion of the approved projects described in the Project Worksheets in a manner acceptable to Recipient, and in accordance with applicable Local, State, and Federal legal requirements.

If applicable, the contract documents for any project undertaken by the Sub-grantee/Sub-Recipient, and any land use permitted by or engaged in by the Sub-grantee/Sub-Recipient, must be consistent with the local government comprehensive plan.

The Sub-Recipient must ensure that any development or development order complies with all applicable planning, permitting, and building requirements including, but not limited to, the National Environmental Policy Act and the National Historic Preservation Act.

The Sub-Recipient must engage such competent, properly licensed, engineering, environmental, archeological, building, and other technical and professional assistance at all project sites as may be needed to ensure that the project complies with the contract documents.

8. FUNDING FOR LARGE PROJECTS

Although Large Project payment must be based on documented actual costs, most Large Projects are initially approved based on estimated costs. Funds are made available to the Sub-Recipient when work is in progress and funds have been expended with documentation of costs available. When all work associated with the project is complete, the State will perform a reconciliation of all costs and will transmit the information to FEMA for its consideration for final funding adjustments (See Closeouts).

The submission from the Sub-Recipient requesting this reimbursement must include:

- a) A Request for Reimbursement (available in the FDEM Grants Management System);
- b) A Summary of Documentation (SOD) which is titled Reimbursement Detail Report in the FDEM Grants Management System and is automatically created when the Request for Reimbursement is submitted (and is supported by copies of original documents such as, but not limited to, contract documents, insurance policies, payroll records, daily work logs, invoices, purchase orders, and change orders); and,
- c) The FDEM Cost Claim Summary Workbook (found in the Forms section of the FDEM Grants Management System), along with copies of original documents such as contract documents, invoices, change orders, canceled checks (or other proof of expenditure), purchase orders, etc.

9. ADVANCES

1. For a Federally funded contract, any advance payment is also subject to 2 C.F.R., Federal OMB Circulars A-87, A-110, A-122, and the Cash Management Improvement Act of 1990.
2. All advances must be held in an interest-bearing account with the interest being remitted to the Recipient as often as practicable, but not later than ten (10) business days after the close of each calendar quarter.
3. In order to prepare a Request for Advance (RFA) the Sub-Recipient must certify to the Recipient that it has procedures in place to ensure that funds are disbursed to project vendors, contractors, and subcontractors without unnecessary delay. The Sub-Recipient must prepare and submit a budget that contains a timeline projecting future payment schedules through project completion.
4. A separate RFA must be completed for each Project Worksheet to be included in the Advance Funding Payment.
5. The Sub-Recipient must complete a Request for Reimbursement (RFR) via the FDEM Grants Management System no more than ninety (90) days after receiving its Advance Payment for a specific project. The RFR must account for all expenditures incurred while performing eligible work documented in the applicable Project Worksheet for which the Advance was received.
6. If a reimbursement has been paid prior to the submittal of a request for an advance payment, an Advance cannot be accepted for processing.
7. The Recipient may advance funds to the Sub-Recipient, not exceeding the Federal share, only if the Sub-Recipient meets the following conditions:
 - a) The Sub-Recipient must certify to the Recipient that Sub-Recipient has procedures in place to ensure that funds are disbursed to project vendors, contractors, and subcontractors without unnecessary delay;
 - b) The Sub-Recipient must submit to the Recipient the budget supporting the request.
8. The Sub-Recipient must submit a statement justifying the advance and the proposed use of the funds, which also specifies the amount of funds requested and certifies that the advanced funds will be expended no more than ninety (90) days after receipt of the Advance;
9. The Recipient may, in its sole discretion, withhold a portion of the Federal and/or nonfederal share of funding under this Agreement from the Sub-Recipient if the Recipient reasonably expects that the Sub-Recipient cannot meet the projected budgeted timeline or that there may be a subsequent determination by FEMA that a previous disbursement of funds under this or any other Agreement with the Sub-Recipient was improper.

Payments under the Public Assistance Alternative Procedures Program (PAAP) are paid as an Advance Payment only if permissible in accordance with 2 C.F.R. § 200.305(b). Advance payments are only permissible if in compliance with 2 C.F.R. § 200.305(b), and PAAP projects are no exception.

10. DESIGNATION OF AGENT

The Sub-Recipient must complete Attachment D by designating at least three (3) agents to execute any Requests for Advance or Reimbursement, certifications, or other necessary documentation on behalf of the Sub-Recipient.

After execution of this Agreement, the authorized, primary, and secondary Agent may request changes to contacts via email to the State assigned team.

In the event the Sub-Recipient contacts have not been updated regularly and all three (3) Agents have separated from the Sub-Recipient's agency, a designation of authority form will be needed to change contacts.

NOTE: This is very important because if contacts are not updated, notifications made from FDEM Grants Management System may not be received and could result in failure to meet time periods to appeal a Federal determination.

11. DUNS Q&A

What is a DUNS number?

The Data Universal Numbering System (DUNS) number is a unique nine-digit identification number provided by Dun & Bradstreet (D&B). The DUNS number is site specific. Therefore, each distinct physical location of an entity such as branches, divisions and headquarters, may be assigned a DUNS number.

Who needs a DUNS number?

Any *institution* that wants to submit a grant application to the Federal government. Individual researchers do not need a DUNS number if they are submitting their application through a research organization.

How do I get a DUNS number?

Dun & Bradstreet have designated a special phone number for Federal grant and cooperative agreement applicants/prospective applicants. Call the number below between 8 a.m. and 5 p.m., local time in the 48 contiguous states and speak to a D&B representative. This process will take approximately 5 – 10 minutes and you will receive your DUNS number at the conclusion of the call.

1-866-705-5711

What do I need before I request a DUNS number?

Before you call D&B, you will need the following pieces of information:

- Legal Name
- Headquarters name and address for your organization
- Doing business as (dba) or other name by which your organization is commonly recognized
- Physical address
- Mailing address (if separate from headquarters and/or physical address)
- Telephone number
- Contact name and title
- Number of employees at your physical location

How much does a DUNS number cost?

There is no charge to obtain a DUNS number.

Why does my institution need a DUNS number?

New regulations taking affect Oct. 1, 2003 mandate that a DUNS number be provided on all Federal grant and cooperative agreement applications. The DUNS number will offer a way for the Federal government to better match information across all agencies.

How do I see if my institution already has a DUNS number?

Call the toll-free number above and indicate that you are a Federal grant and/or cooperative agreement applicant. D&B will tell you if your organization already has a number assigned. If not, they will ask if you wish to obtain one.

Should we use the +4 extension to the DUNS number?

Although D&B provides the ability to use a 4-digit extension to the DUNS number, neither D&B nor the Federal government assign any importance to the extension. Benefits, if any, derived from the extension will be at your institution only.

Is there anything special that we should do for multi-campus systems?

Multi-campus systems can use what is called a parent DUNS number to aggregate information for the system as a whole. The main campus will need to be assigned a DUNS number. Then each satellite campus will need to reference the main campus DUNS number as their parent DUNS when obtaining their own DUNS number. For NIH grantees, if each campus submits grant applications as a unique grantee organization, then each campus needs to obtain their own DUNS number.

What should we do if our institution has more than 1 DUNS number?

Your institution will need to decide which DUNS number to use for grant application purposes and use only that number.

Are there any exceptions to the new DUNS number rules?

Individuals who would personally receive a grant or cooperative agreement award from the Federal government apart from any business or non-profit organization they may operate are exempt from this requirement.

Who at my institution is responsible for requesting a DUNS number?

This will vary from institution to institution. This should be done by someone knowledgeable about the entire structure of your institution and who has the authority to make such decisions. Typically, this request would come from the finance/accounting department or some other department that conducts business with a large cross section of the institution.

We are an organization new to Federal grant funding so we obviously need a DUNS number. But we don't want to be included in any marketing list. What can we do?

Inclusion on a D&B marketing list is optional. If you do not want your name/organization included on this marketing list, request to be de-listed from D&B's marketing file when you are speaking with a D&B representative during your DUNS number telephone application.

Who do we contact if we have questions?

If you have questions about applying for a DUNS number, contact the Dun & Bradstreet special phone number 1-866-705-5771. If you have questions concerning this new Federal-wide requirement, contact Sandra Swab, Office of Federal Financial Management, 202-395-3993 or via e-mail at sswab@omb.eop.gov.

12. Substitute Form W-9

For the purpose of this Agreement, a Sub-Recipient is also a Vendor. The State of Florida requires vendors doing business with the State to submit a Substitute Form W-9. The purpose of a Form W-9 is to provide a Federal Taxpayer Identification Number (TIN), official entity name, a business designation (sole proprietorship, corporation, partnership, etc.), and other taxpayer information to the State. Submission of a Form W-9 ensures that the State's vendor records and Form 1099 reporting

are accurate. Due to specific State of Florida requirements, the State will not accept the Internal Revenue Service Form W-9.

Effective March 5, 2012, State of Florida agencies will not be permitted to place orders for goods and services **or make payments to any vendor that does not have a verified Substitute W-9 on file** with the Department of Financial Services. Vendors are required to register and submit a Form W-9 on the State's Vendor Website at <https://flvendor.myfloridacfo.com>.

13. Small, Women Owned and Minority Owned Businesses

2 CFR 200.321 requires a non-Federal entity take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. These affirmative steps must include:

- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

Attachment H

**FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT (FFATA)
INSTRUCTIONS AND WORKSHEET**

PURPOSE: The Federal Funding Accountability and Transparency Act (FFATA) was signed on September 26, 2006. The intent of this legislation is to empower every American with the ability to hold the government accountable for each spending decision. The FFATA legislation requires information on Federal awards (Federal assistance and expenditures) be made available to the public via a single, searchable website, which is <http://www.usaspending.gov/>.

The FFATA Subaward Reporting System (FSRS) is the reporting tool the Florida Division of Emergency Management ("FDEM" or "Division") must use to capture and report sub-award and executive compensation data regarding first-tier subawards that obligate \$25,000 or more in Federal funds (excluding Recovery funds as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5).

Note: This "Instructions and Worksheet" is meant to explain the requirements of the FFATA and give clarity to the FFATA Form distributed to sub-awardees for completion. All pertinent information below should be filled out, signed, and returned to the project manager.

ORGANIZATION AND PROJECT INFORMATION

The following information must be provided to the FDEM prior to the FDEM's issuance of a subaward (Agreement) that obligates \$25,000 or more in Federal funds as described above. Please provide the following information and return the signed form to the Division as requested.

PROJECT #: _____

FUNDING AGENCY: Federal Emergency Management Agency

AWARD AMOUNT: \$ _____

OBLIGATION/ACTION DATE: _____

SUBAWARD DATE (if applicable): _____

DUNS#: 076040070

DUNS# +4: _____

*If your company or organization does not have a DUNS number, you will need to obtain one from Dun & Bradstreet at 866-705-5711 or use the web form (<http://fedgov.dnb.com/webform>). The process to request a DUNS number takes about ten minutes and is free of charge.

BUSINESS NAME: _____

DBA NAME (IF APPLICABLE): _____

PRINCIPAL PLACE OF BUSINESS ADDRESS: _____

ADDRESS LINE 1: _____

ADDRESS LINE 2: _____

ADDRESS LINE 3: _____

CITY _____ STATE _____ ZIP CODE+4** _____

PARENT COMPANY DUNS# (if applicable): _____

CATALOG OF FEDERAL DOMESTIC ASSISTANCE (CFDA#): _____

DESCRIPTION OF PROJECT (Up to 4000 Characters)

Complete eligible Projects for repair or replacement of Disaster damaged facilities.

PRINCIPAL PLACE OF PROJECT PERFORMANCE (IF DIFFERENT THAN PRINCIPAL PLACE OF BUSINESS):

ADDRESS LINE 1: _____

ADDRESS LINE 2: _____

ADDRESS LINE 3: _____

CITY _____ STATE _____ ZIP CODE+4** _____

CONGRESSIONAL DISTRICT FOR PRINCIPAL PLACE OF PROJECT PERFORMANCE:

**Providing the Zip+4 ensures that the correct Congressional District is reported.

EXECUTIVE COMPENSATION INFORMATION:

1. In your business or organization's previous fiscal year, did your business or organization (including parent organization, all branches, and all affiliates worldwide) receive (a) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance (e.g. loans, grants, subgrants, and/or cooperative agreements, etc.) subject to the Transparency Act, as defined at 2 CFR 170.320; AND, (b) \$25,000,000 or more in annual gross revenues from U.S. Federal procurement contracts (and subcontracts) and Federal financial assistance (e.g. loans, grants, subgrants, and/or cooperative agreements, etc.) subject to the Transparency Act?
Yes No

If the answer to Question 1 is "Yes," continue to Question 2. If the answer to Question 1 is "No", move to the signature block below to complete the certification and submittal process.

2. Does the public have access to information about the compensation of the executives in your business or organization (including parent organization, all branches, and all affiliates worldwide) through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) Section 6104 of the Internal Revenue Code of 1986?
Yes No

If the answer to Question 2 is "Yes," move to the signature block below to complete the certification and submittal process. [Note: Securities Exchange Commission information should be accessible at <http://www.sec.gov/answers/excomp.htm>. Requests for Internal Revenue Service (IRS) information should be directed to the local IRS for further assistance.]

If the answer to Question 2 is "No" FFATA reporting is required. Provide the information required in the "TOTAL COMPENSATION CHART FOR MOST RECENTLY COMPLETED FISCAL YEAR" appearing below to report the "Total Compensation" for the five (5) most highly compensated "Executives", in rank order, in your organization. For purposes of this request, the following terms apply as defined in 2 CFR Ch. 1 Part 170 Appendix A:

"Executive" is defined as "officers, managing partners, or other employees in management positions".

"Total Compensation" is defined as the cash and noncash dollar value earned by the executive during the most recently completed fiscal year and includes the following:

- i. Salary and bonus.
- ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
- iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
- iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
- v. Above-market earnings on deferred compensation which is not tax-qualified.
- vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

TOTAL COMPENSATION CHART FOR MOST RECENTLY COMPLETED FISCAL YEAR

(Date of Fiscal Year Completion _____)

Rank (Highest to Lowest)	Name (Last, First, MI)	Title	Total Compensation for Most Recently Completed Fiscal Year
1			
2			
3			
4			
5			

THE UNDERSIGNED CERTIFIES THAT ON THE DATE WRITTEN BELOW, THE INFORMATION PROVIDED HEREIN IS ACCURATE.

SIGNATURE: _____

NAME AND TITLE: _____

DATE: _____



CONTRACT PROVISIONS TEMPLATE

FEMA Office of Chief Counsel

Procurement Disaster Assistance Team

INTRODUCTION

If a non-Federal entity (state or non-state) wants to use federal funds to pay or reimburse their expenses for equipment or services under a contract, that contract **must** contain the applicable clauses described in [Appendix II to the Uniform Rules](#) (Contract Provisions for Non-Federal Entity Contracts Under Federal Awards) under 2 C.F.R. § 200.326. In addition, there are certain contract clauses which are recommended by FEMA.

This document outlines the federally required contract provisions in addition to FEMA-recommended provisions.

- For some of the required clauses, sample language or references to find sample language are provided.
- Sample language for certain required clauses (remedies, termination for cause and convenience, changes) is not provided since these must be drafted in accordance with the non-Federal entity's applicable local laws and procedures.
- For the clauses which require that exact language be included, the required language is provided. Those clauses are specifically identified below.

Please note that the non-Federal entity alone is responsible for ensuring that all language included in their contracts meets the requirements of 2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II.

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Required Contract Provisions: Quick Reference Guide

KEY	
Required/Recommended Provision	<input type="checkbox"/>
Required/Recommended Provision and Required Exact Language	<input type="checkbox"/>
Not Required for PA Awards (Grants)	<input type="checkbox"/>

	Required Provision	Contract Criteria	Sample Language?
1.	Legal/contractual/administrative remedies for breach of contract	> Simplified Acquisition Threshold (\$250k)	No. It is based on applicant's procedures.
2.	Termination for cause or convenience	> \$10k	No. It is based on applicant's procedures.
3.	Equal Employment Opportunity	Construction work	Yes. 41 CFR Part 60-1.4(b)
4.	Davis Bacon Act	Construction work	Not applicable to PA grants
5.	Copeland Anti-Kickback Act	Construction work > \$2k	Not applicable to PA grants
6.	Contract Work Hours and Safety Standards Act	> \$100k + mechanics or laborers	Yes. 29 CFR 5.5(b)
7.	Rights to inventions made under a contract or agreement	Funding agreement	Not applicable to PA grants
8.	Clean Air Act and Federal Water Pollution Control Act	>\$150k	Yes
9.	Debarment and Suspension	All	Yes
10.	Byrd Anti-Lobbying Amendment	All (>\$100k: Certification)	Yes. Clause and certification
11.	Procurement of Recovered Materials	Applicant is a state or political subdivision of a state. Work involves the use of materials.	Yes

Recommended Contract Provisions: Quick Reference Guide

	Recommended Provision	Contract Criteria	Sample Language?
1.	Access to Records	All	Yes
2.	Contract Changes or Modifications	All	No. It depends on nature of contract and end-item procured.
3.	DHS Seal, Logo, and Flags	All	Yes
4.	Compliance with Federal Law, Regulations and Executive Orders	All	Yes
5.	No Obligation by Federal Government	All	Yes
6.	Program Fraud and False or Fraudulent Statements or Related Acts	All	Yes

REQUIRED CONTRACT PROVISIONS

1. REMEDIES

- a. Standard. Contracts for more than the simplified acquisition threshold, currently set at \$250,000, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. See 2 C.F.R. Part 200, Appendix II(A).
- b. Applicability. This requirement applies to all FEMA grant and cooperative agreement programs.

2. TERMINATION FOR CAUSE AND CONVENIENCE

- a. Standard. All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity, including the manner by which it will be effected and the basis for settlement. See 2 C.F.R. Part 200, Appendix II(B).
- b. Applicability. This requirement applies to all FEMA grant and cooperative agreement programs.

3. EQUAL EMPLOYMENT OPPORTUNITY

If applicable, exact language below in subsection 3.d is required.

- a. Standard. Except as otherwise provided under 41 C.F.R. Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 C.F.R. § 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. § 60- 1.4(b), in accordance with Executive Order 11246, *Equal Employment Opportunity* (30 Fed. Reg. 12319, 12935, 3 C.F.R. Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, *Amending Executive Order 11246 Relating to Equal Employment Opportunity*, and implementing regulations at 41 C.F.R. Part 60 (Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor). See 2 C.F.R. Part 200, Appendix II(C).

b. Key Definitions.

- i. Federally Assisted Construction Contract. The regulation at 41 C.F.R. § 60-1.3 defines a “federally assisted construction contract” as any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any Federal program involving a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the Government for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work.
- ii. Construction Work. The regulation at 41 C.F.R. § 60-1.3 defines “construction work” as the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.

c. Applicability. This requirement applies to all FEMA grant and cooperative agreement programs.

d. Required Language. The regulation at 41 C.F.R. Part 60-1.4(b) requires the insertion of the following contract clause.

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for

employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures

authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon

contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

4. DAVIS-BACON ACT

- a. **Standard.** All prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. §§ 3141-3144 and 3146-3148) as supplemented by Department of Labor regulations at 29 C.F.R. Part 5 (Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction). See 2 C.F.R. Part 200, Appendix II(D). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week.
- b. **Applicability.** The Davis-Bacon Act only applies to the Emergency Management Preparedness Grant Program, Homeland Security Grant Program, Nonprofit Security Grant Program, Tribal Homeland Security Grant Program, Port Security Grant Program, and Transit Security Grant Program. **It DOES NOT apply to other FEMA grant and cooperative agreement programs, including the Public Assistance Program.**
- c. **Requirements.** If applicable, the non-federal entity must do the following:
 - i. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
 - ii. Additionally, pursuant 2 C.F.R. Part 200, Appendix II(D), contracts subject to the Davis-Bacon Act, must also include a provision for compliance with

the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations at 29 C.F.R. Part 3 (Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States). The Copeland Anti-Kickback Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to FEMA.

- iii. Include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”).

Suggested Language. The following provides a sample contract clause:

Compliance with the Davis-Bacon Act.

- a. All transactions regarding this contract shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. The contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.
- b. Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.
- c. Additionally, contractors are required to pay wages not less than once a week.

5. COPELAND ANTI-KICKBACK ACT

- a. Standard. Recipient and subrecipient contracts must include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”).

- b. Applicability. This requirement applies to all contracts for construction or repair work above \$2,000 in situations where the Davis-Bacon Act also applies. **It DOES NOT apply to the FEMA Public Assistance Program.**

- c. Requirements. If applicable, the non-federal entity must include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations at 29 C.F.R. Part 3 (Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States). Each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to FEMA. Additionally, in accordance with the regulation, each contractor and subcontractor must furnish each week a statement with respect to the wages paid each of its employees engaged in work covered by the Copeland Anti-Kickback Act and the Davis Bacon Act during the preceding weekly payroll period. The report shall be delivered by the contractor or subcontractor, within seven days after the regular payment date of the payroll period, to a representative of a Federal or State agency in charge at the site of the building or work.

Sample Language. The following provides a sample contract clause:

Compliance with the Copeland “Anti-Kickback” Act.

- a. Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.

- b. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

- c. Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment

as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.”

6. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

- a. **Standard.** Where applicable (see 40 U.S.C. §§ 3701-3708), all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations at 29 C.F.R. Part 5. See 2 C.F.R. Part 200, Appendix II(E). Under 40 U.S.C. § 3702, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Further, no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous.
- b. **Applicability.** This requirement applies to all FEMA contracts awarded by the non-federal entity in excess of \$100,000 under grant and cooperative agreement programs that involve the employment of mechanics or laborers. It is applicable to construction work. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- c. **Suggested Language.** The regulation at 29 C.F.R. § 5.5(b) provides contract clause language concerning compliance with the Contract Work Hours and Safety Standards Act. FEMA suggests including the following contract clause:

Compliance with the Contract Work Hours and Safety Standards Act.

(1) *Overtime requirements.* No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The **(write in the name of the Federal agency or the loan or grant recipient)** shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

7. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT

- a. Standard.** If the FEMA award meets the definition of “funding agreement” under 37C.F.R. § 401.2(a) and the non-Federal entity wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the non-Federal entity must comply with the requirements of 37 C.F.R. Part 401 (Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under

Government Grants, Contracts and Cooperative Agreements), and any implementing regulations issued by FEMA. See 2 C.F.R. Part 200, Appendix II(F).

- b. Applicability. This requirement applies to “*funding agreements*,” but it **DOES NOT apply to the Public Assistance**, Hazard Mitigation Grant Program, Fire Management Assistance Grant Program, Crisis Counseling Assistance and Training Grant Program, Disaster Case Management Grant Program, and Federal Assistance to Individuals and Households – Other Needs Assistance Grant Program, as FEMA awards under these programs do not meet the definition of “funding agreement.”
- c. Funding Agreements Definition. The regulation at 37 C.F.R. § 401.2(a) defines “funding agreement” as any contract, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority, and any contractor for the performance of experimental, developmental, or research work funded in whole or in part by the Federal government. This term also includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as defined in the first sentence of this paragraph.

8. CLEAN AIR ACT AND THE FEDERAL WATER POLLUTION CONTROL ACT

- a. Standard. If applicable, contracts must contain a provision that requires the contractor to agree to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§ 7401-7671q.) and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251-1387). Violations must be reported to FEMA and the Regional Office of the Environmental Protection Agency. See 2 C.F.R. Part 200, Appendix II(G).
- b. Applicability. This requirement applies to contracts awarded by a non-federal entity of amounts in excess of \$150,000 under a federal grant.
- c. Suggested Language. The following provides a sample contract clause.

Clean Air Act

1. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as

amended, 42 U.S.C. § 7401 et seq.

2. The contractor agrees to report each violation to the (**name of applicant entering into the contract**) and understands and agrees that the (**name of the applicant entering into the contract**) will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

Federal Water Pollution Control Act

1. The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
2. The contractor agrees to report each violation to the (**name of the applicant entering into the contract**) and understands and agrees that the (**name of the applicant entering into the contract**) will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

9. DEBARMENT AND SUSPENSION

- a. Standard. Non-Federal entities and contractors are subject to the debarment and suspension regulations implementing Executive Order 12549, *Debarment and Suspension* (1986) and Executive Order 12689, *Debarment and Suspension* (1989) at 2 C.F.R. Part 180 and the Department of Homeland Security's regulations at 2 C.F.R. Part 3000 (Nonprocurement Debarment and Suspension).
- b. Applicability. This requirement applies to all FEMA grant and cooperative

agreement programs.

c. Requirements.

- i. These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs and activities. See 2 C.F.R. Part 200, Appendix II(H); and 2 C.F.R. § 200.213. A contract award must not be made to parties listed in the SAM Exclusions. SAM Exclusions is the list maintained by the General Services Administration that contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. SAM exclusions can be accessed at www.sam.gov. See 2 C.F.R. § 180.530.
- ii. In general, an “excluded” party cannot receive a Federal grant award or a contract within the meaning of a “covered transaction,” to include subawards and subcontracts. This includes parties that receive Federal funding indirectly, such as contractors to recipients and subrecipients. The key to the exclusion is whether there is a “covered transaction,” which is any nonprocurement transaction (unless excepted) at either a “primary” or “secondary” tier. Although “covered transactions” do not include contracts awarded by the Federal Government for purposes of the nonprocurement common rule and DHS’s implementing regulations, it does include some contracts awarded by recipients and subrecipients.
- iii. Specifically, a covered transaction includes the following contracts for goods or services:
 1. The contract is awarded by a recipient or subrecipient in the amount of at least \$25,000.
 2. The contract requires the approval of FEMA, regardless of amount.
 3. The contract is for federally-required audit services.
 4. A subcontract is also a covered transaction if it is awarded by the contractor of a recipient or subrecipient and requires either the approval of FEMA or is in excess of \$25,000.

d. Suggested Language. The following provides a debarment and suspension

clause. It incorporates an optional method of verifying that contractors are not excluded or disqualified.

Suspension and Debarment

- (1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the contractor is required to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- (2) The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- (3) This certification is a material representation of fact relied upon by (**insert name of recipient/subrecipient/applicant**). If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to (**insert name of recipient/subrecipient/applicant**), the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- (4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

10. BYRD ANTI-LOBBYING AMENDMENT

- a. **Standard.** Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. § 1352. FEMA's regulation at 44 C.F.R. Part 18 implements the requirements of 31 U.S.C. § 1352 and provides, in Appendix A to Part 18, a copy of the certification that is required to be completed by each entity as described in 31 U.S.C. § 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any

Federal award. Such disclosures are forwarded from tier to tier up to the Federal awarding agency.

- b. Applicability. This requirement applies to all FEMA grant and cooperative agreement programs. Contractors that apply or bid for a contract of \$100,000 or more under a federal grant must file the required certification. See 2 C.F.R. Part 200, Appendix II(I); 31 U.S.C. § 1352; and 44 C.F.R. Part 18.
- c. Suggested Language.

Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

- d. Required Certification. If applicable, contractors must sign and submit to the non-federal entity the following certification.

APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any

Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date

11. PROCUREMENT OF RECOVERED MATERIALS

- a. Standard. A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. See 2 C.F.R. Part 200, Appendix II(J); and 2 C.F.R. § 200.322.
- b. Applicability. This requirement applies to all contracts awarded by a non-federal entity under FEMA grant and cooperative agreement programs.
- c. Requirements. The requirements of Section 6002 include procuring only items designated in guidelines of the EPA at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
- d. Suggested Language.
 - i. In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—
 - 1. Competitively within a timeframe providing for compliance with the contract performance schedule;
 - 2. Meeting contract performance requirements; or
 - 3. At a reasonable price.
 - ii. Information about this requirement, along with the list of EPA-designated items, is available at EPA’s Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
 - iii. The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.”

RECOMMENDED CONTRACT PROVISIONS

The Uniform Rules authorize FEMA to require additional provisions for non-Federal entity contracts. Although FEMA does not currently require additional provisions, **FEMA recommends** the following:

1. ACCESS TO RECORDS

- a. Standard. All recipients, subrecipients, successors, transferees, and assignees must acknowledge and agree to comply with applicable provisions governing DHS access to records, accounts, documents, information, facilities, and staff. Recipients must give DHS/FEMA access to, and the right to examine and copy, records, accounts, and other documents and sources of information related to the federal financial assistance award and permit access to facilities, personnel, and other individuals and information as may be necessary, as required by DHS regulations *and* other applicable laws or program guidance. See DHS Standard Terms and Conditions: Version 8.1 (2018). Additionally, Section 1225 of the Disaster Recovery Reform Act of 2018 prohibits FEMA from providing reimbursement to any state, local, tribal, or territorial government, or private non-profit for activities made pursuant to a contract that purports to prohibit audits or internal reviews by the FEMA administrator or Comptroller General.
- b. Suggested Language.

Access to Records. The following access to records requirements apply to this contract:

- (1) The Contractor agrees to provide (**insert name of state agency or local or Indian tribal government**), (**insert name of recipient**), the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
- (2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- (3) The Contractor agrees to provide the FEMA Administrator or

his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

(4) In compliance with the Disaster Recovery Act of 2018, the (**write in name of the non-federal entity**) and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

2. CHANGES

- a. Standard. To be eligible for FEMA assistance under the non-Federal entity's FEMA grant or cooperative agreement, the cost of the change, modification, change order, or constructive change must be allowable, allocable, within the scope of its grant or cooperative agreement, and reasonable for the completion of project scope.
- b. Applicability. FEMA recommends, therefore, that a non-Federal entity include a changes clause in its contract that describes how, if at all, changes can be made by either party to alter the method, price, or schedule of the work without breaching the contract. The language of the clause may differ depending on the nature of the contract and the end-item procured.

3. DHS SEAL, LOGO, AND FLAGS

- a. Standard. Recipients must obtain permission prior to using the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials. See DHS Standard Terms and Conditions: Version 8.1 (2018).
- b. Applicability. FEMA recommends that all non-Federal entities place in their contracts a provision that a contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.
- c. Suggested Language.

“The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.”

4. COMPLIANCE WITH FEDERAL LAW, REGULATIONS, AND EXECUTIVE ORDERS

- a. Standard. The recipient and its contractors are required to comply with all Federal laws, regulations, and executive orders.
- b. Applicability. FEMA recommends that all non-Federal entities place into their contracts an acknowledgement that FEMA financial assistance will be used to fund the contract along with the requirement that the contractor will comply with all applicable Federal law, regulations, executive orders, and FEMA policies, procedures, and directives.
- c. Suggested Language.

“This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.”

5. NO OBLIGATION BY FEDERAL GOVERNMENT

- a. Standard. FEMA is not a party to any transaction between the recipient and its contractor. FEMA is not subject to any obligations or liable to any party for any matter relating to the contract.
- b. Applicability. FEMA recommends that the non-Federal entity include a provision in its contract that states that the Federal Government is not a party to the contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.
- c. Suggested Language.

“The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.”

6. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

- a. Standard. Recipients must comply with the requirements of The False Claims Act (31 U.S.C. §§ 3729-3733) which prohibits the submission of false or

fraudulent claims for payment to the federal government. See DHS Standard Terms and Conditions: Version 8.1 (2018); and 31 U.S.C. §§ 3801-3812, which details the administrative remedies for false claims and statements made. The non-Federal entity must include a provision in its contract that the contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to its actions pertaining to the contract.

- b. Applicability. FEMA recommends that the non-Federal entity include a provision in its contract that the contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to its actions pertaining to the contract.

- c. Suggested Language.

“The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor’s actions pertaining to this contract.”

Attachment J
DHS OIG AUDIT ISSUES and ACKNOWLEDGEMENT

The Department of Homeland Security (DHS) Office of Inspector General (OIG) was tasked by Congress to audit all FEMA projects for fiscal year 2014. A synopsis of those findings are listed below:

There have been 32 separate instances where Grantees/Recipients or Sub-Recipients did not follow the prescribed rules to the point that the OIG believed the below listed violations could have nullified the FEMA/State agreement.

1. Non-Competitive contracting practices.
2. Failure to include required contract provisions.
3. Failure to employ the required procedures to ensure that small, minority, and women's owned firms were all given fair consideration.
4. Improper "cost-plus-a-percentage-of-cost" contracting practices.

The following information comes directly from DHS's OIG Audit Tips for Managing Disaster Related Project Costs; Report Number OIG-16-109-D dated July 1, 2016. The following may be reasons for the disallowance or total de-obligation of funding given under the FEMA/State agreement:

1. Use of improper contracting practices.
2. Unsupported costs.
3. Poor project accounting.
4. Duplication of benefits.
5. Excessive equipment charges (applicability may vary with hazard mitigation projects).
6. Excessive labor and fringe benefit charges.
7. Unrelated project costs.
8. Direct Administrative Costs.
9. Failure to meet the requirement to obtain and maintain insurance.

Key Points that *must* be followed when Administering FEMA Grants:

- Designate one person to coordinate the accumulation of records.
- Establish a separate and distinct account for recording revenue and expenditures, and a separate identifier for each specific FEMA project.
- Ensure that the final claim for each project is supported by amounts recorded in the accounting system.
- Ensure that each expenditure is recorded in the accounting books and references supporting sources of documentation (checks, invoices, etc.) that can be readily retrieved.
- Research insurance coverage and seek reimbursement for the maximum amount. Credit the appropriate FEMA project with that amount.

- Check with your Federal Grant Program Coordinator about availability of funding under other Federal programs (Federal Highways, Housing and Urban Development, etc.) and ensure that the final project claim does not include costs that another Federal agency funded or could have funded.
- Ensure that materials taken from existing inventories for use on FEMA projects are documented by inventory withdrawal and usage records.
- Ensure that expenditures claimed under the FEMA project are reasonable, necessary, directly benefit the project, and are authorized under the "Scope of Work."

I acknowledge that I have received a copy of, and have been briefed on, the above DHS OIG Audit Issues.

Sub-Recipient Agency

Date

Signature

Printed Name & Title

Attachment K
JUSTIFICATION FOR ADVANCE PAYMENT

RECIPIENT:

If you are requesting an advance, indicate same by checking the box below.

<p><input type="checkbox"/> ADVANCE REQUESTED</p> <p>Advance payment of \$ _____ is requested. Balance of payments will be made on a reimbursement basis. These funds are needed to pay pending obligations for eligible work. We would not be able to operate the program without this advance.</p>

If you are requesting an advance, complete the following chart and line item justification below.

BUDGET CATEGORY/LINE ITEMS (list applicable line items)	20__-20__ Anticipated Expenditures for First Three Months of Agreement
<i>Example: PW#00001(0)</i>	<i>Contract Work \$1,500,000.00 (provide detailed justification).</i>
TOTAL EXPENSES	

LINE ITEM JUSTIFICATION (For each line item, provide a **detailed justification** explaining the need for the cash advance. The justification must include supporting documentation that clearly shows the advance **will be expended within the first ninety (90) days of the contract term**. Support documentation should include quotes for purchases, delivery timelines, salary and expense projections, etc. to provide the Division reasonable and necessary support that the advance will be expended within the first ninety (90) days of the contract term. Any advance funds not expended within the first ninety (90) days of the contract term must be returned to the Division Cashier, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399, within thirty (30) days of receipt, along with any interest earned on the advance).

EXECUTIVE BRIEF REGULAR MEETING

AGENDA DATE: August 18, 2020

DEPARTMENT: Leisure Services

TITLE:

Resolution No. 32-2020 – FY 2020 Justice Assistance Grant Application

SUMMARY:

This resolution approves and authorizes the submission of an application to the Bureau of Justice Assistance for the City's Fiscal Year 2020 Justice Assistance Grant formula award of \$31,296. The City intends to use these funds to retain the Recreation Leader position to continue the provision of general management, oversight and coordination of the City's out-of-school programs for at-risk youth at the City's Youth Empowerment Centers.

BACKGROUND AND JUSTIFICATION:

The Department of Justice, Bureau of Justice Assistance (BJA) has recently notified the City of its eligibility for Fiscal Year 2020 Edward Byrne Memorial Justice Assistance Grant (JAG) funding under the Local JAG solicitation in the amount of \$31,296. These funds are made available to the City for eligible local initiatives and activities that include law enforcement programs, prosecution and court programs, prevention and education programs, corrections and community corrections programs, drug treatment and enforcement programs, planning, evaluation and technology programs, and crime victim and witness programs. The term of the award is from October 1, 2020 through September 30, 2024.

The City proposes to use this allocation of Fiscal Year 2020 JAG Program funding to retain the Recreation Leader position. The Recreation Leader is responsible for general oversight, management and coordination of the out-of-school programs offered at the City's Youth Empowerment Centers. This is an eligible prevention and education program under the JAG Program guidelines.

Resolution No. 32-2020 approves the submission of the City's application for Fiscal Year 2020 JAG funding for this purpose. It further authorizes the acceptance of these funds, if awarded, and for the City Manager to execute all programmatic documents.

MOTION:

Move to approve/disapprove Resolution No. 32-2020 approving the submission of the City's application for Fiscal Year 2020 JAG funding in the amount of \$31,296 and authorizing the acceptance of these funds, if awarded, and for the City Manager to execute all related programmatic documents.

ATTACHMENT(S):

Fiscal Impact Analysis
Resolution 32-2020

FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2020	2021	2022	2023	2024
Capital Expenditures	0	0	0	0	0
Operating Expenditures	0	0	31,296	0	0
External Revenues	0	0	31,296	0	0
Program Income	0	0	0	0	0
In-kind Match	0	0	0	0	0
 Net Fiscal Impact	 0	 0	 0	 0	 0
 No. of Addn'l Full-Time Employee Positions	 0	 0	 0	 0	 0

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

Public Safety Edward Byrne Memorial Justice Assistance Grant

Account Number	Account Description	Project Number	FY22 Budget	Current Balance	Agenda Expenditure	Balance
180-0000-331-20.00	Federal Grants Safety	TBD	\$31,296	N/A	\$31,296	
180-9710-529-12.10.21	Salaries & Benefits	TBD	\$31,296	N/A	\$31,296	

C. Department Fiscal Review:_____

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RESOLUTION NO. 32-2020 OF THE CITY OF LAKE WORTH BEACH, FLORIDA, AUTHORIZING THE SUBMISSION OF AN APPLICATION TO THE U.S. DEPARTMENT OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, BUREAU OF JUSTICE ASSISTANCE FOR GRANT FUNDS PROVIDED THROUGH THE FISCAL YEAR 2020 EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT PROGRAM IN THE AMOUNT OF \$31,296; PROVIDING FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES

WHEREAS, the City has received notification from the U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance of its eligibility to apply for assistance under the Fiscal Year 2020 Edward Byrne Memorial Justice Assistance Grant (JAG) Program via its Local JAG Program solicitation; and

WHEREAS, the Fiscal Year 2020 JAG Program allocation for the City has been established by formula in the amount of \$31,296 for eligible local initiatives and activities; and

WHEREAS, the provision of out-of-school programs for at-risk youth at the Youth Empowerment Center is an eligible prevention and education activity under JAG Program guidelines; and

WHEREAS, the City desires to apply for Fiscal Year 2020 JAG Program funds to support the continued staffing of the Recreation Leader position at the City's Youth Empowerment Center to provide general oversight, management and coordination of the out-of-school programs for at-risk youth at the city's Youth Empowerment Centers.

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

SECTION 1: The City Commission of the City of Lake Worth, Florida, hereby authorizes the submission of an application to the U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance for grant funds made available through the Fiscal Year 2020 Edward Byrne Memorial Justice Assistance Grant Program in the amount of \$31,296 for the continued staffing of the Recreation Leader position to provide general oversight, management and coordination of the out-of-school programs for at-risk youth at the City's Youth Empowerment Center.

SECTION 2: The City Commission of the City of Lake Worth, Florida, hereby authorizes the acceptance of these funds, if awarded, for this purpose.

49 SECTION 3: The City Commission of the City of Lake Worth, Florida, hereby
50 authorizes the City Manager to execute all related programmatic documents for
51 this purpose.

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53 SECTION 4: Upon execution of the resolution, one copy shall be forwarded to
54 the Leisure Services Director. The fully executed original shall be maintained by
55 the City Clerk as a public record of the City.

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57 SECTION 5: This resolution shall become effective upon adoption.

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60 The passage of this resolution was moved by Commissioner _____,
61 seconded by Commissioner _____, and upon being put to a
62 vote, the vote was as follows:

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Mayor Pam Triolo

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Vice Mayor Andy Amoroso

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Commissioner Scott Maxwell

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Commissioner Omari Hardy

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Commissioner Herman Robinson

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69 The Mayor thereupon declared this resolution duly passed and adopted
70 on the 18th day of August, 2020.

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72

LAKE WORTH BEACH CITY COMMISSION

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By: _____

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Pam Triolo, Mayor

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ATTEST:

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Deborah M. Andrea, CMC, City Clerk

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EXECUTIVE BRIEF REGULAR MEETING

AGENDA DATE: August 18, 2020

DEPARTMENT: Electric Utility

TITLE:

Agreement with KVA, Inc., d/b/a KVA Power Protection & Control for a prefabricated control house

SUMMARY:

Agreement with KVA, Inc., d/b/a KVA Power Protection & Control for a prefabricated control house for 7th Avenue North Substation rebuild project in the amount not to exceed \$183,656.

BACKGROUND AND JUSTIFICATION:

The City issued a Request for Proposal (RFP 20-204) seeking proposals from qualified firms to design and furnish a prefabricated concrete control house for substation relay and protection equipment. Two firms provided proposals and KVA Inc., was selected by the evaluation committee to provide these services.

Currently, the 7th Ave North substation is operating as a 4kV distribution substation. The substation is equipped with a single 26kV to 4kV step-down transformer and metal-clad switchgear which are at their end of useful remaining life. Over the past year, the electric utility has completed design of the new substation incorporating the 4kV to 26kV voltage conversion and are currently making final preparations to begin construction. The new pre-fabricated control house will provide a robust shelter, capable of withstanding a 180mph wind load, for substation relays, controls & protection equipment.

KVA, Inc. will be providing all personnel, equipment and labor to build and pre-wire the control house equipment off-site. Delivery will be coordinated with construction of the 7th Ave North substation and will minimizing additional on-site work.

MOTION:

Move to approve/disapprove Agreement with KVA, Inc., d/b/a KVA Power Protection & Control for a prefabricated control house at a cost not to exceed \$183,656.

ATTACHMENT(S):

Fiscal Impact Analysis
Control House Agreement

FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2020	2021	2022	2023	2024
Capital Expenditures	\$183,656	0	0	0	0
Operating Expenditures	0	0	0	0	0
External Revenues	0	0	0	0	0
Program Income	0	0	0	0	0
In-kind Match	0	0	0	0	0
 Net Fiscal Impact	 0	 0	 0	 0	 0
 No. of Addn'l Full-Time Employee Positions	 \$183,656	 0	 0	 0	 0

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

Account Number	Account Description	Project Number	FY20 Budget	Current Balance	Agenda Expenditure	Balance
421-6034-531.63-15	Improve Other Than Build/ Infrastructure	SH1802	\$4,582,688	\$676,192	\$183,656	\$492,536

C. Department Fiscal Review: Electric Utility Director, Edward Liberty

**AGREEMENT FOR GOODS AND SERVICES
(Substation Prefabricated Control House)**

THIS AGREEMENT (hereinafter "Agreement") is made this _____ day, between the **City of Lake Worth Beach**, Florida, a municipal corporation (hereinafter the "CITY"), with its office located at 7 North Dixie Highway, Lake Worth Beach, Florida 33460, and **KVA, Inc., d/b/a KVA Power Protection & Control**, a company registered to do business in the State of Florida (hereinafter the "CONTRACTOR"), with its principal office located at 3307 Brushy Creek Rd. Greer, SC 29650.

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, the CITY issued Request for Proposal #20-204 for the Substation Control House (hereinafter "RFP"), which RFP is not attached but incorporated by the reference into this Agreement; and

WHEREAS, the City received no timely or responsive submissions in response to the RFP and subsequently canceled the RFP; and

WHEREAS, in accordance to the City's Procurement Code and Policy, the City approached the market to obtain the required product; and

WHEREAS, the City received two quotes in response to the search; and

WHEREAS, the CONTRACTOR provided a quote that meets the City's requirements and standard specification; and

WHEREAS, the CITY desires to accept the CONTRACTOR's quote in order for CONTRACTOR to render the goods and services to the CITY as provided therein pursuant to the terms and conditions of this Agreement; and

WHEREAS, as there were no responses to the RFP, the CITY may utilize the waiver process in accordance to the CITY's Procurement Code Sec. 2-112 (g); 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 this Agreement with the CONTRACTOR as described herein serves a valid public purpose.

NOW THEREFORE, the CITY hereby engages the services of the CONTRACTOR, and in consideration of the mutual promises herein contained, the sufficiency of which is hereby acknowledged by both parties, the parties agree as follows:

1. TERM

1.1 The term shall commence upon the approval of this Agreement by the City Commission and the CITY's issuance of a Notice to Proceed. The CONTRACTOR agrees to provide all goods

and services required under this Agreement for the period of up to three (3) years, which may be extended by mutual, written agreement of the CITY and CONTRACTOR. **The CITY is initially purchasing one (1) unit (the "Initial Unit" hereinafter) but anticipates requesting the CONTRACTOR to design and fabricate up to six (6) units total as defined in this Agreement, dependent on the CITY's funding availability.** The CITY may utilize this Agreement to have additional units built or additional units with updated specifications and different sizes built to maintain the CITY's standards.

2. SCOPE OF WORK

2.1 The scope of work specifications set forth in the RFP details the design and fabrication requirements for a single-story, single-module concrete equipment relay vault unit. Specific Quantities of Major Equipment are indicated in CONTRACTOR's quote attached hereto as an **Exhibit "A"** and as set forth in the RFP (hereinafter the "Scope of Work"). The specification in **Exhibit A** shall be used for the Initial Unit; specifically, the Total Control house relay panels and equipment with a manual transfer switch. The CITY may request modifications to additional units the CITY desires to purchase and the CITY will seek a proposal from the CONTRACTOR based on such modifications.

2.2 The CONTRACTOR represents to the CITY that all work performed 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 work provided for herein in a professional and competent manner.

2.4 The work shall be performed by the CONTRACTOR or under its supervision and all personnel engaged in performing the work shall be fully qualified and, if required, authorized or permitted under the state and local law to perform such work. All of the CONTRACTOR's personnel (and all subcontractors), while on CITY premises, shall comply with all CITY requirements governing safety, conduct and security.

2.5 The work shall be completed in accordance with the terms and conditions set forth in this Agreement.

3. INDEPENDENT CONTRACTOR; USE OF AGENTS OR ASSISTANTS

3.1 The CONTRACTOR is and shall be, in the performance of the work under this Agreement, an independent contractor, and not an employee, agent, or servant of the CITY. All persons engaged in any of the work 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 work.

3.2 To the extent reasonably necessary to enable the CONTRACTOR to perform the Scope of Work 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 the Scope of Work or as reasonably necessary to accomplish the work unless otherwise specified in writing by the CITY.

5. FEE AND ORDERING MECHANISM

5.1 For the Initial Unit and all work performed under this Agreement in order to complete the delivery and installation of the Initial Unit, the CONTRACTOR shall be paid an amount not to exceed **\$183,656.00**.

5.2 Should the CITY require additional materials and/or work for the Initial Unit (or future units that are ordered by the CITY), which additional materials or work are not included in the initial Scope of Work for each unit, the CITY and CONTRACTOR will prepare and execute a written amendment setting forth the additional materials and/or work and the total cost for the same prior to any such additional materials or services being provided by the CONTRACTOR.

5.3 Except for the Initial Unit, the CITY's ordering mechanism for each unit will either be by a fully executed written amendment to this Agreement by the parties or by a CITY issued Purchase Order; however, the terms and conditions stated in this Agreement and any amendment thereto will apply to the additional unit(s). CONTRACTOR shall not exceed amounts expressed herein or in any CITY issued Purchase Order. The CITY's Fiscal Year ends on September 30th of each calendar year. Except for purchases authorized in a prior fiscal year and fully appropriated and funded, the CITY cannot authorize the purchase of additional goods or services beyond September 30th of each calendar year, prior to the annual budget being approved by the CITY's City Commission.

6. MAXIMUM COSTS

6.1 The CONTRACTOR expressly acknowledges and agrees that the total cost to complete the work is as set forth above for the Initial Unit. However, it is anticipated that the CITY may spend up to no more than \$500,000.00 annually under this Agreement for additional units. The CITY does not guarantee that the CITY will purchase any other units from the CONTRACTOR except the Initial Unit.

7. INVOICE

7.1 The CONTRACTOR shall submit an itemized invoice to the CITY for the Initial Unit upon delivery, complete installation, and final acceptance of the Initial Unit by the CITY. Final acceptance occurs when all work (including punch-list items) has been completed by the CONTRACTOR and the unit becomes fully operational and accepted by the CITY. The CONTRACTOR shall be paid by the CITY within thirty (30) days of receipt of an approved invoice for all work for the Initial Unit. Invoicing for additional units shall be addressed for each additional unit in the amendment to this Agreement or the CITY's issued purchase order.

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 Scope of Work or work or perform any additional work or provide any additional materials 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 work 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 or designee may give written notice to the CONTRACTOR specifying the default(s) to be remedied. Such notice shall set forth a reasonable timeframe for correcting the default(s) and any suggested corrective measures. If the CONTRACTOR does not remedy the default(s) within the timeframe provided in the CITY's notice or commence good faith steps to remedy the default to the reasonable satisfaction of the CITY, 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 all of the CITY's legal fees; 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 three (3) business days the CONTRACTOR has not remedied defaults or commenced good faith steps to remedy defaults to the satisfaction of the CITY, the CITY may elect to terminate this Agreement. No cancellation fee or other compensation shall be paid by the CITY 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. However, CITY shall be responsible for the cancellation fee set forth in the CONTRACTOR's quote.

12.3 If the CITY fails to timely perform in accordance with this Agreement; or, is in material breach of a term or condition of this Agreement, the CONTRACTOR may give written notice to the CITY specifying the default(s) to be remedied. Such notice shall set forth a reasonable timeframe for correcting the default(s) and any suggested corrective measures. If the CITY does not remedy the default(s) within the timeframe provided in the CONTRACTOR's notice or commence good faith steps to remedy the default to the reasonable satisfaction of the CONTRACTOR, the CONTRACTOR may take such action to remedy the default and all expenses related thereto shall be borne by the CITY; and/or, the CONTRACTOR may withhold any work. Alternatively, or in addition to the foregoing, if after three (3) business days the CITY has not remedied defaults or commenced good faith steps to remedy defaults to the satisfaction of the CONTRACTOR, the CONTRACTOR may elect to terminate this Agreement.

13. INSURANCE

13.1. Prior to commencing any 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 Beach" as an "Additional Insured" on a primary, non-contributing basis, 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; the RFP (including all specifications, exhibits and addenda attached thereto or referenced therein); and, the CONTRACTOR's quote. 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 RFP (including all specifications, exhibits and addenda attached thereto) next taking precedence; however, the CONTRACTOR's quote for the Initial Unit shall take precedence over the RFP. 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. This Agreement may be executed electronically.

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:

Michael Bornstein, City Manager
City of Lake Worth Beach
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:

KVA Inc.
3307 Brushy Creek Rd.
Greer, SC 29650

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. Each of the parties shall sign a sufficient number of counterparts, so that each party will receive a fully executed original of this Agreement.

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. There shall be no other limitation of liability between the parties or under this Agreement.

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 AT (561) 586-1660, DANDREA@LAKEWORTHBEACHFL.GOV, OR 7 NORTH DIXIE HIGHWAY, LAKE WORTH BEACH, 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 is exempt from Federal Tax and State Tax for Tangible Personal Property. The Procurement Official will provide the CONTRACTOR with a signed exemption certificate submitted by the CONTRACTOR. CONTRACTOR shall not be exempted from paying sales tax to their suppliers for materials to fulfill contractual obligations with the CITY, nor shall 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. WARRANTY

37.1 CONTRACTOR warrants and guarantees to the CITY that work performed and all materials provided under this Agreement shall be in accordance with the Agreement and the other documents specifically included in this Agreement. CONTRACTOR warrants that all materials and parts supplied under this Agreement shall be free from defects for a minimum of 18 months from the final acceptance of the work. CONTRACTOR guarantees that all work performed under this Agreement will be free from defects for a minimum of 18 months from the final acceptance of the work. CONTRACTOR shall provide to the CITY any and all manufacturers' warranties for the goods and services being provided under this Agreement. CONTRACTOR agrees to pay for all transportation and handling costs of returning any equipment or the unit(s), if required, for repair or replacement. If a unit(s) must be returned, CONTRACTOR, shall provide a replacement unit(s) for the duration.

38. SCRUTINIZED COMPANIES

38.1 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.

38.2 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.

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

38.4 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.

38.5 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.

38.6 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.

39. SURVIVABILITY

39.1 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.

40. NO CONSEQUENTIAL DAMAGES

40.1 In no event shall CITY be liable to CONTRACTOR for any incidental, special, indirect, consequential, or punitive damages arising out of or related to this Agreement, whether such alleged damages are labeled in tort, contract, or otherwise, and even if Vendor has been advised of the possibility of such damages.

REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK
SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF the parties hereto have made and executed this Agreement to the Substation Prefabricated Control House on the day and year first above written.

CITY OF LAKE WORTH BEACH, FLORIDA

By: _____
Pam Triolo, Mayor

ATTEST:

By: _____
Deborah M. Andrea, City Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

By: _____
Glen J. Torcivia, City Attorney

APPROVED FOR FINANCIAL SUFFICIENCY

By: _____
Bruce T. Miller, Financial Services Director

CONTRACTOR: **KVA, Inc. d/b/a KVA Power Protection & Control**



[Corporate Seal]

By: Anthony W. Burns
Print Name: ANTHONY W. BURNS
Title: VICE PRESIDENT

STATE OF SC
COUNTY OF Durham

The foregoing instrument was acknowledged before me this 4 day of August, 2020, by, who was physically present, as Vice President (title), of, KVA Inc. d/b/a Power Protection & Control, A corporation registered to do business in the State of Florida, and who is personally known to me or who has produced the following drivers license as identification.

Notary Public

Print Name: David Perry
My commission expires: 6/10/30

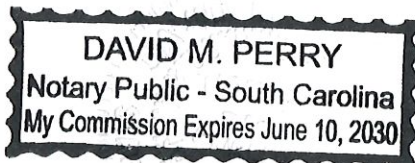


Exhibit "A"
Contractor's Quote (10 pages)



Revision 1
PROPOSAL
City of Lake Worth
RFP #20-204
Control Building, 2 Relay Panels & Equipment

Prepared for City of Lake Worth
May 08, 2020
KVA Quote # 10807R2



KVA Inc.
864.801.4430
info@kva-emc.com
www.kva-emc.com



Scope of Work: To provide a Concrete Control Building, 2 Relay Panels and Equipment fabricated, assembled, wired, tested and delivered.

1) Substation:

House with ATS	\$ 114,651.00	House with Manual TS	\$ 111,951.00
Panels	\$ 43,788.00	Panels	\$ 43,788.00
Battery System and Charger	\$ 20,726.00	Battery System and Charger	\$ 20,726.00

Total Control house relay panels and equipment with an automatic transfer switch: \$186,365.00

Total Control house relay panels and equipment with a manual transfer switch: \$183,656.00

Bill of Material for Panel 1:

Component	STYLE #	Manufacturer	Qty
Relay Panel		KVA	1
Schweitzer; Type 2488, Satellite-Synchronized Network, 2 125/250Vdc Power Supplies, IRIG-B and Network Time Protocol (NTP), 4 10/100BASE-T Ethernet Ports, 8 BNC Time Outputs, TNC Antenna Input, 1 Form-C mechanical conventional alarm contact, 1 Form A solid-state timer, one rack unit high	24880RAX1181AX23X	SEL	1
Schweitzer; Type 2516, Remote I/O Relay 125Vdc, conventional terminal blocks, V-Pin Fiber, 8 Form-C contacts, 8 Inputs, SEL Protocol, 1 Form C mechanical conventional alarm contact, three rack units high	251603114X	SEL	0
Schweitzer; Type 2730M, Managed 24 Port Ethernet Switch, 2 125/250Vdc Power Supplies, 4 Small Form Factor Pluggable Ports (1-4), 4 Copper 10/100/1000 Mbps Ports (5-8), 8 10/100 BASE-T and 8 10/100 BASE-FX Ports (9-24), 1 Form C mechanical alarm contact, one rack unit high	2730MOARAX1122AAAAX0	SEL	1
Schweitzer; Type 3530, SCADA Data Concentrator/RTU, 48/125Vdc Power Supply, 1 EIA-485 Serial Port, 17 EIA-232 Serial Ports, 2 10/100 Base-T RJ-45 Ethernet Ports, 3U high	3530#DHCF	SEL	1



Schweitzer; Type 487B-1 Relay, 1 125/250Vdc Power Supply, 1 Primary DC Monitor, 100 Card Slot has 8 Outputs including 3 Form-C Outputs, Add 200 B Slot with 8 Outputs including 6 High Speed Outputs, Add 300 B Slot with 8 Outputs including 6 High Speed Outputs, 55 Inputs, Enhanced Front Panel with 24 Target LEDs, 12 Operator Control Pushbuttons, and Tri-Color LEDs, 3 AC Voltage Inputs, 21 AC Current Inputs, 2 10/100 BASE-T Ethernet Ports and 3 EIA-232 Serial Port , seven rack units high.	0487B1X6X52XC0XE8EEXXX	SEL	1
SecuControl ST Switch, 10 Pole, All potential.	STSA10002AX	SecuControl	2
SecuControl ST Switch, 10 Pole, 4 potential, 6 Current shorting	STS10004BM	SecuControl	7
SecuControl 19" Panel slot covers, ANSI Grey, 3U, 3-10 Pole cuts	FTX3UA101010AG	SecuControl	4
Cover for ST Switches, 10 Pole, Clear	FTDC10	SecuControl	9
Spare Disconnect Pins		SecuControl	10
Blank ST10/FT10 Cover plates ANSI Grey		KVA	1
Eaton FAZ Series, DIN rail type, 10 ampere, 125VDC minimum rating	FAZ10/1SP	Eaton	6
Eaton FAZ Series, DIN rail type, 5 ampere, 125VDC minimum rating	FAZB15	Eaton	1
General Electric; Terminal Block Type EB-25, 24 point.	EB25B24	GE	3
General Electric; Terminal Block Type EB-25, 6 point.	EB25B06	GE	1
Din mounting rail Type NS 35/7.5 Steel perforated	801733	Phoenix	1
Phoenix; Type UBE/D, Terminal Strip Marker Carrier with cover	1004076	Phoenix	1
Phoenix; E/NS 35 N End Clamp	800886	Phoenix	2
Phoenix; D-UDK 4 End Cover	2775113	Phoenix	2
Phoenix; UDK4 Terminal Block (1-180)	2775016	Phoenix	42
Phoenix; ZB6 White Number Strip Label mount on both sides of block, printed horizontally with sequential numbers. (1-180)	1051016	Phoenix	42
Phoenix; ZB6 Orange Number Strip Label, mount on both sides of block, printed horizontally, decade labeling (10,20,30....)	1051210	Phoenix	4



J-Hook, stainless steel with hex nuts and #10-32 thread		KVA	1
Abbatron/H.H. Smith; binding post, Black hex head, 10-32, gold plated.	257-103	Abbatron/H.H. Smith	2
Abbatron/H.H. Smith; binding post, Green hex head, 10-32, gold plated.	257-104	Abbatron/H.H. Smith	1
SecuControl 19" Blank Panels Covers, ANSI Grey. Order as needed to fill all gaps	FTBC10AG	SecuControl	11
Ground Bar		KVA	1

Bill of Material for Panel 2:

Component	STYLE #	Manufacturer	Qty
Relay Panel		KVA	1
Schweitzer; Type 551 Relay, 1 125/250Vdc Power Supply, 1 EIA 232 (CLWB Provided) Serial Port, 3 5A Phase Current Analog Inputs, 1 Neutral Analog Input, 4 Outputs, 1 Form C mechanical contact, 2 Digital Inputs, SEL Protocol, Modbus Protocol, two rack units high	0551003X5X1X	SEL	0
Plate to support the SEL-551 and Test Block		KVA	1
Schweitzer; Type 351S Relay, 1 125/250Vdc Power Supply, 1 EIA-485 Serial Port, 2 EIA-232 Serial Ports, 2 RJ45 Ethernet Ports, conventional terminal blocks, Standard Interface including USB plus Indoor Safe Lock Trip/Close Pushbuttons and Configurable Labels, IEC 61850	0351S7XHD3E5422	SEL	0
SecuControl ST Switch, 10 Pole, All potential.	STSA10002AX	SecuControl	2
SecuControl ST Switch, 10 Pole, 4 potential, 6 Current shorting	STS10004BM	SecuControl	3
SecuControl 19" Panel slot covers, ANSI Grey, 3U, 3-10 Pole cuts	FTX3UA101010AG	SecuControl	3
Cover for ST Switches, 10 Pole, Clear	FTDC10	SecuControl	5
Spare Disconnect Pins		SecuControl	10
Blank ST10/FT10 Cover plates ANSI Grey		KVA	3
Eaton FAZ Series, DIN rail type, 10 ampere, 125VDC minimum rating	FAZC10/1SP	Eaton	3
Eaton FAZ Series, DIN rail type, 5 ampere, 125VDC minimum rating	FAZB15/1NA	Eaton	2
Terminal Block Type EB-25, 24 point.	M25024	States	3



Din mounting rail Type NS 35/7.5 Steel perforated	801733	Phoenix	1
Phoenix; Type UBE/D, Terminal Strip Marker Carrier with cover	1004076	Phoenix	1
Phoenix; E/NS 35 N End Clamp	800886	Phoenix	2
Phoenix; D-UDK 4 End Cover	2775113	Phoenix	2
Phoenix; UDK4 Terminal Block (1-180)	2775016	Phoenix	42
Phoenix; ZB6 White Number Strip Label mount on both sides of block, printed horizontally with sequential numbers. (1-180)	1051016	Phoenix	42
Phoenix; ZB6 Orange Number Strip Label, mount on both sides of block, printed horizontally, decade labeling (10,20,30....)	1051210	Phoenix	4
J-Hook, stainless steel with hex nuts and #10-32 thread		KVA	1
Abbatron/H.H. Smith; binding post, Black hex head, 10-32, gold plated.	257-103	Abbatron/H.H. Smith	2
Abbatron/H.H. Smith; binding post, Green hex head, 10-32, gold plated.	257-104	Abbatron/H.H. Smith	1
SecuControl 19" Blank Panels Covers, ANSI Grey. Order as needed to fill all gaps	FTBC10AG	SecuControl	13
Ground Bar		KVA	1

Bill of Material for the Concrete Control Building:

KVA is pleased to provide this quotation for a concrete control house in response to your referenced request for quotation with the following exceptions and clarifications:

1. Specification Section 2.4 & 3.2.8.c.i: AC panel to be AE type in order to meet AIC rating requirement for TEY branch breakers.
2. Specification Section 3.2.14.a – A separate manual transfer switch mounted next to the AC panel will be provided in lieu of the manual transfer switch being included in the design of the AC panel.

The proposed control house is described below:

Construction - Concrete

- Size nominal 10'8" wide (11'2" wide with 3" roof overhang) exterior x nominal 14' long exterior x nominal 10' high interior, one room concrete control house
- Standard construction in accordance with VFP product specifications. The structural loads of the proposed concrete control house are as follows:



- 200 pounds per square foot distributed floor loading while on foundation
- 125 pounds per square foot distributed floor loading while lifting
- 100 pounds per square foot distributed roof load
- 180 mph wind load
- Seismic zone 4
- Exposed aggregate exterior
- The proposed control house walls are capable of stopping 30.06 rifle fire per UL752 requirements. Unless otherwise specified, the control house door is not bullet resistant.
- The proposed exterior control house walls will provide a two hour fire rating
- The walls and ceiling will be insulated to R-11 with hardboard insulation
- The interior walls and ceiling will be sheathed with ¾" OSB backed white FRP board
- The 6" thick concrete floor will be covered with non-skid epoxy based floor paint (ANSI 61 gray)
- One (1) 42" wide x 84" high insulated steel exterior door, with panic bar, lever lockset and fiberglass weather hood
- One (1) hydraulic door closer

Power Distribution

- One (1) 225 Amp, 42,000 AIC, 120/240 VAC, single phase, 60 Hz, 42 space main breaker, bolt-in utility power distribution panels, in NEMA 1 surface mount enclosures
- AC power panels to be supplied with the following breakers each:
 - Thirty-eight (38) 20 Amp single pole TEY branch breakers
 - Two (2) 60 Amp double pole TEY branch breakers
- One (1) control house wall penetration to serve as utility power service entry
DC power panel to be supplied with the following breakers:
 - Fourteen (14) 30 Amp double pole
 - Fourteen (14) 60 Amp double pole
- One (1) 200 Amp, 240VAC, fused, double pole safety switch; DG224NGK
- One (1) 200 Amp, 250V, double pole, double throw manual transfer switch; DT224UGK
- Six (6) 20 Amp specification grade duplex receptacles
- One (1) 20 Amp specification grade exterior ground fault duplex receptacle
- One (1) 50A 120/240V generator receptacle

Lighting

- Six (6) surface mounted LED light fixtures
- One (1) LED exterior door light with photocell
- One (1) emergency/exit light
- One (1) wall switch box with motion sensor control

HVAC

- One (1) 1 ½ Ton, 240 VAC, single phase, 60 Hz, 11EER wall mount unit air conditioner unit, with low ambient and compressor anti cycle controls, integral 5kW resistance heat strip and washable dust filter



- Separate wall mounted thermostat
- One (1) 585 cfm (at 0" of H₂O static pressure) exhaust fan system, including gravity intake and exhaust louvers, timer and hydrogen detector controls, fiberglass hoods, permanent expanded metal dust filter and exhaust insect screen

Alarm Device Contacts

The following alarm device contacts will be wired and brought to a location specified by the customer. The alarm wires will be terminated at the alarm enclosure and tagged for identification per VFP standards. Unless otherwise stated in this proposal, termination at the customer's equipment is assumed to be provided by others.

There are no provisions for audible, visual or remote alarm monitoring offered, except where it is integral to the device offered or stated otherwise in this proposal.

- One (1) line voltage smoke detector
- One (1) intrusion alarm switch with form "C" contacts rated at 125 VDC
- One (1) high temperature alarm
- One (1) low temperature alarm
- One (1) power failure alarm
- One (1) exterior visual fire indicator alarm
- One (1) hydrogen detector for alarm and exhaust fan control

Grounding

- Provisions for the connection of a grounding electrode conductor at the control house service equipment
- One ground system consisting of a 4/0 AWG stranded bare copper conductor, run through the cable tray with coils at the cable entrance hoods for attachment to a ground grid by others

Additional Equipment

- One (1) Manual Transfer switch: DT224URKNLC – Eaton in lieu of ATS
- One (1) Batteries - STT6V200- (20) - SBS
- One (1) Battery rack - E-PGL1-20
- One (1) Spill containment system - SC148-12P12 - SBS
- One (1) Battery charger - ACSWM-125-026-1 – Alpha
- One (1) Automatic Transfer switch, Eaton # ATV9KDC20225WSU

Accessories

- Up to twenty feet (20') of 24" wide x 4" deep aluminum cable tray
- One (1) 12 gauge steel cable entry hood
- One (1) hand held emergency eye wash station
- One (1) folding drafting table
- One (1) size D wall mounted drawing rack
- One (1) 30" W x 66" H x 15" D storage cabinet
- One (1) portable 10 pound ABC rated fire extinguisher
- One (1) service manual



- KVA/VFP will provide three (3) sets of control house drawings with each control house unit order. Typical foundation drawings based upon normal soil conditions are available to support calculations for recommended control house tie down locations. No other foundation drawings are offered in the proposed control house price. Additional foundation drawings can be provided and will be negotiated separately.
- All wiring will be installed in surface mounted conduit or wireways if specified and will be in full compliance with ANSI/NFPA-70 - The National Electrical Code, latest revision.

Control houses are to be built according the latest IBC edition and state requirements of which the control house is residing, local and county codes are not applicable unless otherwise stated.

Control House Set-up

Control house accessories may be removed as required for shipping at the discretion of VFP's Transportation Manager to facilitate shipping dimensions, safety, security, or to prevent damage to equipment. Any equipment removed for shipment will be packed in the control house along with mounting hardware for reinstallation per VFP standards. KVA has included the reinstallation of equipment in this offering.

Terms and Conditions

All pricing is exclusive of sales tax, use tax, or other fees.

Use taxes and any other state or local taxes or fees will be the responsibility of the customer. If the sale is subject to any such taxes or other fees, then KVA/VFP, Inc. reserves the right, at any time (even after final payment), to invoice separately for all such taxes or fees, together with any interest and penalties that may be imposed by the taxing or fee collecting authority. If this sale is exempt from any such taxes and fees, the customer must provide KVA/VFP with proof of any exemption (such as an exemption certificate) at the time the customer places its order.

Transportation

Delivery charges are based on normal site access for KVA/VFP over the road tractor-trailers. If the site is not accessible due to weather, unsuitable roadway, obstructions or other conditions KVA/VFP will, if possible, obtain the proper equipment to complete the delivery. Additional costs may be incurred.

In the event there is difficulty in getting into the job site because of unforeseen obstacles, will not assume liability for any property damage as a result of being instructed by the customer's contractor to proceed; even though the driver or contract carrier driver is aware of the potential for risk of damage to property.

KVA/VFP also assumes no responsibility for damage to the control house as a result of inadequate right of ways to the job site. It will be the customer's responsibility to ensure there is proper access to the job site.



On-Site Services

- Will attach the control building to the customer furnished foundation.
- Will reinstall all provided items that were removed for shipment.
- Will install the batteries in the battery rack; make interconnections and final wiring terminations.
- Crane Offloading is included and is based on free and clear access to the jobsite.

A) Delivery:

Delivery will be 20 to 22 weeks after the receipt of a Purchase order and all necessary engineering information.

B) Clarifications:

Material Clarifications

- Testing will include Power up of SEL and point to point continuity testing.
- Pricing in this proposal is based solely on the quantities of goods and services quoted in the above Bills of Materials. Any deviation required in the goods and services quoted could result in a change order.
- General Terminal Block EB25 – 27 does not have a 24 pole, KVA is offering a States M25024 as a replacement.
- Limited information given on the DC panel, KVA is including an Eaton P2K225BT54CH01 in this proposal.

C) Engineering Drawings: Relay panel engineering drawings are not included in this proposal.

D) Payment: Unless otherwise agreed to in writing, payments for the Product or Services shall be as follows:

Project Phase:	Contracts Less than \$300,000	Contracts over \$300,000
1. Receipt of Purchase Order	N/A	10%
2. Receipt of "For Construction" Drawings	N/A	30%
3. Delivery	100%	60%

- a. Payment terms are 100% net 30 days from invoice date.
- b. In the event of default of Buyer, all costs and charges incurred by Seller as a result of Buyer's default will be charged to Buyer's account; these costs include but are not limited to bank fees for canceled checks or insufficient funds, collection fees and applicable legal fees.
- c. In the event of default by Buyer requiring collection activity by Seller, Seller shall be entitled to reimbursement of all costs, including legal fees incurred in the collection process.

E) Taxes: Prices shown do not include sales or other taxes imposed on the sale of the goods.

F) Freight: FOB Lake Worth FL freight costs included in the prices shown.

G) Cancellation: With the placement of an Order, Buyer acknowledges that Seller would incur financial damages in the case of a cancellation of an Order and that Seller has the right to charge the Buyer for such damages as specified by the time schedule below.



a.
Cancellation of Order:

Schedule of Fees for

Timing of Cancellation of Order before Confirmed Shipment Date	Percentage of Sales Price to be Applied as Cancellation Fee
60 days or less	100%
61-90 days	75%
Over 90 days	50%

b. Higher cancellation fees may be imposed on special or modified equipment up to the entire value of the Order.

c. Payment of the cancellation fee is to be made within fifteen (15) days of cancellation

H) **Validity:** This proposal is valid for acceptance within 90 days.

I) **Warranty:** KVA shall repair or replace any defective item within 12 months of Acceptance Date or 18 months after shipment (whichever is sooner) and will extend the full manufacturers' warranty on all purchased components.

Limits of Liability: In no event, whether as a result of a breach of contract, indemnity, warranty or tort (including negligence), strict liability, or otherwise, shall the Seller be liable to the Buyer for:

- (i) Loss of profit or revenue, loss of use, cost of capital, downtime costs, cost of substitute products, facilities, services or replacement power;
- (ii) Property damage external to the product and loss arising out of such damage;
- (iii) Special, indirect, punitive or consequential damage; or for
- (iv) Any of the foregoing suffered by a customer of the Buyer.

KVA MAKES NO WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE AND KVA SHALL HAVE NO LIABILITY ARISING OUT OF THE ORDER IN EXCESS OF THE AMOUNT OF THE ORDER.

MADE IN THE UNITED STATES

KVA Inc. is a WBE Certified Corporation.

KVA Inc. 3307 Brushy Creek Rd. Greer, SC 29650 (864) 801-4430

EXECUTIVE BRIEF REGULAR MEETING

AGENDA DATE: August 18, 2020

DEPARTMENT: Legal

TITLE:

Consideration of settlement with Alide Cajuste in the amount of \$35,000 (inclusive of attorney's fees)

SUMMARY:

This is a request to settle a lawsuit with Ms. Cajuste for injuries she sustained in a trip and fall accident that occurred in August 2016. If approved, the claimant will execute a general release in favor of the City.

BACKGROUND AND JUSTIFICATION:

This case arises out of an accident that occurred on August 25, 2016, when Plaintiff, Alide Cajuste, slipped and fell on the stairs at the north exit of the Lake Worth Public Utilities Customer Service Center located at 414 Lake Avenue after paying her utility bill. The stairs had berries on them which Plaintiff states caused her to fall. As a result of the fall, Plaintiff injured her ankle, knee, elbow, shoulder, hips, back, chest, ribs and head. Plaintiff has medical bills near \$20,000 for treatment, and may require lumbar discectomy surgery.

After court ordered mediation failed, the parties continued to discuss settlement. The parties have tentatively agreed to a settlement of \$35,000, which is inclusive of attorney's fees and costs. The settlement agreement is contingent upon City Commission approval, and is recommended.

MOTION:

Move to approve the settlement with Ms. Cajuste in the amount of \$35,000 (inclusive of attorney's fees), in exchange for a complete release.

ATTACHMENT(S):

Fiscal Impact Analysis

FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2020	2021	2022	2023	2024
Capital Expenditures	0	0	0	0	0
Operating Expenditures	\$35,000	0	0	0	0
External Revenues	0	0	0	0	0
Program Income	0	0	0	0	0
In-kind Match	0	0	0	0	0
 Net Fiscal Impact	 \$35,000	 0	 0	 0	 0
 No. of Addn'l Full-Time Employee Positions	 0	 0	 0	 0	 0

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

Account Number	Account Description	Project Number	FY20 Budget	Current Balance	Agenda Expenditure	Balance
520-1332-513-45-60	Self-Insurance					

C. Department Fiscal Review:_____

EXECUTIVE BRIEF REGULAR MEETING

AGENDA DATE: August 18, 2020

DEPARTMENT: City Commission

TITLE:

Ratification of advisory board appointments and reappointments

SUMMARY:

Ratification of appointments and reappointments to various City advisory boards.

BACKGROUND AND JUSTIFICATION:

On February 5, 2013, the Commission adopted an ordinance amending the board member appointment process to allow for the selection of board members by individual elected officials. In accordance with the ordinance, the board appointments would be effective upon ratification by the Commission as a whole.

The following appointment and reappointments are requested to be ratified.

Historic Resources Preservation Board:

Vice Mayor Amoroso's reappointment of Robert D'Arinzo to the Historic Resources Preservation Board for a term ending on July 31, 2023.

Commissioner Robinson's reappointment of Oswaldo Ona to the Historic Resources Preservation Board for a term ending on July 31, 2023.

Planning and Zoning Board:

Vice Mayor Amoroso's reappointment of Mark Humm to the Planning and Zoning Board for a term ending on July 31, 2023.

Community Redevelopment Board:

Commissioner Robinson's reappointment of John Paxman to the Community Redevelopment Agency for a term ending on July 31, 2024.

Finance Advisory Board:

Commissioner Robinson's appointment of Don Rosenshine to the Finance Advisory Board to fill an unexpired term ending on July 31, 2022.

MOTION:

Move to approve/disapprove the ratification of Vice Mayor Amoroso's reappointment of Robert D'Arinzo to the Historic Resources Preservation Board for a term ending on July 31, 2023, and reappointment of Mark Humm to the Planning and Zoning Board for a term ending on July 31, 2023; Commissioner Robinson's reappointment of Oswaldo Ona to the Historic Resources Preservation Board for a term ending on July 31, 2023, and reappointment of John Paxman to the Community Redevelopment Board for a term ending on July 31, 2024 and appointment of Don Rosenshine to the Finance Advisory Board to fill an unexpired term ending on July 31, 2022.

ATTACHMENT(S):

Fiscal Impact Analysis: N/A
Board Applications
Membership Logs



VOLUNTEER ADVISORY BOARD – REAPPOINTMENT APPLICATION

7 North Dixie Highway, Lake Worth Beach, FL 33460 – Phone: 561-586-1600 – Fax: 561-586-1750

SECTION 1

Full Name: Robert D'Arinzo

Name of the Advisory Board / Committee you are currently serving on, for which you wish to be considered for reappointment: HRPB

Has your information changed since your appointment or last reappointment? YES NO

If you selected YES, please fill out below. If you selected NO, please go to SECTION 2.

Residence Address: 531 N Ocean Breeze, Lake Worth FI 33460

City: _____ State: _____ Zip Code: _____

Business Address: (If applicable) 9 N Ocean Breeze, Lake Worth FI 33460

City: _____ State: _____ Zip Code: _____

Mailing Address: (If different from residence / business) _____

City: _____ State: _____ ZIP Code: _____

Home Phone: _____ Business Phone: 561-540-8979

Cell Phone: 561-662-8370 Email Address: bobpier@hotmail.com

Proof of residency attached: _____

SECTION 2


By signing this form I acknowledge that the information above is true and correct and that I am required to complete Ethics Training and submit the Ethics Training Certificate of Acknowledgement to the City Clerk's Office at least once a year and that the attendance policy will be in effect as per the ordinance governing the board for which I am seeking reappointment.

Robert D'Arinzo

Jul 30, 2020

Signature

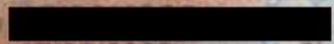
Date

Florida DRIVER LICENSE 

1 ID NUMBER **D652-760-62** 

2 NAME **D. ARINZO
ROBERT, JR.**

3 ADDRESS **551 N OCEAN BREEZE
LAKE WORTH, FL 33460-3154**



4a DOB 


4b EXP **07/30/2028** 15 HGT **5'-11"**

12 REST **NONE** 9a END **NONE**

4a ISS **05/21/2020**

5 DC **Q012005210232**

Operation of a motor vehicle constitutes consent to any sobriety test required by law. 



VOLUNTEER ADVISORY BOARD – REAPPOINTMENT APPLICATION

7 North Dixie Highway, Lake Worth Beach, FL 33460 – Phone: 561-586-1600 – Fax: 561-586-1750

SECTION 1

Full Name: Oswaldo R Ona

Name of the Advisory Board / Committee you are currently serving on, for which you wish to be considered for reappointment: Historic Resources Preservation Board

Has your information changed since your appointment or last reappointment? YES _____ NO

If you selected YES, please fill out below. If you selected NO, please go to SECTION 2.

Residence Address: _____

City: _____ State: _____ Zip Code: _____

Business Address: (If applicable) _____

City: _____ State: _____ Zip Code: _____

Mailing Address: (If different from residence / business) _____

City: _____ State: _____ ZIP Code: _____

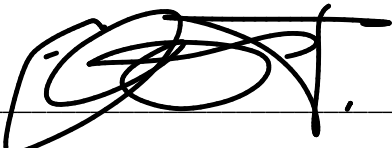
Home Phone: _____ Business Phone: _____

Cell Phone: _____ Email Address: _____

Proof of residency attached: _____

SECTION 2

By signing this form I acknowledge that the information above is true and correct and that I am required to complete Ethics Training and submit the Ethics Training Certificate of Acknowledgement to the City Clerk's Office at least once a year and that the attendance policy will be in effect as per the ordinance governing the board for which I am seeking reappointment.

Signature 

July 28th, 2020
Date



HISTORIC RESOURCES PRESERVATION BOARD

Three-Year Terms

MEMBERS	APPOINTED	PHONE	ETHICS TRAINING	TERM EXPIRES
Judith Fox 514 N. Palmway Email: TBD (Citizen at large) (Mayor's Appointment)	05/01/118	C: 561-253-4895	YES	07/31/2021
VACANT (due to Dave Cavorsi's absence) (Vice Mayor's Appointment - District 3)				07/31/2020
Judith Just VICE CHAIR 306 N. Lakeside Dr. Judithjust01@hotmail.com (Law) (Commissioner District 1 Appointment)	07/23/12	H: 561-202-8081 W: 561-547-0549 C: 561-379-5372	YES	07/31/2022
William Feldkamp CHAIR 108 Lake Avenue, #205 billfeldkamp@gmail.com (Commissioner District 2 Appointment)	04/04/17	C: 561-248-5769	YES	07/31/2022
Oswaldo Ona 826 N. Palmway Ozzie.ona@gmail.com (Commissioner District 4 Appointment)	01/7/20	C: 561-706-9078	YES	07/31/2020
Bernard Guthrie 823 South Palmway bguthrie@pottydoctor.com (Contractor) (Mayor's Appointment)	04/3/18	C: 561-719-6696	YES	07/31/2020
Robert D'Arinzo 531 North O Street bobbier@hotmail.com (Real Estate Sales) (Vice Mayor's Appointment - District 3)	08/16/16	C: 561-662-8370	YES	07/31/2020

Meetings: Second Wednesday of each month at 6:00 PM



The Board's function is to consider historic preservation issues and shall consist of five resident members plus two alternates appointed by the City Commission. Four members constitute a quorum. Initial appointments: one member to serve three years; two members to serve one year; two members for a term of two years; thereafter, all regular terms three years and alternate terms one year.

Ord. No. 2014-02 - Section 23.2-7 establishes that the historic resources preservation board shall consist of seven (7) members. All members of the board shall be residents of or property owners in the city. Members of the historic resources preservation board shall serve without compensation. The seven (7) members shall be appointed by the city commission. All members of the board shall be appointed for a term of three (3) years. If any member of the board shall fail to be present at three (3) consecutive regularly scheduled meetings or at twenty-five (25) percent of the public meetings of the board held within any twelve-month period, the city clerk shall declare the member's office vacant and the city commission shall promptly fill such vacancy. Vacancies in the board membership by resignation, illness or other causes shall be filled by the city commission for the unexpired term of the member involved. Members of the historic resources preservation board may be removed from office by the city commission at its discretion. The board shall select its own chairman and vice-chairman annually at the first meeting in January. The city's preservation planner shall serve as secretary and advisor to the board. The membership of the HRPB shall include, to the extent available, members from the disciplines of architecture, architectural history, planning, archeology or related fields. At least two (2) members of the HRPB shall be experienced in the areas of real estate sales, land development, banking or law. One (1) member shall be from a professional discipline as described above and one (1) member shall be a citizen at large. The city commission shall determine whether or not the existing members of the HRPB meet the requirements of the certified local government program and may appoint up to two (2) additional members to the HRPB, if needed. Whenever a new member is appointed to the HRPB, the city commission shall consider the professional requirements of the new member to ensure that the requirements of the certified local government program are met. When necessary, persons serving on the HRPB shall attend educational meetings to develop a special interest, expertise, experience or knowledge in history, architecture, or related disciplines.

Ord. 2013-34 - Section 23.2, effective August 16, 2013 deletes alternate members and increases membership to seven (7) board members and amends absentee policy to three (3) consecutive regularly scheduled meetings or at twenty five percent (25%) of the public meetings of the Board held within any 12-month period, the City clerk shall declare the member's office vacant and the City Commission shall promptly fill such vacancy.

Ord. No. 2012-17, effective 04/27/12, changed qualifications to include disciplines of architecture, architectural history, planning, archaeology, or related fields. At least (2) members shall be experienced in the areas of real estate sales, land development, banking or law. One (1) alternate shall be from a professional discipline, and one (1) alternate member shall be a citizen at large.

Ord. No. 2010-16, HRPB was created.

Effective July 2017, Financial Disclosure Forms are required.

Secretary: Sherrie Coale

VOLUNTEER ADVISORY BOARD APPLICATION



BOARD/S YOU ARE APPLYING TO BE ON	• Planning & Zoning Board * **
NAME	Mark Humm
RESIDENCE ADDRESS	708 N H St Lake Worth, Florida 33460 United States
UPLOAD PROOF OF RESIDENCY	• Proof-of-Residency.pdf
DO YOU HAVE A DIFFERENT MAILING ADDRESS?	No
PHONE	(561) 351-3057
CELL PHONE	(561) 351-3057
EMAIL	marknwpb@yahoo.com
ARE YOU A CITIZEN OF THE UNITED STATES?	Yes
ARE YOU A REGISTERED PALM BEACH COUNTY VOTER?	Yes
ARE YOU A REGISTERED LAKE WORTH VOTER?	Yes
HOW LONG HAVE YOU BEEN A RESIDENT OF LAKE WORTH BEACH?	11 years
LIST ALL PROPERTIES OWNED AND/OR BUSINESS INTERESTS IN LAKE WORTH	N/A
WHAT IS YOUR OCCUPATION?	Sales/Estimating
EMPLOYER?	National Millwork
ARE YOU CURRENTLY SERVING ON ANY CITY ADVISORY BOARD?	Yes
WHICH BOARDS?	Planning and Zoning
HAVE YOU EVER SERVED ON A CITY OF LAKE WORTH BOARD?	Yes
IF YES, WHEN AND WHICH BOARD(S)?	Planing and Zoning
DO YOU SERVE ON ANY BOARDS IN FLORIDA, OR ARE YOU AN ELECTED OR APPOINTED STATE, COUNTY, OR MUNICIPAL OFFICE HOLDER, OR PALM BEACH COUNTY EMPLOYEE?	No
HIGH SCHOOL	Chautauqua High School
DATE OF GRADUATION	06/20/2020
6. A - WHY DO YOU DESIRE TO SERVE ON THIS BOARD (FIRST PREFERENCE)	I've been on it for a while and I like being involved.

CONSENT

✓ I agree to the privacy policy.

I understand the responsibilities associated with being a board/committee member, and I have adequate time to serve if appointed.

I have read the attached Ordinance No. 2010-29 and Article XIII (Palm Beach County) Code of Ethics and understand the policy on the City of Lake Worth Beach Code of Ethics. Within 30 days after appointment, I

understand that I am required to participate in Ethics Training and submit an Acknowledgement of Receipt form to the City Clerk's Office in order to continue to serve on my appointed board.

*THIS APPLICATION IS VALID FOR ONE (1) YEAR FROM THE DATE SIGNED ABOVE.

*THIS APPLICATION IS NOT VALID WITHOUT APPLICANT'S PROOF OF RESIDENCY.

SIGNATURE

Mark Humm



PLANNING AND ZONING BOARD

Three -Year Terms

MEMBERS	APPOINTED	PHONE	ETHICS TRAINING	TERM EXPIRES
Laura Starr 2010 Holy Cross lstarr@yourfloridacounsel.com (Professional/law) (Mayor's Appointment)	08/06/2019	C: 561-414-5686	YES	07/31/2022
Daniel Tanner 1740 12 th Avenue North Drtan464@yahoo.com (Citizen at large) (Vice Mayor's Appointment - District 3)	05/02/17	H: 561-908-1235	YES	07/31/2021
Greg Rice - CHAIR 511 Lucerne Ave. greg@bugs.com (Professional/real estate) (Commissioner District 1 Appointment)	06/25/2012	W: 561-686-7171 C: 561-602-0193	YES	07/31/2022
VACANT (due to Brock Grill's resignation) (Commissioner District 2 Appointment)				07/31/2020
Michael Glaser 129 S. Golfview Rd. #9 mgcrebkr@aol.com (Commercial Real Estate) (Commissioner District 4 Appointment)	06/20/17	C: 561-309-9679	YES	07/31/2020
Anthony Marotta – VICE CHAIR 327 North Lakeside Dr. anthony@alliedpmg.com (Professional / property management) (Mayor's Appointment)	01/28/2014	W: 561-818-1184	YES	07/31/2022
Mark Humm 708 North H Street marknwpb@yahoo.com (Citizen at large) (Vice Mayor's Appointment – District 3)	07/02/2013	C: 561-351-3057 W: 561-848-5556	YES	07/31/2020

Meetings: First Wednesday of each month at t 6:00 pm.



The Board's function is to review and approve site plans for three units or more of residential development and all commercial development. This Board also reviews community appearance and has the ability to grant variance from the Lake Worth Zoning Code.

Ord. No. 2014-02 - Sec. 23.2-8. - Planning and zoning board, established that the planning and zoning board shall consist of seven (7) members. All members of the board shall be residents of or property owners in the city. Members of the planning and zoning board shall serve without compensation. The seven (7) members shall be appointed by the city commission. All members of the board shall be appointed for a term of three (3) years. **If any member of the board shall fail to be present at three (3) consecutive regularly scheduled meetings or at twenty-five (25) percent of the public meetings of the board held within any 12-month period, the city clerk shall declare the member's office vacant and the city commission shall promptly fill such vacancy.** Vacancies in the board membership by resignation, illness or other causes shall be filled by the city commission for the unexpired term of the member involved. Members of the planning and zoning board may be removed from office by the city commission at its discretion. The board shall select its own chairman and vice-chairman annually at the first meeting in January. The city's community planner shall serve as secretary and advisor to the board.

To carry out its responsibilities under this article, the membership of the planning and zoning board shall include, to the extent available, **three (3) members from the disciplines of architecture, landscape architecture, planning, real estate sales, land development, banking, law or related fields. Two (2) members of the planning and zoning board shall be citizen at large members. One (1) member shall be from a professional discipline as described above and one (1) member shall be a citizen at large.** The city commission shall determine whether or not the existing members of the planning and zoning board meet these requirements may appoint up to two (2) additional members to the planning and zoning board, if needed. Whenever a new member is appointed to the planning and zoning board, the city commission shall consider the professional requirements of the new member to ensure that the requirements of this article are met.

Ord. 2013-34 - Section 23.2, effective August 16, 2013 deletes alternate members and increases membership to seven (7) board members and amends absentee policy to three (3) consecutive regularly scheduled meetings or at twenty five percent (25%) of the public meetings of the Board held within any 12-month period, the City clerk shall declare the member's office vacant and the City Commission shall promptly fill such vacancy.

Ord. No. 2012-17, effective April 27, 2012, changed qualifications to include three (3) members from the disciplines of architecture, landscape architecture, planning, real estate sales, land development, banking, law or related fields. Two (2) members shall be citizens at large. One (1) alternate member shall be a professional and one (1) alternate shall be citizen at large.

Ord. No. 2012-17, effective April 27, 2012, reduced from seven (7) voting members to five (5) voting and two (2) alternate members.

Ord. No. 2011-10, effective July 15, 2011, deleted the two alternate members and changed advisor to Com. Dev. Department or designee instead of City Planner

Ord. No. 2010-16, effective October 1, 2010, removed the criteria for members to have professional qualifications, such as attorney, professional planner, architect, landscape architect, real estate agent or broker, and land developer.

Ord. No. 2008-14, effective 7/10/08, amended attendance requirements: a member who fails to attend three consecutive regularly scheduled meetings or 20% of regularly scheduled meetings held within a 12-month period shall have his/her seat declared vacant by the City Clerk and the City Commission shall promptly fill such vacancy.

Ord. No. 2003-25, enacted 8/5/03, established attendance requirements: a member who fails to attend three consecutive regularly scheduled meetings or 25% of all meetings held within a 12-month period shall have his/her seat declared vacant by the City Clerk and the City Commission shall promptly fill such vacancy.

Ord. No. 97-8, enacted 4/22/97, enabling/merged/created Planning Board & Board of Appeals.

Ord. No. 95-27, enacted 10/3/95, requiring gift disclosure.

Financial Disclosure Forms are required.

Secretary: Sherrie Coale



City of
**Lake Worth
Beach**
FLORIDA™

VOLUNTEER ADVISORY BOARD – REAPPOINTMENT APPLICATION

7 North Dixie Highway, Lake Worth Beach, FL 33460 – Phone: 561-586-1600 – Fax: 561-586-1750

SECTION 1

Full Name: JOHN T. Paxman

Name of the Advisory Board / Committee you are currently serving on, for which you wish to be considered for reappointment: CRA

Has your information changed since your appointment or last reappointment? YES _____ NO

If you selected YES, please fill out below. If you selected NO, please go to SECTION 2.

Residence Address: _____

City: _____ State: _____ Zip Code: _____

Business Address: (If applicable) _____

City: _____ State: _____ Zip Code: _____

Mailing Address: (If different from residence / business) _____

City: _____ State: _____ ZIP Code: _____

Home Phone: _____ Business Phone: _____

Cell Phone: _____ Email Address: _____

Proof of residency attached: _____

SECTION 2

By signing this form I acknowledge that the information above is true and correct and that I am required to complete Ethics Training and submit the Ethics Training Certificate of Acknowledgement to the City Clerk's Office at least once a year and that the attendance policy will be in effect as per the ordinance governing the board for which I am seeking reappointment.

[Handwritten Signature]
Signature

8/6/20
Date

Information regarding the duties and responsibilities of any board/committee can be found by visiting our website at www.lakeworthbeachfl.gov. If you need additional information, please contact Silvina Donaldson at sdonaldson@lakeworthbeachfl.gov, 561-586-1730.



COMMUNITY REDEVELOPMENT AGENCY

Four-Year Terms

MEMBERS	APPOINTED	PHONE	ETHICS TRAINING	TERM EXPIRES
Brendan Lynch - CHAIR 920 South Lakeside Drive blynch@plastridge.com (Mayor’s Appointment)	05/05/2015	C: 561-386-1703	YES	08/21/2023
Tom Copeland 1605 South Palmway tommycopeland@me.com (Vice Mayor’s Appointment – District 3)	06/18/2019	C: 561-601-5036	YES	08/21/2021
Mark Rickards – VICE CHAIR 2508 Lake Osborne Drive Mark.rickards@kimley-horn.com (District 1 Appointment)	09/19/2017	C: 561-214-5032	YES	08/21/2021
Andrew Bartlett 211 North L Street Drewbartlett135@gmail.com (Commissioner District 2 Appointment)	11/05/2019	C: 404-7882062	YES	08/21/2022
John Paxman 1832 N. Dixie Highway johnpaxman@aol.ocm (Commissioner District 4 Appointment)	03/18/2014	H: 561-547-2424	YES	07/31/2020
Brent Whitfield 133 Duke Drive bwhitfield@chenmoore.com (Mayor’s Appointment)	01/16/2018	H: 561-329-1797	YES	08/21/2022
Leah Foertsch 1421 N. O Street Leah.foertsch@gmail.com (Vice Mayor’s Appointment – District 3)	05/20/2014	C: 305-299-3025	YES	08/21/2021

Executive Director: Joan Oliva - 561-493-2550 - joliva@lakeworth.org
Commission Liaison: VM Andy Amoroso - 561-586-1733 - aamoroso@lakeworth.org

Responsible for formulating and implementing projects that are consistent with the Lake Worth Redevelopment Plan to assist in revitalizing and redeveloping portions of the City of Lake Worth Beach.
 Established by Resolution No. 47-89, effective 7/3/89. Florida Statute 163.356 (3) (b), Any person may be appointed as commissioner if he or she resides or is engaged in business, which means owning a business, practicing a profession, or performing a service for compensation, or serving as an officer or director of a corporation or other business entity so engaged, within the area of operation of the agency, which shall be coterminous with the area of operation of the county or municipality, and is otherwise eligible for such appointment under this part. Ordinance No. 93-2, effective 2/13/93, to consist of seven



members appointed by City Commission. Ordinance No. 2008-14, effective 7/10/08, amended attendance requirements: if any member of the board shall fail to be present at three (3) consecutive regularly scheduled meetings or at twenty (20) percent of the regularly scheduled meetings of the board held within any 12-month period, the city clerk shall schedule the matter for hearing before the city commission.

Effective May 1, 2013, Chapter 2013-36 FINANCIAL DISCLOSURE FORMS ARE REQUIRED.

Meeting Schedule: Second Tuesday of every month at the Hatch located 1121 Lucerne Avenue at 6:00 p.m.

SECRETARY: Emily Theodossakos, 561-493-2550



VOLUNTEER ADVISORY BOARD APPLICATION

7 North Dixie Highway, Lake Worth, FL 33160 – Phone: 561-586-1730 – Fax: 561-586-1750

APPLICANT'S NAME: DONALD LOUIS ROSENSHINE
(Print name)

THIS APPLICATION IS VALID FOR ONLY ONE (1) YEAR FROM THE DATE ENTERED ON PAGE FIVE (5).

Thank you for your interest in serving the City of Lake Worth. The City Commission recognizes that volunteering is important, and your contribution is what makes Lake Worth a great community. Completion of this application is necessary so that the members of the City Commission can thoroughly review each application as part of their consideration for your appointment.

If applying for more than one Board/Committee, please number in order of preference. If you have previously submitted an application, it will be removed from our files unless you mark the board(s) previously applied for on this application. Please choose no more than three Boards/Committees for which you wish to apply. When selecting, indicate your first, second, and third preference. You may not serve on two of the following boards/committees at one time: Construction Board of Adjustments and Appeals, Community Redevelopment Agency, Historic Resources Preservation, or Planning & Zoning Boards.

- Board of Trustees Employees' Retirement System *
- Board of Trustees Police Retirement System *
- Board of Trustees Firefighters' Pension Trust Fund *
- Board of Trustees Firefighters' Pension Trust Fund – Division II *
- City Recreation Advisory Board
- City Tree Board
- Community Redevelopment Agency *
- Construction Board of Adjustments and Appeals **
- Electric Utility Advisory Board
- Finance Advisory Board
- Historic Resources Preservation Board **
- Library Board
- Planning & Zoning Board * **
- Sister City Board
- C-51 Canal Advisory Committee
- Citizens Advisory Committee – Bond Referendum

* Requires that appointee fill out an annual financial disclosure form to be filed with the Supervisor of Elections Office

** Certain skill-set disciplines required

ALL BOARD/COMMITTEES ARE SUBJECT TO THE SUNSHINE LAW

1. PERSONAL

Name: Mr./Mrs./Ms. (circle one) Donald Rosenzshine

Residence Address: 131 N. Golf View Rd No. 3

City: Lake Worth Beach State: FL Zip Code: 33460

Proof of residency attached: Drivers License

Mailing Address: (if different from residence) N/A

City: _____ State: _____ ZIP Code: _____

Home Phone: _____ Business Phone: _____

Cell Phone: 443-603-6137 Email Address: DonRosenzshine29@gmail.com

Are you a citizen of the United States? Yes

Are you a registered Palm Beach County voter? Yes

Are you a registered Lake Worth voter? Yes

How long have you been a resident of Lake Worth? 4 yrs

List all properties owned and/or business interests in Lake Worth NONE

What is your occupation? Retired

Employer? N/A

Business Address: (CRA board only) _____

Are you currently serving on any City advisory Board? NO

If yes, which board? _____

Have you ever served on a City of Lake Worth board? NO

If yes, when and which board(s)? _____

Do you serve on any boards in Florida, or are you an elected or appointed state, county, or municipal office holder, or Palm Beach County employee? NO

If yes, please name the board, position, etc. _____

2. EDUCATION

High School: Lindbergh Military Inst. Date of Graduation: 1961
College: Washington & Jefferson College Degree: B.A. Date of Graduation: 1965
U of Baltimore Law School 1969
Resume attached? Yes No J.D. LLB

3. WORK EXPERIENCE

Sunshine Mtg. Corp. President 1978-2010
Director of Acquisitions For Residential Home Devl. 1985-1991
Exec. Dir. Anne Arundel Co. Housing Authority 1978-1985
Member, Md. General Assembly, House of Del. 1974-1978
Dir. of Transportation Serv. Comm. Act. Agency, Annap. MD 1968-1972

4. INTEREST/ACTIVITIES

Sports, Golf, Swimming,
Reading
Music
Geography & History
Current events

5. COMMUNITY INVOLVEMENT

- 1) ADVOCATE FOR THE POOL - CASINO COMPLEX
- 2) ADVOCATE FOR BLACK LIVES MATTER TO INCLUDE BETTER COMMUNICATION BETWEEN THE CITIZENS AND THE POLICE.
- 3)

6. a - Why do you desire to serve on this board (first preference)

I WOULD LIKE TO SERVE PRIMARILY ON THE FINANCIAL ADVISORY BOARD. THAT IS THE CITY'S ~~ANNUAL~~ FISCAL JUGULAR. IF CITY REVENUES ARE APPORTIONED EQUITABLY THE CITY WILL PROSPER.

6. b - Why do you desire to serve on this board (second preference)

I BELIEVE THE KEY TO A CITY'S SUCCESS IS ITS ECONOMIC BASE. IF THAT IS NOT ADMINISTERED EQUITABLY, PROFESSIONALLY AND CONSISTENTLY THE CITY WILL PLOUNDER.

6. c - Why do you desire to serve on this board (third preference)

N/A

I understand the responsibilities associated with being a board/committee member, and I have adequate time to serve if appointed.

I have read Ordinance No. 2010-29 and Article XIII (Palm Beach County) Code of Ethics attached hereto, and understand the policy on the City of Lake Worth's Code of Ethics. **Within 30 days after appointment, I understand that I am required to participate in Ethics Training and submit an Acknowledgement of Receipt form to the City Clerk's Office in order to continue to serve on my appointed board.**

PLEASE INITIAL DLR

DLR 8/7/20

Signature Date

THIS APPLICATION IS VALID FOR ONLY ONE (1) YEAR FROM THE DATE SIGNED ABOVE.

NOTE: Information regarding the duties and responsibilities of any board/committee can be found by visiting our website at www.lakeworth.org, then select Services and Departments, then select Advisory Boards. For the application, please select Services and Departments, then select Forms, scroll down to Volunteers and select Advisory Board Application. If you need additional information, please contact Silvina Donaldson, Volunteer Coordinator at sdonaldson@lakeworth.org or by calling 561-586-1730.

EMAIL APPLICATION TO: sdonaldson@lakeworth.org (preferred method)

or

FAX APPLICATION TO: Volunteer Coordinator (561) 586-1750

or

RETURN APPLICATION TO: Volunteer Coordinator
Lake Worth City Hall
7 North Dixie Highway
Lake Worth, FL 33460

SUNSHINE LAW: The primary purpose of government in the Sunshine Law is to assure public access to the decision making processes of public boards and committees. The Sunshine Law extends to discussions and deliberations as well as to formal actions taken by boards and committees.

Florida

DRIVER LICENSE



CLASS E

AND ID# R252-192-██████████



ROSENSHINE
DONALD LOUIS
131 N GOLFVIEW RD APT 3
LAKE WORTH, FL 33460-3533

1 DOB 08/29/1938 SEX M
4b EXP 08/29/2025 HEIGHT 5'-07"
12 REBT NONE HAIR NONE

SPONSOR



██████████

4a ISS 09/19/2016

5CD X832807304070

REPLACED 07/30/2020

Operation of a motor vehicle constitutes consent to any sobriety test required by law.

112



FINANCE ADVISORY BOARD

Three-Year Terms

MEMBERS	APPOINTED	PHONE	ETHICS TRAINING	TERM EXPIRES
Lindy Seto 316 Princeton Drive Lindy.seto@gmail.com (Mayor's Appointment)	05/21/2019	C: 910-750-2462	YES	07/31/2021
VACANT (due to Michael Calhoun's passing) (Vice Mayor's Appointment – District 3)				07/31/2021
Ben Ellis, Jr. 530 South Federal Highway # 10 bellis@ellisgritter.com (District 1 Appointment)	03/06/2018	C: 561-254-3805	YES	07/31/2019
VACANT (due to Judith Just's resignation) (District 2 Appointment)				07/31/2023
VACANT (Due to Jessica Shaw's move out of LWB) (District 4 Appointment)				07/13/2022
Sherry Schmidt 4 Indigo Terrace sherry@cri-re.com (Mayor's Appointment)	07/31/2013	C: 954 551-1655	YES	07/31/2019
Vacant (Caryn Rixey resignation) (Vice Mayor's Appointment – District 3)				07/31/2023

BOARD LIAISON

Bruce Miller, Finance Director
bmiller@lakeworth.org,
561-586-1641

The City of Lake Worth Finance Advisory Board was created to serve in an advisory capacity to the City Commission and the City Manager. The Board shall serve to promote transparency in the City of Lake Worth's budget process and allow for additional citizen input on major financial decisions. The Board shall consult with and advise the City Manager and the City Commission in matters affecting the annual operating budget, capital improvement program and all financial policies.

Established by Ordinance No. 2010-03, effective 02/26/10, comprised of seven resident members appointed by the City Commission.



Ord. No. 2010-03, effective 2/26/10, a member who fails to attend three consecutive regularly scheduled meetings or 20% of regularly scheduled meetings held within a 12-month period shall have his/her seat declared vacant by the City Clerk and the City Commission shall promptly fill such vacancy.

Meetings: First Monday of each month at 6:00 pm in the City Hall Conference Room.

EXECUTIVE BRIEF REGULAR MEETING

AGENDA DATE: August 18, 2020

DEPARTMENT: Administration

TITLE:

Tenth Addendum to the Law Enforcement Service Agreement (LESA)

SUMMARY:

The Addendum to the Palm Beach County Sheriff's office LESA extends our law enforcement services through September 30, 2021 with no increase over the previous year. The rate will remain the same at \$13,896,202.00 with a monthly payment of \$1,158,016.87.

BACKGROUND AND JUSTIFICATION:

In FY 2008, the City of Lake Worth ("City") and the Palm Beach County Sheriff's Office ("PBSO") entered into a contract entitled "Agreement for Law Enforcement Services by and between the Palm Beach County Sheriff's Office and the City of Lake Worth" ("LESA") which provides for all the City's law enforcement services. Residents in the community have been very satisfied with the law enforcement services provided by PBSO and the positive impact they have had in addressing criminal activities in the Community. The original Agreement has been amended several times allowing for annual increases, as well as, additional personnel requested by the City

MOTION:

Move to approve/disapprove this Ninth Addendum to the Law Enforcement Services Agreement for Fiscal Year 2019-2020.

ATTACHMENT(S):

Fiscal Impact Analysis Tenth Addendum

FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2020	2021	2022	2023	2024
Capital Expenditures	0	0	0	0	0
Operating Expenditures	0	13,896,202	0	0	0
External Revenues	0	0	0	0	0
Program Income	0	0	0	0	0
In-kind Match	0	0	0	0	0
Net Fiscal Impact	0	0	0	0	0
No. of Addn'l Full-Time Employee Positions	0	0	0	0	0

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

Account Number	Account Description	Project Number	FY21 Budget	Current Balance	Agenda Expenditure	Balance
001-3010-521.34-50	Contractual Service		13,382,875.		13,382,660.60.	
140-8074-575.34-50	Contractual Service		\$295,000.00		256,770.70	
401-1240-513.34-50	Contractual Service		\$578,000.00		\$256,770.70	

C. Department Fiscal Review:_____

TENTH ADDENDUM TO THE LAW ENFORCEMENT SERVICE AGREEMENT
SHERIFF RIC L. BRADSHAW AND THE CITY OF LAKE WORTH BEACH

This Tenth Addendum to the Law Enforcement Service Agreement is made by and between The City of Lake Worth Beach formerly known as The City of Lake Worth (hereinafter referred to as “City”), located in Palm Beach County, and Ric L. Bradshaw, Sheriff of Palm Beach County, Florida (hereinafter referred to as “Sheriff”). The City and the Sheriff shall hereinafter be referred to as the “Parties.”

WHEREAS, the Parties executed a Law Enforcement Service Agreement effective October 01, 2008, a First Addendum effective October 01, 2009, a Second Addendum effective October 01, 2010, a Third Addendum October 01, 2011, a Fourth Addendum October 01, 2013, a Fifth Addendum October 01, 2015, a Sixth Addendum October 01, 2016, a Seventh Addendum October 01, 2017, an Eighth Addendum October 01, 2018, and a Ninth Addendum October 01, 2019 (the “Agreement”), by which the Sheriff agreed to perform law enforcement services; and

WHEREAS, the Parties wish to extend the Agreement for one (1) year, and set forth the consideration for the contract term October 01, 2020 through September 30, 2021.

NOW, THEREFORE, in consideration of the mutual covenants herein contained the receipt and sufficiency of which are hereby acknowledged, it is agreed upon as follows:

1. In accordance with Article 12 of the Law Enforcement Service Agreement, the Parties have agreed to extend the term of the Agreement for an additional one (1) year. The term of this Agreement shall run through September 30, 2021.
2. Article 6, Section 6.1 of the Law Enforcement Service Agreement is amended as to the total amount due for services for the period beginning October 01, 2020 through September 30, 2021 as follows: The total amount due for the annual period referenced above shall be \$13,896,202.00. Monthly payments shall be \$1,158,016.83. The last monthly payment shall be \$1,158,016.87.
3. In all other respects and unless otherwise stated, the terms and conditions of the Agreement, which includes prior Addendums, shall continue unchanged and in full force and effect.

IN WITNESS WHEREOF, the Parties hereto have executed this Addendum to the Agreement as of the last date all signatures below are affixed.

PALM BEACH COUNTY SHERIFF'S OFFICE

THE CITY OF LAKE WORTH BEACH

BY: _____
Ric L. Bradshaw

BY: _____
Pam Triolo

Title: Sheriff

Title: Mayor

Witness: _____
Christopher Keane, Major

ATTEST: _____
Deborah M. Andrea, City Clerk

DATE: _____

DATE: _____

Reviewed and approved
for execution:

BY: _____
Michael Bornstein
City Manager

BY: _____
Bruce Miller
Finance Director

Approved as to form and
Legal sufficiency:

BY: _____
Glen Torcivia
City Attorney

EXECUTIVE BRIEF SPECIAL MEETING

AGENDA DATE: August 18, 2020

DEPARTMENT: Community Sustainability

TITLE:

Ordinance No. 2020-11 – Amend the City’s Code of Ordinances Chapter 23 Land Development Regulations

SUMMARY:

Ordinance 2020-11 provides for a series of amendments to Chapter 23 Land Development Regulations of the City’s Code of Ordinances related to Article I - General Provisions, Division 1 - Generally and Division 2 - Definitions; Article II - Administration, Division 3 - Permits; Article III - Zoning Districts, Division 2 - Official Zoning Map; Article IV – Development Standards – Division 4 - Fence, Walls and Gates, Division 10 – Off Street Parking and Division 19 – Outdoor Storage; and Article VI – Environmental Regulations, Division 1 – Landscape Regulations.

BACKGROUND AND JUSTIFICATION:

Ordinance 2020-11 provides for a series of updates, clarifications, corrections and additions to the City’s Land Development Regulations (LDRs). Back at its workshop on March 3, 2020, Staff presented a series of priorities for the LDRs to the Commission. The changes provided here are of the highest priority and include the following:

1. Clarifying and updating how the City’s Comprehensive Plan and Future Land Use Map are changed and amended including fees.
2. Clarifying additional definitions
3. Clarifying parameters for minor site plan and major site plan approvals and amendments
4. Establishing provisions so that the City’s Official Zoning Map and Future Land Use Map can be maintained virtually and digitally
5. Clarification of requirements for fences, walls and gates
6. Clarification of standards for off street parking, outdoor storage and dumpsters

At its meetings in July, both the Planning & Zoning Board and Historic Resources Preservation Board discussed the amendments and both recommended unanimously for the City Commission to approve the proposed amendments.

At its special meeting of July 28, the commission voted 4-1 to approve the ordinance on first reading and to schedule the public hearing and second reading for August 18, 2020

MOTION:

Move to approve/disapprove Ordinance No. 2020-11 on second reading.

ATTACHMENT(S):

Ordinance No. 2020-11

PZB/HRPB Staff Report

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4 **ORDINANCE 2020-11 - AN ORDINANCE OF THE CITY OF LAKE**
5 **WORTH BEACH, FLORIDA, AMENDING CHAPTER 2**
6 **“ADMINISTRATION,” DIVISION 1 “IN GENERAL,” SECTIONS 2-4, 2-7,**
7 **2-10.2 AND 2-11.3 RELATED TO APPLICATION FEES; AND AMENDING**
8 **CHAPTER 23 “LAND DEVELOPMENT REGULATIONS, BY AMENDING**
9 **ARTICLE 1 “GENERAL PROVISIONS,” DIVISION 1, “GENERALLY,”**
10 **SECTIONS 23.1-5 AND 23.1-6 RELATED TO OFFICIAL MAPS; ARTICLE**
11 **1 “GENERAL PROVISIONS,” DIVISION 2, “DEFINITIONS,” SECTION**
12 **23.1-12 - DEFINITIONS; ARTICLE 2 “ADMINISTRATION” DIVISION 3,**
13 **“PERMITS,” SEC. 23.2-30. – SITE PLAN REVIEW; ARTICLE 3, “ZONING**
14 **DISTRICTS” SEC. 23.3-2. –OFFICIAL ZONING MAP; ARTICLE 4,**
15 **“DEVELOPMENT STANDARDS” - SECTION 23.4-4. – FENCES, WALLS**
16 **AND GATES; ARTICLE 4, “DEVELOPMENT STANDARDS” SECTION**
17 **23.4-10 – OFF-STREET PARKING; ARTICLE 4, “DEVELOPMENT**
18 **STANDARDS” SECTION 23.4-19 – OUTDOOR STORAGE; ARTICLE 6**
19 **“ENVIRONMENTAL REGULATIONS”, SECTION 23.6-1(C)(3)**
20 **LANDSCAPE REGULATIONS OF THE CITY’S CODE OF ORDINANCES;**
21 **AND PROVIDING FOR SEVERABILITY, THE REPEAL OF LAWS IN**
22 **CONFLICT, CODIFICATION, AND AN EFFECTIVE DATE.**
23
24

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

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

37 **WHEREAS**, the City wishes to amend Chapter 2, Division 1 “In General,” Sections
38 2-4, 2-7, 2-10.2 and 2-11.3 addressing application fees to provide clarity and address a
39 conflict; and
40

41 **WHEREAS**, the City wishes to amend Chapter 23, Division 1 “Generally,” Sections
42 23.1-5 and 23.1-6, and Article 3, “Zoning Districts” SEC. 23.3-2. –Official Zoning Map to
43 adopt a digital Future Land Use Map and Zoning District Map; and
44

45 **WHEREAS**, the City wishes to amend the definitions and landscape sections of
46 Chapter 23 of its land development regulations to address inconsistencies and conflicts
47 related lot coverage type and pervious and impervious surfaces; and
48

49 **WHEREAS**, the City wishes to amend Chapter 23, Article 2 “General Provisions,”
50 Division 3, “Permits,” Section 23.2-30. Site Plan Review to provide clarity and consistency
51 regarding major development and minor development site plan processing; and
52

53 **WHEREAS**, the City wishes to amend Chapter 23, Article 4 “Development
54 Standards,” Sections 23.4-4 regarding fences, walls and gates section to provide clarity
55 and consistency; and
56

57 **WHEREAS**, the City wishes to amend Chapter 23, Article 4 “Development
58 Standards, Section 23.4-19 regarding outdoor storage to provide clarity and consistency
59 on where outdoor storage may occur and storm water pollution requirements; and
60

61 **WHEREAS**, the Planning and Zoning Board, in its capacity as the local planning
62 agency, considered the proposed amendments at a duly advertised public hearing; and
63

64 **WHEREAS**, the Historic Resources Preservation Board, in its capacity as the local
65 planning agency, considered the proposed amendments at a duly advertised public
66 hearing; and
67

68 **WHEREAS**, the City Commission has reviewed the proposed amendments and
69 has determined that it is in the best interest of the public health, safety, and general
70 welfare of the City to adopt this ordinance.
71

72 **NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE**
73 **CITY OF LAKE WORTH BEACH, FLORIDA, that:**
74

75 **Section 1:** The foregoing “WHEREAS” clauses are ratified and confirmed as
76 being true and correct and are made a specific part of this Ordinance as if set forth herein.
77

78 **Section 2:** Chapter 2 “Administration,” Division 1, “In-General,” Sections 2-4, 2-
79 7, 2-10.2 AND 2-11.3 related to application fees of the City’s Code of Ordinances, is
80 hereby amended by adding the words shown in underlined type and deleting the words
81 struck through as indicated in **Exhibit A**.
82

83 **Section 3:** Chapter 23 Land Development Regulations,” Article 1, “*General*
84 *Provisions*,” Division 1 “Generally,” Sections 23.1-5 AND 13.1-6 related to official maps is
85 hereby amended by adding the words shown in underlined type and deleting the words
86 struck through as indicated in **Exhibit B**.
87

88 **Section 4:** Chapter 23 Land Development Regulations,” Article 1, “*General*
89 *Provisions*,” Division 2 “Definitions,” Section 23.1-12 - Definitions is hereby amended by
90 adding the words shown in underlined type and deleting the words struck through as
91 indicated in **Exhibit C**.
92

93 **Section 5:** Chapter 23 Land Development Regulations,” Article 2,
94 “*Administration*,” Division 3 “Permits,” Sec. 23.2-30. – Site Plan Review is hereby
95 amended by adding the words shown in underlined type and deleting the words struck
96 through as indicated in **Exhibit D**.

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Section 6: Chapter 23 “Land Development Regulations,” Article 3, “Zoning Districts” Sec. 23.3-2. –Official Zoning Map; are hereby amended by adding the words shown in underlined type and deleting the words struck through as indicated in **Exhibit E**.

Section 7: Chapter 23 “Land Development Regulations,” Article 4, “Development Standards” Sec. 23.4-4. –Fences, Wall, and Gates; are hereby amended by adding the words shown in underlined type and deleting the words struck through as indicated in **Exhibit F**.

Section 8: Chapter 23 “Land Development Regulations,” Article 4, “Development Standards” *Section 23.4-10 – Off-street parking*; are hereby amended by adding the words shown in underlined type and deleting the words struck through as indicated in **Exhibit G**.

Section 9: Chapter 23 “Land Development Regulations,” Article 4, “Development Standards” *Section 23.4-19 – Outdoor Storage*; are hereby amended by adding the words shown in underlined type and deleting the words struck through as indicated in **Exhibit H**.

Section 10: Chapter 23 “Land Development Regulations,” Article 6, “Environmental Regulations” Sec. 23.6-1. – Landscape Regulations; are hereby amended by adding the words shown in underlined type and deleting the words struck through as indicated in **Exhibit I**.

Section 11. Severability. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

Section 12. Repeal of Laws in Conflict. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 13. 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 14. Effective Date. This ordinance shall become effective 10 days after passage.

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

Mayor Pam Triolo	AYE
Vice Mayor Andy Amoroso	AYE

146	Commissioner Scott Maxwell	AYE
147	Commissioner Omari Hardy	NAY
148	Commissioner Herman Robinson	AYE

149
 150 The Mayor thereupon declared this ordinance duly passed on first reading on the
 151 28th day of July, 2020.
 152

153
 154 The passage of this ordinance on second reading was moved by
 155 _____, seconded by _____, and upon being put to a vote,
 156 the vote was as follows:
 157

158 Mayor Pam Triolo
 159 Vice Mayor Andy Amoroso
 160 Commissioner Scott Maxwell
 161 Commissioner Omari Hardy
 162 Commissioner Herman Robinson
 163

164
 165 The Mayor thereupon declared this ordinance duly passed on the _____ day of
 166 _____, 2020.
 167

168 LAKE WORTH BEACH CITY COMMISSION

169
 170
 171 By: _____
 172 Pam Triolo, Mayor
 173

174 ATTEST:

175
 176
 177 _____
 178 Deborah Andrea, CMC, City Clerk
 179

EXHIBIT A

Chapter 2

CODE OF ORDINANCES ARTICLE 2 "ADMINISTRATION"

DIVISION 1. – IN GENERAL

Sec. 2-4. - Changes and amendments to comprehensive plan.

(a) ~~There is hereby fixed a service charge of fifteen dollars (\$15.00) for copying the comprehensive plan, excluding the land use map. There is hereby fixed a fee of five dollars (\$5.00) for copying the land use map.~~ (b) ~~There is hereby fixed a service charge. A fee of not less than of one thousand five hundred dollars (\$1,500.00) two thousand dollars (\$2,000) shall be established by resolution in the City's adopted fee schedule for any request to amend the City's comprehensive plan pursuant to section 163.3187(1)(c), Florida Statutes, and a service charge of five hundred dollars (\$500.00) for any other request to amend the comprehensive plan, which amount shall be paid at the time of the filing of such petition regardless of whether such petition has ever previously been filed. The sum shall be a flat application fee plus the cost of advertising and the same, or any part thereof, shall not be refundable.~~

Sec. 2-7. - Voluntary annexation; service charge.

~~There is hereby A fixed a service charge of five hundred dollars (\$500.00) plus the costs of advertising for each petition for voluntary annexation shall be established by resolution in the City's adopted fee schedule. The service charge and advertising fees may be waived by the City Manager or designee on a case-by-case basis to incentivize annexation within the City's future annexation area.~~

Sec. 2-10.2. - Zoning confirmation fees.

Whenever the city receives a request for zoning confirmation or information, a service fee ~~of thirty five dollars (\$35.00)~~ as established by resolution in the City's adopted fee schedule shall be charged for each request. Each request must be submitted in writing, with the required fee, at least seven (7) business days before the city's response.

Sec. 2-10.3. - Historic status confirmation fees.

Whenever the city receives a request for historic status confirmation or information about the historic status of a particular property, a service fee ~~of thirty five dollars (\$35.00)~~ as established by resolution in the City's adopted fee schedule shall be charged for each request. Each request must be submitted in writing, with the required fee, at least seven (7) business days before the city's response.

EXHIBIT B

Chapter 23

LAND DEVELOPMENT REGULATIONS ARTICLE 1 "GENERAL PROVISIONS"

Article 1, "General Provisions," Division 1, "Generally"

Sec. 23.1-5. - Comprehensive plan and future land use map.

The comprehensive plan and future land use map " (FLUM)" of the City of Lake Worth are the official statements of policy of the city with regard to the use and development of land within the city. All use or development of land undertaken pursuant to these regulations shall be consistent with the comprehensive plan and the future land use map.

a) FLUM adoption procedure and policy. The boundaries of the future land use designations including any duly enacted amendments are set forth and administered in a digital data format within a geographic information system (GIS) under the direction of the Development Review Official (DRO) or designee that together with all explanatory matter and data therein shall constitute the City's official FLUM. The FLUM shall be available for viewing by the public upon the City's webpage. The City Clerk or designee shall certify, upon validation by the DRO or designee, a signed paper copy of official FLUM from time to time and upon request as consistent with Comprehensive Plan Policy 1.1.2.1. The digital GIS data shall supersede any paper map copies in the event of a conflict. The City's development review official (DRO) or designee shall have the authority to correct errors in the map data if they are discovered. No other changes of any nature shall be made to the official FLUM or matters shown thereon except in conformity with the procedures set forth in these LDRs and the City's Comprehensive Plan.

Sec. 23.1-6. - Official zoning map.

The official zoning map is established and incorporated into these regulations by this reference. The official zoning map designates the boundaries of all zoning districts as adopted by the city commission pursuant to the procedures of these regulations. The official zoning map, as amended from time to time, shall be maintained in accordance with the provisions of Sec. 23.3-2. - Official zoning map. ~~kept on file and made available for public reference in the office of the city clerk.~~ See also Article 3, Zoning Districts.

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EXHIBIT C

Chapter 23

LAND DEVELOPMENT REGULATIONS ARTICLE 1 "GENERAL PROVISIONS"

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

Sec. 23.1-12. - Definitions.

Building lot coverage: The area of a lot covered by the impervious surface associated with the footprint(s) of all buildings on a particular lot. Exceptions: Structured parking garages are exempt from building lot coverage- calculations unless habitable space is provided above or on top of the structured parking, then that portion of the parking garage would be included in the calculation.

* * *

Impermeable / impervious surface: All surfaces on a lot incapable of being penetrated by water under normal circumstances, wherein moisture runs off the surface instead of penetrating the material to be absorbed in the underlying soil. Impermeable materials include, but are not limited to, asphalt, concrete, pavers and compacted shell rock and roofs. Impermeable surfaces shall have a minimum of a one (1) foot setback from the side property line and rear property lines.

* * *

Landscaping: Any of the following or combination thereof: materials such as, but not limited to, grass, living ground covers, shrubs, vines, hedges, trees or palms. A landscape area shall contain a maximum of 50% mulch or rock in planting beds.

* * *

Landscape screen (or "landscape hedge"): A line, ~~or~~ row, or group of plant material planted installed and maintained at a minimum height of 24" so as to form a continuous buffer acting as a visual screen that may include shrub hedging or decorative landscaping. to adjacent property.

* * *

Lot coverage: That area of the lot area covered by the impervious surfaces associated with the footprint(s) of all buildings and improved surfaces on a particular lot, ~~inclusive of including structured parking garages, driveways, walkways, patios, pool decks, screen enclosures, equipment pads, hardscapes and including or other impervious surfaces~~ any surface covered by impervious or semi-pervious materials. Exception: Swimming pools are exempt from lot coverage calculations. For semi-pervious surfaces, two (2) square feet of semi-pervious surface shall be equivalent to one (1) square foot of impervious surface for the purpose of calculating lot coverage.

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313 Maximum lot coverage: The total area of a particular lot covered with an impervious
314 or semi-pervious surface material. Includes but is not limited to building footprints,
315 structures, driveways, screen enclosures, terraces, patios and pavement. For semi-
316 pervious surfaces, two (2) square feet of semi-pervious surface shall be equivalent to one
317 (1) square foot of impervious surface for the purpose of calculating development
318 regulation requirements for permitted, administrative or conditional uses.

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321 Open space: That area of a lot which is unencumbered by buildings, other structures,
322 areas defined as impermeable/impervious surface, driveways, or automobile parking
323 areas, except for garden walls and fences and recreational equipment as provided herein.
324 Such space is to be generally maintained in a natural or cultural living landscape and shall
325 include the water surface area of swimming pools. Open space shall be considered
326 pervious in the lot coverage and maximum lot coverage calculations. and shall not be
327 included in the calculation of impervious area for the purposes of maximum lot coverage.

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331 Pervious / permeable surface: Any surface that is capable of being penetrated by
332 water- with a percolation rate that is generally equivalent to the ground percolation rate.
333 For semi-pervious surface materials, two (2) square feet of semi-pervious surface shall
334 be equivalent to one (1) square foot of impervious surface for the purpose of calculating
335 development regulation requirements for permitted, administrative or conditional uses.
336 Percolation (perc) rate of the semi-pervious material must be fifty (50) percent relative to
337 the ground perc rate. Semi-pervious material may include but is not limited to pervious
338 pavers, pervious concrete, grasscrete and substantially similar materials. [Note: Deleted
339 text moved to definition for semi-pervious surface.]

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343 Permeable paving materials: Paving materials with a percolation rate of at least fifty
344 (50) percent relative to the ground percolation rate that are specifically designed to be
345 semi-pervious and also provide a stable surface. Permeable paving materials include but
346 are not limited to pervious pavers, pervious concrete, porous asphalt, grasscrete and
347 substantially similar materials.

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* * *

350 Semi-pervious surface: A surface covered by materials with a percolation rate of at
351 least fifty (50) percent relative to the ground percolation rate. Semi-pervious surface may
352 include but are not limited to permeable paving material and other semi-pervious
353 materials such as gravel, small stone, and other substantially similar materials. For semi-

354 pervious surfaces, two (2) square feet of semi-pervious surface shall be equivalent to one
355 (1) square foot of impervious surface for the purpose of calculating development
356 regulations. The semi-pervious surface credit shall not reduce the required open space
357 and landscape area requirements.

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361 *Swimming pools:* Any pool which is constructed, used or maintained to provide
362 recreational facilities for swimming, bathing or wading and which is capable of containing
363 water to a depth greater than eighteen (18) inches and ~~all buildings, equipment, and~~
364 ~~appurtenances thereto, and~~ The water surface area of a swimming pool shall not be
365 included in the calculation of impervious area for the purposes of maximum lot coverage.

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EXHIBIT D

Chapter 23

LAND DEVELOPMENT REGULATIONS ARTICLE 2 “ADMINISTRATION”

Article 2, “Administration” Division 3. “Permits”

Sec. 23.2-30. – Site plan review

a) *Intent.* The intent of the site plan review provisions is to establish standards for development and provide review procedures which ensure compliance with these qualitative standards and with other regulations of these LDRs. Site plans shall be prepared in accordance with the qualitative site design requirements in section 23.2-31. Site plan review and approval shall be required for the following:

1. Construction of all new structures, except principal and accessory structures associated with the use of a lot or parcel for single-family detached or two-family dwelling units.
2. Modification of existing structures, except principal and accessory structures associated with the use of a lot or parcel for single-family detached or two-family dwelling units.
3. Occupancy of an existing structure, where a change of occupancy requires additional parking, a site plan shall be required. Where a change of use does not require additional parking, an application so stating and signed by the development review official must be attached to the certificate of occupancy application file prior to the issuance of a certificate of occupancy.
4. Modifications to parking, landscaping, open space, and impervious area that impact greater than five percent (5%) of the site, except principal and accessory structures associated with the use of a lot or parcel for single-family detached or two-family dwelling units.
5. Reconfiguration or modification of on-site circulation, except principal and accessory structures associated with the use of a lot or parcel for single-family detached or two-family dwelling units.

In the case of a site plan that is part of a master development plan for a planned development district, the procedures in section 23.3-25 shall apply.

- b) *Determination if site plan review required.* Prior to issuance of a building permit or a certificate of occupancy, the development review official shall determine if site plan review pursuant to the provisions of this section is required. If site plan review is required, the development review official shall notify the applicant of this determination.
- c) *Determination of type of site plan review procedure application.* Applications shall be submitted to the department for community sustainability. The development review

414 official shall review development applications to determine if they require site plan
415 review or approval as minor or major developments. If the application constitutes a
416 major development, notice of the review by the appropriate board shall be given by
417 publication, posting and courtesy mailing in accordance with the notice provision of
418 this article. ~~The development review official's determination shall be based on the~~
419 ~~following criteria:~~

420 1. Major development shall include one or more of the following:

- 421 a. All development including new structure(s) or use area having more than
422 seven thousand five hundred (7,500) square feet of floor area.
- 423 b.. An increase of more than twenty-five (25%) percent of existing or approved
424 parking spaces, or more than ten (ten) parking spaces.
- 425 c. Amendments to existing development or site plans, previously approved as a
426 minor development, where the combined total of all site development (existing
427 and proposed) meets or exceeds the thresholds for review as a major
428 development.
- 429 d. Amendments to existing development or site plans, previously approved as a
430 major development, that change a phasing plan or developer control that
431 would substantially impact the approval.
- 432 e. Amendments to existing development or site plans, previously approved as a
433 major development, that significantly change the approved building design as
434 determined by the development review official, increase the building height of
435 a structure by one or more stories, or modify the approved site plan by more
436 than ten percent (10%) for one or more of the following:
 - 437 1) density,
 - 438 2) intensity (FAR)
 - 439 3) impervious surface or parking area, or
 - 440 4) landscape area.

441
442
443 2.4. Minor development shall include all development that is not determined to be
444 major development, which may include but is not limited to the following:

- 445 a. Addition of awnings, canopies or ornamental structures; addition or
446 modification of pool location or size; ~~redesign and different location of pools;~~
447 addition or modification of landscape areas or impervious areas; parking
448 spaces and drives and driveways; modifications in stairs or elevations of
449 decks, porches, terraces and fencing; or similar types of improvements;
- 450 b. ~~Addition of up to twenty (20) parking spaces~~ An increase of up to twenty-five
451 (25%) percent of existing or approved parking spaces, or more than ten (10)
452 parking spaces;
- 453 c. ~~Attached or detached additions to buildings which do not increase the floor~~
454 area by more than five thousand (5,000) square feet; and
- 455 ~~ed. New structures having less than seven thousand five hundred (7,500) square~~
456 feet of floor area.

457

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459 c. All development including new structure(s) or use area less than seven
460 thousand five hundred (7,500) square feet in total, which are not determined
461 to be major development by the development review official because it does
462 not have the potential to negatively impact the surrounding neighborhood.

463

464 ~~2. Major development shall include all development which is not determined to be~~
465 ~~minor development or that has the potential to negatively impact the surrounding~~
466 ~~neighborhood by the development review official.~~

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EXHIBIT E

Chapter 23

LAND DEVELOPMENT REGULATIONS ARTICLE 3 "ZONING DISTRICTS"

Sec. 23.3-2. - Official zoning map.

a) *Adoption procedure and policy.* ~~The boundaries of each of the hereinafter designated zoning districts are set forth and shown on the official zoning map which, together with all explanatory matter thereon, is hereby adopted by reference and declared to be a part of these LDRs. The boundaries of the designated zoning districts are set forth and administered in a digital data format within a geographic information system (GIS) under the direction of the Development Review Official (DRO) or designee that together with all explanatory matter and data therein shall constitute the City's official zoning map. The zoning map shall be available for viewing by the public upon the City's webpage. The City Clerk or designee may certify, upon validation by the DRO or designee, a paper copy of official zoning map or portions of the map as a true and accurate copy of the official zoning map.~~

~~The official zoning map shall be identified by the signature of the mayor, attested by the city clerk, and bearing the seal of the city under the following words:~~

~~"This is to certify that this is the Official Zoning Map as referred to in Chapter 23 of the City of Lake Worth Code of Ordinances."~~

~~If, in accordance with the provisions of these LDRs and applicable Florida Statutes, changes are made in district boundaries or other matters portrayed on the official zoning map, such changes shall be made to on the official zoning map data promptly after the amendment has been approved by the city commission, together with an entry on the official zoning map as follows:~~

~~"On the date shown on the revision table, located below the following change(s) was made on the Official Zoning Map," (by official action of the City Commission)."~~

~~Such entry shall be signed by the mayor and attested by the city clerk. The amending ordinance shall provide that such changes or amendments shall not become effective until they have been duly entered upon the official zoning map. No amendment to these LDRs which involves matters portrayed on the official zoning map shall become effective until after such change and entry has been made on said map. The City Clerk shall keep records on file which identify the official action by which zoning map amendments are made, including the adopting ordinance. The DRO or designee shall have the authority to correct errors in the map data if they are discovered. No other changes of any nature shall be made on the official zoning map or matters shown thereon except in conformity with the procedures set forth in these LDRs. Any unauthorized change of whatever kind by any person or persons shall be considered a violation of these LDRs and punishable as provided under section 1-6 of the Lake Worth Code of Ordinances.~~

~~Regardless of the existence of purported copies of the official zoning map which may, from time to time, be made or published, the official zoning map which shall be located in a safe deposit vault in the office of the city clerk shall be final authority as to the current zoning status of land and water areas, buildings, and other structures in the city.~~

515 b) *Replacement of official zoning map.* The data that comprises the official zoning map
516 shall be protected in a manner consistent with City policies and best practices for data
517 protection. In the unlikely event that the official zoning map data becomes damaged,
518 or destroyed and is not recoverable, lost or difficult to interpret because of the nature
519 or number of changes and additions, the city commission may by resolution adopt a
520 new official digital zoning map which shall supersede the prior official zoning map.
521 ~~The new official zoning map shall be identified by the signature of the mayor attested~~
522 ~~by the city clerk, and bearing the seal of the city under the following words:~~

523 ~~"This is to certify that this Official Zoning Map supersedes and replaces the Official~~
524 ~~Zoning Map adopted on August 20, 1990, as part of Chapter 23 of the City of Lake~~
525 ~~Worth Code of Ordinances."~~

526 Unless the prior official zoning map data has been lost, or has been totally destroyed,
527 the prior map or any significant parts thereof remaining, including official copies
528 certified by the City Clerk, shall be preserved, ~~together~~ with all available records
529 pertaining to its adoption or amendment to reconstruct the map data.

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EXHIBIT F

Chapter 23

LAND DEVELOPMENT REGULATIONS ARTICLE 4 "DEVELOPMENT STANDARDS"

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

a) *General provisions.* For the purpose of this section, fences, walls, and gates shall be constructed to meet the requirements and standards contained in this section.

b) *Design.* All fences, gates and/or walls adjacent to a major thoroughfare shall be designed in a manner that complements, supports and harmonizes with the proposed and/or existing architecture. For sites with a mix of uses, the most restrictive requirements shall apply.

c) *Materials.* Except as may be otherwise provided in these LDRs, walls or fences may be constructed of the following; stone; brick, coral rock; flagstone; concrete block or reinforced concrete stuccoed on both sides; precast concrete; ornamental or architectural concrete block; cedar; bamboo; cypress or redwood; treated wood (not on walls); chain link (black or dark green vinyl coated); aluminum; wrought iron; galvanized steel; glass block; porcelain or glass tile; and, vinyl, fiberglass or similar material. Use of materials that are not specifically mentioned require the approval of the zoning administrator or designee but shall not be limited to those listed above unless otherwise prohibited in these LDRs. The following uses and materials shall be expressly prohibited in all zoning districts:

1. No fence or wall shall be electrically charged.
2. Barbed wire, razor wire, chicken wire, sharp or protruding objects shall not be permitted on any fence or wall for any residential use or in any residential district or in any mixed use district.
3. No materials intended for temporary use are permitted for permanent use.
4. The following shall be prohibited from use on any wall: rubble, concrete test cylinders, scrap metal of any kind, broken glass, or any other sharp particles.
5. Chain link that is not vinyl coated (black or dark green) and/or with barbs.

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

1. *Height limitations.*
 - A. On the front property line and on that portion of the side property line from the front property line to the front building setback line, a fence or wall shall have a maximum height of four (4) feet from the natural grade of the lot. (See definitions.)
 - B. On the rear property line adjacent to an alley, a fence or wall shall have a maximum height of eight (8) feet from the natural grade of the lot.

575

576 C. On the rear property line (not adjacent to an alley) and on that portion of the
577 side property line from the rear property line to the front building setback line,
578 a fence or wall shall have a maximum height of six (6) feet from the natural
579 grade of the lot.

580

581 D. Along side and rear property lines adjacent to roadways (except alleys) a
582 fence shall have a maximum height of six (6) feet and must be set back a
583 minimum of thirty (30) inches from the property line providing a landscape
584 screen maintained at a minimum height of 24" (see definitions). Walls along
585 side and rear property lines adjacent to roadways (except alleys) shall have
586 a maximum height of six (6) feet and must be set back a minimum of five (5)
587 feet from the property line providing a landscape screen. (See definitions.)

588

589 E. Decorative accents, such as column caps or finials, may extend an additional
six (6) inches above the allowable wall or fence height.

590

591 2. *Wall construction.* Regulations in these LDRs which apply to fences regarding
592 height, location and appearance shall apply to wall construction unless otherwise
593 noted in these LDRs.

593

3. *Fences.*

594

595 A. All fences unless otherwise provided herein, shall be symmetrical in
596 appearance and conforming to a definite pattern and uniform design. The
597 same shall be kept in good repair. The finished side of all fences shall be
598 constructed to face toward the adjacent property, street, or alley. All fences
shall comply with height limitations and follow the slope of the natural grade.

599

600 B. Chain link fences are not permitted in front of the front building setback line
601 or on portions of a property abutting public rights-of-way except alleys.
602 Replacement of existing chain link fences shall comply with current
standards.

603

604 ~~C. Chain link fences shall be coated in black or dark green vinyl and shall not
have any exposed metal barbs.~~

605

606 ~~D. All fencing must meet historical guidelines within the historic districts.~~

606

4. *Gates and gateposts.*

607

608 A. Gates and gateposts shall not exceed a height of two (2) feet above the
allowable fence height for the location.

609

610 B. Gateposts not exceeding three (3) feet in any horizontal dimension may be
611 erected or constructed in connection with the erection or construction of a
wall, fence, or in connection with an existing or proposed hedge.

612

613 C. Electronic security gates and keypad/call boxes shall be located a minimum
614 of 25 feet from the property line/right-of-way to prevent stacking of
615 automobiles into the public right-of-way. The minimum stacking distance may
616 be increased in the event the city engineer determines traffic safety so
617 requires. Such increase shall be based on a gate queuing analysis performed
by a certified traffic engineer to be provided by the applicant.

618 D. Gated complexes/communities shall provide for separate resident and visitor
619 entries, where feasible, to allow efficient movement of automobiles from the
620 public right-of-way onto the premises.

621 5. *Waterfront setback.* No solid opaque fencing of any type shall be erected within
622 fifteen (15) feet of the bulkhead or mean high water line of any properties adjacent
623 to waterfronts.

624 6. *Entrance arbor, trellis, pergola, or arch.*

625 A. One (1) entrance arbor, trellis, pergola or arch shall be allowed at the front of
626 a property or two (2) shall be allowed for dual frontage properties.

627 B. Overall height of any entrance feature shall not exceed eight (8) feet in height.

628 C. Overall width of entrance feature shall not exceed ten (10) percent of the
629 overall width of the property frontage or ten (10) feet, whichever is less.

630 ed)Multi-family residential uses.

631 1. *Height limitations.*

632 A. On the front property line and on that portion of the side property line from
633 the front property line to the front building setback line, a fence or wall shall
634 have a maximum height of six (6) feet from the natural grade of the lot. (See
635 definitions.)

636 B. On the rear property line and on that portion of the side property line from the
637 rear property line to the front building setback line, a fence or wall shall have
638 a maximum height of six (6) feet from the natural grade of the lot.

639 C. Along side and rear property lines adjacent to roadways (except alleys) a
640 fence shall have a maximum height of six (6) feet and must be set back a
641 minimum of thirty (30) inches from the property line providing a landscape
642 screen maintained at a minimum height of 24" (see definitions). Walls along
643 side and rear property lines adjacent to roadways (except alleys) shall have
644 a maximum height of six (6) feet and must be set back a minimum of five (5)
645 feet from the property line providing a landscape screen. (See definitions.)

646 D. Decorative accents, such as column caps or finials, may extend an additional
647 six (6) inches above the allowable wall or fence height.

648 2. *Wall construction.* Regulations in these LDRs which apply to fences regarding
649 height, location and appearance shall apply to wall construction unless otherwise
650 noted in these LDRs.

651 3. *Fences.*

652 A. All fences unless otherwise provided herein, shall be symmetrical in
653 appearance and conforming to a definite pattern and uniform design. The
654 same shall be kept in good repair. The finished side of all fences shall be
655 constructed to face toward the adjacent property, street, or alley. All fences
656 shall comply with height limitations and follow the slope of the natural grade.

657 B. Chain link fences are not permitted in front of the front building setback line
658 or on portions of a property abutting public rights-of-way except alleys.
659 Replacement of existing chain link fences shall comply with current
660 standards. Chain link fences or portion thereof visible from a right-of-way

661 including alleys shall require a landscape screen of shrub hedging or other
662 continuous decorative landscaping on the side of the fence facing the public
663 right-of-way that is a minimum height of 24" at installation and shall be
664 maintained at no less than ¾ of the total height of the fence.

665 C. ~~Chain link fences shall be coated in black or dark green vinyl and shall not~~
666 ~~have any exposed metal barbs.~~

667 D. ~~All fencing must meet historical guidelines within the historic districts.~~

668 4. *Gates and gateposts.*

669 A. Gates and gateposts shall not exceed a height of two (2) feet above the
670 allowable fence height for the location.

671 B. Gateposts not exceeding three (3) feet in any horizontal dimension may be
672 erected or constructed in connection with the erection or construction of a
673 wall, fence, or in connection with an existing or proposed hedge.

674 C. Electronic security gates and keypad/call boxes shall be located a minimum
675 of 25 feet sufficiently back from the property line/right-of-way ~~so as to not~~
676 ~~cause to prevent~~ stacking of automobiles in the public right-of-way. The
677 minimum queuing distance may be increased in the event the city engineer
678 determines traffic safety so requires. Such increase shall be based on a gate
679 queuing analysis from a certified traffic consultant to be provided by the
680 applicant.

681 D. Gated complexes/communities should provide for separate resident and
682 visitor entries, where feasible, to allow efficient movement of automobiles ~~off~~
683 ~~of~~ from the public right-of-way ~~and~~ onto the premises.

684 5. *Piers.*

685 A. Piers shall not exceed a height of two (2) feet above the allowable fence
686 height for the location.

687 B. The total width of all piers along a property frontage shall not exceed twenty
688 (20) percent of the overall length of the property frontage.

689 6. *Entrance arbor, trellis, pergola, or arch.*

690 A. One (1) entrance arbor, trellis, pergola or arch shall be allowed at the front of
691 a property or two (2) shall be allowed for dual frontage properties.

692 B. Overall height of any entrance feature shall not exceed eight (8) feet in height.

693 C. Overall width of entrance feature shall not exceed ten (10) percent of the
694 overall width of the property frontage or ten (10) feet, whichever is less.

695 7. *Waterfront setback.* No solid opaque fencing of any type shall be erected within
696 fifteen (15) feet of the bulkhead or mean high water line of any properties adjacent
697 to waterfronts.

698

699

700 **f) e) *Commercial / Vehicular / Non-residential uses***

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

706 2. Where outdoor storage areas are permitted, they shall be screened and visually
 707 shielded from a street, alley, or abutting property by a masonry wall, opaque
 708 ornamental fence, or dense hedge of at least six (6) feet, but no more than eight
 709 (8) feet in height, except for that portion thereof located in the visibility triangle, in
 710 which case the provisions of subsection mg, visibility triangle, shall apply. All
 711 screening material is subject to approval by the building official and shall be
 712 installed in a professional manner.

713 3. Chain link fences are not permitted in front of the front building setback line or on
 714 a portion of a property abutting public rights-of-way except alleys. Replacement
 715 of existing chain link fences shall comply with current standards. Chain link
 716 fences or portion thereof visible from a right-of-way including alleys shall require
 717 a landscape screen of shrub hedging or other continuous decorative landscaping
 718 on the side of the fence facing the public right-of-way that is a minimum height of
 719 24" or 1/3 of the height of the fence at installation whichever is greater and shall
 720 be maintained at no less than ¾ of the total height of the fence.

721 5. Electronic security gates and keypad/call boxes shall be located a minimum of
 722 25 feet from the property line/right-of-way to prevent stacking of automobiles in
 723 the public right-of-way. The minimum queuing distance may be increased in the
 724 event the city engineer determines traffic safety so requires. Such increase shall
 725 be based on a gate queuing analysis performed by a certified traffic consultant
 726 to be provided by the applicant.

727 6. Gated complexes/communities shall provide for separate resident and visitor
 728 entries, where feasible, to allow efficient movement of automobiles from the
 729 public right-of-way onto the premises.

730 **g) ~~f)~~ *Industrial uses***

731 1. Chain link fences are not permitted in front of the front building setback line or on
 732 property abutting public rights-of-way except alleys. Replacement of existing chain
 733 link fences shall comply with current standards. Chain link fences or portion thereof
 734 visible from rights-of-way including alleys shall require a landscape screen of shrub
 735 hedging on the side of the fence facing the public right-of-way that is a minimum
 736 height of 24" or 1/2 of the height of the fence at installation whichever is greater
 737 and shall be maintained at a height equal to the height of the fence.

738 2. Any area in the industrial district used as open storage shall be completely
 739 enclosed by an opaque fence or wall so as to protect surrounding property from
 740 debris damage caused by wind or storm. The above required fences or walls shall
 741 be at least six (6) feet, but no more than eight (8) feet in height and shall be set
 742 back to the minimum building setback line on the front of the lot for traffic vision
 743 purposes. All screening material is subject to approval by the ~~zoning administrator~~

744 development review official or designee and shall be installed in a professional
745 manner.

746 3. Electronic security gates and keypad/call boxes shall be located a minimum of 25
747 feet from the property line/right-of-way to prevent stacking of automobiles in the
748 public right-of-way. The minimum stacking distance may be increased at the City's
749 discretion. Such increase shall be based on a gate queuing analysis performed by
750 a certified traffic consultant to be provided by the applicant.

751 4. Specialty uses that require additional screening may utilize the industrial fence
752 provisions as approved through an administrative adjustment process based on
753 consistency with the City's design guidelines as applicable and balancing the need
754 for screening uses from public rights-of-way, creating attractive and safe
755 pedestrian corridors and site security requirements.

756 h) Park / Public recreation / School (Elementary/Intermediate/Secondary)

757
758 1. All fences, walls, and hedges shall have a maximum height of six (6) feet. All
759 fences and walls shall be set back to the minimum building setback line on the
760 front of the lot. Hedges within the front setback area shall be a maximum of thirty
761 (30) inches in height from the edge of the street or alley surface. Exception: as
762 otherwise provided herein.

763 2. Where outdoor storage areas are permitted, they shall be screened and visually
764 shielded from a street, alley, or abutting property by a masonry wall, opaque
765 ornamental fence, or dense hedge of at least six (6) feet, but no more than eight
766 (8) feet in height, except for that portion thereof located in the visibility triangle, in
767 which case the provisions of subsection g, visibility triangle, shall apply. All
768 screening material is subject to approval by the building official and shall be
769 installed in a professional manner.

770 3. Chain link fences are not permitted in front of the front building setback line or on
771 the portion of the property abutting public rights-of-way except alleys.
772 Replacement of existing chain link fences shall comply with current standards.

773 4. Maximum fence height for tennis courts, playing fields, playgrounds, or
774 substantially similar uses shall be 10 feet. The development review official may
775 approve additional height for these uses if necessary to ensure the safety of
776 participants and spectators. Chain link fencing shall be permitted next to rights-
777 of-way for fencing described in this sub-section only.

778 5. The development review official may approve an increase in height and a
779 modification to the required set-back for fencing through the site plan review
780 process provided that appropriate landscaping to maintain an attractive visual
781 corridor is provided.

782

783 i) Visibility triangle. With respect to fences, walls and hedges, and other landscaping,
784 including trees, shrubs, ornaments and decorations, a visibility triangle shall be
785 provided at all street intersections and street-alley intersections. Within said visibility
786 triangle, landscaping shall be maintained to provide clear vision without obstruction
787 from the adjoining public ways from elevation thirty (30) inches to elevation eight (8)

788 feet above the average elevation of the intersection. Trees and palms shall be
789 permitted in said triangle provided they are trimmed to allow visibility at the levels
790 indicated above, and further provided they are not located so as to create a traffic
791 hazard.

792 1. *Definitions.*

793 a. *Major / collector or arterial roads.* For the purposes of this section major roads
794 are streets or roads with a speed limit of thirty (30) mph or greater, and/or
795 high volume, and/or a ROW width of sixty (60) feet or greater.

796 b. *Minor / local roads.* For the purposes of this section, minor roads are streets
797 or roads with a speed limit below thirty (30) mph, and/or low volume, and/or
798 a ROW width less than sixty (60) feet.

799 c. *Alley.* For the purposes of this section, any right-of-way that is approximately
800 between ten (10) feet and sixteen (16) feet in width and affords a secondary
801 means of access and is not intended for general circulation.

802 2. *Intersection of a major road.* At an intersection that includes at least one (1) major
803 road, the visibility triangle shall have twenty-foot sides measured along the street
804 right-of-way line from the corner of the intersection, the third side of the triangle
805 to be the line connecting the ends of the aforesaid lines.

806 3. *Intersection of a minor road.* At the intersection of two (2) or more minor roads,
807 the visibility triangle shall have a minimum of ten-foot sides, measured along the
808 street right-of-way line from the corner of the intersection, the third side of the
809 triangle to be the line connecting the ends of the aforesaid lines.

810 4. *Intersection of an alley.* At minor road street-alley intersections and alley-alley
811 intersections, two (2) sides of the visibility triangle shall be ~~ten (10)~~ seven (7) feet
812 in length. Exception: Alleys located along the rear of property fronting major roads
813 shall have a visibility triangle with sides that are ten (10) feet in length. A greater
814 distance may be required in the event the city engineer determines traffic safety
815 so requires. The third side of the triangle shall be the line connecting the ends of
816 the other two (2) lines.

817 5. Exception. Additional sight visibility may be required in situations where the city
818 engineer determines that the additional distance is needed to improve traffic
819 safety.

820
821 i) h) *Temporary construction fencing.*

822 1. Screening details shall be submitted with the temporary construction fence permit
823 application. Wind screening shall be substantial enough to avoid rips or tears due
824 to wind or sun, and shall have no less than eighty-five (85) percent opacity.
825 Screening shall be maintained in good condition at all times. Screening graphics
826 shall be approved with a permit pursuant to the provisions of section 23.5-1,
827 signs, of the zoning and land development regulations of this Code.

828 2. Temporary construction fencing must be associated with an active building permit
829 unless approved by the development review official in lieu of a permit. The
830 development review official may require the removal of a temporary fence in
831 absence of an active permit or for safety issues.

832 3. Acceptable materials include screened chain link and any other permitted
833 materials identified in Sec. 23.4-4(c).

834 (Ord. No. 2015-04, § 5(Exh. D), 8-4-15; Ord. No. 2018-10, § 10(Exh. I), 7-17-18)

EXHIBIT G

Chapter 23

LAND DEVELOPMENT REGULATIONS ARTICLE 4 “DEVELOPMENT STANDARDS”

Section 23.4-10 – Off-street parking.

d) Material. Each parking space shall be surfaced with a hard impermeable dustless material, either solid in area or in individual concrete strips or other approved materials, including but not limited to impervious materials and permeable paving materials in accordance with City of Lake Worth Beach standards. Required off-street parking for single family and two family dwelling units may also utilize ~~permeable materials~~ semi-pervious surface materials including such as permeable pavers, gravel, and other small stone material stone, and shell rock, and turf block, in lieu of impermeable or permeable paving material as long as it meets the following criteria:

- 1.-Appropriate stabilization method ~~must~~ shall be established to keep small stone like permeable materials out of the ROW, alley, and storm water systems.
2. All semi permeable driveway and parking surfaces shall be maintained to ensure permeable qualities and to prevent ponding of water.

e) Drainage. All off-street parking facilities shall be drained so as not to cause any nuisance to adjacent private or public property. Paved parking surfaces, including but not limited to driveways and parking lots, shall have a one (1) foot setback from the side property line and rear property if not alley accessed.

EXHIBIT H

Chapter 23

LAND DEVELOPMENT REGULATIONS ARTICLE 4 "DEVELOPMENT STANDARDS"

Sec. 23.4-19. - Outdoor storage.

a) Outdoor storage in residential districts. Outdoor storage in residential districts for residential purposes shall be limited to domestic equipment and normal supplies necessary for residents. Storage shall not be permitted in any front yard.

b) Outdoor storage industrial districts. Outdoor storage in the I-POC industrial districts shall be permitted only as accessory to an approved principal use. All such storage shall be completely screened from all public rights-of-way and any adjacent property that is zoned for residential or mixed use. Outdoor storage of equipment, vehicles, boats, parts, materials, or chemicals are required to be stored on an impervious paved surfaces to reduce pollutants in storm water runoff.

EXHIBIT I

Chapter 23

LAND DEVELOPMENT REGULATIONS ARTICLE 6 "ENVIRONMENTAL REGULATIONS"

Section 23.6-1(c)(3) Landscape regulations.

h. All dumpster and refuse areas and all ground level mechanical equipment shall be screened with shrubbery or with opaque fencing or walls with an exterior landscape screen of shrub hedging or other continuous decorative landscaping that is a minimum height of 24" at installation and shall be maintained at no less than 3/4 of the total height of the enclosure, where visible from public rights-of-way. All ground level mechanical equipment shall be screened with shrub hedging or opaque fencing or walls. Chain link or similar type open fencing shall not be permitted.

1. Existing non-conformities

a. Where the development review official determines that a literal enforcement of this section will result in a reduction of the number of required parking spaces or the modification of impervious and landscape areas, the development review official may approve an administrative adjustment of the number of required parking spaces by no more than one (1) parking space, and/or no more than 10% of the impervious area and landscape area.



City Of Lake Worth
Department for Community Sustainability
Planning, Zoning and Historic Preservation Division
1900 Second Avenue North · Lake Worth · Florida 33461 · Phone: 561-586-1687

DATE: July 1, 2020 & July 9, 2020

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

FROM: William Waters, Director Community Sustainability

MEETING: July 8, 2020 and July 15, 2020

SUBJECT: **PZB / HRPB Project Number 20-03100003**: Consideration of an ordinance to amend Chapter 2 regarding application fees and Chapter 23 “Land Development Regulations” regarding changes to adopt a digital zoning and future land use map, site plan review, pervious and impervious surfaces, outdoor storage, and modifications to development standards and requirements for fence, walls and gates.

BACKGROUND/ PROPOSAL:

On March 5, 2020, the City Commission held a workshop on the prioritization of amendments to the City’s Land Development Regulations (LDR) that were previously identified by staff and the Commission. The subject LDR amendments address a second series of prioritized items identified at the March meeting. These include changes to additional definitions, electronic zoning maps and future land use maps, fees, site plan review, fences, walls and gates, parking lot materials and dumpsters. The proposed amendments to the Land Development Regulations have been reviewed by staff for consistency with the City’s Comprehensive Plan. A summary of each component in the draft ordinance is also provided.

The proposed LDR amendments for Chapter 23 will modify the following sections of the City’s Code of Ordinances:

- Article 1- Section 23.1-5 and 6 - General Provisions
- Article 1- Section 23.1-12 – Definitions
- Article 2 - Section 23.2-20 – Site Plan Review
- Article 3 - Section 23.3-2 – Official Zoning Map
- Article 4 - Section 23.4-4 – Fences, Walls and Gates
- Article 4 - Section 23.4-10 – Off Street Parking
- Article 4 - Section 23.4-19 – Outdoor Storage
- Article 6 - Section 23.6-1 – Landscape Regulations

There also are a few changes to Chapter 2 of the Code of Ordinances related to development fees.

Changes and amendments to Chapter 2: These amendments are proposed to reference the City's official schedule of fees and charges for privately initiated changes to either the City's Comprehensive Plan or Future Land Use Map (FLUM) as well as voluntary annexations and other zoning requests.

Official Future Land Use Map and Official Zoning Map: The proposed amendments provide for the City to have both its official zoning map and official future land use map managed digitally.

Definitions: The proposed amendments provide clarity and with regard to building lot coverage, overall lot coverage, and permeable and impermeable surfaces.

Site Plan Review: The proposed amendments clarify the distinction between major site plans and minor site plans as well as the process to amend same.

Fences, Walls & Gates: The proposed amendments provide additional regulations regarding types of perimeter fences, materials and locations for all zoning districts as well as clarity with regard to visibility triangles.

Off Street Parking: The proposed amendments provide for clarity with regard of acceptable materials allowed for off street parking.

Outdoor Storage: The proposed amendments provide for clarity on the where outdoor storage may occur and storm water requirements for outdoor storage.

Landscape Regulations: The proposed amendments provide for dealing with dumpster landscaping and non-conforming dumpster conditions.

STAFF RECOMMENDATION:

Staff recommends that the Planning and Zoning Board and Historic Resources Preservation Board recommend that the City Commission adopt Ordinance 2020-XX: PZB / HRPB Project Number 20-03100003

POTENTIAL MOTION:

I move to RECOMMEND/NOT RECOMMEND TO THE CITY COMMISSION **TO ADOPT** the proposed LDR text amendments included in PZB / HRPB Project Number 20-03100003 (Ordinance 2020-11).

Attachments

- A. Draft Ordinance 2020-11

EXECUTIVE BRIEF SPECIAL MEETING

AGENDA DATE: August 18, 2020

DEPARTMENT: Community Sustainability

TITLE:

Ordinance No. 2020-12 – Amend the City’s Code of Ordinances Chapter 23 Land Development Regulations

SUMMARY:

Ordinance provides for a series of amendments to Chapter 23 Land Development Regulations of the City’s Code of Ordinances related to Article I – General Provisions, Division 2 - Definitions; Article III – Zoning Districts - Division 1, Generally, Section 6 - Use Tables; Article IV - Development Standards, Section 13 - Administrative Uses and Conditional Uses.

BACKGROUND AND JUSTIFICATION:

Ordinance provides for a series of updates, clarifications, corrections and additions to the City’s Land Development Regulations (LDRs). Back at its workshop on March 3, 2020, Staff presented a series of priorities for the LDRs to the Commission. The changes provided here are of the second series of highest priority and include the following:

1. Clarifying and adding definitions
2. Updating, revising and clarifying the City’s Use Tables
3. Additional expansion and clarification of performance standards for Administrative Uses and Conditional Uses including new sections for Breweries and Distilleries, Specialty Storage and Money Business Services

At its meetings in July, both the Planning & Zoning Board and Historic Resources Preservation Board discussed the amendments and both recommended unanimously for the City Commission to approve the proposed amendments.

At its special meeting of July 28, the commission voted 4-1 to approve the ordinance on first reading and to schedule the public hearing and second reading for August 18, 2020.

MOTION:

Move to approve/disapprove Ordinance No. 2020-11 on second reading amending the City’s Code of Ordinances Chapter 23 Land Development Regulations.

ATTACHMENT(S):

Ordinance No. 2020-12
Exhibit B - Use Table
PZB/HRPB Staff Report

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4 **ORDINANCE 2020-12 - AN ORDINANCE OF THE CITY OF LAKE**
5 **WORTH BEACH, FLORIDA, AMENDING CHAPTER 23 “LAND**
6 **DEVELOPMENT REGULATIONS, BY AMENDING ARTICLE 1**
7 **“GENERAL PROVISIONS,” DIVISION 2, “DEFINITIONS,” SECTION**
8 **23.1-12 - DEFINITIONS; ARTICLE 3 “ZONING DISTRICTS,” DIVISION 1,**
9 **“GENERALLY,” SECTION 23.3-6 – USE TABLES; AND ARTICLE 4**
10 **“DEVELOPMENT STANDARDS,” SECTION 23.4-12 –**
11 **ADMINISTRATIVE USES AND CONDITIONAL USES OF THE CITY’S**
12 **CODE OF ORDINANCES; AND PROVIDING FOR SEVERABILITY, THE**
13 **REPEAL OF LAWS IN CONFLICT, CODIFICATION, AND AN EFFECTIVE**
14 **DATE.**
15

16
17 **WHEREAS**, as provided in Section 2(b), Article VIII of the Constitution of the State
18 of Florida, and Section 166.021(1), Florida Statutes, the City of Lake Worth Beach (the
19 “City”), a municipal corporation, enjoys all governmental, corporate, and proprietary
20 powers necessary to conduct municipal government, perform municipal functions, and
21 render municipal services, and may exercise any power for municipal purposes, except
22 as expressly prohibited by law; and
23

24 **WHEREAS**, as provided in Section 166.021(3), Florida Statutes, the governing
25 body of each municipality in the state has the power to enact legislation concerning any
26 subject matter upon which the state legislature may act, except when expressly prohibited
27 by law; and
28

29 **WHEREAS**, the City wishes to amend the Definitions section of its Land
30 Development Regulations to address inconsistencies and conflicts; and
31

32 **WHEREAS**, the City wishes to amend the Site Design Qualitative Standards for
33 vehicle repair and maintenance service facilities, create a minimum use area for industrial
34 manufacturing and production, and create new standards for repair and maintenance
35 services – major, storage –specialty, and brewery / distillery including specialty and micro;
36 and

37 **WHEREAS**, the City wishes to amend the Use Table section to provide clarity and
38 consistency and add new uses to the table; and
39

40 **WHEREAS**, the Planning and Zoning Board, in its capacity as the local planning
41 agency, considered the proposed amendments at a duly advertised public hearing; and
42

43 **WHEREAS**, the Historic Resources Preservation Board, in its capacity as the local
44 planning agency, considered the proposed amendments at a duly advertised public
45 hearing; and
46

47 **WHEREAS**, the City Commission has reviewed the proposed amendments and
48 has determined that it is in the best interest of the public health, safety, and general
49 welfare of the City to adopt this ordinance.
50

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

54 **Section 1.** The foregoing “WHEREAS” clauses are ratified and confirmed as
55 being true and correct and are made a specific part of this Ordinance as if set forth herein.
56

57 **Section 2.** Chapter 23 “Land Development Regulations,” Article 1, “General
58 Provisions,” Division 2, “Definitions”, Sec. 23.1-12. – Definitions of the City’s Code of
59 Ordinances, is hereby amended by adding the words shown in underlined type and
60 deleting the words struck through as indicated in **Exhibit A**.
61

62 **Section 3.** Chapter 23 “Land Development Regulations,” Article 3, “*Zoning*
63 *Districts*,” Division 1 “Generally,” Sec. 23-3.6 – Use Tables is hereby amended by adding
64 the words shown in underlined type and deleting the words struck through as indicated in
65 **Exhibit B**.
66

67 **Section 4.** Chapter 23 “Land Development Regulations,” Article 4,
68 “*Development Standards*,” Sec. 23.4-13. – Administrative Uses and Conditional Uses is
69 hereby amended by adding the words shown in underlined type and deleting the words
70 struck through as indicated in **Exhibit C**.
71

72 **Section 5.** Severability. If any section, subsection, sentence, clause, phrase or
73 portion of this Ordinance is for any reason held invalid or unconstitutional by any court of
74 competent jurisdiction, such portion shall be deemed a separate, distinct, and
75 independent provision, and such holding shall not affect the validity of the remaining
76 portions thereof.
77

78 **Section 6.** Repeal of Laws in Conflict. All ordinances or parts of ordinances in
79 conflict herewith are hereby repealed to the extent of such conflict.
80

81 **Section 7.** Codification. The sections of the ordinance may be made a part of
82 the City Code of Laws and ordinances and may be re-numbered or re-lettered to
83 accomplish such, and the word “ordinance” may be changed to “section”, “division”, or
84 any other appropriate word.
85

86 **Section 8.** Effective Date. This ordinance shall become effective 10 days after
87 passage.
88

89 The passage of this ordinance on first reading was moved by Commissioner
90 Maxwell, seconded by Vice Mayor Amoroso, and upon being put to a vote, the vote was
91 as follows:
92

93	Mayor Pam Triolo	AYE
94	Vice Mayor Andy Amoroso	AYE

95	Commissioner Scott Maxwell	AYE
96	Commissioner Omari Hardy	NAY
97	Commissioner Herman Robinson	AYE

98

99

The Mayor thereupon declared this ordinance duly passed on first reading on the 28th day of July, 2020.

100

101

102

103

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:

104

105

106

107

Mayor Pam Triolo
 Vice Mayor Andy Amoroso
 Commissioner Scott Maxwell
 Commissioner Omari Hardy
 Commissioner Herman Robinson

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The Mayor thereupon declared this ordinance duly passed on the _____ day of _____, 2020.

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LAKE WORTH BEACH CITY COMMISSION

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By: _____
Pam Triolo, Mayor

121

122

123

ATTEST:

124

125

126

Deborah Andrea, CMC, City Clerk

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128

129 **EXHIBIT A**

130
131
132 Chapter 23

133 LAND DEVELOPMENT REGULATIONS ARTICLE 1 "GENERAL PROVISIONS"

134
135
136 Article 1, "General Provisions," Division 2, "Definitions"

137
138 **Sec. 23.1-12. - Definitions.**

139
140 The following defined terms are arranged in alphabetical order and should be
141 referenced by this subsection and specific term.

142 * * *

143
144 Artisanal: Refers to small batch manufacturing and productions of food and
145 goods. Artisanal uses are typically less than 7,500 square feet of use area and have
146 less use impacts than typical manufacturing and production processes. [New Use
147 Definition]

148 * * *

149
150 Brewery or Distillery – Specialty: An indoor establishment engaged in the
151 production and packaging of alcohol for distribution, wholesale or retail, on or off
152 premise consumption, and limited to a maximum of 7,500 square feet of use area with
153 a tasting or tap room for the purchase or consumption of alcoholic beverage produced
154 on-site. Specialty brewery or distillery shall be accessory to or located in the same
155 building as a full service restaurant, or shall require approval as bar. [New Use
156 Definition]

157 * * *

158
159
160 Brewery or Distillery – Micro: An indoor establishment engaged in the production
161 and packaging of alcohol for distribution, wholesale or retail, on or off premise
162 consumption, and limited to 30,000 square feet of use area with a tasting or tap room
163 for the purchase or consumption of alcoholic beverage produced on-site. Food service
164 may be permitted as accessory to micro-brewery or micro-distillery. [New Use
165 Definition]

166 * * *

167
168
169 Contractor: Each A business or person who engaged contracts or subcontracts to
170 construct, alter, repair, dismantle, or demolish buildings, roads, bridges, viaducts, sewers,
171 water and gas mains or engages in the business of construction, alteration, repairing,
172 dismantling or demolition of buildings, roads, bridges, viaducts, sewers, water and gas
173 mains. For zoning purposes, the business office of a contractor with no retail or accessory
174 outdoor storage may be permitted as a professional services office. Each contractor that
175 maintains a business location within the municipal limits must obtain a license as a
176 contractor through the Department of Community Sustainability., that maintains a
177 business location within the municipal limits.

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~~Contractor, specialty: described as: acoustical ceiling contractor, aluminum specialty, burglar alarm, communication and sound systems, concrete forming and placing, decorative metal, demolition, dredging and landfill, drywall, fabric awnings, fence, glass and glazing, gunite, high pressure gas pipeline, insulation, irrigation and sprinkler, marine, masonry paver brick and paver brick systems, commercial paving, residential paving, plastering, prestressed precast concrete erections, reinforcing steel, residential window and door installation, roof deck, septic tank, sign contractor-electrical, sign contractor-nonelectrical, structural steel erection, swimming pool construction, swimming pool repair contractor, swimming pool plastering contractor, tennis court contractor, tile, terrazzo and marble installer, T.V. antenna and satellite dish installer, underground/overhead transmission lines and underground utilities.~~

* * *

Contractor – Showroom: A showroom where no manufacturing, assembly, processing or any other industrial uses are located. A contractor showroom greater than 2,500 square feet is not permitted in the DT districts. Outdoor or Indoor storage uses are not permitted as accessory to a contractor showroom outside of industrial districts. The business office of a contractor and a contractor showroom may occur within the same structure. [New Use Definition]

* * *

Financial Institution: An establishment engaged in deposit banking which may include but is not limited commercial banks, savings institutions, and credit unions, but excludes money business services. [New Use Definition]

* * *

High-intensity uses: Those uses that have the potential of generating high levels of vehicular or pedestrian traffic, noise or other adverse impacts based on the nature of the activity, hours of operation, extent of use or size. For the purposes of this Code, uses with similar high-intensity impacts and that are typically, projects involving more than seven thousand five hundred (7,500) square feet or more are considered high intensity and are generally approved as conditional land uses. In addition, any use allowed under the high-intensity use level may be assumed to be allowed at the medium-intensity use level if it meets the square foot threshold for medium-intensity use and may be generally approved as an administrative land use or conditional land use as determined by the development review official. In addition, the DRO may allow a use permitted under the high-intensity use level to be reviewed as a medium-intensity use requiring either a conditional use or administrative use approval if the use is less than seven thousand five hundred (7,500) square feet, has impacts similar to medium-intensity uses, and is not otherwise regulated as a separate specified use.

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Intensity of use:

~~Low: Less than two thousand five hundred (2,500) square feet~~

~~Medium: Between two thousand five hundred (2,500) square feet and seven thousand five hundred (7,500) square feet of use area.~~

~~High: Seven thousand five hundred (7,500) or more square feet of use area.~~

* * *

~~Low-intensity uses. Those uses that have the potential of generating low levels of vehicular or pedestrian traffic, noise or other adverse impacts based on the nature of the activity, hours of operation, extent of use, or size. For the purposes of these LDRs, projects uses with similar low-intensity impacts and involving less than two thousand five hundred (2,500) square feet are considered low intensity and are generally approved by the development review official DRO or as administrative land uses.~~

* * *

~~Medium-intensity uses. Those uses that have the potential of generating moderate levels of vehicular or pedestrian traffic, noise or other adverse impacts based on the nature of the activity, hours of operation, extent of use or size. For the purposes of this Code, uses with similar medium-intensity impacts and projects involving less than seven thousand five hundred (7,500) square feet ~~and more than two thousand four hundred ninety-nine (2,499) square feet~~ are considered medium intensity and are generally approved as administrative land uses or as conditional land uses. ~~In addition, any use allowed under the medium-intensity use level may be assumed to be allowed at the low-intensity use level if it meets the square foot threshold for low-intensity use and may be generally approved by the development review official or as an administrative land use as determined by the development review official.~~~~

* * *

~~Retail-type business services: Establishments providing services or entertainment, as opposed to products, to the general public for personal or household use, including eating and drinking places, hotels and motels, finance, real estate and insurance, personal service, motion pictures, amusement and recreation services, health, education and social services and those that are substantially similar or related. For the purposes of these LDRs, retail use activities shall be divided into low intensity or less than two thousand five hundred (2,500) square feet, medium intensity or between two thousand five hundred (2,500) square feet and seven thousand five hundred (7,500) square feet or high intensity or seven thousand five hundred (7,500) or more square feet~~

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Personal Grooming Services & Day Spa: An establishment engaged in the provision of recurrent services of a personal nature related to the grooming of people. Personal Services may include but are not limited to beauty salon, barbershops, nail salon, licensed therapeutic massage studios, day spa, diet and weight reducing centers, and tanning salons. [New Use Definition]

* * *

Repair and Maintenance Services – Major: An establishment engaged in the repair, maintenance and customization of recreational vehicles, boats, personal watercraft; the repair and maintenance of commercial appliances, heavy equipment or machinery, commercial vehicles or trailers, marine vessels, or similar; or media blasting, paint stripping, and paint or body work. Major repair and maintenance services are an industrial use that may include vehicle upholstery, machine shops, welding, paint and body, and other equipment and processes associated with major alteration or customization of vehicle or boat structures and interiors. [New Use Definition]

* * *

Repair and Maintenance Services – Minor: An indoor commercial and industrial establishment engaged in the minor repair or maintenance of lawn mowers, major household appliances, or household furniture such as upholstery or restoration, washers and dryers, refrigerators, stoves and dishwashers. Outdoor storage and activities are prohibited. [New Use Definition]

* * *

Repair and Maintenance Services - Specialty: An indoor personal services establishment that provides limited repair services of personal or small household items including but not limited to jewelry repair, clock and watch repair, phone or computer repair, bicycle repair, shoe repair, apparel repair and alterations, and excluding the repair of large household items and appliances. For zoning purposes this use may be allowed as principal or accessory use, including as accessory to specialty retail uses or single-destination commercial uses. [New Use Definition]

* * *

Restaurant: Every building or part thereof and all accessory buildings used in connection there with or any place or location kept, used, or held out to the public to be a place where meals or foodstuffs are prepared and served to the general public. Restaurants may have catering and/or bakery as an accessory use.

~~Restaurant, low intensity/turnover: Low turnover restaurants shall have table service for all tables and bar seats within the establishment. Average turnover time for each customer's meal shall be one (1) hour or greater.~~

~~Restaurant, medium intensity/turnover: Medium turnover restaurants shall have table service for seventy (70) percent or more of all table and bar seats. Average turnover~~

316 time for each customer's meal may be less than one (1) hour but greater than thirty (30)
317 minutes.

318 Restaurant, high intensity/turnover: High turnover restaurants need not have any
319 table service for seats at tables or bar. Average turnover time shall be less than thirty
320 (30) minutes.

321
322 Single-destination commercial uses: A commercial establishment offering a wide
323 array of commercial activity and services open to the general public that typically also
324 contains a combination of uses, including but not limited to retail, service or business
325 office. The following commercial uses are categorized as single destination for zoning
326 district purposes and those that are have substantially similar or related use impacts:

327
328 Auction rooms or on-line auction services, accessory only.

329 Automobile insurance claims services.

330 Appliance or equipment sales, retail.

331 Bait shops.

332 Bar and restaurant equipment sales.

333 Bicycle sales and service stores.

334 Building material or trade supply establishments, retail.

335 Catering establishments, as accessory to restaurants, but not direct selling
336 establishments as listed in SIC 5963.

337 Contractor with a retail component and excluding outdoor storage and warehouse.

338 Electrical supply stores.

339 Food storage lockers.

340 Funeral homes and mortuaries.

341 Furniture and domestic equipment rental establishments.

342 Furniture refinishing.

343 Greenhouses and nurseries.

344 Janitorial equipment and supply establishments.

345 Locksmith establishments.

346 Medical and dental supply sales and rental sales.

347 Monument sales establishments.

348 Pool supply stores.

349 Motion picture studios.

350 Newspaper distributing agencies.

351 Nurseries, retail, for the sale of plant materials grown off the premises.

352 Plumbing supply stores.

353 Related office temporary help service.

354 Repair shops for household appliances, furniture, small motors and machines and
355 other small mechanical and electrical equipment.

356 Single-destination retail or stand alone retail establishment that includes other
357 services as part of the same building or business, including but not limited to
358 money business services, optical services, banking or contracting services, which
359 may include big-box stores.

360 *Taxidermists.*
361 *Trade schools not involving industrial, motor vehicles, or other heavy equipment.*
362 ~~*Upholstering, cloth and canvas products fabrication, including the fabrication of*~~
363 ~~*clothing, slipcovers, awnings and similar products.*~~
364 ~~*Veterinary establishments, but not kennels.*~~

365 * * *

366
367 Single-destination retail uses: Retail establishment providing a wide array of retail
368 items that are complimentary and similar in nature that are offered in a singular location.
369 For zoning purposes, these uses have substantially similar or related use impacts and
370 include but are not limited to the following: convenience stores, beauty supply, sundry
371 shop, grocery/food stores including accessory pharmacy, retail hardware stores,
372 antique shops, sports equipment, retail furniture stores, discount stores and hobby
373 shops.

374 * * *

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376
377 Specialty retail uses: Small retail establishments less than 7,500 square feet
378 providing specialty retail and gift items that have a similar nature, region or product type
379 offered in a singular location. For zoning purposes, these uses have substantially similar
380 or related use impacts and include but are not limited to the following: specialty food
381 stores, bike or sport specific equipment shops, boutique apparel shops, specialized
382 vintage or antique shops, tobacco shops, and gift stores. Retail establishments greater
383 than 7,500 square feet shall be considered single-destination retail or stand alone retail
384 uses. **[New Use Definition]**

385 * * *

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387
388 Storage – Indoor: A warehouse or other building used for the storage of raw materials,
389 equipment, or products. Typical uses include moving companies, cold storage, and dead
390 storage facilities, but excludes specialty storage and mini-warehouse uses. **[New Use**
391 **Definition]**

392 * * *

393
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395 Storage -Mini-warehouse: A building or group of buildings that contain individual stalls
396 or lockers for the storage of customers' items and goods. A mini-warehouse may be a
397 building with small multi-compartments or bays, which do not have electrical receptacles,
398 for the long term storage of goods.

399 * * *

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402 Storage – Outdoor: The storage of construction material, mechanical equipment, and
403 commercial vehicles used by building trades and services or associated with other
404 permitted industrial uses. Outdoor storage is only allowed as accessory to a permitted
405 principal use and shall be appropriately screened from adjacent properties and all rights-
406 of-way. **[New Use Definition]**

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Storage – Specialty: A limited access climate controlled indoor facility consisting of individual, self-contained units that are leased for the storage of business, household, or other personal goods. This use shall only be permitted in mixed use districts and shall have a retail, office and/or commercial use that activates the street frontage. [New Use Definition]

* * *

Use Impacts: Effects of development on adjacent property owners or within a neighborhood which may include but not limited to noise, odor, dust, pollution, effluent, traffic, number of employees, hours of operation and customer turnover. For the purposes of this code, permitted uses are categorized by the intensity of their impacts as well as by the size of the use area into the following categories: low intensity, medium intensity and high intensity. [New Definition]

* * *

Vehicle fueling/charging filling-stations: An automobile filling fueling/charging station is an establishment whose principal business is the retail dispensing of fuels and energy automobile fuels, but whose business may include the following:

- (1) Provision of air for tires;
- (2) Sales of cold drinks, candies, tobacco products and similar goods for service station customers, but only as accessory and incidental to the principal business operation with a total retail area of less than 250 square feet. A full convenience store use is considered a single destination retail use;
- (3) Provision of road maps and other informational material for customers;
- (4) Provision of restroom facilities.

* * *

Vehicle fueling/charging service station: For zoning purposes, a vehicle fueling/charging service station use shall be reviewed as a combination of vehicle fueling/charging station and a vehicle service and repair, minor; the most restrictive requirements herein shall apply. ~~A vehicle fueling/charging service station is an establishment whose principal business is the retail dispensing of fuels and energy for vehicles, but whose business may also include the selling and installation of oil, grease, batteries, tires and other vehicle accessories. The following services may be rendered and sales made, and no other:~~

- ~~(1) Fuel, energy, oil and grease sales;~~
- ~~(2) Sales and servicing related to spark plugs, batteries, distributors and distributor parts;~~
- ~~(3) Tire sales;~~
- ~~(4) Tire servicing and repair, but not recapping or regrooving;~~

451 ~~(5) Replacement of water hoses, fan belts, brake fluid, light bulbs, fuses, floor mats,~~
452 ~~wiper blades, grease retainers, wheel bearings, mufflers, shock absorbers, mirrors~~
453 ~~and the like;~~
454 ~~(6) Provision of water and supplements for radiator fluids, and the like;~~
455 ~~(7) Washing and polishing, limited to facilities for washing one (1) vehicle car at a~~
456 ~~time, and sale of vehicle washing and polishing materials, but not the operation of~~
457 ~~vehicle washing establishments;~~
458 ~~(8) Providing and preparing fuel pumps and lines;~~
459 ~~(9) Minor servicing and repair of carburetors;~~
460 ~~(10) Minor servicing of air conditioners;~~
461 ~~(11) Vehicular wiring repairs;~~
462 ~~(12) Brake repair;~~
463 ~~(13) Motor repairs not involved in removal of the motor from the vehicle;~~
464 ~~(14) Greasing and lubrication;~~
465 ~~(15) Provision of air for tires;~~
466 ~~(16) Sales of cold drinks, candies, tobacco products and similar goods for service~~
467 ~~station customers, but only as accessory and incidental to the principal business~~
468 ~~operation;~~
469 ~~(17) Provision of road maps and other informational material for customers;~~
470 ~~(18) Provision of restroom facilities. [Codification Note: the definition was~~
471 ~~previously amended and in Ord 2020-007 and is now being deleted]~~
472
473

474 *Vehicle service and repair, major:* A business providing any repair or service beyond
475 basic standard maintenance to motor vehicles, including repairs that require the removal
476 of the engine or other major vehicle components, that are not included in general
477 maintenance such as painting and body work, frame repair, upholstery, engine,
478 transmissions, air conditioning systems, electrical systems, operational systems, drive
479 trains, and other major general repairs.
480

481 *Vehicle service and repair, minor:* A business providing brake repairs, tire repair and
482 installation, ~~air conditioning service,~~ muffler replacement, and oil changes and
483 transmission repair not including repairs to the drive train or requiring the removal of the
484 engine block, drive train or other major engine components. This includes establishments
485 engaged in the installation, maintenance and repair of motor vehicle parts or systems that
486 require basic standard maintenance and shall include but not be limited to: air
487 conditioning systems, audio systems, brakes, ~~cooling systems,~~ electrical systems,
488 ~~exhaust systems, fuel systems,~~ oil and fluid changes, shock absorbers, tune-ups, window
489 tinting, washing and detailing, ~~upholstery,~~ and wheel alignment and balancing for
490 automobiles, trucks, and motorcycles. Any minor vehicle service and repair use that
491 requires outdoor storage or activities and overnight parking of vehicles being serviced will
492 be considered a major vehicle service and repair use.

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EXHIBIT B

Chapter 23

LAND DEVELOPMENT REGULATIONS ARTICLE 3 "ZONING DISTRICTS"

Division 1 "Generally"

Sec. 23-3.6 – Use Tables.

[See Use Tables under separate cover]

506 **EXHIBIT C**

507
508
509 Chapter 23

510
511 LAND DEVELOPMENT REGULATIONS ARTICLE 4 “DEVELOPMENT STANDARDS”

512
513 ***

514
515 **Sec. 23.4-13. – Administrative Uses and Conditional Uses**

516 ***

517 c) Standards.

518 ***

519
520 (3) Vehicle rental facilities. ~~Reserved.~~ Refer to vehicle sales standards for
521 administrative and conditional uses as applicable.

522
523 (4) Vehicle service and repair facilities – major or minor, or repair and maintenance
524 services – major.

525
526 ***

527 (b) Design and performance standards.

528
529 i. Minimum lot frontage. Seventy-five (75) feet.

530
531 ii. Minimum site.

532
533 Major - Site: Twenty thousand (20,000) square feet; Minimum area per business /
534 tenant on a multiple tenant / business site: two thousand five hundred (2,500) square
535 feet.

536
537 Minor – Site: Ten thousand (10,000) square feet; Minimum area per business / tenant
538 on a multiple tenant / business site: one thousand (1,000) square feet.

539
540 ***

541 vi. Minimum parking requirements. Three (3) parking spaces for each service bay (if
542 applicable) plus one parking space for each three hundred (300) square feet of non-
543 service enclosed area. Applicable parking requirements in Sec. 23.4-10 apply to all
544 other use areas. All vehicles shall be parked in designated storage areas, except for
545 vehicles dropped off by customers or placed for temporary customer pick-up in parking
546 spaces designated on an approved site plan not visible from the public right-of-way.
547 These vehicles may be temporarily parked in these designated parking spaces, not to
548 exceed a maximum of one 24-hour period.

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552 viii. Outdoor storage may be permitted as accessory to vehicle service and repair-major
553 and repair and maintenance services-major in I-POC only, provided the outdoor
554 storage area is fully screened from any public rights-of-way and adjacent properties
555 as consistent with Sec. 23.4-19 Outdoor Storage, and all equipment, parts and
556 vehicles are stored on an impermeable paved surface.
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561 7. Industrial/Manufacturing/processing/fabrication facilities.
562

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566
567 B. Design and performance standards.
568 (7) Minimum area per business / tenant on a multiple tenant / business site shall not be
569 less than eight hundred (800) square feet for manufacturing or processing and five
570 hundred (500) square feet for fabrication services.
571

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575
576 17. Storage - Specialty.
577

578 A. Purpose. It is the purpose of this section to provide regulations and standards for the
579 establishment of Storage - specialty within designated zoning districts. Specialty storage
580 facilities are intended to accommodate the dead storage needs of families and small
581 businesses in interior air-conditioned environment. They are not intended to
582 accommodate any office, retail, service, manufacturing or other similar activity within the
583 storage area. They are also not intended to be used for the storage of hazardous
584 compounds or chemicals, explosives, or other dangerous content that could pose a threat
585 to the immediate neighborhood. Specialty storage shall be approved through the
586 appropriate regulatory board by conditional use procedures.
587

588 B. Use and development regulations.
589

590 (1) All use activity shall be conducted entirely within the building.
591

592 (2) Along major thoroughfares the use shall not front directly onto the ROW and shall
593 be developed with an office, retail, or commercial component that activate the
594 street frontage.
595

596 (3) Loading areas shall not be visible from any of the City's major thoroughfare rights-
597 of-way.
598

599 (4) There shall be no plumbing or electrical service or equipment, other than that
600 required for lighting and fire suppression, which could make the facility in any way
601 able to accommodate any office, retail, service, manufacturing or other similar
602 activity within designated storage area.

603
604 (5) No business, hobby or other activity unrelated to the purpose of the use may be
605 operated from within.

606
607
608 D. Lighting. Supplementary lighting shall be shielded in accordance with the provisions of
609 section 23.4-3.

610 E. Parking lot regulations.

611
612
613 (1) Rental of required parking spaces prohibited. Required parking spaces shall not
614 be rented to customers for the purpose of parking or storing vehicles or for any
615 other purpose.

616
617 F. Circulation and loading.

618
619 (1) Configuration of circulation and loading areas. Circulation and loading areas shall
620 be arranged and sized to permit customer and emergency vehicles to circulate
621 unobstructed by the loading or unloading of vehicles at individual storage stalls
622 and shall not be visible from any of the City's major thoroughfares. Areas where
623 vehicles may be placed for loading and unloading shall be distinguished from
624 circulation routes by clear pavement markings. The width of circulation routes and
625 the dimensions of loading areas shall be subject to the approval of the
626 development review official or designee based on the criteria of this section.

627
628 G. Outdoor storage regulated. Outdoor storage is prohibited.

629
630
631 18. Breweries, Distilleries, Micro-breweries, Micro-Distilleries, Specialty Breweries and
632 Specialty Distilleries.

633 A. Purpose. It is the purpose of this section to provide regulations and standards
634 for all types of brewery and distillery establishments within designated zoning
635 districts. These uses shall be approved through the appropriate decision-making
636 authority.

637 B. Design and performance standards.

638 (1) Minimum site area: Seventy-five hundred (7,500) square feet.

639 (2) Minimum lot width: Seventy-five (75) feet.

640 (3) Minimum distances. All such uses shall be located a minimum of five
641 hundred (500) feet from each other. Distance shall be measured from
642 property line to property line, without regard to intervening structures or
643 objects.

- 644 (4) Landscape requirements. The site must be provided with a minimum five-
645 foot-wide perimeter planting area when adjacent to residential uses. Site
646 landscaping shall comply with adopted landscape regulations.
- 647 (5) Buffering. A fence or wall shall be erected at a height of not less than six (6)
648 feet when the parking area(s) or other common area(s) is within twenty-five
649 (25) feet of a residential district, in addition to the landscaping requirements
650 outlined in subsection (5), above. All fences and walls shall be constructed
651 of concrete, masonry or metal. Metal fences shall be open weave chain link,
652 vinyl coated type combined with a shrub hedge or ornamental in nature.
653 Walls shall be finished with a graffiti-resistant paint.
- 654 (6) Variances for minimum site area shall not be granted.
- 655 (7) Specialty breweries and specialty distilleries must front one of the city's
656 major thoroughfares.
- 657 (8) Outdoor display of any items is strictly prohibited.
- 658 (9) Establishments must have at least twenty-five (25) percent clear glazing
659 and fenestration along frontages with entrances clearly identifiable.
- 660 (10) Display windows must have engaging and pedestrian friendly vignettes.
661 Covering of display windows with posters, paper, advertisements, written
662 signs and similar shall be strictly prohibited. Vacant buildings shall have
663 approved vignettes covering windows until an active business is
664 established and operating.
- 665 (11) All sales transactions, except during city approved special events, shall
666 take place within the building.
- 667 (12) Walk up sales windows shall not be allowed.
- 668 (13) All storage, production, shipping and receiving associated with use must
669 be confined within an approved building or structure.
- 670 (14) All deliveries and distribution activities shall take place between the hours
671 of 8 am and 6 pm Monday through Saturday, except when located within
672 an industrial zoning district.
- 673 (15) Each facility shall abide by the following restrictions on production capacity.
- 674 (a) Breweries and Distilleries shall have capacity limited only by size of
675 property and square footage of building and/or structure.
- 676 (b) Micro-breweries and Micro-distilleries shall have a production capacity
677 of no more than 750,000 proof gallons on an annual basis, or two
678 million, nineteen thousand (2,019,000), 750 ml bottles production per
679 year.
- 680 (c) Specialty breweries and specialty distilleries shall have a production
681 capacity of no more than 325,000 proof gallons on an annual basis, or
682 one million, ninety-five hundred (1,009,500), 750 ml bottles production
683 per year.

- 684 (16) Each facility shall abide by the following restrictions on deliveries.
- 685 (a) Breweries and Distilleries shall have unlimited commercial truck
686 deliveries for shipping, receiving and distribution, except no deliveries
687 on Sunday.
- 688 (b) Micro-breweries and micro-distilleries shall have no more than 12
689 commercial truck deliveries for shipping, receiving and distribution
690 each week and no deliveries on Sunday.
- 691 (c) Specialty breweries and specialty distilleries shall have no more than 6
692 commercial truck deliveries for shipping, receiving and distribution
693 each week and no deliveries or distribution on Sunday. All deliveries
694 must take place on site and off public rights of way.
- 695 (17) All micro-breweries, micro-distilleries, specialty breweries and specialty
696 distilleries shall be required to have a retail sales component and a
697 consumption on premises component. For micro-breweries, micro-
698 distilleries, specialty breweries and specialty distilleries in mixed-use
699 districts, no more than seventy (70%) percent of the use area shall be used
700 for brewery or distillery manufacturing or production, including packaging
701 with the balance consisting of office, retail sales and taprooms / tasting
702 areas.
- 703 (18) For micro-breweries, micro-distilleries, specialty breweries and specialty
704 distilleries, guest taps may be allowed in conjunction with a tap or tasting
705 room not to exceed 30 percent of the number of taps or on-site production
706 unless as part of a restaurant with bar or bar use approval.
- 707 (19) All spoils generated as the result of the fermentation and production shall
708 be disposed in an appropriate manner meeting all requisite health and
709 safety standards.
- 710 (20) Other appropriate conditions may be placed on the use approval depending
711 on location, building/structure and orientation to ensure nuisance type of
712 activities including but not limited to noise, dust, pollutants, odors, and
713 waste by products and other use impacts do not occur.

714

715

716 19. Money business services

717 A. Purpose. It is the purpose of this section to provide regulations and standards for
718 money business services such as payment instrument seller, foreign currency
719 exchanger, check casher, or money transmitter. These uses shall be approved
720 through the appropriate decision-making authority. Principal uses shall be
721 reviewed through the conditional use permit process. These uses may also
722 occur as accessory to single destination commercial only provided the
723 development standards are met for both the principal and accessory use.

724 B. Design and performance standards.

725 1) Separation Distance:

726 (a) A minimum separation distance of four hundred (400) feet for accessory
727 uses.

728 (b) A minimum separation distance of one thousand (1,000) feet for principal
729 uses.

730 2) Operational Standards:

731 (a) Hours of operation shall be limited to 8 am to 9 pm on Monday through
732 Saturday and 9 am to 6 pm on Sunday.

733 (b) No temporary or promotional signage shall be permitted on windows or
734 doors except as expressly permitted in Sec. 23.5-1 Signs.

735 (c) Interior and exterior video surveillance for security purposes is required
736 and surveillance recordings shall be maintained for a minimum of
737 fourteen (14) days.

738 (d) The site shall meet appropriate Crime Prevention through Environmental
739 Design (CPTED) standards as feasible.

RESIDENTIAL																										
TYPE/USE	SF-R	SF-TF 14	MH-7	MF-20	MF-30	MF-40	MU-E Lake & Lucerne	MU-E 1st & 2nd Edges	MU-E Federal Hwy	MU-E 10th & 6th	DT	MU-FH	MU-DH	MU-W Lake & 10th	TOD-E	TOD-W	NC	BAC	AI	I-POC	PD	P	PROS	CON	FEG-[Delete Column]	Hotel-[Delete Column]
Dwelling, Single Family	P	P		P	P	P			P			P									P					
Dwelling, Mobile Home			P																							
Dwelling, Two-Family		P		P	P	P			P			P									P					
Dwelling, Multifamily				P	P	P	P	P	P	P	P	P	P	P	P	P			C		P					
Mobile Home Park			P																							
Townhouses		C A		C	C	C	C	C	C	C	C	C	C	C	C	C			C		P					
Accessory Dwelling Unit		P		P	P	P	P	P	P	P		P														
Accessory Mechanical Equipment	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P			
Accessory Structure(s)	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P			P		P					
Assisted Living Centers/Facilities			C	C	C	C						C		C												
Family Day Care (Accessory to Residence per Florida Statutes)	P	P		P	P	P			P	P	P	P	P	P							P					
Boarding House				C	C	C	C	C	C	C									C							
Nursing Homes/Facilities			C	C	C	C						C		C												
Retirement Homes/Facilities			C	C	C	C						C		C												
Community Residences, Type I (6 or less residents) - Former Group Home	P	P		P	P	P	P	P	P	P		P														
Community Residences, Type II (7-14) - Former Group Home				C	C	C	C	C	C	C			C	C												
Community Residences, Type III										C		C	C	C									C			
Community Residences, Type IV													C	C									C			

Note: P is Permitted by Right, A is Administrative Use Permit (staff level review), and C is Conditional Use Permit (board level review).

RETAIL																											
High Intensity Retail Uses - Building Use area Greater than 7,500 sq. ft and/or high intensity impact uses.	SF-R	SF-TF 14	MH-7	MF-20	MF-30	MF-40	MU-E Lake & Lucerne	MU-E 1st & 2nd Edges	MU-E Federal Hwy	MU-E 10th & 6th	DT	MU-FH	MU-DH	MU-W Lake & 10th	TOD-E	TOD-W	NC	BAC	AI	I-POC	PD	P	PROS	CON	FEC-[Delete Column]	Hotel-[Delete Column]	
Drive Through Facilities													C	C													
Grocery Store							G		G		G		G	G	G	G											
Home Improvement Center													C	C													
Liquor Store							C			C	C		C	C		C											
Merchant Retail Stock (Reference Ordinance Chapter 14)							C			C	C		C	C	C	C											
Pharmacy/Drug Store													C	C	C	C											
Produce Market							G			G	G		G	G	G	G											
Single Destination Retail							C	G	C	C	C		C	C	C	C				C							
Stand Alone Retail													C	C													
Medium Intensity Retail Uses - Less than Building Use area less than 7,500 sq. ft and/or medium intensity impact uses.	SF-R	SF-TF 14	MH-7	MF-20	MF-30	MF-40	MU-E Lake & Lucerne	MU-E 1st & 2nd Edges	MU-E Federal Hwy	MU-E 10th & 6th	DT	MU-FH	MU-DH	MU-W Lake & 10th	TOD-E	TOD-W	NC	BAC	AI	I-POC	PD	P	PROS	CON	FEC-[Delete Column]	Hotel-[Delete Column]	
Convenience Stores							G						G	G													
Drive Through Facilities													C	C													
Grocery Store							A			A			A	A	A	A											
Home Improvement Center										G			A	A													
Liquor Store							C			C	C		C	C		C											
Pharmacy/Drug Store													C	C	C	C											
Produce Market							A			A	A		A	A	A	A											
Single Destination Retail							P A	P C	P A	P A	P A		P A	P A	P A	P A				P A							
Specialty Retail							A	A	A			C	P	P	P	P		C	P	P							
Stand Alone Retail							A		A	A			A	A	A	A					A						
Specialty Food Product Stores							A		A	A			A	A	A	A											
Sundry Shop							A		A	A	A		A	A	A	A		A	P	A							
Low Intensity Retail Uses - Building Use area Less than 2,500 sq. ft and low intensity impact uses.	SF-R	SF-TF 14	MH-7	MF-20	MF-30	MF-40	MU-E Lake & Lucerne	MU-E 1st & 2nd Edges	MU-E Federal Hwy	MU-E 10th & 6th	DT	MU-FH	MU-DH	MU-W Lake & 10th	TOD-E	TOD-W	NC	BAC	AI	I-POC	PD	P	PROS	CON	FEC-[Delete Column]	Hotel-[Delete Column]	
Convenience Stores							A						A	A													
Gift Boutiques							P	P	P	P	P		P	P	P	P			P	P							
Grocery Store-Neighborhood							A			A			A	A	A	A											
Hobby Shops							P	P	P	P	P		P	P	P	P					P						
Pharmacy Accessory										C	C	G	C	C	C	C											
Produce Market							A			A	A		A	A	A	A							A				
Single Destination Retail							P	P A	P A	P A	P A		P	P	P	P				P A							
Specialty Food Product Stores							P	P	P	P	P		P	P	P	P				P							
Specialty Retail							P	A	P	A	P		P	P	P	P			P	P							
Sundry Shop							P		P	P			P	P	P	P				P	P						
Tobacco Shop							P						P	P	P	P				P	P						

Note: P is Permitted by Right, A is Administrative Use Permit (staff level review), and C is Conditional Use Permit (board level review).

COMMERCIAL																											
High Intensity Commercial Uses - Building Use area greater than 7,500 sq. ft and/or high intensity impact uses.	SF-R	SF-TF 14	MH-7	MF-20	MF-30	MF-40	MU-E Lake & Lucerne	MU-E 1st & 2nd Edges	MU-E Federal Hwy	MU-E 10th & 6th	DT	MU-FH	MU-DH	MU-W Lake & 10th	TOD-E	TOD-W	NC	BAC	AI	I-POC	PD	P	PROS	CON	FEC [Delete Column]	Hotel [Delete Column]	
Bars/ Clubs with or without live entertainment											C		C	C	C	C			C								
Cold Storage																				C	C						
Contractor (Office with no outdoor storage yard)							C							E	E					E	E						
Contractor (Office with outdoor storage yard)																					E						
Outdoor Commercial Recreation, Outdoor (See Indoor-Commercial-Recreation)														C						C	C						
Contractor - Showroom														C	C					A C	C						
Dead Storage Facilities														C						C	C						
Drive Through Facilities									C	C				C	C												
Extended Stay Hotel or Motel Lodging Facility											C			C	C	C	C				C						
Financial Institution with Drive Through									C	C	C			C	C	C	C										
Financial Institution without Drive Through							C			C	C	C	C	C	C	C											
Hotels Lodging Facility							C	C	C	C	C	C	C	C	C	C											E
Indoor Commercial Recreation, Indoor (Reference Ordinance Chapter 14)														C	C					C	C						
Printing Services							C			C	C			C	C	C	C				C	C					
Mini-Warehouses														E	C						C	C					E
Motels							E	E	E	E	E	E	E	E	E	E					E						
Motel or Hotel, extended stay											E			E	E	E					E						
Restaurants Accessory to Hotel or Motel							E		E	E	E	E	E	E	E	E											
Restaurants with Drive Through							C		C	C				C	C						C						
Restaurants - With Bar							C		C	C	C			C	C	C	C		C	C							
Restaurants - Take Out							C	C	C	C				C	C	C	C	C	C	C		C					
Restaurants							C	C	C	C	C			C	C	C	C	C	C	C		C					
Storage - Specialty														C	C						C						
Single Destination Commercial										E	E			C	C	E	C				C						
Truck/Van Rentals														C								C					
Veterinary Offices, with or without Kennels														C	C						C	C					
Warehouse Facilities																					C	C					
Wholesale and Distribution Facilities [Moved to industrial]																E					E	E					
Medium Intensity Commercial Uses - Less than Building Use area less than 7,500 sq. ft and/or medium intensity impact uses.	SF-R	SF-TF 14	MH-7	MF-20	MF-30	MF-40	MU-E Lake & Lucerne	MU-E 1st & 2nd Edges	MU-E Federal Hwy	MU-E 10th & 6th	DT	MU-FH	MU-DH	MU-W Lake & 10th	TOD-E	TOD-W	NC	BAC	AI	I-POC	PD	P	PROS	CON	FEC [Delete Column]	Hotel [Delete Column]	
Bars/ Clubs with or without live entertainment											C			C	C	C				C							
Bed and Breakfast Inns	C	C		C	C	C	C	C	C	C	C	C	C							C							
Catering/Caterer							A							A	A	A					A						
Contractor (Office only - no outdoor storage yard)							A	A	A	A	A	A	A	A	A	A					A	A					
Contractor (Office with outdoor storage yard)																						E					
Contractor - Showroom										C				A	A	A	A				A	C					
Drive Through Facilities									C	C				C	C												
Extended Stay Lodging Facility											C			C	C	C	C				C						
Financial Institution with Drive Through									C	C	C			C	C	C	C										
Financial Institution without Drive Through							A C	A C	A C	A C	A C			A C	A C	A C	A C										
Financial Management Services							A	A	A	A	A			A	A	A	A										
Funeral Home/ Crematory							C	C						C								C					
Hotels Lodging Facility							A	A	A	A	A	A	A	A	A	A											
Indoor Commercial Recreation (Reference Ordinance Chapter 14)							A			A				A	A	A					A	A					
Motels							A		A		A	A	A	A	A	A					A						
Motel or Hotel Extended Stay											E			E	E						E						
Money Business Services														C	C												
Printing Services							A		A		A			A	A	A	A				A	A					
Restaurants with Drive Through							C		C					C	C						C						
Restaurants - With Bar							E		E	E	E			E	E	E	E		A		E						
Restaurants - Take Out							A	A	A	A	A			A	A	A	A	A	P		A		P				
Restaurants							A	A	A	A	A			A	A	A	A	A	P		A		P				
Single Destination Commercial							A C			A C				A C	A C	A C	A C				A C						
Social Service Centers [Moved to Institutional]							A	A	A	A				A	A	A	A				A						
Storage Lockers														A	A	A	A										
Storage - Specialty														C	C						C						
Veterinary Offices, without Kennels										A				A	A	P A	P A				A	A					
Veterinary Offices, with Kennels														C	C						C	C					
Warehouse Facilities															A						A	A					

COMMERCIAL																											
Wholesale and Distribution Facilities (Moved to industrial)																											
	SF-R	SF-TF 14	MH-7	MF-20	MF-30	MF-40	MU-E Lake & Lucerne	MU-E 1st & 2nd Edges	MU-E Federal Hwy	MU-E 10th & 6th	DT	MU-FH	MU-DH	MU-W Lake & 10th	TOD-E	TOD-W	NC	BAC	AI	I-POC	PD	P	PROS	CON	FEC [Delete Column]	Hotel [Delete Column]	
Coffee Shop / Ice Cream Shop							P	P	P	P	P		P	P	P	P	P	P	P	P		P					
Contractor (Office only - no outdoor storage yard) - [Professional Office Use]							P	P	P	P	P	P		P	P	P				P	P						
Contractor (Office with outdoor storage yard) - [Moved to industrial use]																					G						
Financial Management Services [Professional Office Use]							P	P	P	P	P		P	P	P	P				P							
Printing Services							P		P	P	P		P	P	P	P				P							
Restaurants with Drive Through							C		C				C	C						C							
Restaurants - With Bar							A		A	A	A		A	A	A	A		A	A								
Restaurants - Take Out							PA	PA	PA	PA			PA	PA	PA	PA	PA	PA	PA	PA		P					
Restaurants							P	P	P	P	P		P	P	P	P	P	P	P	P		P					
Single Destination Commercial							PA	P	P	PA	P		PA	PA	PA	PA	PA	PA		PA							
Wholesale and Distribution Facilities															P					P	P						

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OFFICE																											
High Intensity Office Uses - Building- Use area G greater than 7,500 sq. ft and/or high intensity impact uses.	SF-R	SF-TF 14	MH-7	MF-20	MF-30	MF-40	MU-E Lake & Lucerne	MU-E 1st & 2nd Edges	MU-E Federal Hwy	MU-E 10th & 6th	DT	MU-FH	MU-DH	MU-W Lake & 10th	TOD-E	TOD-W	NC	BAC	AI	I-POC	PD	P	PROS	CON	FEC [Delete Column]	Hotel [Delete Column]	
Administrative/Professional Services: (non-medical)							C	C	C	C	C	C	C	C	C	C				C							
Business Services							C	C	C	C	C		C	C	C	C											
Call Center													C		C	C				C	C						
Contractor (Office only--no outdoor storage yard)							G						G	G						G	G						
Contractor (Office with outdoor storage yard)																					G						
Governmental Administrative Office							C			C			C	C	C	C				C	C			C			
Health Clinics/Urgent Care													C	C	C	C								C			
Out Patient Clinics Medical Offices										C	C	C	C	C										C			
Medium Intensity Office Uses - Less than Building- Use area less than 7,500 sq. ft and/or medium intensity impact uses.	SF-R	SF-TF 14	MH-7	MF-20	MF-30	MF-40	MU-E Lake & Lucerne	MU-E 1st & 2nd Edges	MU-E Federal Hwy	MU-E 10th & 6th	DT	MU-FH	MU-DH	MU-W Lake & 10th	TOD-E	TOD-W	NC	BAC	AI	I-POC	PD	P	PROS	CON	FEC [Delete Column]	Hotel [Delete Column]	
Administrative/Professional Services: (non-medical)							A	A	A	A	A	A	A	A	A	A	A			A							
Business Incubation Office							A		A		A		A	A	A	A											
Business Services							A	A	A	A	A		A	A	A	A											
Call Center													A	A	A	A				A							
Contractor (Office only--no outdoor storage yard)							A	A	A	A	A	A	A	A	A	A					A	A					
Contractor (Office with outdoor storage yard)																						G					
Governmental Administrative Office							A			A			A	A	A	A				A	A			A			
Health Clinics/Urgent Care													C	C	C	C								C			
Interior Design Studio w/ Sales							A		A		A		A	A	A	A				A							
Kitchen/Millwork Design Studio							A	A	A	A	A		A	A	A	A				A	A						
Out Patient Clinics/Medical Office										C	C	C	C	C	C	C											
Low Intensity Office Uses - Building- Use area L less than 2,500 sq. ft and low intensity impact uses.	SF-R	SF-TF 14	MH-7	MF-20	MF-30	MF-40	MU-E Lake & Lucerne	MU-E 1st & 2nd Edges	MU-E Federal Hwy	MU-E 10th & 6th	DT	MU-FH	MU-DH	MU-W Lake & 10th	TOD-E	TOD-W	NC	BAC	AI	I-POC	PD	P	PROS	CON	FEC [Delete Column]	Hotel [Delete Column]	
Administrative/Professional Services: (non-medical)							P	P	P	P	P	P	P	P	P	P	P			P	P			C			
Call Center													P	P	P	P				P							
Contractor (Office only--no outdoor storage yard)							P	P	P	P	P	P	P	P	P	P					P	P					
Contractor (Office with outdoor storage yard)																						G					
Governmental Administrative Office							A			A			A	A	A	A				A	A			A			
Home Occupation	P	P		P	P	P	P	P	P	P	P	P	P	P	P	P				P		P					

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PERSONAL SERVICES																												
High Intensity Personal Services Uses - Building-Use area Greater than 7,500 sq. ft and/or high intensity impact uses.	SF-R	SF-TF 14	MH-7	MF-20	MF-30	MF-40	MU-E Lake & Lucerne	MU-E 1st & 2nd Edges	MU-E Federal Hwy	MU-E 10th & 6th	DT	MU-FH	MU-DH	MU-W Lake & 10th	TOD-E	TOD-W	NC	BAC	AI	I-POC	PD	P	PROS	CON	Cultural Arts	FEC [Delete Column]	Hotel [Delete Column]	
Ballroom, Banquet and Meeting Rooms							C		C	C	C		C	C	C	C		P	C			C	C					C
Cryogenic Frozen Storage & Laboratory														C						C	C							
Gymnastics Studios/Training Facilities													C	C						C	C			C				
Gyms/Studio, Fitness or Dance													C	C		C				C	C							
Large Household Appliance Repair													C	C						C	C							
Medium Intensity Personal Services Uses - Less than Building Use area less than 7,500 sq. ft and/or medium intensity impact uses.	SF-R	SF-TF 14	MH-7	MF-20	MF-30	MF-40	MU-E Lake & Lucerne	MU-E 1st & 2nd Edges	MU-E Federal Hwy	MU-E 10th & 6th	DT	MU-FH	MU-DH	MU-W Lake & 10th	TOD-E	TOD-W	NC	BAC	AI	I-POC	PD	P	PROS	CON	Cultural Arts	FEC [Delete Column]	Hotel [Delete Column]	
Ballroom, Banquet and Meeting Rooms							C		C	C	C		C	C	C	C		P	C			C	C					C
Barber Shop							A	A	A	A	A	A	A	A	A	A			A									
Beauty Parlor/Shop/Salon/Esthetician/Make-up Artist/							A	A	A	A	A	A	A	A	A	A			A									
Personal Grooming Services & Day Spa							A	A	A	A	A	A	A	A	A	A			A									
Dry Cleaning Establishment without on-site cleaning							A	A		A			A	A	A	A			A									
Exercise Gyms/Studio, Fitness or Dance							A	A	A	A	A	A	A	A	A	A			A	A				A				
Gymnastics Studios/Training Facility							A	A	A	A			A	A	A	A			A	A				A				
Holistic Health Care Facility							A	A	A	A	A	A	A	A	A	A	A			A								
Large Household Appliance Repair													A	A					A	A								
Laundry Establishment							C	C		C			C	C	C	C			C									
Small Household Appliance Repair													A	A					A									
Martial Arts Studio							A	A	A	A			A	A	A	A			A	A				A				
Music/Dance Studio							A	A	A	A			A	A	A	A			A	A				A				
Pet Grooming with boarding													C	C		C												
Personal Training Gyms/Studio							A	A	A	A	A	A	A	A	A	A			A	A				A				
Physical Fitness Studio/Facilities (group, multi-client services)							A	A	A	A			A	A	A	A			A									
Social Service Center							A	A	A	A			A	A	A	A			A									
Tattoo Studio/Body Art/Piercing											A		A						A									
Low Intensity Personal Services Uses - Building-Use area Less than 2,500 sq. ft and low intensity impact uses.	SF-R	SF-TF 14	MH-7	MF-20	MF-30	MF-40	MU-E Lake & Lucerne	MU-E 1st & 2nd Edges	MU-E Federal Hwy	MU-E 10th & 6th	DT	MU-FH	MU-DH	MU-W Lake & 10th	TOD-E	TOD-W	NC	BAC	AI	I-POC	PD	P	PROS	CON	Cultural Arts	FEC [Delete Column]	Hotel [Delete Column]	
Ballroom, Banquet and Meeting Rooms							A		A	A	A		A	A	A	A		P	A			A	A					A
Barber Shop							P	P	P	P	P	P	P	P	P	P	P		P		P							
Beauty Parlor/Shop/Salon/Esthetician/Make-up Artist/							P	P	P	P	P	P	P	P	P	P	P		P		P							
Clothing Alterations							P	P	P	P	P	P	P	P	P	P	P		P									
Dry Cleaning Establishment without on-site cleaning							A	A		A			A	A	A	A			A									
Educational or Tutoring Business (excluding trade schools), indoor only and including music and supplementary academic programs.							A		A	A		A	A	A	A	A	A											
Exercise Gyms/Studio, Fitness or Dance							P	P	P	P	P	P	P	P	P	P	P		P	P				P				
Holistic Health Care Facility							P	P	P	P	P	P	P	P	P	P	P			P								
Large Household Appliance Repair													P	P					P		P							
Laundry Establishment							A	A		A			A	A	A	A			A									
Small Household Appliance Repair													P	P					P									
Licensed Tanning Salon							P	P	P	P	P	P	P	P	P	P	P		P									
Nail Salon							P	P	P	P	P	P	P	P	P	P	P					P						
Martial Arts Studio							P	P	P	P	P	P	P	P	P	P	P		P	P				P				
Music/Dance Studio							P	P	P	P	P	P	P	P	P	P	P		P	P				P				
Gymnastics Studio/Training Facility							P	P	P	P	P	P	P	P	P	P	P		P	P				P				
Personal Training Gyms/Studio							P	P	P	P	P	P	P	P	P	P	P		P					P				
Personal Grooming Services & Day Spa							P	P	P	P	P	P	P	P	P	P	P		P									
Pet Grooming							P	P	P	P	P	P	P	P	P	P	P		P									
Shoe Repair							P	P	P	P	P	P	P	P	P	P	P		P									
Tailor/Dressmaking							P	P	P	P	P	P	P	P	P	P	P		P									
Repair and Maintenance Services - Specialty							P	P	P	P	P	P	P	P	P	P	P		P									
Tattoo Studio/Body Art/Piercing											A		A						A									
Watch, Clock and Jewelry Repair							P	P	P	P	P	P	P	P	P	P	P		P									

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INDUSTRIAL																												
High Intensity Industrial Uses -Building- Use area greater than 7,500 sq. ft and/or high intensity impact uses.	SF-R	SF-TF 14	MH-7	MF-20	MF-30	MF-40	MU-E Lake & Lucerne	MU-E 1st & 2nd Edges	MU-E Federal Hwy	MU-E 10th & 6th	DT	MU-FH	MU-DH	MU-W Lake & 10th	TOD-E	TOD-W	NC	BAC	AI	I-POC	PD	P	PROS	CON	FEC [Delete Column]	Hotel [Delete Column]		
Aquaculture/Hydroponic Farming																			C	C								
Auction House w/ or w/out outdoor storage																				C	C							
Bldg. and Const. Trades/Contractors manufacturing w/ Outdoor Storage Yards																					E							
Brewery/Distillery - Micro-Microbrewery without Sales													C	C	C	C				A	A-C							
Brewery/Distillery																				C	C							
Bldg. and Const. Trades/Contractors manufacturing w/o Outdoor Storage																				C	C							
Boat Repair / Maintenance / Detailing																						C						
Contractors with or without outdoor storage																						C						
Dry Cleaning Plant / Linen Service																						C						
Equipment Rental and Leasing																						C						
Factory or Manufacturing (Reference Ordinance Chapter 14)																						C						
Food Manufacturing & Processing																				C	C							
Garment/Clothing/Apparel Manufacturing																				C	C							
Heavy Utility Service Uses																						C	C					
High-Intensity-Fabrication Services/Manufacturing/Processing excluding retail display and sales																						C						
High-Intensity Manufacturing excluding retail display and sales																						E						
High-Intensity Processing excluding retail display and sales																						E						
Import/Export Business														C						C	C							
Jobsite Preparation (Reference Ordinance Chapter 14)																				C	C							
Microbrewery with Sales-Consumption on Premises										G			E							E	E							
Microbrewery without Sales																				E	E							
Organic/Green/All Natural Composting Fertilizer Manufacturing																				C	C							
Pharmaceutical & Medicine																						C						
Plant Nursery (sales only)													C							C	C							
Plant Nursery																				C	C							
Recycling Processing Center																						C						
Regional Distribution Center																				C	C							
Renewable Energy Resource Center																						C						
Repair and Maintenance - Major																				C	C							
Repair and Maintenance - Minor													C	C						A	A							
Research & Development, Scientific/Technological																						C						
Septic Tank, Sewer, and Drain Cleaning and Repair Services																						C						
Storage-outdoor, Accessory-Only																				E	E							
Storage-indoor																				C	C							
Testing Laboratory																						C						
Utility Plant, Substation, Power Generation-Minor																						C						
Vintner/Winery																				C	C							
Welding Contractors																						C						
Welding Repair Services																						C						
Wholesale and Distribution Facilities														C						C	C							
Medium Intensity Industrial Uses -Less than Building- Use area less than 7,500 sq. ft and/or medium intensity impact uses.	SF-R	SF-TF 14	MH-7	MF-20	MF-30	MF-40	MU-E Lake & Lucerne	MU-E 1st & 2nd Edges	MU-E Federal Hwy	MU-E 10th & 6th	DT	MU-FH	MU-DH	MU-W Lake & 10th	TOD-E	TOD-W	NC	BAC	AI	I-POC	PD	P	PROS	CON	FEC [Delete Column]	Hotel [Delete Column]		
Aquaculture/Hydroponic Farming																				A	A							
Auction House w/out outdoor storage													C							C	C							
Boat Repair / Maintenance / Detailing																				E	E							
Bldg. & Const. Trades/Contractors manufacturing without outdoor storage yards																				E	E-P							
Bldg. & Const. Trades/Contractors manufacturing with outdoor storage																						E						
Brewery/Distillery - Specialty Microbrewery with Sales											C		C	C						A	A							
Brewery/Distillery - Micro-Microbrewery without Sales													C	C	C	C				A	A-C							
Brewery/Distillery																				A	A							
Cabinetry Manufacturing																				E	E							
Cleaning and Maintenance Services																				A	A							
Contractors without outdoor storage																				A	A							
Disinfecting and Exterminating Services																				C	C-A							
Dry Cleaning Plant / Linen Service																				C	C							
Distillery																				E	E							
Furniture Stripping, Finishing and Refinishing																				C	C							
Furniture Manufacturing																				E	E							
Garment/Clothing/Apparel Manufacturing																				E	E							

Import/Export Business																			C	C								
Landscaping Contractors w/Storage-Yards																			C	C- A								
Lawn, Garden and Tree Maintenance Services																			A	A- A								
Mail Delivery Services																			C	C- A								
Medical/Biotech/Pharmaceutical Manufacturing & Distribution																			C	C								
Medium-Intensity-Fabrication Services/Manufacturing/Processing/Assembly excluding retail display and sales																			C	C- A								
Medium-Intensity Manufacturing-excluding-retail-display-and-sales																			E	E								
Medium-Intensity Processing-excluding-retail-display-and-sales																			E	E								
Packaging and Labeling Services																			C	C- A								
Pharmaceutical & Medicine																				E								
Plant Nursery (sales only)																			C	C								
Plant Nursery																			A	C- A								
Regional Distribution Center																			A	C- A								
Repair and Maintenance - Minor																			C	A								
Research & Development, Scientific / Technological / Pharmaceutical / Medical																					C- A							
Steam and Pressure Cleaning Services																			C	C- A								
Storage-outdoor-Accessory																					E							
Storage-indoor																			A	C- A								
Testing Laboratory																					C							
Utility Plant, Substation, Power Generation-Minor																			C	C								
Vintner/Winery																			A	A								
Wholesale and Distribution Facilities																				A	A+UM1-AA82							
Low Intensity Industrial Uses -Building Use area Less than 2,500 sq. ft and low intensity impact uses.	SF-R	SF-TF 14	MH-7	MF-20	MF-30	MF-40	MU-E Lake & Lucerne	MU-E 1st & 2nd Edges	MU-E Federal Hwy	MU-E 10th & 6th	DT	MU-FH	MU-DH	MU-W Lake & 10th	TOD-E	TOD-W	NC	BAC	AI	I-POC	PD	P	PROS	CON	FEC [Delete Column]	Hotel [Delete Column]		
Bldg. & Const. Trades/Contractors manufacturing without outdoor storage																				P A	P A							
Bldg. & Const. Trades/Contractors manufacturing with outdoor storage																					E							
Contractor (Office-only, no outdoor storage yard)							P	P	P	P	P	P		P	P	P				P	P							
Contractor without outdoor storage (Office with outdoor storage yard)																				A	C- A							
Landscaping Contractors w/Storage-Yards																					C- P							
Lawn, Garden and Tree Maintenance Services & Contractors																				P A	P A							
Low-Intensity Fabrication Services-excluding-retail-display-and-sales																				P A	P A							
Low-Intensity Fabrication Services-including-retail-display-and-sales																				A	A							
Low-Intensity Manufacturing-excluding-retail-display-and-sales																				P	P							
Low-Intensity Manufacturing-including-retail-display-and-sales																				A	A							
Low-Intensity Processing-excluding-retail-display-and-sales																				P	P							
Low-Intensity Processing-including-retail-display-and-sales																				A	A							
Garment/Clothing/Apparel Manufacturing																				P A	P A							
Medical and Dental Laboratories																				P A	P A							
Pharmaceutical & Medicine																					E							
Repair and Maintenance - Minor							C						A	A						A	A							
Research & Development, Scientific / Technological / Pharmaceutical / Medical																					C							
Storage - indoor																				A	A							
Testing Laboratory																					C							

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INSTITUTIONAL																											
High Intensity Institutional Uses - Building- Use area G greater than 7,500 sq. ft and/or high intensity impact uses.	SF-R	SF-TF 14	MH-7	MF-20	MF-30	MF-40	MU-E Lake & Lucerne	MU-E 1st & 2nd Edges	MU-E Federal Hwy	MU-E 10th & 6th	DT	MU-FH	MU-DH	MU-W Lake & 10th	TOD-E	TOD-W	NC	BAC	AI	I-POC	PD	P	PROS	CON	Cultural Arts	FEC-[Delete Column]	Hotel-[Delete Column]
Colleges and Universities	C	C		C	C	C	C	C	C	C	C	C	C	C	C	C						C					
Day Care Center						C	C	C	C	C		C	C	C	C	C				C							
Day Care Center Accessory to Place of Worship	C	C		C	C	C	C	C	C	C	C	C	C	C	C	C											
Hospitals and Clinics Public														C								C					
Hospitals and Clinics Private														C								C					
Museums							C		C		C									C		C	C	C			
Places of Worship	C	C		C	C	C	C	C	C	C	C	C	C	C	C	C											
Schools, elementary	C	C		C	C	C	C	C	C	C	C	C	C	C	C	C							C				
Schools, intermediate and secondary	C	C		C	C	C	C	C	C	C	C	C	C	C	C	C							C				
Schools-Conservatory of Music (Retail merchant license required)													C	C	C	C					C						
School of the Arts														C								C					
School for Modeling or Booking Agency														C								C					
School of Instruction (for artisan, workers, etc.)														C								C					
Medium Intensity Institutional Uses - Less than Building- Use area less than 7,500 sq. ft and/or medium intensity impact uses.	SF-R	SF-TF 14	MH-7	MF-20	MF-30	MF-40	MU-E Lake & Lucerne	MU-E 1st & 2nd Edges	MU-E Federal Hwy	MU-E 10th & 6th	DT	MU-FH	MU-DH	MU-W Lake & 10th	TOD-E	TOD-W	NC	BAC	AI	I-POC	PD	P	PROS	CON	Cultural Arts	FEC-[Delete Column]	Hotel-[Delete Column]
Botanical Research and Education																				A			A	A	A		
Colleges and Universities (Satellite Campus)	A	A		A	A	A	A	A	A	A	A	A	A	A	A	A				A			A				
Day Care Center				A	A	A	A	A	A	A		A	A	A	A	A				A							
Marine Research and Education															A	A				A			A	A	A		
Museums							A		A		A									A			A	A	A		
Nursing Homes/Assisted Living Facilities				A	A	A	A	A	A	A		A	A	A	A	A				A							
Places of Worship	A	A		A	A	A	A	A	A	A	A	A	A	A	A	A											
Social Service Center (Relocated from Personal Services)							A	A	A	A			A	A	A	A				A							
Welcome Centers											A				A	A							A	A	A		
Low Intensity Institutional Uses - Building- Use area L less than 2,500 sq. ft and low intensity impact uses.	SF-R	SF-TF 14	MH-7	MF-20	MF-30	MF-40	MU-E Lake & Lucerne	MU-E 1st & 2nd Edges	MU-E Federal Hwy	MU-E 10th & 6th	DT	MU-FH	MU-DH	MU-W Lake & 10th	TOD-E	TOD-W	NC	BAC	AI	I-POC	PD	P	PROS	CON	Cultural Arts	FEC-[Delete Column]	Hotel-[Delete Column]
Environmental Nature Centers																							C	C	C		
Museum											P									P			P	A	A		

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CULTURAL & ARTISANAL ARTS																											
High Intensity Artisanal Uses - Building-Use area greater than 7,500 sq. ft and/or high intensity impact uses.	SF-R	SF-TF 14	MH-7	MF-20	MF-30	MF-40	MU-E Lake & Lucerne	MU-E 1st & 2nd Edges	MU-E Federal Hwy	MU-E 10th & 6th	DT	MU-FH	MU-DH	MU-W Lake & 10th	TOD-E	TOD-W	NC	BAC	AI	I-POC	PD	P	PROS	CON	FEC [Delete Column]	Hotel [Delete Column]	
Artisan or Art Studio																											
Artisanal Foods																											
Artisanal Manufacturing																											
Bakery, Commercial																											
Ceramics or Pottery Studio with or without Kiln																											
Commissary Kitchen																											
Culinary Arts																											
Film Studio																											
Indoor Motion Pictures (more than three (3) Screens)																											
Performing Arts Theatre (more than 250 seats)																											
Radio Broadcasting Studio																											
Recording Studio																											
Sculpture Studio with or without Kiln																											
Sculpture Studio without Kiln																											
Television Production Studio																											
Medium Intensity Artisanal Uses - Less than Building-Use area less than 7,500 sq. ft and/or medium intensity impact uses.	SF-R	SF-TF 14	MH-7	MF-20	MF-30	MF-40	MU-E Lake & Lucerne	MU-E 1st & 2nd Edges	MU-E Federal Hwy	MU-E 10th & 6th	DT	MU-FH	MU-DH	MU-W Lake & 10th	TOD-E	TOD-W	NC	BAC	AI	I-POC	PD	P	PROS	CON	FEC [Delete Column]	Hotel [Delete Column]	
Artisanal Foods																											
Artisanal Manufacturing																											
Artisan or Art Studio																											
Arts and Crafts Studio																											
Art or Photography Gallery																											
Bakery, Retail																											
Bakery, Commercial																											
Book Binding																											
Ceramics or Pottery Studio with Kiln																											
Ceramics or Pottery Studio without Kiln																											
Commissary Kitchen																											
Culinary Arts																											
Custom Jewelry Studio																											
Indoor Motion Pictures (more than three (3) Screens)																											
Performing Arts Theater (less than 250 seats)																											
Perfumery																											
Photography Studio																											
Pottery Shop/Studio																											
Recording Studio																											
Sculpture Studio with Kiln																											
Sculpture Studio without Kiln																											
Stationery/Engraver																											
Low Intensity Artisanal Uses - Building-Use area less than 2,500 sq. ft and low intensity impact uses.	SF-R	SF-TF 14	MH-7	MF-20	MF-30	MF-40	MU-E Lake & Lucerne	MU-E 1st & 2nd Edges	MU-E Federal Hwy	MU-E 10th & 6th	DT	MU-FH	MU-DH	MU-W Lake & 10th	TOD-E	TOD-W	NC	BAC	AI	I-POC	PD	P	PROS	CON	FEC [Delete Column]	Hotel [Delete Column]	
Artisan or Art Studio																											
Arts and Crafts Studio																											
Art or Photography Gallery																											
Bakery, Retail																											
Ceramics or Pottery Studio with Kiln																											
Ceramics or Pottery Studio without Kiln																											
Commissary Kitchen																											
Craft Gallery																											
Custom Jewelry Fabrication/Studio																											
Photography Studio																											
Photography gallery (including picture framing)																											
Pottery Shop/Studio																											
Recording Studio																											
Sculpture Studio with Kiln																											
Sculpture Studio w/o Kiln																											
Stained Glass Studio																											

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PUBLIC																											
High Intensity Public Uses - Building Use area greater than 7,500 sq. ft and/or high intensity impact uses.	SF-R	SF-TF 14	MH-7	MF-20	MF-30	MF-40	MU-E Lake & Lucerne	MU-E 1st & 2nd Edges	MU-E Federal Hwy	MU-E 10th & 6th	DT	MU-FH	MU-DH	MU-W Lake & 10th	TOD-E	TOD-W	NC	BAC	AI	I-POC	PD	P	PROS	CON	FEC [Delete Column]	Hotel [Delete Column]	
Amphitheaters - Greater than 250 Seats																		P				C	C				
Community Gardens																						C	C				
Light Utility Facility Services	C	C		C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C			C	C	C	€	€
Recreation Public (Indoor) with Team Sports Facilities														C				P				C	C				
Recreation Public (Indoor) w/o Team Sports Facilities														€				P				C	C				
Recreation Public (Outdoor) with Team Sports Facilities																						C	C	C			
Recreation Public (Outdoor) w/o Team Sports Facilities	C	C		C	C	C	C	C	C	C	C	C	C	C	C	C		P					C	C	C		
Recreation Park (Active) with Team Sports Facilities																						C	C	C			
Sports Arenas														C								C					
Medium Intensity Public Uses - Active - Less than Building Use area less than 7,500 sq. ft and/or medium intensity impact uses.	SF-R	SF-TF 14	MH-7	MF-20	MF-30	MF-40	MU-E Lake & Lucerne	MU-E 1st & 2nd Edges	MU-E Federal Hwy	MU-E 10th & 6th	DT	MU-FH	MU-DH	MU-W Lake & 10th	TOD-E	TOD-W	NC	BAC	AI	I-POC	PD	P	PROS	CON	FEC [Delete Column]	Hotel [Delete Column]	
Amphitheaters - Less than 250 Seats																		P					C	C	C		
Community Gardens																							C	C			
Concession Stands in Conjunction with recreational facilities																		P					C	C	C		
Light Utility Facility Services	C	C		C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C			C	C	C	€	€
Recreation Public (Indoor) with Team Sports Facilities														C				P				C	C				
Recreation Public (Indoor) w/o Team Sports Facilities														€				P					C	C			
Recreation Public (Outdoor) with Team Sports Facilities																						C	C	C			
Recreation Public (Outdoor) w/o Team Sports Facilities	C	C		C	C	C	C	C	C	C	C	C	C	C	C	C		P					C	C	C		
Recreation Park (Passive) - More than Two (2) Acres	C	C		C	C	C	C	C	C	C	C	C	C	C	C	C		P					C	C	C		
Low Intensity Public Uses - Passive - Building Use area Less than 2,500 sq. ft and low intensity impact uses.	SF-R	SF-TF 14	MH-7	MF-20	MF-30	MF-40	MU-E Lake & Lucerne	MU-E 1st & 2nd Edges	MU-E Federal Hwy	MU-E 10th & 6th	DT	MU-FH	MU-DH	MU-W Lake & 10th	TOD-E	TOD-W	NC	BAC	AI	I-POC	PD	P	PROS	CON	FEC [Delete Column]	Hotel [Delete Column]	
Nature, Foot and Bicycle Trails	P	P		P	P													P				P	P	P	P		
Pocket Parks	P	P		P	P		P	P	P	P	P	P	P	P	P	P		P	P			P	P	P			
Picnic facilities, Play-Grounds, Passive Recreational, Restrooms																		P				P	P	P			
Public and Private Nature Preserves	P	P		P	P													P					P	P	P		
Recreation Park (Passive) - Less than Two (2) Acres	P	P		P	P	P	P	P	P	P	P	P	P	P				P	P			P	P	P			

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SPECIALTY																												
High Intensity Specialty Uses - <u>Building Use area greater than 7,500 sq. ft and/or high intensity impact uses.</u>	SF-R	SF-TF 14	MH-7	MF-20	MF-30	MF-40	MU-E Lake & Lucerne	MU-E 1st & 2nd Edges	MU-E Federal Hwy	MU-E 10th & 6th	DT	MU-FH	MU-DH	MU-W Lake & 10th	TOD-E	TOD-W	NC	BAC	AI	I-POC	PD	P	PROS	CON	FEC [Delete Column]	Hotel [Delete Column]		
Adult Establishments																					C							
Flea Market							C	C	C	C	C	C	C	C	C	C					C		C					
Outdoor Farmer's Market																					C		C					
Mobile food vending courts																					C		C					
Passenger Railroads/Transit															C	C							C					
Private Club									C				C	C									C					
Power Plants																						C		C				
Public Safety Facilities																							C					
Radio and Television Broadcasting Studios w/ Communication Towers														C									C		C			
Shooting Ranges																							C					
Special Interest Automobile Dealership													C								C		C					
Sports Arenas, (Public/Private)(Indoor/Outdoor)														C									C					
Taxicab Companies																							C					
Taxidermist																							C					
Water Towers																								C				
Wireless Communication Facilities										C	C	C	C	C	C	C					C	C	C					
Medium Intensity Specialty Uses - <u>Less than Building Use less than 7,500 sq. ft and/or medium intensity impact uses.</u>	SF-R	SF-TF 14	MH-7	MF-20	MF-30	MF-40	MU-E Lake & Lucerne	MU-E 1st & 2nd Edges	MU-E Federal Hwy	MU-E 10th & 6th	DT	MU-FH	MU-DH	MU-W Lake & 10th	TOD-E	TOD-W	NC	BAC	AI	I-POC	PD	P	PROS	CON	FEC [Delete Column]	Hotel [Delete Column]		
Adult Establishments																						C						
Cemetery/Mausoleum(Public/Private)	C	C		C	C	C						C											C	C				
Private Club									A				A	A										C				
Produce Market							A			A	A		A	A	A	A							A					
Radio and Television Broadcasting Studios w/o Communication Towers							A			A	A		A	A	A	A					A	A		C				
Special Interest Automobile Dealership													A								A	A						
Temporary Help Marshalling and Dispatch Services																							C					
Non-motorized recreational equipment rental (canoes, kayaks, paddle boards, etc)																							C	C	C			
Outdoor Farmer's Market																							C					
Flea Market																							C					
Mobile food vending courts																							C					
Low Intensity Specialty Uses - <u>Building Use area less than 2,500 sq. ft and low intensity impact uses.</u>	SF-R	SF-TF 14	MH-7	MF-20	MF-30	MF-40	MU-E Lake & Lucerne	MU-E 1st & 2nd Edges	MU-E Federal Hwy	MU-E 10th & 6th	DT	MU-FH	MU-DH	MU-W Lake & 10th	TOD-E	TOD-W	NC	BAC	AI	I-POC	PD	P	PROS	CON	FEC [Delete Column]	Hotel [Delete Column]		
Essential Services	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P			
Open Space Conservation Areas	P	P	P	P																				P	P	P		
Produce Market							A			A	A		A	A	A	A							A					
Private Club									P				P	P														
Special Interest Automobile Dealership													P								P	P						
Water Conservation Areas	P	P	P	P																				P	P	P		

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City Of Lake Worth
Department for Community Sustainability
Planning, Zoning and Historic Preservation Division
1900 Second Avenue North · Lake Worth · Florida 33461 · Phone: 561-586-1687

DATE: July 1, 2020 & July 9, 2020

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

FROM: William Waters, Director Community Sustainability

MEETING: July 8, 2020 and July 15, 2020

SUBJECT: **PZB / HRPB Project Number 20-00400003**: Consideration of an ordinance to amend Chapter 23 “Land Development Regulations” that includes changes to add new uses and to consolidate and clarify existing uses, including modifications to definitions, use tables, and development standards.

BACKGROUND/ PROPOSAL:

On March 5, 2020, the City Commission held a workshop on the prioritization of amendments to the City’s Land Development Regulations (LDR) that were previously identified by staff and the Commission. The subject LDR amendments address a second series of prioritized items identified at the March meeting. These proposed amendments are all focused on uses, performance standard for uses, and the permitted use table overhaul. The proposed amendments to the Land Development Regulations have been reviewed by staff for consistency with the City’s Comprehensive Plan. A summary of each component in the draft ordinance is also provided.

The proposed LDR amendments for Chapter 23 will modify the following sections of the City’s Code of Ordinances:

- Article 1- Section 23.1-12 – Definitions
- Article 3 - Section 23.3-6 – Use Tables
- Article 4 - Section 23.4-13 – Administrative Uses and Conditional Uses

Definitions: The proposed amendments provide clarity and with regard to numerous use types, intensity of uses, and new uses.

Use Tables: The proposed amendments provide for a major overhaul of the current permitted use tables including consolidation of uses, clarifying level of review, adding several new uses, and deleting redundant or unnecessary uses.

Administrative Uses and Conditional Uses: The proposed amendments provide additional performance standards for vehicular and industrial uses as well as new standards for specialty storage, money business services, and breweries, distilleries, micro-breweries, micro-distilleries, specialty breweries and specialty distilleries.

STAFF RECOMMENDATION:

Staff recommends that the Planning and Zoning Board and Historic Resources Preservation Board recommend that the City Commission to adopt the proposed LDR text amendments included in PZB/HRPB Project Number 20-00400003

POTENTIAL MOTION:

I move to RECOMMEND/NOT RECOMMEND TO THE CITY COMMISSION **TO ADOPT** the proposed LDR text amendments included in PZB / HRPB Project Number 20-00400003 (Ordinance 2020-12).

Attachments

- A. Draft Ordinance 2020-12

EXECUTIVE BRIEF REGULAR MEETING

AGENDA DATE: August 18 2020

DEPARTMENT: Commission

TITLE:

Agreement with Racial Equity Institute to provide consulting services

**BACKUP MATERIAL WILL BE AVAILABLE FOR THIS ITEM
ON MONDAY**

ATTACHMENT(S):

Fiscal Impact Analysis

FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

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

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

Account Number	Account Description	Project Number	FY20 Budget	Current Balance	Agenda Expenditure	Balance

C. Department Fiscal Review: _____

EXECUTIVE BRIEF REGULAR MEETING

AGENDA DATE: August 18, 2020

DEPARTMENT: Electric Utility

TITLE:

AT&T and City of Lake Worth Beach Settlement Agreement and Joint Use Pole Attachment Agreement

SUMMARY:

Settlement Agreement and Joint Use Pole Attachment Agreement with AT&T for unauthorized attachments and for installation and maintenance of wireline attachments on the City's utility poles

BACKGROUND AND JUSTIFICATION:

The City has had Pole Attachment Agreements with communications companies referred to as franchise Utility Agency Owners (UAO's) such as ATT and Comcast, for many decades. These agreements had expired and/or were not up to date in regards to pole counts, rates, operating responsibilities, etc. In the case of ATT, City and ATT both own poles and are attached to each other's poles. A "netting" process was and is used to calculate payments owed to each other. Over a period of multiple decades both City and ATT failed to maintain accurate pole counts and notifications to each other on attachments and pole replacements. This resulted in inaccurate counts which were further exasperated by mass replacements of poles during storm recovery efforts, aged pole failures, and motor vehicles accidents.

On April 3, 2018, the City issued a Task Order to Wantman Group, Inc., (WGI) under RFQ 18-303 to complete an audit of utility poles in the City's electric utility service territory to quantify the number of UAO's attached to each pole. The results of the audit indicated that AT&T was attached to 5,955 utility poles owned by the City, and the City was attached to 1,224 poles owned by AT&T. In August of 2019, AT&T conducted its own audit of 1268 poles which they owned. Results of their findings showed that City had attached to 1260 AT&T owned poles, and of these approximately 830 poles were of undetermined ownership. The audit results and findings completed by each party were mutually shared for review and/or concurrence.

Over the past two years, the City's Electric Utility in conjunction with the City's legal team, has worked with AT&T on a Settlement Agreement and a new Joint Use Pole Attachment Agreement. Prior to 2018, invoicing was based on 4,267 City owned poles to which AT&T was attached at a rate of \$15.78 per pole and 1,362 AT&T owned poles to which City was attached at a rate of \$19.73 per pole.

Under the terms of the Settlement Agreement, the City will recover five years of pole attachment fees for the additional 1,688 unauthorized attachments, in the amount of \$79,909.92. In addition, the City will also receive \$16,000 from AT&T as reimbursement

for ATT's share of the pole audit undertaken by WGI. The one-time revenue to the City as an outcome of the settlement with AT&T is \$95,909.92.

The new Pole Attachment Agreement requires AT&T to pay the City \$16.50 per pole annually and the City to pay AT&T \$20.68 annually per pole for poles in which either party is attached. The new pole attachment rates are among the most competitive in the state based on a survey of rates charged by other municipal electric utilities conducted by the Florida Municipal Electric Association. As a result of the new pole attachment agreement with ATT, the City's net revenues from pole attachments by AT&T will increase from \$40,461 to \$57,329 annually.

The new Pole Attachment Agreement also includes: new construction standards for poles that are consistent with the City's standards for new poles under the System Hardening and Reliability Improvement Project (SHRIP), improved communication and notification processes between the parties, and well-defined emergency response roles. Agreeing on our updated construction standards will help ensure that eventually all utility poles in the City's electric service territory will be hardened to withstand Category 5 wind conditions.

MOTION:

Move to approve/disapprove the Settlement Agreement and Joint Use Pole Attachment Agreement with AT&T for unauthorized attachments and the new Joint Use Pole Attachment Agreement for FY 2020 in the amount \$95,909.92.

ATTACHMENT(S):

Fiscal Impact Analysis
WGI Pole Attachment Audit
Settlement Agreement
Joint Use Agreement

FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2020	2021	2022	2023	2024
Capital Expenditures	0	0	0	0	0
Operating Expenditures	0	0	0	0	0
External Revenues	\$95,909	\$57,329	\$57,329	\$57,329	\$57,329
Program Income	0	0	0	0	0
In-kind Match	0	0	0	0	0
Net Fiscal Impact	\$95,909	\$57,329	\$57,329	\$57,329	\$57,329
No. of Addn'l Full-Time Employee Positions	0	0	0	0	0

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

Account Number	Account Description	Estimated Revenue	YTD Revenue	Agenda Revenue	Balance
401-0000-341-90-90	Government chrges/Fees Misc	\$246,600	\$25,381	\$95,909	\$367,890



SURVEYORS REPORT (SPECIFIC PURPOSE SURVEY)
City of Lake Worth Citywide Power Pole Inventory Collection
RFQ-18-303 - Task Work Order NO.1
City of Lake Worth, Palm Beach County, FL

Prepared by
Wantman Group, Inc.

Objective:

The City of Lake Worth is located in Palm Beach County, Florida, and spans approximately 6.5 square miles. Lake Worth Electric Utilities provides electric service to the city's 40,000 residents and nearly 12,000 homes through its city maintained electric distribution and service network. Over the course of many years, various utility agency owners (UAO's) expanded their own service networks by adding attachments to city-owned utility and power poles. This was done, in many instances, without the UAO obtaining the necessary city permits or paying required fees.

The primary objective of the project was to identify UAO attachments on Lake Worth Electric Utilities power and utility poles located throughout the city, with the specific objective of quantifying pole attachments by UAO. The scope of work included collection or verification of pole locations, physical observation and documentation of pole attachment conditions, determining the number of attachments per pole, the owner of each attachment on each pole, and providing the necessary utility records research and UAO coordination to support these efforts. WGI took a four-phased approach to achieve the project objective:

- 1) Utility record research
- 2) Field data collection (Terrestrial Mobile Lidar)
- 3) Data extraction and conditions documentation
- 4) Quality Control - facility owner verification

Project Approach

Planning and Initial Project Setup

The basis of the project was the city's Electric Distribution ESRI ArcGIS File Geodatabase, containing approximately 12,000 utility, power, and light poles. In order to ensure all poles with non-city owned attachments in the city were collected and accounted for in the project, the city was divided into eight separate collection zones. The city's file geodatabase was parsed to only include power poles, and a separate geodatabase was created for each collection zone to allow for multiple user data extraction and simultaneous attribute data table updates. Collection zones were determined based on density of facilities, collection routes/data gathering methodology, city priority areas, and safety. A field data dictionary of new attributes was then developed to facilitate collection of pole attributes required to achieve project objectives:

- Number of Attachments
- Attachment owner
- Status of Pole (Existing, New Pole, Removed)
- Picture ID (photo of pole with attachments)
- Comments

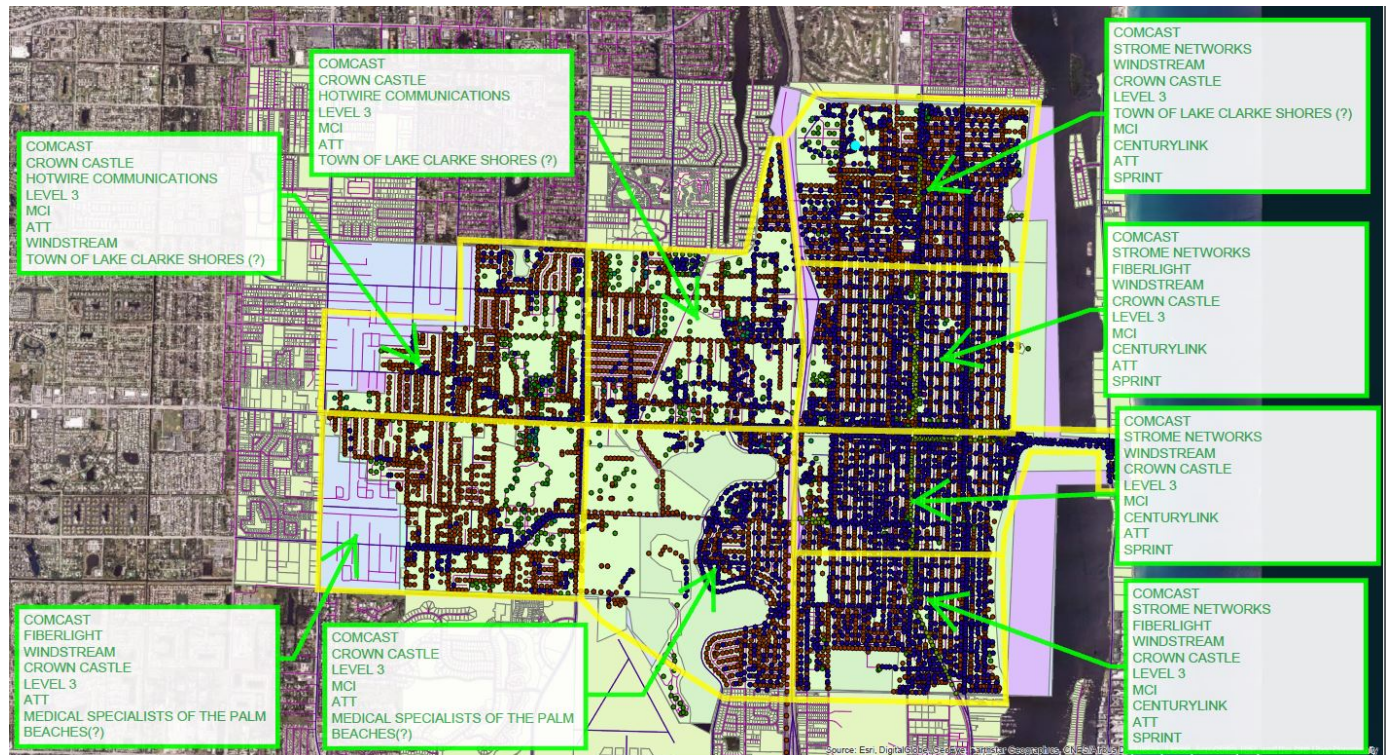
Utility Records Research:

Sunshine 811 provides all participating utility owners within a given project area. A Sunshine 811 design ticket was obtained for each collection zone, with a singular focus on aerial facilities. UAO's as identified in the design ticket were then transcribed into the matrix below, clearly articulating which UAO's maintain facilities in each collection zone and identifying the contact person for each UAO.

UTILITY AGENCY OWNER	Response	Zone 1	Zone 2	Zone 3	Zone 4	Zone 5	Zone 6	Zone 7	Zone 8	Comments
COMCAST-WPB Contact: TONY SPRINGSTEEL Day: (561) 804 0973 Alt: (772) 321 3425 Utility Type: CABLE TV	NO	✓	✓	✓	✓	✓	✓	✓	✓	
A T & T/ DISTRIBUTION Contact: DINO FARRUGGIO Day: (561) 997 - 0240 Utility Type: TELEPHONE	NO	✓	✓	✓	✓	✓	✓	✓	✓	
LEVEL 3 COMMUNICATIONS NETWORK RELATIONS Day: (877) 366 - 8344 x2 Contact: FIBER OPTIC	YES	✓	✓	✓	✓	✓	✓	✓	✓	
CROWN CASTLE FIBER Contact: DANNY HASKETT Day: (786) 610 - 7073 Alt: (786) 246 - 7827 Utility Type: FIBER	YES									Not in Lake Worth Limits
TOWN OF LAKE CLARKE SHORES Contact: DAMON GAMMONS Day: (561) 964 - 1515 x1113 Utility Type: UNKNOWN	NO	✓						✓	✓	
MCI Contact: DEAN BOYERS Day: (469) 886 - 4238 Utility Type: COMMUNICATIONS / FIBER OPTIC	NO	✓	✓	✓	✓	✓		✓	✓	
FIBERLIGHT LLC. Contact: TROY GAETA Day: (678) 824 - 6630 Alt: (954) 213 - 3367 Utility Type: FIBER OPTICS	NO		✓		✓		✓			
MEDICAL SPECIALISTS OF THE PALM BEACHES Contact: BRAD MARTIN Day: (561) 649 - 7000 x1126 Alt: (561) 436 - 8706 Utility Type: FIBER	NO					✓	✓			
WINDSTREAM COMMUNICATIONS Contact: LOCATE DESK Day: (800) 289 - 1901 Utility Type: FIBER OPTIC	NO	✓	✓	✓	✓		✓			
HOTWIRE COMMUNICATIONS Contact: WALTER DAVILA Day: (954) 699 - 0900 Utility Type: FIBER, TELEPHONE, CATV, COAX	NO							✓	✓	

WGI then made utility contacts with each UAO representative identified in the matrix. Utility records, as required to support the project objective, were then requested from each contact at each UAO. These records included design plans, record drawings, utility atlas plans, permit plans, marked city road atlas sheets, and the like. The records were

correlated to each collection zone in order to provide field and office technicians with anticipated UAO facilities within each zone.



Field Data Collection

A Leica Pegasus 2 Terrestrial Mobile LIDAR Sensor, a portable survey grade mobile mapping system, was deployed to each collection zone. The TML unit is built on the ESRI ArcGIS platform. All accessible RW and utility easements were scanned and approximately 260 miles of 3D point cloud data with corresponding Google Earth-style Street view digital imagery was collected.

Post processing of field collected LiDAR and Imagery

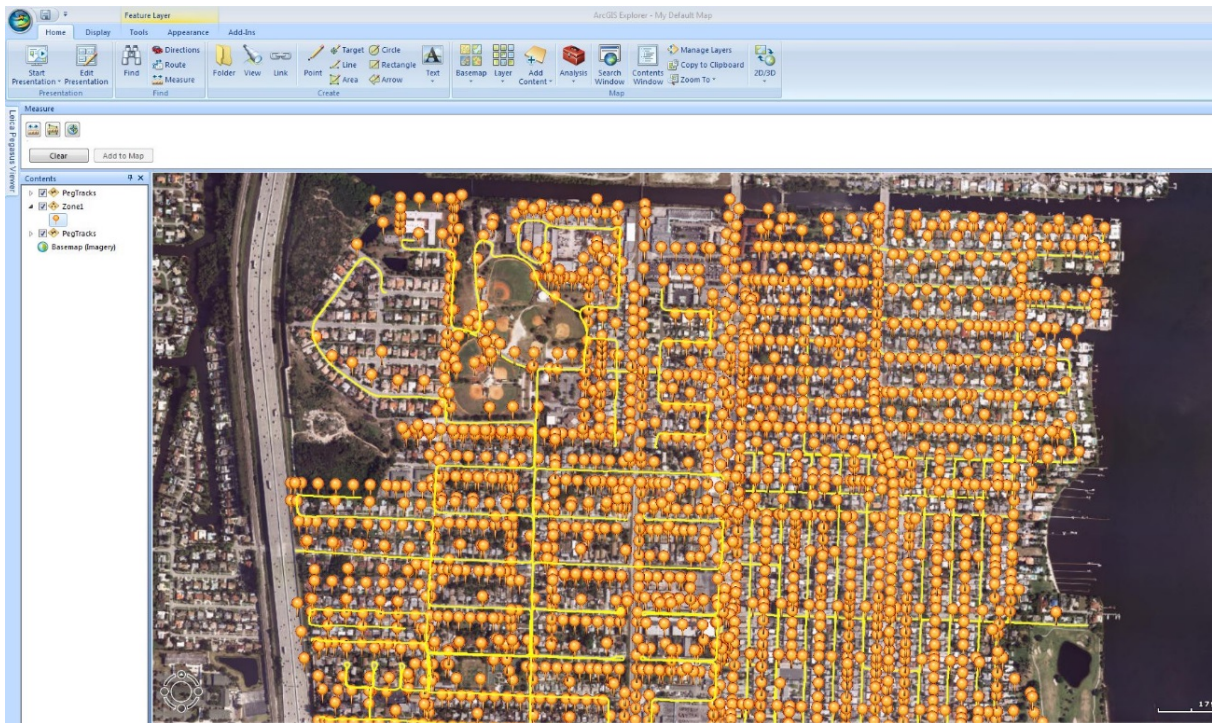
Initial TML trajectories were processed using NovAtel Inertial Explorer. Raw Global Satellite Navigation (GNSS) observations, Inertial Measurement Unit (IMU) observations, and speed sensor observations were processed to derive initial trajectory positions at this stage of the post-processing workflow of the project. Leica Pegasus Auto P was then used to link high dynamic camera images, point cloud data, and spherical imagery to the post-processed trajectory positions. Point clouds and imagery were reviewed by WGI's technical staff to ensure proper exposure of imagery and correct correlation of imagery and point cloud data to their respective trajectories and positions.

Office Data Extraction:

Utility poles lying within the projects limits that were identifiable in the final point clouds and imagery were viewed using ArcGIS Explorer with Leica Pegasus Viewer Add-In, and attributes of the poles were populated using ArcMap Desktop 10.3.1. Still frame photos were retrieved from the Pegasus Viewer street view imagery of each individual pole and its attachments. The following steps detail the means by which attribute data was collected and stored in the geodatabase:

- Identify Pole Location/Owner:** The Lake Worth geodatabase was reviewed along with the field collected pole locations from the Leica Pegasus imagery. Pole locations as per WGI's field collection were correlated to the Lake Worth ESRI file geodatabase. It was determined that many Lake Worth owned poles have been removed, and many poles have since been constructed since the database was developed. Poles that no

longer exist were removed from the geodatabase. New poles as identified in WGI's field collection were added to the file geodatabase. Approximately 1,600 poles were removed, while approximately 240 poles were added.



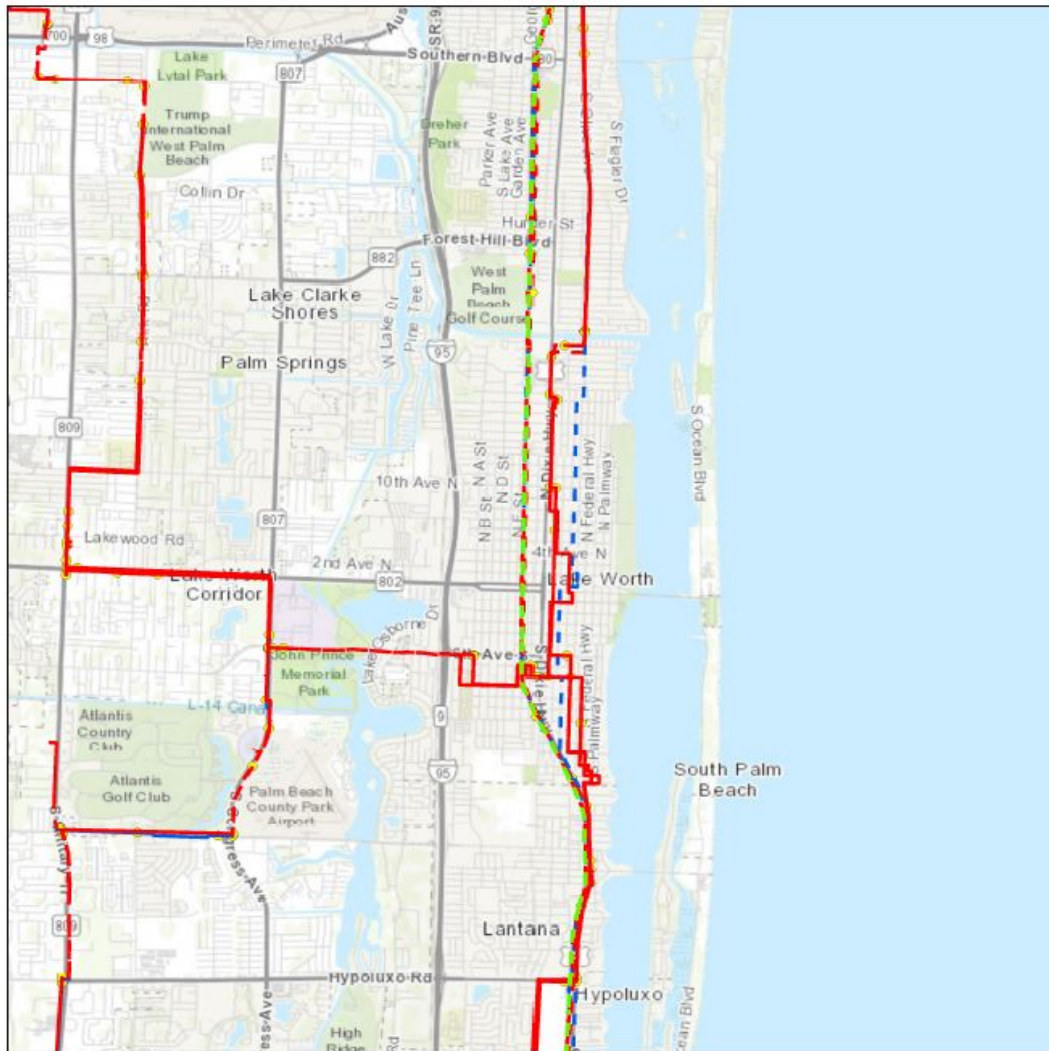
Zone 1 Tracks from Leica Pegasus Mobile Mapper (yellow lines) and Zone 1 shapefile of poles in ArcGIS Explorer.

- Identify number/type of attachments:** Before populating of data attributes could begin in the file geodatabase, our utility staff briefed our GIS technicians on how specific attachments are determined. The photos below highlight some examples of cable television and telecommunications attachments. Clear direction was provided as to the difference between Lake Worth Electric Utilities facilities and the telecommunications/cable television attachments that were the focus of the project. Additionally, what constitutes a separate attachment was also a focus. In each of the examples below, three separate attachments are depicted.



- Identify Utility Agency Owners and respective attachments:** Review the UAO provided record information vis-a-vis field observations, photographs, and additional field evidence. Where UAO provided information was insufficient to make a determination, WGI coordinated directly with UAO representatives to confirm facility ownership. WGI did not receive response from Comcast and AT&T but their presence was field verified to be throughout the project limits. WGI received response from Level 3 and the markups provided were compared to what was determined in the field.

CenturyLink and Level 3 Network



May 24, 2018

1:72,224

CTL National UG

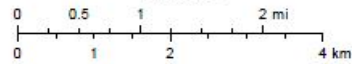
--- CTL National Owned Underground Routes

Level 3 Facilities

— Aerial
 - Underground

Non Level 3 Facilities

— Aerial
 - Underground
 ◆ Splice-Point

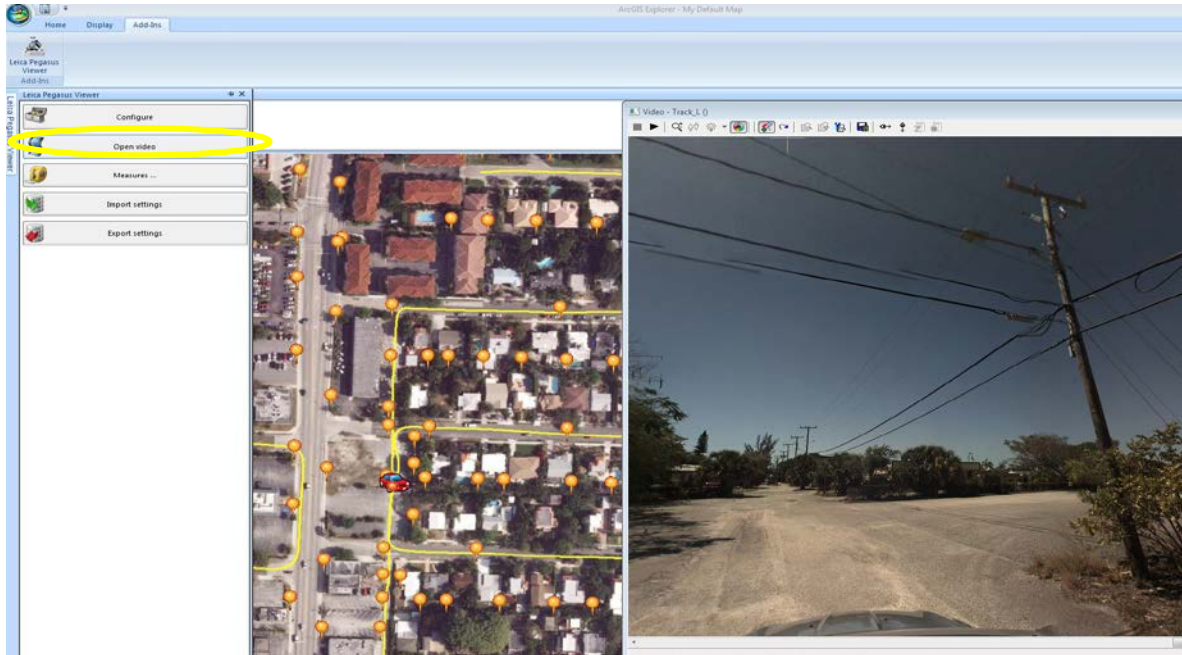


Level 3 Data is Highly Confidential and Proprietary.
 Sources: Esri, HERE, Garmin, Intermap, Increment P Corp., GEBCO, UGGS, FAO, NPS, NRCAN, Geobase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), swisstopo, © OpenStreetMap contributors, and the GIS User Community

WGI received marked plans and utility distribution atlas from Level 3 Communications and Century Link. Century Link indicated that no aerial facilities were present in any collection zone, and they were not

included in field deployment. Level 3 Aerial lines (Red) were verified in the field by observing identification plates, drop shields, and other identifiers indicating ownership.

- **Extract digital photo of pole(s) and create separate folder of photos:**



Street view of Leica Pegasus imagery at corresponding pole from Zone 1 trajectory. ESRI ArcMap was used to review and obtain pole imagery at specific pole locations along each trajectory. The photo is extracted at its relative position along the TML collection trajectory, as depicted in the corresponding imagery on the right. Attachments are clearly identified and catalogued in the file geodatabase, and the photo is stored in a discrete and correlated location.

- **Final QC in Office and Field visit obscured poles / identify additional field evidence:** Upon initial extraction of all poles collected during the initial TML deployment, it was determined that approximately 200 poles per zone were obscured in the collection or inaccessible. Reasonable effort was made to coordinate with private property owners to secure access where poles are placed in controlled access (fences, yards, gated communities, and the like). Once areas of TML obscurity were determined, field crews were deployed with Google Earth KMZ files per zone of each missing pole, the accurate location, and the corresponding pole ID number in GIS. Attributes and photos were collected of each pole and provided to technicians to attribute in the file geodatabase. Once all poles were visited, pole locations were back checked against the Lake Worth file geodatabase, UAO provided record information, imagery, and confirmed attachments pre the field investigation.

Constant utility coordination was made with the UAO's throughout the project cycle. AT&T, Comcast and Level 3 were verified to be within the project limits. Responses were received from Crown Castle, but their presence in Lake Worth was beyond the limits of this project. Field verification of Level 3 areas from the received markups was the final step of the QC process. Fiber optic markers were examined and most Level 3 locations were confirmed, but many of their marked Aerial areas were not accurate in the field.

Deliverables

One merged geodatabase of all collection zones, a corresponding Microsoft Excel spreadsheet detailing the pole ID, and attachment attributes from the geodatabase, and a corresponding folder of photos divided by zone.

Summary:

WGI's final Lake Worth Pole Inventory geodatabase reflected 10,211 existing poles, 235 new poles added to the Lake Worth Database, 1,617 poles no longer present to be removed and 50 poles that were not accessible/obscured after field visits (in restricted areas, obscured by trees). **WGI's investigation yielded a 99.6% inclusion rate for all poles in the Lake Worth Electric Utility Network.** The poles that could not be confirmed after field visits are attributed as N (No) in the 'Visited' field in the final file geodatabase. The final number of utility poles present in the City of Lake Worth is 12,113 poles. AT&T has confirmed presence on 5,955 City of Lake Worth utility poles, with 6,494 total attachments. Comcast has confirmed presence on 7,213 City of Lake Worth utility poles, with 7,479 total attachments. Level 3 has confirmed presence on 448 City of Lake Worth utility poles, with 448 total attachments.

Issues and Concerns:

Due to lack of response from several UAO's (Fiberlight, Strome Networks, Windstream, MCI, Century Link, Sprint, Lake Clark Shores, Hotwire), utility poles predetermined to have certain attachments in different zones are not reflected in the geodatabase. Most of these areas have poles with multiple attachments, but ownership could not be determined accurately. Locations of poles with 3 or more attachments were field visited with the intent of finding new UAO attachments. However, due to the amount of poles within the limits and no UAO markups, these could not be verified with complete certainty. Some of the aforementioned UAO's may also be potential leasees of Comcast, AT&T and/or Level 3, but this also cannot be confirmed.

In the provided City of Lake Worth geodatabase, approximately 216 utility poles are shown as not Lake Worth owned. WGI did not confirm the status of utility poles not owned by the City of Lake Worth.

Certification:

(1) This survey meets all applicable requirements of the Florida Standards of Practice as contained in Chapter 5J-17 of Florida's Administrative Code, pursuant to section 472.027 of the Florida Statutes. (2) This report is not valid without the signature and the original raised seal of the Florida Surveyor and Mapper in responsible charge. (3) Additions or deletions to this data by anyone other than the signing party are prohibited without written consent of the signing party. (4) This report stands together with the digital submittal for FPID 435546-1-32-01, digitally signed and sealed under rule 5J-17.0062 FAC, and neither is complete or valid without the other. (5) Quality Control (QC) was conducted on this project and found to meet specifications.

Professional Surveyor and Mapper in Responsible Charge:

Samuel T. Hall
Florida Professional Surveyor and Mapper
License Number 6644

For the Firm of:

Wantman Group, Incorporated, LB 7055
2035 Vista Parkway
West Palm Beach, FL 33411

SETTLEMENT AGREEMENT AND RELEASE

THE CITY OF LAKE WORTH BEACH (“**City**”) and BELLSOUTH TELECOMMUNICATIONS, LLC, D/B/A AT&T FLORIDA (“**AT&T**”) collectively “Parties,” for settlement purposes and through their undersigned agents agree as follows:

WHEREAS, the City and AT&T currently have a “joint use” arrangement to allow one another to hang wireline facilities on one another’s utility poles; and

WHEREAS, although the Parties did not have an executed Joint Use Agreement, the Parties have been operating under the terms of an unexecuted agreement, General Agreement for Joint Use of Poles, dated January 1, 2006 (the “Unexecuted Agreement”); and

WHEREAS, in accordance with the Unexecuted Agreement, AT&T has been paying to City an annual rental fee of \$15.78 for the use of each electric pole and City has been paying AT&T \$19.73 for the use of each telephone pole; and

WHEREAS, as of January 1, 2006, the City owned 4,267 electric poles and AT&T owned 1,362 telephone poles; and

WHEREAS, In August of 2018, the City completed an inventory of its electric poles in which AT&T did not participate, and determined that AT&T now has wires attached to 5,955 of City’s electric poles (“Inventory Results”); and

WHEREAS AT&T conducted an audit of the Inventory Results and has agreed to the use of them; and

WHEREAS, AT&T intends to conduct an inventory of City’s attachments to AT&T’s poles; and

WHEREAS, the City believes that AT&T owes the City remuneration for at least 5 years of unpaid back rent due to the increased amount of City electric poles to which AT&T has attached since 2006 (“Back Rent”); and

WHEREAS, the City also believes that AT&T owes the City for a portion of the costs of the pole inventory conducted by the City in 2018 (“Inventory Costs”); and

WHEREAS, AT&T disputes that it owes Back Rent in the amount claimed by City and disputes that it owes City for Inventory Costs; and

WHEREAS, the City and AT&T have agreed to settle the matter according to the terms and conditions set forth in this Settlement Agreement and Release (“Settlement Agreement”).

NOW THEREFORE, in consideration of the mutual promises, covenants and conditions contained herein, the sufficiency of which is acknowledged by both Parties, the Parties hereby enter into this Settlement Agreement and agree as follows:

1. **Payment for Back Rent.** AT&T shall pay City \$106,546.56 as compensation for the additional 1,688 Lake Worth poles to which AT&T is attached, as per Lake Worth's inventory. This payment consists of: (a) \$26,636.64 attributable to 2018 rent for the additional poles, already paid as part of the payment of the invoice for 2018, and (b) a supplemental payment, no later than forty-five (45) days after the final approval by the City Commission of this Settlement Agreement, of \$79,909.92 (which is \$106,546.56 less the \$26,636.64 attributable to 2018 rent for the additional poles).

2. **Payment for Inventory Costs.**

a. **City Inventory.** AT&T shall pay City \$16,000 as AT&T's share of the inventory costs, no later than forty-five (45) days after the final approval by the City Commission of this Settlement Agreement.

b. **AT&T Inventory.** Following completion of AT&T's inventory of its poles, AT&T shall provide the City with a copy of the audit. AT&T will invoice City for its share of that inventory based on the proportion of AT&T poles attached to by City, out of all attachers, including AT&T. City shall pay such invoice within forty five (45) days after receipt of the copy of the audit.

3. **Pole Attachment Agreement.** The parties have negotiated an agreement to govern the rates, terms and conditions of AT&T's access to the City's electric poles ("Joint Use Pole Attachment Agreement" or the "Joint Use Agreement"), attached hereto as Exhibit A, which awaits final City commission approval. Pursuant to the Joint Use Agreement, AT&T shall pay an annual rental fee of \$16.50 per pole for the first 5 years of the Joint Use Agreement. The City shall pay AT&T \$20.68 per pole for every AT&T pole to which the City is attached. In the event it is determined, pursuant a future inventory, that AT&T is attached to fewer than 5,955 poles, the pole count upon which rent is assessed shall be reduced.

4. **Mutual Limited Release.** Upon the final approval by the City commission of this Settlement Agreement, **each Party** and its respective directors, officers, shareholders, agents, representatives, employees, related or affiliated companies, subsidiaries, beneficiaries, heirs, predecessors, successors, assigns, and executors ("Releasing Party") hereby mutually releases **the other Party** and its respective directors, officers, shareholders, agents, representatives, employees, related or affiliated companies, subsidiaries, beneficiaries, heirs, predecessors, successors, assigns, and executors ("Released Party") from and against any and all claims, rights, damages, actions or liabilities, at law or in equity, known or unknown, matured or unmatured, foreseeable or unforeseeable, which the Releasing Party now has or ever had against the Released Party arising out of or related to compensation for Back Rent and Inventory Costs and the Inventory Results ("Disputes") prior to the date of this settlement except as

provided herein. The Parties acknowledge and agree that although they may hereafter discover facts in addition to or different from those which they know or believe to be true as of the Effective Date, it is their respective and mutual intentions hereby to fully, finally and forever, with respect to each other, settle and release the Disputes and, in furtherance of such intention, the releases shall be and remain in effect notwithstanding the discovery or existence of any such additional or different facts. Each of the Parties expressly waives whatever rights it may have under any applicable law providing that a general release does not extend to claims that a party does not know or suspect to exist in its favor as of the Effective Date, and do so under the advice of counsel and in full understanding of the significance of that waiver. Nothing in this Agreement shall be construed as a waiver of sovereign immunity for the City beyond the waiver provided in section 768.28, Florida Statutes.

5. **Entire Agreement.** This Agreement sets forth the entire understanding of the Parties with respect to the matters set forth herein, and no verbal or written warranties or representations have been made or have been relied upon which do not appear in writing within this Agreement. Any reliance on verbal or other representations which do not appear within this Agreement shall be deemed unjustifiable reliance.

6. **Modification of Agreement.** This Agreement may not be amended or modified except by written instrument signed by all of the Parties hereto, and the Parties agree that this provision may not be waived except in writing.

7. **Waiver.** The rights of the Parties under this Agreement are to be considered cumulative, and the failure on the part of any party to exercise or enforce properly or promptly any rights arising out of this Agreement shall not operate to forfeit or serve as a waiver of any of those or other rights. The waiver by one party of the performance of any covenant or condition herein shall not invalidate this Agreement, nor shall it be considered to be a waiver by such party of any other covenant or condition herein. The waiver by any party of the time for performing any act shall not constitute a waiver of the time for performing any other act or an identical act required to be performed at a later time.

8. **Cooperation.** The Parties hereto agree to cooperate fully in the execution of any documents or performance in any way which may be reasonably necessary to carry out the purposes of this Agreement and to effectuate the intent of the Parties hereto.

9. **No Admission of Liability.** By this settlement, no party admits any liability, but rather the Parties have agreed to this settlement as a compromise of disputed claims in the interests of avoiding the costs and uncertainty of litigation.

10. **Time is of the Essence.** Time is of the essence for all obligations under this Agreement.

11. **Headings.** The headings used in this Agreement are for convenience and reference only and in no way define, describe, extend, or limit the scope or intent of this Agreement or the intent of any provision in it.

12. **Severability**. If any provision of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid or unenforceable for any reason, whether on its face or as applied, the remaining provisions shall remain in full force and effect.

13. **Benefit and Binding Effect**. This Agreement shall inure to the benefit of and be binding upon the Parties, their heirs, successors and assigns. This Agreement may be executed in counterparts, which, taken together, shall constitute one and the same instrument. The individuals signing below on behalf of entities represent and warrant that they have the full authority to bind their respective entities to all of the provisions hereof. Signatures by facsimile transmission or other electronic transmission of this Agreement shall be acceptable and binding upon the Parties. A copy hereof shall be as binding as an executed original.

14. **Governing Law and Venue**. This Agreement shall be governed by the laws of the State of Florida, without regard to its principles of conflicts of law. Venue for any action relating to or arising out of this Agreement shall be in Palm Beach County, Florida.

15. **Attorneys' Fees**. Each Party shall bear its own attorneys' fees and costs in connection with this settlement of the above-referenced matter and the negotiation and preparation of this Agreement. Furthermore, in any legal action or other proceeding arising out of or relating to this Agreement including, without limitation, enforcement of the terms of this Agreement, each Party shall bear its own attorneys' fees and costs incurred in connection with such dispute.

16. **Independent Legal Advice**. The Parties have had the opportunity to obtain independent advice of legal counsel of their own selection. Each of the Parties acknowledges that they have entered into this Agreement freely and voluntarily, believing it to be in their best interest. The Parties have entered into this Agreement with a full and complete understanding of their legal rights and neither Party is under any current impediment that would prevent their full and complete understanding of this Agreement and their free and voluntary acceptance of the terms and conditions of this Agreement. The Parties to this Agreement further acknowledge and agree that none of the signatories for any Party is/are suffering from any physical, mental, or other condition that would impair their ability to contract and their ability to understand fully the terms and conditions of this Agreement. This Agreement shall not be construed more strongly against any party regardless of who was more responsible for its preparation.

17. Notices

Any notices required under this Settlement Agreement shall be served upon the Parties via overnight priority mail or certified mail, return receipt requested as follows:

To AT&T:

Phillip R. Simmons

Senior Sourcing Manager
AT&T National Joint Utility Team
120 N. K Street
3rd Floor
Lake Worth, FL, 33460

With a copy to:

Thomas (Tre) M. Payne III
AVP-Senior Legal Counsel
AT&T Technology & Operations
1025 Lenox Park Blvd. NE
5th Floor, Room D583
Atlanta, GA 30319-5309

To 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
Electric Utility Director
1900 2nd Avenue North
Lake Worth Beach, FL 33461

And:

City of Lake Worth Beach
Attn: City Attorney
7 N. Dixie Highway
Lake Worth Beach, FL 33460

Either Party may change the Notice contact information as set forth above by providing the other Party with written notice of such change.

18. **Effective Date.** The Effective Date of this Agreement is the later of the date the City Commission for the City of Lake Worth Beach approves this Agreement and executes Exhibit A.

REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.
SIGNATURE PAGES FOLLOW.

IN WITNESS WHEREOF, the parties hereto have made and executed this Settlement Agreement and Release as of the day and year set forth below by the City.

CITY OF LAKE WORTH BEACH, FLORIDA

ATTEST:

By: _____
Deborah M. Andrea, City Clerk

By: _____
Pam Triolo, Mayor

Date: _____

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

APPROVED FOR FINANCIAL
SUFFICIENCY

By: _____
Glen J. Torcivia, City Attorney

By: _____
Bruce T. Miller, Financial Services Director

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was physically acknowledged before me this _____ day of _____, 2020, by Pam Triolo, as the Mayor of the City of Lake Worth Beach, Florida, and who is personally known to me or who has produced the following _____ as identification.

Notary Public

BELLSOUTH TELECOMMUNICATIONS, LLC,
D/B/A AT&T FLORIDA

By: _____

Print Name: _____

Title: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was physically acknowledged before me this _____ day of _____, 2020, by _____, as _____ of BELLSOUTH TELECOMMUNICATIONS, LLC, D/B/A AT&T FLORIDA, and who is personally known to me or who has produced the following _____ as identification.

Notary Public

EXHIBIT A
POLE ATTACHMENT
(TO BE ATTACHED AFTER EXECUTION)

AGREEMENT REGARDING JOINT USE OF POLES

BETWEEN

**BELLSOUTH TELECOMMUNICATIONS, LLC,
D/B/A AT&T FLORIDA
AND**

CITY OF LAKE WORTH BEACH, FLORIDA

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AGREEMENT REGARDING JOINT USE OF POLES

THIS AGREEMENT, effective this ___ day of _____, 2020, is made by and between CITY OF LAKE WORTH BEACH, FLORIDA, which owns and operates a municipal electric utility (hereinafter referred to as the "CITY") and BellSouth Telecommunications, LLC, d/b/a AT&T Florida (hereinafter referred to as "AT&T").

WITNESSETH

WHEREAS, the CITY and AT&T desire to promote the Joint Use of their respective poles when and where such Joint Use shall be mutually advantageous.

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the parties hereto, for themselves, their successors and assigns, do hereby covenant and agree as follows:

1 SCOPE OF AGREEMENT

- 1.01 This Agreement shall be in effect in such areas of the State of Florida in which the CITY and AT&T now or hereafter jointly operate and shall cover all poles of each of the parties now existing or hereafter erected or acquired in such areas when said poles are brought hereunder in accordance with this Agreement.
- 1.02 This Agreement sets forth the terms and conditions under which each party, as Owner, shall grant to the other party, as Joint Partner, a nonexclusive license to make Attachments to Owner's poles. Owner shall grant such nonexclusive license and such Joint Partner shall undertake Attachments in accordance with the terms and conditions of this Agreement.
- 1.03 Nothing herein contained shall be construed as prohibiting the Owner (to the extent such other attachments do not infringe upon the rights granted to Joint Partner hereunder) from permitting the attachment of facilities by third parties to Owner's poles covered by this Agreement. Nor shall anything herein contained be construed as giving the Joint Partner the authority to permit the attachment of facilities by third parties to the poles covered by this Agreement that they do not own.
- 1.04 Contractors engaged by either party to perform any work in connection with the terms of this Agreement shall be considered as agents of the party engaging them, and not the agent of the other party.
- 1.05 All poles covered by this Agreement shall be and remain the property of Owner regardless of any payment by Joint Partner toward their cost. No use, however extended, of Owner's poles or payment of any fee or charge required hereunder shall create or vest in Joint Partner any claim of right, possession, title, interest or ownership in such poles.
- 1.06 Except as otherwise provided, nothing in this Agreement shall be construed to compel Owner to construct, reconstruct, retain, extend, repair, place, replace or maintain any pole which, in Owner's sole discretion, is not needed for its own purposes. Owner and its successors and assigns shall have the right to operate, relocate and maintain its poles and attendant facilities in such a manner as will best enable it, in its sole discretion, to fulfill its service requirements. If after all attempts have been exhausted to include both Parties in Joint Use of the pole then the poles can be, in the Owner's

judgment, deemed necessary for its sole use where there is insufficient capacity or for reasons of safety, reliability or generally applicable engineering purposes.

1.07 All references to “days” shall mean calendar days, unless specified otherwise.

2 EXPLANATION OF TERMS

For the purpose of this Agreement, certain terms shall have the meanings given in this Section.

- 2.01 AFFILIATE – Another entity who owns or controls, is owned or controlled by, or is under common ownership or control with such Attaching Entity.
- 2.02 ANCHOR – A metal plate or screw placed in the ground to provide a counter load to the stringing tensions. Anchors shall be of sufficient size to hold the load placed on them.
- 2.03 ATTACHMENT – Any facility now or hereafter fastened to a Joint Use pole by the parties hereto except that pedestals, overlashing, risers and bonding or grounding connections shall be exempt from both the Proposal process and rental payment obligation.
- 2.04 BILL OF SALE – A legal document, in a mutually agreed upon format, for the conveyance or transfer of assets or property regardless of the sale price, condition of the pole to be determined by prospective Owner, attached hereto as Exhibit D.
- 2.05 DESIGN REQUIREMENTS – All applicable regulations or codes promulgated by any federal, state, local or other governmental authority having jurisdiction, including, but not limited to, the National Electrical Safety Code and Owner’s design or attachment requirements, and Owner’s written storm hardening plans.
- 2.06 ELECTRONIC COMMUNICATION OR "ELECTRONICALLY TRANSMITTED" – Communication sent via email.
- 2.07 EMERGENCY - Conditions where there is a substantial potential for damage to property, injury or death to persons, or interruption of utility service.
- 2.08 JOINT POLE INVENTORY – Mutually agreed upon process to collect information about Attachments to Joint Use poles covered under this Agreement.
- 2.09 JOINT PARTNER – The party having the right under this Agreement to make Attachments to Owner's poles.
- 2.10 JOINT USE – The simultaneous use of a pole for the attachment by both parties.
- 2.11 OWNER – The party owning the pole.
- 2.12 OVERLASH – To lash an additional wire or other facility to an existing facility attached to a Pole.
- 2.13 PROPOSAL – A standardized form, either on paper or electronically transmitted, used by the parties to communicate their intentions, requirements or costs regarding Attachments. **See Exhibit A.**

- 2.14 SET AND SELL – A process under which poles are replaced by the Joint Partner for the Owner and billed to the Owner according to Article 9.06. Ownership of replaced pole remains with the original Owner.
- 2.15 SIMPLE TRANSFER – Transfer work that may include any combination of tangent transfer, a dead-end attachment, down guys or anchor attachment, bonds, rearrangement or lateral, or buried dips which do not require cable splicing to complete the transfer's permanent attachment.
- 2.16 STANDARD JOINT USE POLE – Such poles for this Agreement shall be:
- (a) when owned by the CITY, a 40-foot, class-2 wood pole for single-phase circuits and a 45-foot, class-2 wood pole for three-phase circuits; and
- (b) when owned by the AT&T, a 40-foot, class-2 wood pole for rear and non-street facing side easements and a 45-foot, class-2 wood pole for front and street facing side easements.
- The foregoing definition of a Standard Joint Use Pole is not intended to preclude the use of Joint Use Poles shorter or taller or of greater or lesser strength than the Standard Joint Use Pole in locations as needed to meet the requirements of the parties and of specifications in Section 3. Notwithstanding the foregoing, poles in place at the time of execution of this Agreement shall be considered a Standard Joint Use Pole regardless of their height or class.
- 2.17 THIRD PARTY – Any entity not a party to this Agreement with an attachment on a pole which is either in Joint Use or a candidate for Joint Use under this Agreement.
- 2.18 TOTAL COST – Total cost shall be the reasonable cost actually incurred for labor (based on fully loaded rates) and materials for the project. Cost shall include overhead to the extent such overhead is reasonably allocated to tasks of a similar nature in the ordinary course of the party's business.
- 2.19 TRANSFER NOTICE – A standardized form, either on paper or electronically transmitted, used by the parties to communicate that new pole placement has been completed and that transfers may commence.

3 SPECIFICATIONS

- 3.01 The joint use of utility poles covered by this Agreement shall at all times conform to the requirements of the version of the National Electric Code (NEC), National Electric Safety Code (NESC) and the Occupational Safety and Health Act of 1970 (OSHA) in effect at the time work done hereunder is performed, except where the lawful requirements of the state or other governmental authorities contain a more stringent requirement, in which case the more stringent requirement will govern. Notwithstanding the foregoing, the use of vertical runs and the mounting of such equipment as terminals or meters on the lower portions of the pole, including below the communications space, is permitted when done so in accordance with the current version of the NESC.
- 3.02 It is the intent of this Agreement that poles having Attachments prior to this Agreement, providing that their installation conformed to the specifications in effect at the time the original attachment was made, will not be replaced or Attachments rearranged or

modified solely to comply with any new Design Requirements, unless compliance with such new Design Requirements is required by law or the pole poses a safety risk. This provision applies until such time as substantial modification to the Attachments takes place. The foregoing does not prohibit the replacement of a pole by mutual agreement if compensation is made in accordance with Section 8.0.

- 3.03 Any new joint use construction of either party, occurring after the execution of this Agreement, which does not conform to the specifications set forth in Section 3, as they existed at the time of construction, shall be brought into conformity within ninety (90) days or other negotiated time frame of written notification by the party identifying such nonconformance. Once the construction has been brought into conformity with said specifications, it shall at all times be maintained in compliance with said specifications in effect at the time of construction. It is the intent of this Agreement that Attachments made pursuant to this Agreement, providing that their installation conformed to the specifications in effect at the time the original Attachment was made, will not be rearranged or modified solely to comply with any new Design Requirements, unless compliance with such new Design Requirements is required by law or the Attachment poses a safety risk.
- 3.04 Proposals for pole or Attachment construction, maintenance or removal, and the associated invoicing will be exchanged between the local representatives of both parties in an agreed-upon electronic format.
- 3.05 If AT&T desires to overlash over its own cables, it shall not require a Proposal; instead, AT&T shall notify City at least 30 days prior and provide load calculations with such prior notice showing that the AT&T overlash Attachments shall not overload the pole. Under no circumstances shall AT&T allow a Third Party to overlash on its cables under this Agreement. Third Party overlashing shall require a separate Pole Attachment Agreement with the Owner and Joint Partner (if overlashing Joint Partner's facilities) and shall be issued separate permits.

4 EASEMENTS/RIGHTS OF WAY

- 4.01 When one party owns existing poles on a right-of-way or easement, and no rights under such right-of-way or easement were obtained for the other party at the time the poles were erected, the party desiring to place Attachments on such existing poles will be required to obtain its own necessary rights. In the event the party owning such existing poles has not obtained its own right-of-way or easement, the procedure to be followed in obtaining such shall be determined by mutual agreement.
- 4.02 To the extent allowed by law, each party, as Joint Partner, hereby agrees to indemnify, defend and save Owner harmless from any and all claims, resulting from or arising out of the failure of Joint Partner to secure such right, license, permit or easement for the construction or maintenance of said Attachments on Owner's poles, the loss of right-of-way or property owner consent, of the costs of relocating any of Owner's facilities or other attachments on Owner's poles. This shall not be construed as a waiver of sovereign immunity for the City beyond the waiver provided in section 768.28, Florida Statutes. As applicable, all of the terms of the indemnity set forth in Section 18 of this Agreement are incorporated herein and shall apply with equal force to the indemnity set forth in this Section.
- 4.03 RIGHT OF WAY. The Owner does not warrant or assure to the Joint Partner any right-of-way privileges on, over or across streets, alleys, public thoroughfares, or publicly

owned property. If the Joint Partner shall not have secured proper authorization for placing its Attachments on the Owner's pole(s), no liability on account thereof shall attach to the Owner.

- 4.04 EASEMENT. If Joint Partner makes Attachment without authorized Easement and any person who owns property on which such Joint Use Poles are located objects to the presence of Joint Partner's Attachments, Joint Partner shall attempt to secure easement or remove Attachments from such poles at its sole expense.
- 4.05 NEITHER PARTY REPRESENTS NOR WARRANTS THAT ANY OF ITS OWN PRIVATE RIGHTS-OF-WAY OR EASEMENTS ENTITLE JOINT PARTNER TO ACCESS THE PROPERTY UNDERLYING OWNER'S UTILITY POLES.

5 ESTABLISHING JOINT USE OF EXISTING POLES

- 5.01 Owner reserves the right to exclude a pole from Joint Use as provided for in Section 1.06.
- 5.02 Notwithstanding any other provision of this Agreement, the Joint Partner may place, replace or modify a service drop on any pole without submitting a Proposal to Owner.
- 5.03 Except as provided for by Section 5.01, whenever either party desires to utilize space on any pole owned by the other party, either as initial space or additional space on said pole, Joint Use will be requested via Proposal, including a sketch and digital picture of said pole, prior to installing or modifying any Attachment(s) on Owner's pole. Such request will specify the pole involved, the amount of space desired and the number and character of cables, wires and/or conductors to be placed thereon. Requesting party is responsible for design, strength and loading characteristics of its Attachment(s). Within thirty (30) days after the receipt of such Proposal, Owner shall notify requesting party via Proposal whether said pole is approved or excluded from Joint Use on the basis of insufficient capacity or for reasons of safety, reliability or generally applicable engineering purposes, and, if so, shall detail the reason for exclusion. Upon receipt of notice from Owner that said pole is not excluded, requesting party will have the right to use said pole as a Joint Partner. If for any reason Owner does not respond within such period or the extension thereof, then Owner shall be deemed to have granted permission to attach. In no event, however, shall Owner be deemed to have given consent to any Attachments that cannot be installed in accordance with the Design Requirements.
- 5.04 Whenever any Joint Use pole or any existing pole about to be so used under the provisions of this Agreement is insufficient in height or strength for the existing Attachments and for the proposed immediate additional Attachments thereon, Owner shall replace such pole with a new pole of the necessary height and strength and shall make such other changes in the existing pole line in which such pole is included as the conditions may then require, and billing shall be rendered in accordance with Section 8 (Division of Cost).
- 5.05 Except as herein otherwise expressly provided, on Joint Use poles each party shall, at its own expense, perform tree trimming necessary for the party's Attachments, place, maintain, transfer, rearrange and remove its own Attachments, and place guys to sustain unbalanced loads due to its Attachments, and shall perform such work promptly and in such manner as not to interfere with the service of the other party.

6 ESTABLISHING JOINT USE OF NEW POLES

- 6.01 Whenever either party hereto intends to place new poles within the territory covered by this Agreement, either as an additional pole line, as an extension of an existing pole line, or in connection with the reconstruction of an existing pole line, and such pole facilities are not to be excluded from Joint Use under the provisions of Section 1, it shall promptly offer Joint Use to the other party by submitting a Proposal (verbal notice subsequently confirmed in writing may be given in cases of Emergency) stating the proposed location, character, nature of the Attachments and size of the new poles.
- 6.02 Within thirty (30) days after the receipt of such notice, the Joint Partner shall reply via Proposal, stating whether it does or does not desire space on said new poles and, if space is desired thereon, shall respond and identify the nature of the Attachments it desires to place. The Proposal, accepted by the Owner, shall constitute authorization to jointly use such poles. Attachments shall not be made prior to such authorization. Failure of the Joint Partner to respond within thirty (30) days shall create a presumption that no Joint Use is desired, and the proposing party may proceed accordingly.

7 MAINTENANCE OF POLES AND ATTACHMENTS

- 7.01 Owner shall maintain its Joint Use poles in a safe and serviceable condition in accordance with the Design Requirements, and shall replace, reinforce or repair poles as they become defective or cause unsafe conditions.
- 7.02 Each party shall maintain its Attachments on Joint Use poles in accordance with the specifications referred to in Section 3 and the terms of this Agreement and shall keep them in safe condition and in thorough repair in accordance with the Design Requirements. Notwithstanding the foregoing, in the event the Joint Use pole is replaced, or the party substantially modifies its Attachments to such pole for other reasons, the party's Attachments shall at such time be brought into compliance with the then applicable Design Requirements.
- 7.03 Owner reserves the right, without liability to Joint Partner, to discontinue the use of, remove, replace or change the location of any or all of its poles regardless of any occupancy of Owner's poles by Joint Partner. As applicable, the provisions of Sections 9 and 11 shall apply in the event of the proposed removal or relocation of any pole subject to Joint Use.

8 DIVISION OF COSTS

- 8.01 The costs of erecting Joint Use poles, either as new pole lines, individual poles, or as extensions or replacements of existing pole lines not previously in Joint Use, will be borne by the parties as follows:
- 8.01.1 For a new Standard Joint Use Pole, or a Joint Use pole shorter or smaller than the Standard Joint Use Pole, the pole will be erected at the sole expense of Owner, except as provided herein, and in cases where an existing Joint Use pole is being replaced, each party shall be responsible for the expenses incurred to transfer its own Attachment(s) to the new pole.
- 8.01.2 For a pole taller or stronger than the Standard Joint Use Pole, the extra height or strength of which is due wholly to Owner's requirements, the pole will be erected at the sole expense of Owner, and in cases where an existing Joint Use

pole is being replaced, Owner shall be responsible for the expenses incurred by Joint Partner to transfer its Attachment(s) to the new pole. Notwithstanding the foregoing, in the case of the replacement by City poles done as part of a written storm hardening plan, AT&T shall be responsible for the expenses to transfer its Attachment(s) to the new pole. To the extent AT&T owns poles in a route subject to a written storm hardening plan (a mixed ownership line), City shall notify AT&T in writing ninety (90) days prior to the date (the "replacement date") City seeks to transfer City's facilities from an AT&T pole to a new pole consistent with the City's storm hardening plan. AT&T shall have forty five (45) days to respond to such notification from City and inform City which of three options it elects: (i) install the new pole consistent with the City's storm hardening plans at AT&T's cost, with AT&T owning the new pole, (ii) have City install the new pole consistent with the City's storm hardening plans, with AT&T paying the cost of the installation as set out in **Exhibit G** and AT&T owning the new pole, or (iii) have City install the new pole consistent with the City's storm hardening plans at City's cost and the City owning the new pole. If AT&T does not respond within forty five (45) days, or such longer time as the parties may mutually agree, then AT&T will be deemed to have selected option (iii). Each party shall be responsible for performing its own transfers at its cost.

- 8.01.3 For a pole taller or stronger than the Standard Joint Use Pole, the extra height or strength of which is due wholly to Joint Partner's requirements, the pole will be erected at the sole expense of the Joint Partner, and in cases where an existing Joint Use pole is being replaced, Joint Partner shall be responsible for the expenses incurred by Owner to transfer its Attachment(s) to the new pole.
- 8.01.4 For a pole taller or stronger than the Standard Joint Use Pole, the extra height or strength of which is due to the requirements of both parties, the parties will share equally the cost to place the new pole and each party shall Transfer at its own expense, and in cases where an existing Joint Use pole is being replaced, each party shall be responsible for the expenses incurred to transfer its own Attachment(s) to the new pole.
- 8.01.5 For a pole taller or stronger than the Standard Joint Use Pole, where height or strength is necessary in order to meet the requirements of public authority, such as legal mandate work, the cost of erecting such pole shall be borne by Owner unless billable to the requesting authority. In cases hereunder where an existing Joint Use pole is being replaced, each party shall be responsible for the expenses incurred to transfer its own Attachment(s) to the new pole, which may include billing the requesting authority under applicable law. Owner shall provide contact information for requesting authority with the original notification to Joint Partner concerning the need for transfer.
- 8.01.6 For a pole taller or stronger than the Standard Joint Use Pole, where height or strength is necessary in order to meet the requirements of a third party, including but not limited to a Third Party attacher or the owner of the property on which the pole is located, the cost of erecting such pole shall be borne by Owner unless billable to a third party. In cases hereunder where an existing Joint Use pole is being replaced, each party shall be responsible for negotiating with the third party payment by such third party of the expenses incurred to transfer its own Attachment(s) to the new pole. Owner shall provide contact information for third party with the original notification to Joint Partner concerning the need for transfer.

- 8.02 When an existing Joint Use pole, which is not defective, is prematurely replaced, solely for the requirement of the Joint Partner, in addition to the costs in Section 8.01, the Joint Partner shall also pay the Owner the depreciated value per **Exhibit E**, plus the cost of removal of the old pole.
- 8.03 For rearrangements of Attachments on existing Joint Use poles, the provisions in Section 8.01 for pole replacements shall apply to the cost allocation of such rearrangements.
- 8.04 For an intermediate pole erected in an existing Joint Use pole line for the sole requirement of Joint Partner, Joint Partner shall set and own such pole unless the parties agree otherwise. Set and Sell may apply if Joint Partner cannot set its own intermediate pole.

9 REPLACEMENT/RELOCATION OF POLES

- 9.01 Whenever it is necessary for Owner to replace or relocate a Joint Use pole, Owner shall, before making such change, provide thirty (30) days' notice thereof to Joint Partner, by use of a Proposal, specifying the date of the proposed replacement or relocation.
- 9.02 Upon completion of all prerequisite work, such as removals or transfers, Joint Partner has up to sixty (60) days to complete routine transfers and up to one hundred twenty (120) days in the case of complex transfers. Bulk upload of transfers from a pole audit, or increased volume of transfers due to other causes the parties may mutually agree to extend this deadline.
- 9.03 If, at the expiration of the transfer period pursuant to Section 9.02, including any agreed extensions, all other parties' Attachments are removed on such pole but Joint Partner shall not have removed all of its Attachments therefrom, such pole shall become the property of Joint Partner upon completion of a title transfer for said pole via Bill of Sale, and Joint Partner shall accept title to said pole. Bills of Sale may only be processed on poles in good condition as confirmed by receiving party. Joint Partner shall pay to the Owner the value of each pole as set out in Exhibit E.
 - 9.03.1 If Joint Partner is unable to remove its Attachments due to circumstances beyond its control, such as acts or omissions of Owner and/or a Third Party user of the pole, Joint Partner shall remove its Attachments when Owner's and/or the Third Party's acts or omissions have been corrected. Under such conditions, Joint Partner shall not be required to assume ownership of said pole as described in Section 9.03.
- 9.04 When replacing a Joint Use pole, including those carrying terminals or equipment, the new pole will be set in the same hole or as close as practical to the existing pole to minimize the amount of work required when transferring facilities from the old pole to the new pole. Poles replaced other than in the same hole shall be shown on the proposal sketch indicating the direction and distance to the new pole location. In locations where the Owner deems it necessary to set the replacement pole in a different location, the Owner shall notify the Joint Partner. If said notification is not provided before constructed or Proposal does not match the actual as-built construction, resulting in additional cost to the Joint Partner, the pole Owner shall bear the additional costs incurred by the Joint Partner.

- 9.05 Where an existing pole must be replaced solely to adequately provide for Joint Partner's proposed new or modified Attachment and the parties have jointly determined replacement is the only method to accommodate the proposed Attachment, the provisions of Section 8.01.3 shall apply.
- 9.06 SET AND SELL. Except as provided in Section 9.07, a Joint Partner may only replace poles for the Owner with the Owner's written approval. Costs associated with such replacement shall be paid by the Owner of the pole being replaced. Title to the new pole will remain with the original Owner.
- 9.07 EMERGENCY REPLACEMENT OF AT&T POLE BY CITY. In case of Emergency, CITY, without advanced permission from AT&T, may replace AT&T's Joint Use pole, anchors and guys as may be considered necessary for public safety or for the restoration of CITY's service. CITY shall submit a confirming Proposal within thirty (30) days of such work, and AT&T shall pay CITY a sum equal to the Total Cost incurred in replacing the pole (excluding CITY's transfer cost), and if CITY removes the old pole, the cost of removal. Title to the new pole will remain with AT&T. CITY will transfer its own facilities at no cost to AT&T.
- 9.08 GOVERNMENTAL REQUIREMENT. Whenever Owner receives notice from any state, municipal (including the City of Lake Worth Beach) or other governmental authority, that it is necessary to change the location, adjust the height, or remove a Joint Use pole ("Government Requirement"), Owner shall advise Joint Partner within fourteen (14) days of receiving notice, including providing any contact information furnished by the governmental authority, so the parties may cooperate in the rearrangement, transfer or removal of facilities. Within thirty (30) days after learning of the Government Requirement, Owner will provide notice to Joint Partner via Proposal of the intended work. Within twenty one (21) days of receipt of Proposal, Joint Partner will provide a response to Owner. The parties will cooperate to meet the timeframe requested by the governmental authority. If no response is received from Joint Partner, Owner may assume its Proposal is accepted. If the Government Requirement is pursuant to section 337.403, Florida Statutes (as amended from time to time), the parties will allocate costs consistent with that section.
- 9.09 PROPERTY OWNER REQUIREMENT. Whenever it is necessary to change the location or remove a Joint Use pole or rearrange facilities on a Joint Use pole, by reasons of the requirement of a property owner, before performing the work, Owner will provide Proposal to Joint Partner detailing the work. Each party shall determine whether such work is billable to the property owner. If such work is billable to property owner, work will not proceed until payment is received by the billing party.
- 9.10 ANCHORS AND GUYS. All anchors and guys shall be placed by and at the expense of the party whose Attachments make such work necessary, unless otherwise stated in this Agreement.

10 INTENTIONALLY DELETED

11 ABANDONMENT OF POLES OR ATTACHMENTS

- 11.01 Joint Partner may at any time and in its sole discretion remove any of its Attachments from Owner's poles but shall provide thirty (30) days' prior notice via Proposal of such removal to Owner. Such notice shall fully identify, by pole number and location, the poles from which such Attachments are being removed.

11.02 If the Owner desires at any time to abandon any Joint Use pole, it shall give the Joint Partner notice in writing at least sixty (60) days prior to the date on which it intends to abandon such pole. If at the expiration of said period, Owner shall have no Attachments thereon, and all prerequisite transfers or removals of Third Parties have been completed, but Joint Partner shall not have removed all its Attachments, such pole may be sold to and become the property of Joint Partner. If Joint Partner inspects and agrees to purchase such pole, Owner shall provide Joint Partner with a properly authorized Bill of Sale. The asset transfer will take place upon acceptance of such Bill of Sale. Invoicing for such pole sales shall occur upon execution of the Bill of Sale, and the value of the pole shall be in accordance with the Depreciation Chart attached hereto as **Exhibit E**. Any associated easement or private right-of-way shall be conveyed to the new Owner by the former pole owner. The new Owner shall be responsible for re-tagging the acquired pole. If Joint Partner does not respond to within ninety (90) days of Owner's notice to abandon the pole, ownership of the pole will automatically transfer to Joint Partner via Bill of Sale as set forth above, with the non-responding Joint Partner being deemed by operation of this section to have executed the Bill of Sale.

12 TRANSFERS OF TITLE

- 12.01 In the case of transfers of ownership pursuant to the provisions of this Agreement, or any other agreement between the parties for sale/purchase of poles, a formal Bill of Sale transferring title to the purchasing party will be required. **Exhibit D** provides the Bill of Sale for the parties to use to transfer title. Prior to such Bill of Sale being rendered, the purchasing party shall, at its sole expense, inspect the poles to be transferred to ensure that such poles meet the criteria set by the parties for the sale/purchase and shall forthwith tag such poles to reflect the new ownership. The Owner of the poles shall provide the purchaser with information regarding the assignability of Third Party attachments.
- 12.02 Each party shall obtain, at its own expense, any necessary approvals of any governmental agency having jurisdiction over such party's part of the transaction.
- 12.03 In the case of transfer of ownership of a pole pursuant to the abandonment provisions of Section 11, once the conditions for the transfer of title from the Owner to the Joint Partner have been met, the party abandoning the pole shall provide the party acquiring title to the pole with an executed Bill of Sale.
- 12.04 Payments for such poles by the Joint Partner will be made at the time of purchase. The price of such poles shall be the depreciated value as reflected in **Exhibit E**.
- 12.05 Owner agrees to pay its pro rata share of any personal property taxes applicable to the property hereto conveyed, which accrue prior to the date of this Bill of Sale, and Buyer agrees to pay its pro rata share of any personal property taxes applicable to the property hereto conveyed, which accrue on and after the date of the Bill of Sale.
- 12.06 Whenever any transfer of ownership or title of a pole occurs as provided according to this Agreement, the former Owner shall remove its identification of ownership as soon as practicable.

13 RENTALS

- 13.01 For purposes of this Agreement, a rental year shall be a calendar year from January 1 to the succeeding December 31. The first rental year under the terms of this Agreement shall be 2020, except as provided for in Section 13.04 with respect to applicability of the rate and Section 15.01 with respect to the pole count and the baseline Inventory.
- 13.02 Joint Partner shall compensate Owner annually, in arrears, for those poles on which space is occupied by Joint Partner as of December 31 of the prior Rental Year in an amount per pole as provided in **Exhibit B**.
- 13.03 Each party shall submit to the other, on or before each March 31 of each year for the preceding rental year, a determination of the number of all Joint Use poles subject to this Agreement on which space was occupied by such other party as of the preceding December 31. If the parties are not able to resolve any such exceptions by the next billing date, the number that was in effect prior to the dispute shall be used until such resolution is accomplished, at which time a retroactive adjustment shall be made if necessary.
- 13.04 The net rental due between the parties shall be set forth in a bill issued by the party to whom net rental is due and rendered no later than May 1 of each year for the preceding rental year. The rental rates due for rental years 2020 through 2024 of this Agreement are set forth in **Exhibit B**. The parties also agree that the rates in Exhibit B shall apply retroactively to rental year 2018 and 2019. All such bills shall be paid within ninety (90) days of receipt.
- 13.05 At any time after five (5) years from the date of this Agreement, and at successive intervals of not less than five years, the rental rates applicable under this Agreement shall be subject to joint review and adjustment upon the written request of either party. In such instances, the following conditions shall apply:
- 13.05.1 Request for rental rate readjustment shall be submitted at least sixty (60) days prior to the end of such five-year period. If such request is not submitted within said timeframe, existing rental rates shall continue.
- 13.05.2 Any adjustment in rates shall apply starting with the annual bill next rendered and remain in place until again readjusted in accordance with this Section.

14 JOINT POLE INVENTORY

- 14.01 In order to transition to this Agreement from the prior agreement, the parties have agreed as to the results of an initial Inventory to establish the baseline total of Joint Use poles, as set forth in Section 15.01. T
- 14.02 The parties shall conduct subsequent Inventories jointly to verify the pole ownership and number of poles with at least one Attachment belonging to the other. Such inventory may be performed by a mutually agreed upon vendor or jointly by the parties. In lieu of a physical Inventory, the parties may agree to a joint review of records. The cost of such Inventory shall be allocated proportionately based on number of poles to which each party is attached. To the extent the inventory encompasses third party attachments, the parties will negotiate the cost allocation with such third parties.

Subsequent physical inventories shall be allowed at not less than five (5) year intervals.

- 14.03 Prior to such an undertaking, the party desiring such Inventory shall notify the other party at least one hundred eighty (180) days in advance of the proposed start date.
- 14.04 Should one party elect not to participate, upon being presented the results, that non-participating party has one hundred eighty (180) days in which to dispute the findings. If the nonparticipating party does not provide evidence demonstrating an error in such finding during such period, then such finding shall be conclusive and final.

15 UNACCOUNTED FOR ATTACHMENTS

- 15.01 Neither party shall make Attachments to any pole owned by the other party, except as authorized under the terms of this Agreement. The City of Lake Worth Beach conducted a pole audit in 2018 followed by negotiations with AT&T, and have agreed to the pole counts set forth in **Exhibit F**. The pole counts for 2020 shall serve as the baseline (initial) Inventory from January 1, 2020 going forward. The Owner will have the right to require the Joint Partner to (1) pay for all poles with unaccounted for Attachments which have been added since the later of (a) the prior audit or (b) five years, with the differential prorated as if the unaccounted for Attachments were placed in equal numbers each year since the last audit and billed at the then appropriate rental rate in effect, and (2) submit a Proposal within thirty (30) days of discovering the unaccounted for Attachment. Nothing in this Agreement is intended to have any effect on the current settlement negotiations ongoing between the parties with respect to any pole rent due for Attachments for periods of time prior to the effective date of this Agreement, and by entering into this Agreement neither party is waiving anything with respect to those negotiations.
- 15.02 If the only Attachment on a pole is unused hardware it shall not be considered an Attachment subject to annual rental payment. Such unused hardware will be promptly removed by the Joint Partner.
- 15.03 For purposes of this provision, Attachments in place at the time of the execution of this Agreement shall be considered "approved Attachments." Such Attachments shall be identified as to pole location during the baseline Inventory, unless the parties hereto agree that a recent Inventory shall obviate the need for a baseline Inventory.

16 INTERFERENCE

- 16.01 Owner shall notify the other party in writing or verbally with written notice that, in Owner's reasonable judgment and based upon the Design Requirements, the Attachments of Joint Partner interfere with the use of such poles, the operation of equipment, or constitute a "conflict" (due to a violation of Design Requirements) to the service rendered, by Owner or any other persons licensed by Owner to use such poles, or constitute a hazard to employees of Owner, other licensed persons or the public. Joint Partner shall, remove, rearrange or change its Attachments in compliance with such Design Requirements.
- 16.02 In the case any such interference or conflicts exist, Joint Partner shall resolve such issue regarding its Attachments within thirty (30) days from receipt of the first such notice, except that the parties may mutually agree to an extension as each situation warrants.

- 16.03 If the use of a different pole is thereby made necessary, application for its use shall be promptly made, and if in Owner's reasonable judgment a new or replacement pole is required, payment for such pole shall be made as provided in this Agreement.

17 ATTACHMENTS OF OTHER PARTIES

- 17.01 Nothing herein contained shall be construed as prohibiting the granting by Owner to others, not parties to this Agreement, by contract or otherwise, rights or privileges to use any poles covered by this Agreement, provided that Owner shall not authorize a subsequent Third Party to use a pole in a manner that Owner knows will interfere with Joint Partner's preexisting use of the pole. The attachments of any Third Party shall be treated for all purposes as Attachments belonging to the Owner, who shall have the right to any payments from such Third Party.
- 17.02 Owner shall provide notice to Joint Partner whenever a Third Party has requested making attachment to Joint Use pole(s), and the Joint Partner is required to perform any transfers or rearrangements of its Attachment(s) as a result. Any such attachments by a Third Party must comply with the Design Requirements as established in the Third Party's agreement with Owner. Any agreement made by Owner with a Third Party for attachments shall require the Third Party to compensate the Owner for pole rental and any other applicable expenses and costs associated with the attachment by the Third Party. The Third Party shall reimburse Joint Partner and any other third parties with prior attachments on such poles for all applicable costs incurred by each in making space available for Third Party, including transfer costs. Furthermore, any such agreement shall obligate the Third Party to promptly transfer or remove its attachments whenever a pole is replaced or removed.
- 17.03 Owner shall require each Third Party, by contract, to maintain its attachments at all times in conformity with the provisions detailed in the agreement between the Third Party and Owner.
- 17.04 Each Owner shall manage Third Parties on its own poles, including permitting, rental and cost recovery. The Joint Partner shall have no responsibility to manage Third Parties' attachments on Owner's poles.
- 17.05 The Joint Partner shall not be responsible for securing all necessary easements, licenses, consents, franchises and permits from any governmental authorities and/or property owners for Third Party attachments.
- 17.06 The Joint Partner shall not be responsible for any Third Party make ready costs or any penalties assessed to a Third Party.

18 INDEMNITY

- 18.01 To the extent permitted by law, and except to the extent caused by the negligence or willful misconduct of the Indemnitees, each party (the "Indemnitor") hereby releases the other party, its affiliates, and their respective directors, officers, administrators, and employees (collectively, "Indemnitees"), from any and all liability for loss of or damage to the property of the Indemnitor and for any interruption to, or failure of, the service rendered by Indemnitor or others in which such Attachments are used. Indemnitor further hereby agrees to indemnify, hold harmless, and defend Indemnitees from and against any and all losses, liabilities, costs, expenses, suits, actions, claims and all other obligations and proceedings whatsoever, including, without limitation, all

judgments rendered against, and all fines and penalties imposed upon Indemnitees, and any reasonable attorneys' fees and any other costs of litigation (hereinafter collectively referred to as "Liabilities") arising out the acts or omissions of the Indemnitor pursuant to this Agreement, except that Indemnitor's obligation to indemnify Indemnitees shall not apply to any Liabilities to the extent arising from Indemnitees' negligence or willful misconduct. The foregoing shall not be construed as a waiver of sovereign immunity for the City beyond the waiver provided in section 768.28, Florida Statutes.

- 18.02 It is further agreed between the parties hereto, that to the extent any of the provisions of this Section are determined to be contrary to law or held to be invalid by any court of competent jurisdiction, this Section shall be construed and applied as if such invalid provisions were not contained herein, attempting at all times to conform, to the extent possible, to the intent of the parties as herein stated, and provide the maximum indemnity allowed by law. With respect to claims against one party by the other party's employees, the latter party agrees to expressly waive its immunity, if any, as a complying employer under the workers' compensation law but only to the extent that such immunity would bar or affect recovery under or enforcement of the indemnification obligations set forth in this Section.
- 18.03 The terms of this indemnity and any other indemnities set forth in this Agreement shall survive the termination of this Agreement. In the event that Owner becomes aware of a claim affecting Joint Partner under the terms of this indemnification clause, Owner shall put Joint Partner on timely notice of such claim.
- 18.04 Each party (the "first party") shall endeavor to require that all contractors, subcontractors and/or any other person acting on the first party's behalf pursuant to this Agreement agree to indemnify, hold harmless, and defend the other party (the "second party") from and against any and all losses, liabilities, costs, expenses, suits, actions, claims and all other obligations and proceedings whatsoever, including, without limitation, all judgments rendered against, and all fines and penalties imposed upon Indemnitees, and any reasonable attorneys' fees and any other costs of litigation (hereinafter collectively referred to as "liabilities") arising out the acts or omission of the first party's contractors, subcontractors and/or any other person acting on first party's behalf pursuant to this Agreement, except that this provision shall not apply to any liabilities to the extent arising from the second party's negligence or willful misconduct. To the extent a contractor, subcontractor or any other person acting on the first party's behalf pursuant to this Agreement will not agree to indemnify, hold harmless, and defend the second party as set forth in the preceding sentence, then the first party shall indemnify, hold harmless, and defend the second party Indemnitees for Liabilities arising out the acts or omissions of the contractor, subcontractor or other person acting on the first party's behalf pursuant to this Agreement, except that first party's obligation to indemnify Indemnitees shall not apply to any Liabilities to the extent arising from the second party Indemnitees' negligence or willful misconduct.

19 INSURANCE

- 19.01 At all times in which the Joint Partner has facilities on Owner's poles, each party as Joint Partner shall keep and maintain in force, at its own expense, the insurance coverage and limits set forth below. The City acknowledges that it is either self-insured for commercial general liability and automobile liability in the amounts specified in Florida Statutes Section 768.28, as may be amended from time to time, or it maintains third-party commercial general liability or business automobile liability insurance in lieu

of exclusive reliance on self-insurance with coverage of \$1 Million. The City agrees to maintain or to be self-insured for worker's compensation and employer's liability insurance in accordance with Chapter 440, Florida Statutes, as may be amended from time to time. The City agrees to provide the AT&T with an affidavit or certificate of insurance evidencing insurance, self-insurance and/or sovereign immunity status, which the parties agree to recognize as acceptable for the below-referenced coverages. Compliance with the requirements of this paragraph shall not relieve the City of its liability and obligations under this Agreement. AT&T shall keep and maintain in force, at its own expense, the insurance coverage and limits set forth below. AT&T may self-insure any required coverage as long as it or its affiliated parents maintains a net worth of at least \$100 million as evidenced in annual certified financials and agrees to provide the City with an affidavit or certificate of insurance evidencing insurance, self-insurance which the parties agree to recognize as acceptable for the below-referenced coverages. Compliance with the requirements of this paragraph shall not relieve Joint Partner of its liability and obligations under this Agreement. Joint Partner shall require that all contractors, subcontractors and/or any other person acting on Joint Partner's behalf maintain coverage while working hereunder, requirements and limits that are reasonable and prudent and, with respect to any maintained on a "claims made" basis, for two years thereafter. Joint Partner must procure the required insurance from an insurance company eligible to do business in the State(s) where the work will be performed and having and maintaining a minimum rating of "A- :VII" from A.M. Best Key Rating Guide.

- 19.01.1 Workers' Compensation insurance with benefits afforded under the laws of each State covered by this Agreement and Employers Liability insurance with limits of \$1,000,000 for Bodily Injury-each accident, \$1,000,000 for Bodily Injury by disease-policy limits and \$1,000,000 for Bodily Injury by disease-each employee. To the fullest extent allowable by law, the policy must include a waiver of subrogation with respect to Owner, its affiliates, and their directors, officers and employees.
- 19.01.2 Commercial General Liability insurance with limits of: \$2,000,000 General Aggregate limit; \$1,000,000 each occurrence limit for all bodily injury or property damage incurred in any one occurrence; \$1,000,000 each occurrence limit for Personal Injury and Advertising; \$2,000,000 Products/Completed Operations Aggregate limit; and Fire Legal Liability/Damage to Premises Rented sub-limits of \$1,000,000 is also required. Owner, its affiliates, officers, and employees shall be included as additional insured by endorsement as respects this Agreement on the Commercial General Liability policy. A waiver of subrogation shall be with respect to Owner. The required liability policies shall be primary and non-contributory from any insurance that is maintained by Owner.
- 19.01.3 Umbrella/Excess Liability insurance with limits of at \$5,000,000 each occurrence and in the aggregate with terms and conditions at least as broad as the underlying Commercial General Liability, Business Automobile Liability and Employers Liability policies. Umbrella/Excess Liability limits will be primary and non-contributory with respect to any insurance or self-insurance that is maintained by Owner.
- 19.01.4 Automobile Liability insurance with limits of \$1,000,000 combined single limits per occurrence for bodily injury and property damage, with coverage extending to all owned, hired and non-owned vehicles. Liability limits will be primary and non-

contributory with respect to any insurance or self-insurance that is maintained by Owner.

- 19.02 Joint Partner agrees to provide Owner's third party administrator certificates of insurance stating the types of insurance and policy limits.
- 19.03 All insurance required in accordance with this section must be in effect before Owner will issue Pole attachment or Conduit Occupancy Permits under this Agreement. Joint Partner will provide renewal Certificates of Insurance prior to expiration of any policy.
- 19.04 Joint Partner agrees to provide Owner with at least thirty (30) calendar days' advance written notice of cancellation or non-renewal of any of the insurance policies required herein that are not replaced.
- 19.05 The Parties agree that:
 - 19.05.1 the failure of Owner to demand certificates of insurance or failure of Owner to identify a deficiency will not be construed as a waiver of Joint Partner's obligation to maintain the insurance required;
 - 19.05.2 the insurance required does not represent that coverage and limits will necessarily be adequate to protect the Joint Partner, nor shall it be deemed as a limitation on Joint Partner's liability to Owner;
 - 19.05.3 Joint Partner may meet the required insurance coverage and limits with any combination of primary and umbrella/excess liability insurance; and
 - 19.05.4 Joint Partner is responsible for payment of any deductible or self-insured retention.

20 DEFAULTS

- 20.01 If either party shall be in material breach of any of its obligations under this Agreement and such party fails to cure such breach within thirty (30) days, or such longer period as may be necessary if the breach is not reasonably capable of being cured within thirty (30) days, after receiving written notice thereof by the other party, the party not in default may, without releasing any other legal remedies available to it, may suspend the rights of the defaulting party to further joint use of non-joint use poles. Termination of the right to make additional Attachments, shall, however, not abrogate or terminate the right of either party to maintain the Attachments currently existing on the poles of the other, and all such prior Attachments shall continue thereafter to be maintained in accordance with the terms of this Agreement which shall remain in full force and effect.
- 20.02 If either party shall default in the performance of any work which it is obligated to perform under this Agreement, the other party may, with thirty (30) days' advance written notice to the defaulting party, elect to do such work and the party in default shall reimburse the other party for the Total Cost thereof. Failure on the part of the defaulting party to make such payment within ninety (90) days after presentation of bills therefore shall, at the election of the other party, constitute a material breach of this Agreement and the non-defaulting party may suspend the rights of the defaulting party to further joint use of non-joint use poles.

21 WAIVER OF TERMS OR CONDITIONS

21.01 The failure of either party to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not constitute a general waiver or relinquishment of any such terms or conditions, and the same shall be and remain at all times in full force and effect.

22 PAYMENT OF TAXES

22.01 Each party shall pay all taxes and assessments levied on its own property upon Joint Use poles, and the taxes and the assessments that are levied on Joint Use poles shall be paid by the Owner. Any *payments in lieu of taxes* (PILOT) made by Owner shall not be assessed in addition to the rental rate. Rather, the PILOT must be a consideration in the calculation of the rate itself, to the extent permitted under applicable law.

23 TIME OF PAYMENT

23.01 Payments of amounts due hereunder are due ninety (90) days from the receipt of the invoice. On all amounts not so paid, and not in dispute, an additional charge for interest of 1.5% or the maximum interest rate permitted by law, whichever is the lesser amount, per month, will be assessed.

24 EXISTING AGREEMENTS

24.01 All previously existing agreements, written or verbal, between the parties hereto for the Joint Use of poles within the territory covered by this Agreement are by mutual consent hereby terminated, and poles covered by such agreements are brought under this Agreement as of the effective date hereof.

25 TERM OF AGREEMENT

25.01 Except as provided in the Default Section 20, this Agreement shall continue from the date hereof, and shall remain in effect for ten (10) years ("Initial Term"). The Agreement will automatically renew for four (4) successive five (5) year renewal terms, unless one party gives the other party at least one (1) year written notice of termination insofar as the granting of future joint use on non-joint use poles is concerned prior to the expiration of the Initial Term or the then applicable renewal term, as the case may be. Termination of the right to make additional Attachments shall not, however, abrogate or terminate the right of either party to maintain the Attachments currently existing on the poles of the other, and all such prior Attachments shall continue thereafter to be maintained in accordance with the Section 25.02 of this Agreement.

25.02 In the event of termination, the parties agree to promptly begin negotiations toward reaching a successor Joint Use Agreement. If the parties are unable to agree on a replacement Joint Use Agreement, all such prior Attachments shall continue thereafter to be maintained in accordance with the terms of this Agreement, which shall remain in full force and effect solely for the purpose of governing and controlling the rights and obligations of the parties with respect to said Attachments.

26 SERVICE OF NOTICE

- 26.01 Until changed by written notice to the other party, whenever in this Agreement notice is required to be given or is given by either party hereto to the other, such notice shall be in writing and given by certified United States mail, return receipt requested, by overnight courier, or by personal delivery, to the appropriate office/individuals identified in **Exhibit C**. Both parties shall keep this list of contacts current and provide updated information if such information changes.
- 26.02 Notice shall be deemed received five (5) days after deposit into the United States mail, one (1) day after delivery by an overnight courier, on the day of personal delivery, or on the day an Electronic Communication is transmitted, as applicable.

27 ASSIGNMENT OF RIGHTS

- 27.01 Except as otherwise provided in this Agreement, neither party shall assign or otherwise dispose of this Agreement or any of its rights or interests to any firm, corporation, individual, except to a parent, affiliate or successor corporation without the written consent of the other party. However, such consent shall not be unreasonably withheld, delayed or conditioned. Either party may assign or transfer its rights under this Agreement to a parent, affiliate or successor corporation by providing thirty (30) days written notice after the assignment or transfer.
- 27.02 Nothing herein contained shall prevent or limit the right of either party to mortgage any or all of its property, rights, privileges or franchises, or to lease or transfer any of them to another corporation organized for the purpose of conducting a business of the same general character as that of such party, or to enter into any merger or consolidations; and in case of the foreclosure of such mortgage, or in case of such lease, transfer, merger or consolidation, such party's rights and obligations hereunder shall pass to and be acquired and assumed by the purchaser on foreclosure, or the transferee, lessee, assignee, merging company, or consolidating company.

28 MISCELLANEOUS

- 28.01 **FORCE MAJEURE.** Except for payment required to be made, neither party shall be considered in default in the performance of its obligations herein, or any of them, to the extent that performance is delayed or prevented due to the following causes but not limited to situations which are beyond the control of said party: Acts of God or the public enemy, war, revolution, terrorism, civil commotion, strike or labor dispute or stoppage, blockade or embargo, fires, explosions, cyclones, floods, unavoidable casualties, quarantines, and epidemics ("Force Majeure Event"). Written notice of a Force Majeure Event must be provided within fifteen (15) days of the Force Majeure Event causing performance to be delayed or prevented in order for the party's delay in performance to not be considered a default. The delay in the performance of the party providing the notice of a Force Majeure Event shall not be considered in default for that period of time as the Force Majeure Event continues to reasonably exist.
- 28.02 **MODIFICATIONS OF AGREEMENT.** No amendments or modifications to this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized representatives of the parties.
- 28.03 **INVALIDITY.** If any provision of this Agreement shall for any reason be held to be invalid, illegal or unenforceable under any laws, rules or regulations of any

governmental body or agency having jurisdiction there over, any such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been incorporated herein.

- 28.04 **APPLICABLE LAW AND VENUE.** This Agreement shall be governed by and interpreted under the laws of the state of Florida, with venue in state or federal court for Palm Beach County.
- 28.05 **THIRD PARTY BENEFIT.** This Agreement is intended to benefit only the parties herein and their affiliates. Neither party intends to confer any benefit to any other person, including but not limited to a Third Party.
- 28.06 **PRESERVATION OF REMEDIES.** No delay or omission in the exercise of any power or remedy herein provided or otherwise available to a party shall impair or affect that party's right thereafter to exercise the same.
- 28.07 **HEADINGS.** Headings used in this Agreement are inserted only for the convenience of the parties and shall not affect the interpretation or construction of this Agreement.
- 28.08 **SURVIVAL OF OBLIGATIONS.** All payment, performance and indemnity obligations of either party, under this Agreement, shall survive the termination of this Agreement, until said obligations are satisfied.
- 28.09 **INSPECTOR GENERAL.** In accordance with Palm Beach County ordinance number 2011-009, this Agreement may be subject to investigation and/or audit by the Palm Beach County Inspector General. AT&T should review such ordinance in order to be aware of its rights and/or obligations under such ordinance and as applicable.
- 28.10 **PUBLIC ENTITY CRIMES.** 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 on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not be awarded or perform Work as a contractor, supplier, subcontractor, or consultant 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 from the date of being placed on the convicted vendor list.
- 28.11 **WAIVER OF JURY TRIAL.** EACH PARTY HEREBY WAIVES ITS RIGHTS TO A TRIAL BY JURY IN ANY LITIGATION ARISING OUT OF THIS AGREEMENT.
- 28.12 **COUNTERPARTS.** This Agreement may be executed in two or more counterparts, each of which together shall constitute one and the same instrument. This Agreement may also be executed by electronic signature of either party.
- 28.13 **CONTINUING OBLIGATIONS.** 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 (as applicable).
- 28.14 **PREPARATION.** This Agreement shall not be construed more strongly against either party regardless of who was more responsible for its preparation.

28.15 SCRUTINIZED COMPANIES. To the extent AT&T is subject to section 287.135, Florida Statutes, AT&T (as the “Contractor” for purposes of this provision), AT&T (as the “Contractor” for purposes of this provision) shall acknowledge and agree that:

28.15.1 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.

28.15.2 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.

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

28.15.4 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.

28.15.5 The Contractor agrees that if its status changes in regards to any certification herein, the Contractor shall immediately notify the City of the same.

28.15.6 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.

28.16 PUBLIC RECORDS LAW. The parties do not believe that AT&T is or will be acting on behalf of City pursuant to this Agreement, nor intend for AT&T to act on behalf of the City pursuant to this Agreement. Without waiver of the foregoing, to the extent AT&T is a “contractor” as defined in section 119.0701 and 119.011(2), Florida Statutes, AT&T (as the “Contractor” for purposes of this provision) shall:

28.16.1 Keep and maintain public records required by the City to perform the service.

28.16.2 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 Chapter 119, Florida Statutes or as otherwise provided by law.

- 28.16.3 Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Contractor does not transfer the records to the City.
- 28.16.4 Upon completion of the contract, transfer, at no cost, to the City all public records in possession of the Contractor or keep and maintain public records required by the City to perform the service. If the Contractor transfers all public records to the City upon completion of the contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS OR DESIGNEE AT: ATTENTION DEBBIE ANDREA, (561) 586-1660 OR DANDREA@LAKEWORTHBEACHFL.GOV OR 7 NORTH DIXIE HIGHWAY, LAKE WORTH BEACH, FL 33460

REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK
SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the parties hereto have caused this Agreement Regarding Joint Use of Poles to be effective as of the day and year first above written.

**BELLSOUTH TELECOMMUNICATIONS, LLC
D/B/A AT&T FLORIDA**

By: _____

Title: _____

STATE OF _____)
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2020, by _____, who was physically present, as _____ (title), of Bellsouth Telecommunications, LLC D/B/A AT&T Florida, which is authorized to do business in the State of Florida, and who is personally known to me or who has produced the following _____ as identification.

Notary Public

Print Name: _____
My commission expires: _____

CITY OF LAKE WORTH BEACH, FLORIDA

ATTEST:

By: _____
Deborah M. Andrea, City Clerk

By: _____
Pam Triolo, Mayor

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

APPROVED FOR FINANCIAL
SUFFICIENCY

By: _____
Glen J. Torcivia, City Attorney

By: _____
Bruce T. Miller, Financial Services Director

EXHIBIT A

SAMPLE PROPOSAL FORM FOR ATTACHMENTS

PROPOSAL FOR ATTACHMENT(S)

PROPOSAL NO. _____

THIS PROPOSAL is made on the ____ day of _____, 2020, by _____ [AT&T or City of Lake Worth Beach] regarding the following described pole(s):

1.0 Pole(s) Description:

The Pole(s) that are subject of this proposal is generally located at: _____ and as further depicted on the attached sketch and digital picture.

2.0 Scope

Under this Proposal, _____ seeks to perform / have performed the following tasks: _____.

3.0 Schedule

The following schedule is proposed for the above Scope: _____.

4.0 Project Manager

The Project Manager for this Proposal is _____, phone: _____; email: _____.

THIS PROPOSAL HAS BEEN SENT TO _____ ON _____, 202__ VIA CERTIFIED MAIL (RRR) / HAND DELIVERY / NATIONALLY RECOGNIZED OVERNIGHT COURIER.

BY: _____

PRINT NAME: _____

TITLE: _____

THIS PROPOSAL IS ACCEPTED BY _____ ON _____, 202__.

BY: _____

PRINT NAME: _____

TITLE: _____

EXHIBIT B

Annual Pole Rental

\$16.50 per Lake Worth Beach pole to which AT&T is attached

\$20.68 per AT&T pole to which Lake Worth Beach is attached

EXHIBIT C

NOTIFICATIONS

CITY

Contract & Billing Issues

**City of Lake Worth Beach
Financial Services Department
7 N. Dixie Highway
Lake Worth Beach, FL 33460**

**With Copy to:
Engineering**

**City of Lake Worth Beach
Electric Utility Director
1900 2nd Avenue North
Lake Worth Beach, FL 33461**

**With Copy to:
Legal**

**City Attorney
7 N. Dixie Highway
Lake Worth Beach, FL 33460**

AT&T

Contract Issues

**Phillip R. Simmons
11760 US Highway 1
Rm 305c, N. Palm Beach, FL. 33408
516-606-2076
g13922@att.com**

Billing/Invoices

(Same as above)

Engineering

**Jonathan Ellzey
9101 SW. 24th St.
Rm 1, Miami, FL., 33165
305-222-8219
jonathan.ellzey@att.com**

Legal

**Bellsouth Telecommunications, LLC d/b/a
AT&T Florida
Attn: AT&T Legal Department – Network
Counsel
208 S. Akard Street
Dallas, Texas 75202-4206**

EXHIBIT D

Bill of Sale

This Agreement is made this ___ day of _____, 20__ (“Effective Date”), by and between _____, a _____ company/corporation with a principal office at _____, hereinafter called Buyer, and _____, a _____ company/corporation, with a principal office in _____, _____, hereinafter called Seller.

For and in consideration of the sum of \$_____ to it in hand paid and other valuable considerations, payable to Seller in immediately available funds, the receipt of all of which is hereby acknowledged, Seller by these presents does hereby bargain, sell, demise, release and forever quitclaim to Buyer, its successors and assigns, all of the rights, title, interest and claim the Seller now has or may have had in the following “Pole(s)” located in , _____ County, _____ (State):

Quantity	Description	Location (address, lat/long, etc.)

_____ Additional locations on attached

This sale is subject to the following terms and conditions:

1. Buyer is purchasing the Poles described above in reliance upon its personal inspection and in an “as is” and “where is” condition, with all faults.
2. Seller makes no warranties, express or implied, of any kind or nature except that (a) Buyer will acquire by the terms of this bill of sale good title to the Poles; (b) Seller has the right to sell the Poles. Without limiting the generality of the foregoing, SELLER MAKES NO WARRANTIES WITH RESPECT TO THE QUALITY, CONTENT, CONDITION, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF THE POLES OR ANY FACILITIES ATTACHED THERETO.
3. BUYER UNDERSTANDS THAT THE SELLER’S POLES OR THE FACILITIES ATTACHED THERETO MAY CONTAIN PRESERVATIVES OR OTHER HAZARDOUS MATERIALS. BUYER REPRESENTS AND WARRANTS THAT IT WILL HANDLE AND TREAT SUCH POLES OR THE FACILITIES ATTACHED THERETO, INCLUDING BUT NOT LIMITED TO, THE POLES OR FACILITIES CONTAINING LEAD, IN COMPLIANCE WITH ALL ENVIRONMENTAL LAWS, INCLUDING, BUT NOT LIMITED TO, PROCURING ALL REQUIRED PERMITS AND CERTIFICATES.
4. As used herein, “Environmental Laws” shall mean all Federal, State or local laws, regulations or ordinances having to do with the protection of health, welfare, the environment or workers, including, without limitation, the Clean Air Act, the Clean Water Act, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Toxic Substances Control Act, the Emergency Planning and Community Right-To-Know Act, the Hazardous Materials Transportation Act, the Occupational Safety and Health Act, and any similar state or local laws, regulations or ordinances.
5. On the Effective Date, Buyer releases Seller of all liability for, and Buyer assumes all liability for, and will defend, indemnify and hold harmless Seller from and against all losses, damages, expenses (including attorneys’ fees and costs), claims, suits and liabilities, whether based in contract or tort (including strict liability), to the extent arising out of, resulting from, or in connection with (a) Buyer’s negligent acts or omissions or wrongful acts or omissions, (b) the failure of Buyer or its agents to fully comply with the terms and conditions of this Agreement, including those concerning compliance with Environmental Laws or (c) assertions under Worker’s Compensation or similar laws made by persons utilized by Buyer. Seller shall promptly notify Buyer of any written claim, loss or demand for which Buyer is responsible under this Clause. Notwithstanding the foregoing, the Seller shall remain liable for, will defend, indemnify and hold harmless Buyer from and against all losses, damages, expenses (including attorneys’ fees and costs), claims, suits and liabilities, whether based in contract or tort (including strict liability), to the extent arising out of, resulting from or in connection with the Poles prior to the Effective Date. Nothing in this Agreement shall be construed as a waiver of a party’s right to sovereign immunity as set forth in section 768.28, Florida Statutes, or other applicable law.

6. If, for any reason, Buyer removes, modifies or disposes of the Poles, then it will do so safely and in accordance with all Environmental Laws and standards, and will do no damage to other property owned by Seller or third parties.

BUYER EXPRESSLY ASSUMES ALL LIABILITIES THAT MAY ARISE FROM THE HANDLING, PROCESSING, REMOVAL OR OTHER USE OF THE POLES OR FACILITIES ATTACHED THERETO, INCLUDING THOSE ARISING UNDER THE ENVIRONMENTAL LAWS.

7. This Agreement does not transfer any rights, licenses or other interests in any easement, right of way, license or other property right or interest associated with the Poles or facilities attached thereto and Seller expressly retains all such rights, licenses and interests.

Effective Date: _____

(Seller's company name)

(Buyer's company name)

Signature

Signature

Printed Name

Printed Name

Title

Title

Address:

Address:

EXHIBIT E

Depreciation Table

Age in Years	35'1	35'2	35'3	40'1	40'2	40'3	45'1	45'2	45'3	50'1	50'2	50'3
0	\$248.50	\$219.00	\$ 214.04	\$299.00	\$ 288.04	\$234.50	\$364.50	\$326.50	\$ 278.00	\$440.00	\$378.50	\$ 322.50
1	\$239.30	\$210.89	\$ 206.11	\$287.93	\$ 277.37	\$225.81	\$351.00	\$314.41	\$ 267.70	\$423.70	\$364.48	\$ 310.56
2	\$230.10	\$202.78	\$ 198.18	\$276.86	\$ 266.70	\$217.12	\$337.50	\$302.32	\$ 257.40	\$407.40	\$350.46	\$ 298.62
3	\$220.90	\$194.67	\$ 190.25	\$265.79	\$ 256.03	\$208.43	\$324.00	\$290.23	\$ 247.10	\$391.10	\$336.44	\$ 286.68
4	\$211.70	\$186.56	\$ 182.32	\$254.72	\$ 245.36	\$199.74	\$310.50	\$278.14	\$ 236.80	\$374.80	\$322.42	\$ 274.74
5	\$202.50	\$178.45	\$ 174.39	\$243.65	\$ 234.69	\$191.05	\$297.00	\$266.05	\$ 226.50	\$358.50	\$308.40	\$ 262.80
6	\$193.30	\$170.34	\$ 166.46	\$232.58	\$ 224.02	\$182.36	\$283.50	\$253.96	\$ 216.20	\$342.20	\$294.38	\$ 250.86
7	\$184.10	\$162.23	\$ 158.53	\$221.51	\$ 213.35	\$173.67	\$270.00	\$241.87	\$ 205.90	\$325.90	\$280.36	\$ 238.92
8	\$174.90	\$154.12	\$ 150.60	\$210.44	\$ 202.68	\$164.98	\$256.50	\$229.78	\$ 195.60	\$309.60	\$266.34	\$ 226.98
9	\$165.70	\$146.01	\$ 142.67	\$199.37	\$ 192.01	\$156.29	\$243.00	\$217.69	\$ 185.30	\$293.30	\$252.32	\$ 215.04
10	\$156.50	\$137.90	\$ 134.74	\$188.30	\$ 181.34	\$147.60	\$229.50	\$205.60	\$ 175.00	\$277.00	\$238.30	\$ 203.10
11	\$147.30	\$129.79	\$ 126.81	\$177.23	\$ 170.67	\$138.91	\$216.00	\$193.51	\$ 164.70	\$260.70	\$224.28	\$ 191.16
12	\$138.10	\$121.68	\$ 118.88	\$166.16	\$ 160.00	\$130.22	\$202.50	\$181.42	\$ 154.40	\$244.40	\$210.26	\$ 179.22
13	\$128.90	\$113.57	\$ 110.95	\$155.09	\$ 149.33	\$121.53	\$189.00	\$169.33	\$ 144.10	\$228.10	\$196.24	\$ 167.28
14	\$119.70	\$105.46	\$ 103.02	\$144.02	\$ 138.66	\$112.84	\$175.50	\$157.24	\$ 133.80	\$211.80	\$182.22	\$ 155.34
15	\$110.50	\$97.35	\$ 95.09	\$132.95	\$ 127.99	\$104.15	\$162.00	\$145.15	\$ 123.50	\$195.50	\$168.20	\$ 143.40
16	\$101.30	\$89.24	\$ 87.16	\$121.88	\$ 117.32	\$95.46	\$148.50	\$133.06	\$ 113.20	\$179.20	\$154.18	\$ 131.46
17	\$92.10	\$81.13	\$ 79.23	\$110.81	\$ 106.65	\$86.77	\$135.00	\$120.97	\$ 102.90	\$162.90	\$140.16	\$ 119.52
18	\$82.90	\$73.02	\$ 71.30	\$99.74	\$ 95.98	\$78.08	\$121.50	\$108.88	\$ 92.60	\$146.60	\$126.14	\$ 107.58
19	\$73.70	\$64.91	\$ 63.37	\$88.67	\$ 85.31	\$69.39	\$108.00	\$96.79	\$ 82.30	\$130.30	\$112.12	\$ 95.64
20	\$64.50	\$56.80	\$ 55.44	\$77.60	\$ 74.64	\$60.70	\$94.50	\$84.70	\$ 72.00	\$114.00	\$98.10	\$ 83.70
21	\$55.30	\$48.69	\$ 47.51	\$66.53	\$ 63.97	\$52.01	\$81.00	\$72.61	\$ 61.70	\$97.70	\$84.08	\$ 71.76
22	\$46.10	\$40.58	\$ 39.58	\$55.46	\$ 53.30	\$43.32	\$67.50	\$60.52	\$ 51.40	\$81.40	\$70.06	\$ 59.82
23	\$36.90	\$32.47	\$ 31.65	\$44.39	\$ 42.63	\$34.63	\$54.00	\$48.43	\$ 41.10	\$65.10	\$56.04	\$ 47.88
24	\$27.70	\$24.36	\$ 23.72	\$33.32	\$ 31.96	\$25.94	\$40.50	\$36.34	\$ 30.80	\$48.80	\$42.02	\$ 35.94
25	\$18.50	\$16.25	\$ 15.79	\$22.25	\$ 21.29	\$17.25	\$27.00	\$24.25	\$ 20.50	\$32.50	\$28.00	\$ 24.00
26	\$9.30	\$8.14	\$ 7.86	\$11.18	\$ 10.62	\$8.56	\$13.50	\$12.16	\$ 10.20	\$16.20	\$13.98	\$ 12.06
27	\$0.10	\$0.03	\$ (0.07)	\$0.11	(\$0.05)	(\$0.13)	\$0.00	\$0.07	\$ (0.10)	(\$0.10)	(\$0.04)	\$ 0.12

EXHIBIT F

Pole Counts

	2018	2019	2020*
CITY Poles to which AT&T is attached	5,955	5,817	5,535
AT&T Poles to which CITY is attached	1,224	1,362	1,644

* The 2020 pole counts are based on the planned transfer from CITY to AT&T of ownership of 420 poles (to be mutually selected by the parties) from a larger group of poles that were previously owned by AT&T and were replaced by CITY with poles of which CITY retained ownership. To arrive at the 2020 counts, 420 was added to the 2018 count of AT&T poles and 420 was deducted from the 2018 count of CITY poles. If the parties transfer a different number of poles than 420, the 2020 pole counts will be adjusted accordingly. With respect to the poles transferred to AT&T, AT&T shall reimburse the City for the depreciated value of the transferred pole (based on labor costs and bare pole costs to install such poles.) Notwithstanding the foregoing, if a pole to be transferred pursuant to this paragraph is scheduled to be replaced as a part of the City's written storm hardening plan, AT&T shall not owe City any amount for that pole. If a pole that is transferred to AT&T pursuant to this paragraph subsequently becomes scheduled to be replaced as part of the City's written storm hardening plan, the City will refund or credit the amount paid by AT&T at such time as the pole is replaced. The final quantity of poles to be transferred and all costs shall be mutually agreed upon by both parties.

EXHIBIT G

CITY Pole Replacement Costs