



**AGENDA**  
**CITY OF LAKE WORTH BEACH**  
**REGULAR CITY COMMISSION MEETING**  
**BY TELECONFERENCE**  
**TUESDAY, MAY 19, 2020 - 6:00 PM**

**ROLL CALL:**

**INVOCATION OR MOMENT OF SILENCE:** led by Commissioner Scott Maxwell

**PLEDGE OF ALLEGIANCE:** led by Vice Mayor Andy Amoroso

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

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

- A. [PBC Fire Rescue annual report by Capt. Tim McCabe](#)
- B. Updates/Reports:
  - Testing in City of Lake Worth Beach
  - Food
  - City Operations Plans for re-opening facilities/services

**COMMISSION LIAISON REPORTS AND COMMENTS:**

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

**APPROVAL OF MINUTES:**

- A. [Regular Meeting - May 5, 2020](#)
- B. [Special Meeting - May 12, 2020](#)

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

- A. [Agreement with Rosso Site Development for the District 2, Year 4 Full Construction Neighborhood Road Program Project](#)
- B. [Final Change Order #4 to Hardrives of Delray, Inc. dba Hardrives, Inc. for the Park of Commerce Phase 1A Infrastructure Improvements Project](#)
- C. [Consideration of settlement with Ferol Lynne Voltaggio in the amount of \\$110,000 \(inclusive of attorney's fees\)](#)

**NEW BUSINESS:**

- A. [Second Amendment to Lease with RTT-Benny's on the Beach, Inc.](#)
- B. [Second Amendment to Retail Lease with Mulligans Lake Worth Acquisition, LLC.](#)

**CITY ATTORNEY'S REPORT:**

**CITY MANAGER'S REPORT:**

A. Commission meeting schedule: Workshops – General, Budget

**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)



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# City of Lake Worth Beach

## Annual Report

October 1, 2018 – September 30, 2019

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*City of*  
**Lake Worth**  
**Beach**  
**FLORIDA**<sup>sm</sup>

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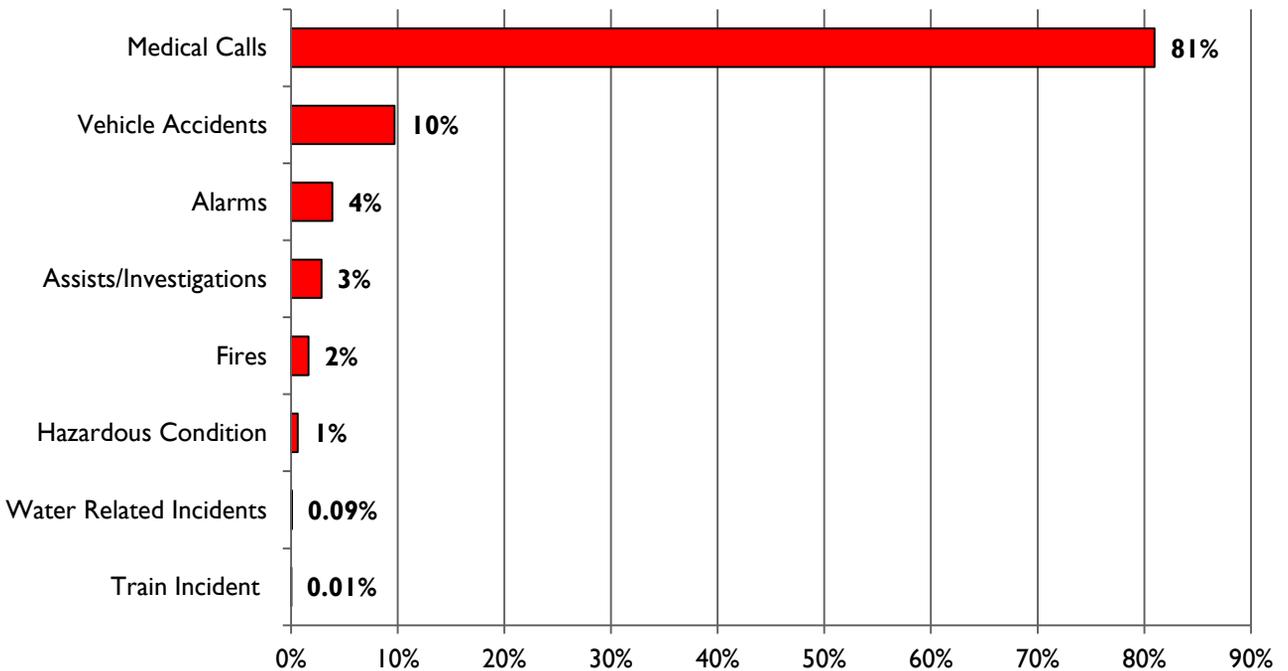
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# Lake Worth Beach Alarm Activity - FY 2019

During the period from October 1, 2018 through September 30, 2019, Fire Rescue responded to 7,847 emergency calls within the City of Lake Worth Beach. The following is a breakdown of the major call types:

## Lake Worth Beach Alarm Activity - FY 19



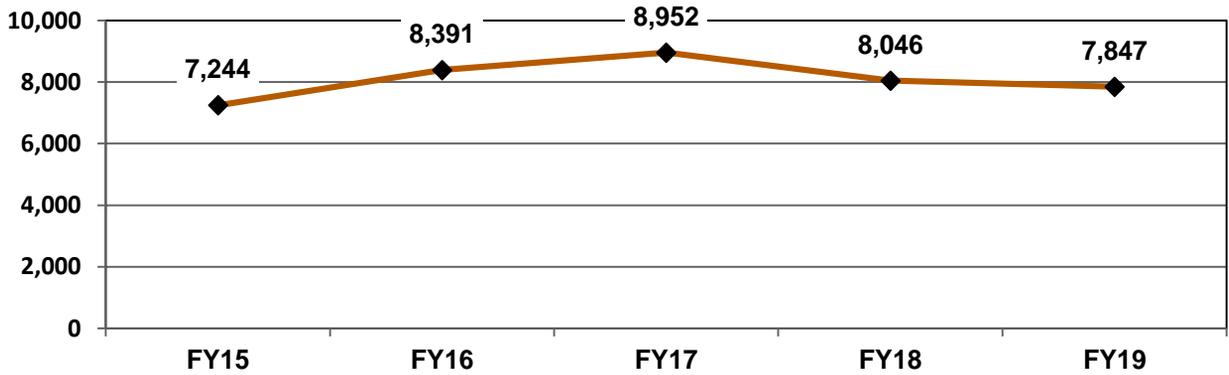
Type	# of Incidents
Medical Calls	6,353
Vehicle Accidents	778
Alarms	304
Assists/Investigations	225
Fires	129
Hazardous Condition	50
Water Related Incidents	7
Train Incident	1
<b>Total:</b>	<b>7,847</b>



# Lake Worth Beach Alarm Activity FY 2015-2019

The following chart reflects the emergency response activity over the past five years.

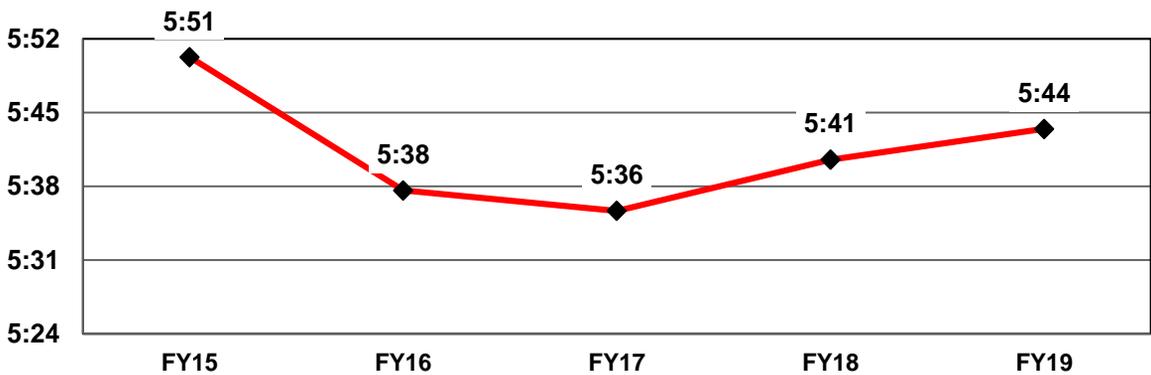
## Lake Worth Beach Total Calls FY2015 - FY2019



## Response Times

Total response time is determined by utilizing three components which are: call handling time, turnout time, and travel time. The following chart reflects the average response time for the past five years.

## Lake Worth Beach Response Time Average FY2015 - FY2019



# Auto Accidents

Fire Rescue responded to 778 vehicle accidents within Lake Worth Beach October 1, 2018 through September 30, 2019. Although vehicle accidents can be a serious matter, Palm Beach County Fire Rescue personnel are trained to handle these situations. The Training & Safety Division is currently providing ongoing extrication training for all personnel to stay proficient in the art of disassembling vehicles.



# Structure Fires

Structure fires pose the most serious threat to life safety and are the highest fire loss potential to the citizens we serve. Fire Rescue must be prepared and respond to each structure fire call with adequate personnel and equipment. Therefore, each reported structure fire receives 3 fire engines, 2 rescues, 1 aerial (ladder), 1 EMS Captain, and a Battalion Chief. This is considered a national standard to adequately handle a structure fire.

Fortunately, due to smoke detectors and early fire discovery, human casualties have been held at a minimum. Palm Beach County Fire Rescue has an on-going program to install smoke detectors in homes of those who are unable due to physical or monetary needs.



# Fire Stations and Personnel

The City of Lake Worth Beach is served by two primary fire stations. All stations are staffed 24 hours a day. Station 91 has a complement of 8 personnel (3 personnel are assigned to the ALS engine, 3 people are assigned to the rescue unit, an EMS Captain and a Battalion Chief). Station 93 has a complement of 6 personnel (3 are assigned to an ALS engine and 3 people are assigned to the rescue unit).



Station #91



Station #93

# Fire Stations and Personnel

## Surrounding Stations:

The Lake Worth Beach service area is part of our regional system and these 4 stations serve as back-up with resources and equipment when needed to better assist the 2 primary stations.



Station #37



Station #35



Station #38



Station #31

# Apparatus

The following vehicles are assigned in the City of Lake Worth Beach:

## Station 91

Model Year	Unit Name
2017	ALS RESCUE
2014	1250 GPM ALS ENGINE
2015	BATTALION CHIEF COMMAND
2019	EMS CAPT COMMAND
2019	DISTRICT CHIEF COMMAND



**Battalion Chief #91**



**EMS Captain #91**



**Engine & Rescue #91**

## Station 93

Model Year	Unit Name
2017	ALS RESCUE
2014	1250 GPM ALS ENGINE



**Engine #93**



**Rescue #93**

All firefighting vehicles meet current National Fire Protection Association specifications.

# Apparatus

The following vehicles support the City of Lake Worth Beach from the surrounding stations :

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## Station 37

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Model Year	Unit Name
2017	ALS RESCUE
2013	1250 GPM ALS ENGINE

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Engine #37



Rescue #37

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## Station 31

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Model Year	Unit Name
2017	ALS RESCUE
2014	1250 GPM ALS ENGINE

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Rescue #31



Engine #31

All firefighting vehicles meet current National Fire Protection Association specifications.

# Apparatus

The following vehicles support the City of Lake Worth Beach from the surrounding stations:

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## Station 35

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**Model Year**  
2019  
2014

**Unit Name**  
ALS RESCUE  
70' PLATFORM TRUCK

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Rescue #35



Platform #35

All firefighting vehicles meet current National Fire Protection Association specifications.

# Operations

The Operations Division is the largest area of Palm Beach County Fire-Rescue, responsible for the direct delivery of emergency services.

PBCFR maintains 49 fire stations throughout the county and our municipal partners, with a minimum of 295 personnel on duty at all times.

Zone coverage is maintained as required by re-locating units to fill areas of need.

PBCFR is an “all-hazards” department, capable of responding to everything from a minor medical call to a regional natural disaster.

All personnel are cross-trained in firefighting and emergency medical services, ensuring efficient delivery of fire suppression, technical rescue, vehicle extrication, and emergency medical care.



# Special Operations

PBCFR maintains two Special Operations teams that responds to emergencies countywide.

Special Operations technicians receive continual training to maintain readiness in a number of disciplines, including:

- Hazardous materials response
- Confined space and technical rescue
- Dark Water Dive Rescue
- Advanced Automobile Extrication
- Explosive Ordnance Disposal (with PBSO)
- High Angle Rescue
- Trench Rescue
- Large Animal Rescue
- Structural Collapse Rescue

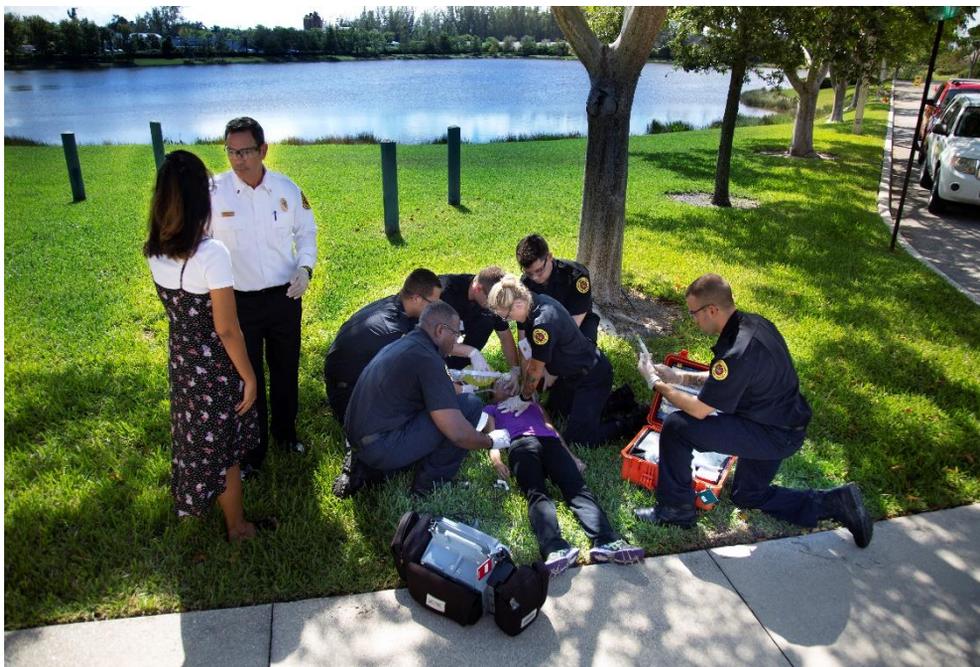


# Medical Services

The Medical Services Division oversees both the Emergency Medical Services and Mobile Integrated Health (MIH) of PBCFR. The Medical Services Division is committed to EMS care and improving the health of PBC citizens by providing the highest level of pre-hospital advanced life support care.

MIH was designed in an effort to enhance the EMS approach to meeting needs of patients after their 911 call through multidisciplinary assessment and care coordination. PBCFR employs a Community Paramedicine Coordinator and Medical Social Work Coordinator to coordinate the MIH Program.

Our exceptional EMS services have continued to provide unparalleled emergency care for those we serve. PBCFR is among the top in the nation at cardiac arrest resuscitation, and continues to elevate standards across the country based on our best practices. This has been accomplished through a partnership of evidence based science and innovative medical protocols and techniques. PBCFR has continuously been recognized both nationally and internationally for our medical and trauma emergency services. PBCFR Medical Services Division is prepared and honored to serve the citizens and visitors of Palm Beach County.



# Air Rescue/Trauma

Palm Beach County is home to two Level I Trauma Centers, at St Mary's Hospital and Delray Community Hospital. This is the highest level of care designated by the state of Florida. Critical patients are transported either by ground ambulance, or by one of two Trauma Hawk helicopters.

In partnership with the Health Care District, PBCFR provides paramedics and flight nurses to rapidly transport injured patients, increasing their chance for survival.



# Aircraft Rescue & Firefighting (ARFF)

Residents and visitors of Palm Beach County receive rapid response to medical calls and fire suppression in the terminals and on the airfield of Palm Beach International Airport(PBIA) from our firefighter/paramedics of Station 81 which is known as our Aircraft Rescue Firefighting(ARFF) station.

Station 81 is located on the airfield at PBIA and houses several large specialized ARFF fire suppression “Dragon” units, capable of quickly delivering large amounts of firefighting foam and water in the event of an aircraft incident on the airfield.



# Training & Safety Division

The Training & Safety Division is responsible for training PBCFR's existing 1260+ certified Firefighters, 200 support personnel, and new recruits in Fire (All Hazards), EMS and continuing education utilizing up-to-date content and cutting edge techniques. It operates using state-of-the-art technology to deliver constant, repeatable training through the department's training facility classroom's, burn building, training tower, numerous props and online intranet sites. The Video Production Department support the Training & Safety Division by producing training videos distributed over the intranet and County Cable Channel 20. The Video Production Department provides video and still photography for scheduled seminars, conferences, promotions, and graduations.



# Support Services

Support Services provides logistical support for the 49 fire stations, as well as equipment and apparatus maintenance.

The areas of responsibility are comprised of several areas:

- Apparatus purchase and repair
- Facility construction and maintenance
- Information Technology (ITS)
- Communications

Existing vehicles are maintained at our state of the art shop on Vista Parkway, where technicians service vehicles from Palm Beach County and several other fire departments.

Palm Beach County Fire-Rescue's Capital Improvement Plan provides for the purchase and replacement of vehicles annually, to maintain the best possible fleet.

New technology is constantly evaluated to improve operational efficiency in our service delivery.



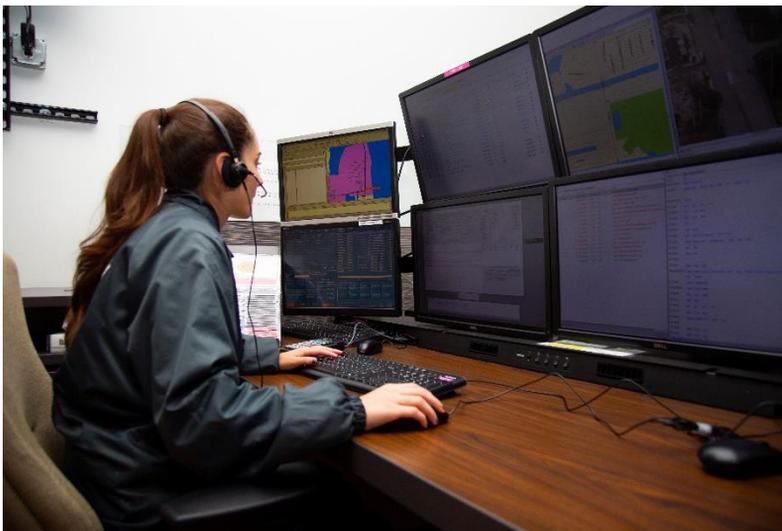
# Alarm Office



PBCFR's Communications Center (Alarm Office) is a multi-agency operation that handles all fire and medical emergency communications for PBCFR, including seven additional municipal Fire Rescue Departments.

The PBCFR Communications Center processes approximately 400,000 phone calls annually resulting in over 200,000 dispatched events. This count includes ALL incoming (both Admin and 911) and outbound calls processed.

Dispatchers are highly trained, able to locate and provide rapid service to callers and emergency personnel.



# Bureau of Safety Services (BOSS)

The Bureau of Safety Services is responsible for a number of fire prevention activities, as well as fire investigations.

Bureau inspectors visit commercial businesses and multi-family dwellings annually, ensuring compliance with the Fire Prevention Code.

New construction must go through Plans Review to ensure that the building meets current code.

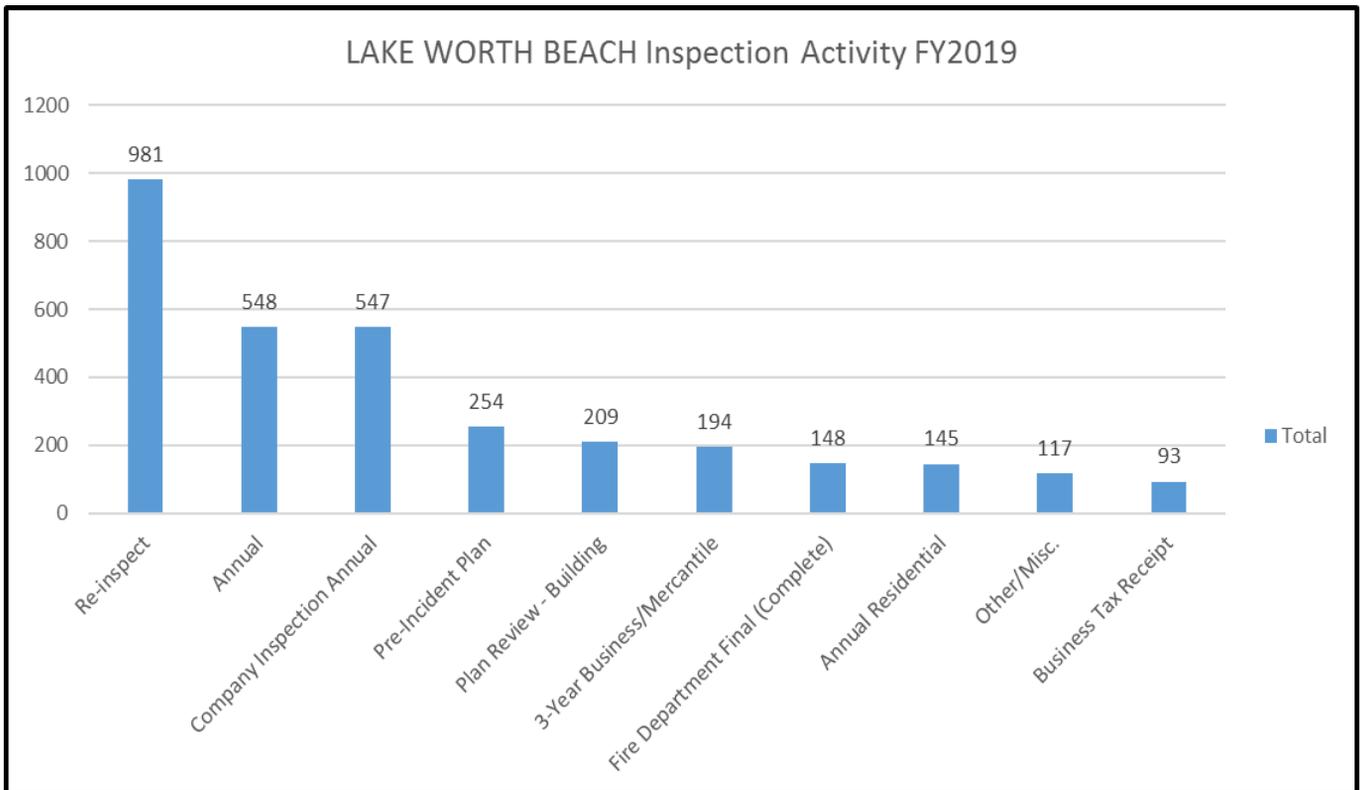
Investigators are responsible for determining cause and origin for suspicious fire, and making criminal arrests.

The Office of the Fire Marshal is responsible for the development, revision, and enforcement of the Fire Prevention Code in Palm Beach County.



# Fire and Safety Inspections

Palm Beach County Fire Rescue's Bureau of Safety Services conducts safety and fire inspections annually on commercial and multi-family buildings. The purpose of these inspections is to increase fire safety and assure compliance with the local fire code. Additionally, all residential inspections are completed by the station personnel. This is part of our Residential/Company Inspection program which requires inspections of all buildings with three or more living units. These inspections are conducted on a regular basis depending on the type of property. During these inspections, the personnel are able to answer any questions from the residents, or they may be able to assist them with any other fire related needs. This graph represents the top inspection activities for the City of Lake Worth Beach.



# Community Education Programs

This past fiscal year 995 community education programs were conducted in the City of Lake Worth Beach. These programs brought fire safety and education training to 22,709 individuals, which resulted in a total of 13,550 contact hours. A complete list of these classes is attached to this report.

Community Educators provide instruction on a variety of topics, as well as offer speakers for presentations.

Presentations include:

- Fire safety in the home
- Carbon monoxide awareness
- Disaster preparedness
- Hands-only CPR

As part of our ongoing commitment to injury prevention, classes are also offered for fall prevention for our elderly citizens.

Car seats are installed at a number of fire stations throughout the county, and swim lessons for children are offered as part of the Drowning Prevention Coalition.



**MINUTES  
CITY OF LAKE WORTH BEACH  
REGULAR CITY COMMISSION MEETING  
BY TELECONFERENCE  
TUESDAY, MAY 5, 2020 - 6:00 PM**

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

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

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

**PLEDGE OF ALLEGIANCE:** led by Commissioner Scott Maxwell.

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

Request to move Consent Items I, J and K to New Business C, D and E and New Business Item A to be moved to the next Commission meeting.

**Action:** Motion made by Commissioner Robinson and seconded by Commissioner Hardy to approve the agenda as amended.

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

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

A. Quarterly update by PBSO given by Captain Todd Baer

Capt. Baer spoke about the 2019 Uniform Crime Report, the plan to address crime, overdose cases within the City and a COVID-19 Update. He expressed disappointment that crime was up for 2019 following three years of decline; street robberies and aggravated assault contributed to the increase but there was a decrease in burglaries. He said that the City was hampered by the low Census numbers from 2010 and urged residents to complete the 2020 Census. He reported that the plan would be to focus on crime and quality of life, applying for grants and working with SAO and USA. He stated that the overdoses were trending downward and there had been no recent complaints regarding sober homes. He said that all leave time had been canceled so PBSO was fully operational to deal with COVID-19; mental health and domestic violence calls were up. He reported that no deputies in the City had tested positively.

Commissioner Robinson asked about domestic violence statistics and about COVID-19 calls.

Capt. Baer replied that domestic violence was up throughout the country. He said that they were keeping track of possible COVID-19 calls and the deputies had plenty of PPE.

Vice Mayor Amoroso thanked PBSO for helping with the weekly food distribution. He asked if the issues arising from the pandemic were being tracked separately. He said that he would give some census flyers to PBSO for distribution.

Capt. Baer said that domestic numbers were up.

Commissioner Maxwell commended PBSO for doing a stellar job.

Capt. Baer said that morale was high.

Mayor Triolo expressed her appreciation for the excellent work by PBSO.

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

Commissioner Robinson: said that it was important for staff to return calls within 24 hours. He congratulated the graduates of Lake Worth High School and said that the five nursing homes in the City were doing well. He wished everyone a Happy Cinco di Mayo.

Commissioner Maxwell: thanked people in the City for helping their neighbors and the community. He asked if something special could be planned for the graduates when the pandemic was over.

Commissioner Hardy: stated that the pandemic was an International tragedy affecting many people who were suffering. He said that there was a conversation about re-opening that took a turn into opening without regard for loss of life; he asked people to be patient and consider what was at stake. He asked that City Attorney Goddeau look at Roberts Rules and the Commission Rules and Procedures regarding removing items from the Consent Agenda. He requested funding public Wi-Fi in the poorest parts of the community because the families did not have the resources to allow their children to learn online. He said that local government zoning decisions had exacerbated health and other disparities in health and after the pandemic, those decisions should be reversed.

Vice Mayor Amoroso: said that he had attended many Zoom meetings for the PB League of Cities and local officials. He stated that they were working on problems like adding hotspots around the City and filling in the gaps with laptops for those without computers. He reported that approximately 700 people were being feed weekly.

Mayor Triolo: reported that she was working on getting mobile testing units in the City. She said that the schools had reached out to express their needs and discuss the feeding programs. She stated that the Pension Board had met and the account was down and she would be tracking the numbers closely. She gave a shout out to Patrick Livingston who was feeding people daily at the south end of town. She thanked Commissioner Maxwell for getting hand sanitizer and supplies to people. She announced that she would be doing a weekly video update and urged residents to maintain social distancing, wash their hands and stay safe.

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

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

Bonnie Bergstein wrote to inquire why the fuel charge was so high on her utility bill.

Tammy Pansa wrote to request that Consent Items I, J and K be pulled for discussion and in opposition to the City spending money to buy properties and then give or transfer them to the CRA.

Don Rosenshine wrote to suggest having gift certificates to be purchased from small businesses for redemption in the fall or winter.

**APPROVAL OF MINUTES:**

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

- A. Regular Meeting - April 9, 2020
- B. Regular Meeting - April 21, 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 Vice Mayor Amoroso and seconded by Commissioner Maxwell to approve the Consent Agenda.

- A. Resolution No. 14-2020 – authorizing the submission of an application to the Bureau of Justice Assistance for funding under the Coronavirus Emergency Supplemental Funding program
- B. Resolution No. 15-2020 – Amendment 001 to Interlocal Cooperation Agreement with Palm Beach County
- C. Contracts for the supply of Bulk Fuel, Gasoline, and Diesel for Public Works
- D. Task Order #13 with Baxter Woodman for the Construction Engineering Inspections Services for the Year 4, District 2 Neighborhood Road Program project
- E. Resolution No. 16-2020 – documenting the levy of municipal special assessment liens for unpaid boarding and securing charges
- F. Resolution No. 17-2020 – documenting the levy of municipal special assessment liens for unpaid demolition charges
- G. Resolution No. 18-2020 – documenting the levy of municipal special assessment liens for unpaid lot clearing charges
- H. Proclamation declaring April 2020 as Water Conservation Month
- I. Consideration of a Purchase and Sale Agreement with the CRA for properties located at 1602 Lake Avenue and 15 North B Street
- J. Consideration of an Agreement for Purchase and Sale of Real Property with 7 North B, LLC for property located at 7 North B Street in Lake Worth Beach
- K. Assignment to the CRA of the Agreement for Purchase and Sale of Real Property with 7 North B, LLC for property located at 7 North B Street in Lake Worth Beach

- L. Consideration of settlement with Brenda Marie Velez-Martinez in the amount of \$65,000 (inclusive of attorney's fees)
- M. Amendment 1 to Task Order No. 5 with Craig A. Smith & Associates, Inc. for additional engineering design services for Lake Osborne Estates Water Main Replacement Project – Phase 1

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

**PUBLIC HEARINGS:**

There were no Public Hearing items on the agenda.

**UNFINISHED BUSINESS:**

There were no Unfinished Business items on the agenda.

**NEW BUSINESS:**

- A. Consideration of a vote to utilize the Snook Islands docks brought forward by Commissioner Robinson

Commissioner Robinson stated that the item did not express his intent properly and requested that it be heard at the next meeting. He said that there should be a step towards seeing if the docks could be profitable. He proposed having an RFP to determine out if there were interest in maintaining the docks.

Comments/requests summary:

Vice Mayor Amoroso asked City Manager Bornstein for clarification regarding the docks; he said that letters from FIND and the County indicated that the docks had to be opened to all of the public as the City was only renting the docks.

City Manager Bornstein explained that FIND and the County were not interested in having a commercial enterprise at the docks. He said that there had been a lot of time spent on the issue and with only six spaces, it would not make money.

Vice Mayor Amoroso stated that the docks should be policed to ensure they were not used for storage.

Commissioner Hardy thanked Commissioner Robinson for bringing the item forward. He stated that the City did not need to ask FIND or the County for permission. He requested that the Commissioners keep an open mind when the issue came back as the City needed to take advantage of its underperforming assets.

**Action:** Motion made by Commissioner Hardy and seconded by Commissioner Robinson to postpone of the item until the next regular meeting.

Mayor Triolo opined that boaters would not want to dock with no security. She said that the Sailing Club could use the docks and offer sailing lessons. She explained that she was told that the City could not manage the docks unless it repaid the grant and that with the ongoing pandemic; this was not the time to address the issue.

Commissioner Maxwell said that there were too many obstacles.

**Action:** Motion to call the question by Commissioner Maxwell and seconded by Vice Mayor Amoroso.

**Vote:** Voice vote showed: AYES: Mayor Triolo, Vice Mayor Amoroso and Commissioner Maxwell. NAYS: Commissioners Hardy and Robinson. Motion failed due to the lack of a super majority.

Mayor Triolo said that there had never been a problem with the rules before and now some Commissioners wanted different rules depending on their positions.

Commissioner Robinson said that the docks were being kept empty and that there should be consideration of a method of use for the docks.

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

- B. Discussion to ascertain Commission direction on how to address the impacts of the COVID-19 pandemic as it relates to the businesses who lease facilities from the City at the Beach/Casino and Golf Course

City Manager Bornstein said that his intent would be to bring a finished item back at the next meeting for a vote. He iterated that there had been a discussion at the last meeting regarding the City's tenants including options from which to choose. He explained the caveats with each option; effective period of impact, what the payments would be, had the business applied for and/or received money from the government, had the business been operational, excluding any businesses that were selling its leases or declaring bankruptcy, tourist season, interest calculated and added into the payment. He named the options:

1. Complete deferment: to be paid back over one season from December 1 to April 1;
2. Abatement and deferment: a 25% abatement with a 75% deferment: to be paid back over five months beginning the month after complete reopening;
3. Businesses completely shut down: a 50% abatement with a 50% deferment: to be paid back during season, from December 1 to April 1.

He said that staff sought guidance from the Commission.

Comments/requests summary:

Commissioner Hardy stated that the lessees' financial positions should be examined to see if they needed the money and could repay it. He said that the City should be the last resort; the tenants should seek private equity first. He stated that the interest rate and compounding period would have to be determined and that the program should be on a case by case basis.

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

Barry Freedman, owner of the LWB Tee Shirt Company, wrote asking for leniency with his rent payments as his store had been closed since March and he had no income.

Rafi and Maria Kilwins wrote to request forgiveness of their rent for April, May and June 2020 and lowering the rent after June until things went back to normal.

Anthony Vultaggio, owner of Mamma Mia's on the Beach, wrote in favor of the "alternative option" but hoped for a 75 percent abatement for May and June with no deferral and an abatement and deferral if the situation did not go back to normal.

Vice Mayor Amoroso spoke in favor of deferment and in opposition to getting the businesses' financials because they had a line of credit with the City. He said that his main concern was to get people back to work. He stated that each business was unique and that the receipt of the PPP money should not disqualify them from getting an abatement or deferral from the City; the program should be consistent and the tenants should be able to discuss their needs with the City.

Commissioner Hardy opined that local government should not be involved in commercial real estate. He said that it would be problematic to use City resources for private entities without verifying their financial positions. He stated that there should be flexibility with the payback periods and the City should work with the businesses. He spoke in favor of deferment not abatement. He requested a report from staff regarding how much revenue was lost from parking at the beach.

Mayor Triolo asked if each Commissioner met by phone with the City Manager on a weekly basis and suggested that each do so before the meeting and request that the appropriate staff to answer questions. She said that there should be discussions with the business owners and that there should be agenda items to deal with the pandemic's effect on the City.

Commissioner Hardy stated that any information discussed with the City Manager be made available to the public.

Commissioner Robinson asked if Bruce Miller, Financial Services Director, had any input into the decision. He stated that the season period should be extended and that deferment would be better than abatement. He said that he would not need to see financial positions but would need to see what loans had been applied for. He stated that it would be difficult to be consistent when all the businesses were different.

Commissioner Maxwell said that one size did not fit all; two businesses were part of a chain. He stated that he preferred deferment to abatement. He asked if the businesses had loss insurance. He opined that it would be easier to get capital from a bank than from the City, which would have a shorter repayment period. He expressed the importance of knowing the businesses' financial situations. He asked what the financial impact would be at the beach and the golf course.

Vice Mayor Amoroso explained that consistent meant that what one did for one, one did for the others. He asked if there were letters of credit or financials.

City Attorney Goddeau replied that each business was different; some had letters of credit while others did not require a security deposit. She said that the legal department did not review financials and that Mr. Miller would need to determine who would be able to look over the financials. She stated that the March rent had been paid, but no one had paid rent for April.

Commissioner Maxwell said that using a security deposit for payment should be considered. He expressed concern about leases being granted without financial due diligence and that each lease was different and would be case by case.

Mayor Triolo opined that the City should not be in the commercial business. She said that she would need to see the numbers regarding the financial impact to the City and if the businesses had applied for and received money from the government.

Commissioner Hardy asked City Attorney Goddeau about closed sessions.

City Attorney Goddeau replied that closed sessions were allowed for specific exemptions such as litigation and union negotiations. She said that she was not aware of a closed session being allowed concerning negotiations with the tenants. She suggested having one on one meetings.

City Manager Bornstein thanked the Commission for their comments. He stated that Mamma Mia's had paid their April rent but approximately \$70,000 in lease revenue and \$250,000 in parking revenue and fines was lost in April. He said that there was enough direction to go to the next level of discussions.

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

City Attorney Goddeau did not provide a report.

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

City Manager Bornstein provided the following report:

- The Board of County Commissioners (PBCBCC) voted to send a letter to the Governor urging a move towards Phase 1 for PBC like the rest of the state
- There would be PBCBCC meeting that week to discuss beach re-opening
- Some of the highest rates of infection were in central PBC, but there was hardly any testing
- Asked for consensus for the Mayor to join with the Mayors of Palm Springs and Greenacres to sign a letter to the PBCBCC to urge them to provide more testing

Commissioner Hardy stated that the County did not have a 14-day decrease in cases and should not be going into Phase 1. He asked what the City would do if the County moved too fast since the City did not have any orders in place. He sought a commitment that LWB would not participate without direction from the Commission and requested an order mirroring the County that would be in place if the County ended theirs.

City Manager Bornstein said that there had been consistency across the County, but there was some dissension from some Commissioners. He stated that he would seek direction after the County made a decision. He said that staff had been working on a re-opening plan and had anticipated another few weeks before anything re-opened.

Mayor Triolo suggested that there be a discussion at the next meeting or at an emergency meeting.

**ADJOURNMENT:**

**Action:** Motion made by Commissioner Hardy and seconded by Commissioner Robinson to adjourn the meeting at 8:25 PM.

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

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Pam Triolo, Mayor

ATTEST:

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Deborah M. Andrea, CMC, City Clerk

Minutes Approved: May 19, 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  
BY TELECONFERENCE  
TUESDAY, MAY 12, 2020 - 6:00 PM**

The meeting was called to order by Mayor Triolo on the above date at 6:00 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 (arrived at 6:03 PM) and Herman Robinson. Also present were City Manager Michael Bornstein, City Attorney Christy L. Goddeau and City Clerk Deborah M. Andrea.

**PLEDGE OF ALLEGIANCE:** led by Vice Mayor Andy Amoroso.

**UNFINISHED BUSINESS:**

There were no Unfinished Business items on the agenda.

**NEW BUSINESS:**

- A. Consideration of and request for official action regarding the re-opening plan for the City's Beach

Michael Bornstein, City Manager, explained that there were some changes regarding the policy for reopening south Florida. He said that the Palm Beach County Commissioner (PBCC) considered opening the beaches last week but postponed it until May 18. He said that the cities and beach personnel have been included in the discussion. He stressed that there was no definitive opening date and requested specific direction from the Commission whether to open the beach. He said that the City could be more restrictive than the County, not less and thanked staff for coming up with a plan.

**Action:** Motion made by Commissioner Hardy and seconded by Commissioner Robinson to disapprove the plan for reopening the beach.

Juan Ruiz, Assistant City Manager, thanked Lauren Bennett, Larry Lightfoot, Doug Yoakum, PBSO and PBFR, all of whom participated in the discussion. He said that the City had been allowing takeout and delivery from the beach restaurants. He gave an overview of the plans regarding Phase One Beach Tenants. He reported that for March 13-17, Lake Worth Beach, Beach Park and William O. Lockhart Pier would remain closed, tenants would operate at 25% indoor capacity and offer outdoor seating with six feet between parties, the parking lot would open to 25% capacity (approximately 180 spaces) and Old Bridge Park would be for employee parking only. He stated that different cities in the County had different approaches to opening their beaches. He said that the City would try to mirror the policies of the County. He announced that Phase 2 reopening would include the beach and Beach Park from May 18-25, pursuant to the County Commission's

decision. He relayed that there would be 50% of the parking lot open with six feet of physical distancing markers, heavy promotion of the ParkMobile parking app, the William O. Lockhart Pier would be open with ten feet of physical distancing markers, restrooms would open, the towers would have one lifeguard with frequent shift rotation, six feet of distancing between staff and beach patrons, medical emergencies would be addressed by PBFR only and all staff would adhere to CDC and Social Distancing guidelines. He said that there would be heavy signage to reinforce the guidelines. He explained that for the Casino tenants, pursuant to PBC Executive Orders, there would be outdoor seating priority, parties could not to exceed ten people and there would have to be six foot distancing between parties. He stated that Phases 3 and 4 would follow when appropriate according to County implementation.

Comments/requests summary:

1. Commissioner Hardy asked about the number of parking spaces. He expressed concern that the risk of outdoor transmission was unknown and the risk was not worth it. He stated that the City beach drew people from outside of the community; people could get sun without going to the beach and many County facilities were open. He said that the criteria to reopen had not been met.
2. Vice Mayor Amoroso spoke in support of reopening the beach on Monday and sending a letter to the County. He said that he trusted City staff and PBSO and that the beach should open.
3. Commissioner Robinson said that the County mentioned resident requirements and if it would be legal to do so in the City. He stated that the City would be overwhelmed with County residents coming to the beach. He said that he was in favor of a phased reopening and that residents should be responsible. He iterated that the phased in approach should be stopped if residents did not adhere to the guidelines and that there should be consequences for those that did not follow them.

Assistant City Manager Ruiz replied that the legality was being explored and was unsure if it would be part of the PBCC's policy. He said that there would be signage boards monitoring the parking and active parking enforcement regarding guidelines. He said that staff was ready to manage the policy decided by the County.

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

Wes Blackman wrote in opposition to opening the beach beyond Phase 1.

Diane Skoglund wrote in opposition to reopening the beach.

City Manager Bornstein said that the Commission should make a policy at the meeting because there would not be time later. He stated that PBSO would be enforcing some activities.

4. Commissioner Hardy said that there had been a spike in crime and the priority would be protecting residents where they lived rather than enforcing guidelines at the beach.

He opined that the County was moving too quickly and being pressured by wealthy constituents. He stated that people who did not practice personal responsibility would harm others. He said that the City had a large minority population without insurance that would be negatively affected. He asked if the City had to allow access to the beach if Kreuzler Park were to open.

City Attorney Goddeau responded that each County had emergency management that oversaw the cities within its jurisdiction; however, the City owned its beach. She opined that the logistics would be the biggest issue.

5. Vice Mayor Amoroso said that he thought the City was ready to reopen the beach and that it would be difficult to police having part of the beach closed when those north and south were open. He stated that lifeguards police the beach every day and that staff could maintain the restrooms. He said that PBSO stepped in when the lifeguards had issues, policed the guidelines downtown.

Captain Todd Baer of PBSO said that he was on the County beach reopening committee. He stated that he had asked for consistency throughout the County and that the guidelines be reasonable, understandable and enforceable. He said that some cities had gone to active use only, like swimming, running, etc.; sunbathing was not allowed. He opined that it would be hectic for a week until the novelty wore off and suggested the beach reopen during the week rather than on a weekend. He said that there was a plan for PBSO throughout the County and they were ready and fully staffed.

6. Commissioner Robinson asked that consequences be established if the public did not follow the guidelines.

Assistant City Manager Ruiz said that the gate was open at the beach and would cause a problem if it were closed. He stated that there had been input from the staff running the property.

Commissioner Hardy asked how the sink faucets worked.

Assistant City Manager Ruiz replied that the intent was to change any potential contamination surfaces to be as contactless as possible.

7. Commissioner Maxwell said that it was natural to have reservations about reopening the beach. He stated that the City would have to rely on science and that the County was making decisions in the best interest of the public.
8. Mayor Triolo praised the PBCC who deliberated for hours. She stated that the City's stance was to follow the County and other mayors in the County said the cities should stick together and be consistent. She said that people would have to be extra cautious for a while.

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

**Action:** Motion made by Commissioner Hardy and seconded by Commissioner Robinson with the

following amendments: with any phase, there would be an equal number of parking spaces for residents and non-residents, the beach would be limited to active use only and City Manager Bornstein could to shut down the beach if he, Captain Baer or the lifeguards felt it was out of control.

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

**Action:** Motion made by Commissioner Maxwell and seconded by Vice Mayor Amoroso to approve the phased in approach outlined by the City Manager and giving the City Manager the complete authority to take any action to mirror the County and to take any action he deemed necessary at his discretion.

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

The meeting recessed at 7:38 PM and reconvened at 7:56 PM.

B. Consideration of issues and request for official action regarding the Governor's Executive Order for Phase 1 Re-Opening of Florida

**Action:** Motion made by Commissioner Maxwell and seconded by Vice Mayor Amoroso to approve the Phase 1 reopening of Florida.

City Manager Bornstein explained that the City was reacting to actions by the Governor who moved PBC to Phase 1, which included allowing restaurants to go to 25% capacity for indoor seating. He said that he had spoken to restaurant owners who expressed concern that they might not be profitable due to the indoor constraints. He explained that there had been discussions with the downtown restaurant owners about expanding the outdoor seating beyond their normal permitted areas. He said that there could be leeway for restaurants on the alphabetical streets into the adjoining parking areas, which were owned and controlled by the City.

He reviewed three options for reopening the downtown area. He stated that there would need to be regulations for private entities to use public spaces. He reported that Public Works and Community Sustainability staff had come up with some stipulations to allow the businesses to take advantage of the outdoor space. He said that Option One would include the following: businesses must have an active City restaurant business license, a minimum of 500 square feet of right-of-way (ROW) adjacent to the frontage of the establishment would be provided to each business to allow for up to ten four seat tables, Public Works would install temporary FDOT approved barricades demarcating the ROW area for use by each business and coordinate with each restaurant to lay out the barricades and the ROW in question would be the City owned roadway on the lettered streets between Lucerne and Lake from J to M (Lake and Lucerne excluded). He explained that the next two options would require permission from the State to close Lake and/or Lucerne entirely from Fridays through Sundays; Option Two for Lake Avenue would have a related cost of \$11,490 for barricades and PBSO and Option Three for both Lake and Lucerne Avenues, incurring a cost of \$22,080. He requested official direction on how to proceed.

Comments/requests summary:

1. Mayor Triolo said that she had spoken with several downtown business owners and there was consensus regarding the lettered streets, but not about completely closing down Lake or Lucerne Avenues. She asked if there had been a conversation with FDOT about those businesses being able to expand into the parking spaces in front of their restaurants.

City Manager Bornstein replied that there had been discussions with FDOT about what could be done on Lake and Lucerne Avenues, but there was no decision from FDOT.

2. Commissioner Hardy spoke in opposition to moving to Phase One and opined that going out to eat during a pandemic and not knowing what the outcome would be with people endangering others was not necessary. He reiterated that the reopening criteria had not been met.
3. Vice Mayor Amoroso spoke in support of Option 1. He stated that restaurant owners on Lake Avenue were concerned about being allowed to extend their outdoor areas to spaces where businesses were not opened.
4. Commissioner Robinson said that the cost was expensive and the owners on the letter streets had an advantage. He stated that people were not being responsible and all the City businesses needed help.
5. Mayor Triolo asked if the letter to the Governor regarding opening PBC for Phase 1 was unanimous.

City Manager Bornstein replied that the vote was 6-0.

Mayor Triolo said that some businesses were opening with social distancing. She stated that there was a new normal and that people would dine more outside. She spoke in favor of reopening with social distancing outside. She asked if restaurants with parking lots could use the lots for more tables.

City Manager Bornstein responded that restaurants with parking lots could be allowed to use them for more tables.

Vice Mayor Amoroso stated that the business owners could police their shops to ensure the people wore masks and practiced social distancing. He said that the restaurants could advertise for the other businesses in the City. He said that the workers were coming out and volunteering for the community.

6. Commissioner Hardy stated that the County Commissioners were not listening to the doctors or experts and cases were increasing. He asked what people with children would do when there was no one to watch their kids when they went to work and we would be endangering people who were safer at home. He said that the new normal was not to treat people as though they were expendable.
7. Commissioner Maxwell said that the City would need to put out communications in

three languages reminding them of the guidelines. He said that there should be a documented floorplan approved by the City for each restaurant.

8. Commissioner Robinson stated that the City was giving people the opportunity to endanger themselves. He asked if Option 1 incurred any cost to the City.

City Manager Bornstein replied that there would not be a cost to the City.

Commissioner Robinson said he would favor Option 1 and asked for the ability to rectify the decision if necessary. He said that it would not be fair for restaurants on Lake and Lucerne to pay to use outdoor space when the other restaurants did not.

Assistant City Manager Ruiz stated that there was a process for obtaining a permit to use parking spaces as an outdoor area as opposed to closing down Lake and Lucerne, which would be very costly.

9. Commissioner Hardy asked how the 25% capacity could be enforced.

City Manager Bornstein replied that the restaurants would have a plan regarding the seating arrangement to comply with the 25% maximum. He stated that the City would have the ability to revoke the permit to use public areas if they did not comply.

Commissioner Maxwell stated that businesses would not want their employees to get sick; this was the new normal and people would get accustomed. He said that there were enough responsible businesses that would take the directive seriously.

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

Joseph Lipovich wrote in favor of reopening City businesses.

David Arm, on behalf of the Greater Lantana Chamber of Commerce, wrote in favor of using Option 3 for City businesses.

Rod Regan, owner of Brogues Downunder, wrote in favor of opening the businesses at 25% capacity.

Kevin Knight, owner of Rhum Shak, wrote in favor of reopening businesses.

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

City Attorney Goddeau stated that there were remedies to address restaurants not adhering to the 25% capacity rule. She said that the ability to use the right of way could be revoked and that both the State and PBSO could enforce the requirements, which would be a second-degree misdemeanor.

### **ADJOURNMENT:**

**Action:** Motion made by Vice Mayor Amoroso and seconded by Commissioner Maxwell to adjourn

the meeting at 9:03 PM.

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

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Pam Triolo, Mayor

ATTEST:

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Deborah M. Andrea, CMC, City Clerk

Minutes Approved: May 19, 2020

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# EXECUTIVE BRIEF REGULAR MEETING

**AGENDA DATE:** May 19, 2020

**DEPARTMENT:** Public Works

**TITLE:**

Agreement with Rosso Site Development for the District 2, Year 4 Full Construction Neighborhood Road Program Project

**SUMMARY:**

The Agreement with Rosso Site Development authorizes the contractor to construct the associated improvements as part of the District 2, Year 4 Pushbutton project at a cost not to exceed \$2,316,601.39.

**BACKGROUND AND JUSTIFICATION:**

The Neighborhood Road Program is entering the fourth and final year of construction. The engineering design work for the District 2, Year 4 Full Construction project is completed and the lowest, most responsive and responsible bid is with Rosso Site Development, Inc. The City received a total of 3 bid responses received on February 19, 2020. Rosso Site Development, Inc. was the lowest and most responsive, responsible bidder and is being recommended for award for this District 2 project at a cost not to exceed \$2,316,601.39. The project will be completed within 180 calendar days of the Notice to Proceed.

The project watermain work is being conditionally awarded based on available Water funding in the amount of \$776,534.39. If and when the Water funding becomes available, the underground watermain work will be authorized to be constructed.

**MOTION:**

Move to approve/disapprove the Agreement with Rosso Site Development, Inc. for a cost not to exceed \$2,316,601.39.

**ATTACHMENT(S):**

Fiscal Impact Analysis  
Agreement with Rosso Site Development, Inc.

## FISCAL IMPACT ANALYSIS

### A. Five Year Summary of Fiscal Impact:

<b>Fiscal Years</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>	<b>2023</b>	<b>2024</b>
Capital Expenditures	2,316,601.39	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
<b>Net Fiscal Impact</b>	<b>2,316,601.39</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
No. of Addn'l Full-Time Employee Positions	0	0	0	0	0

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

<b>Account Number</b>	<b>Account Description</b>	<b>FY2020 Budget</b>	<b>Project #</b>	<b>Pre Exp; Balance</b>	<b>Expenditure for this item</b>	<b>Post Exp; Balance</b>
308-5020-519-63-15	Improve other than build		NR2002	14,672,552	1,540,067.00	13,132,485
402-7034-533-63-60	Improve other than Build / Mains		NR2002		776,534.39*	

\*Conditionally utilized based on Water account funding.

### C. Department Fiscal Review:\_\_\_\_\_

**00500  
AGREEMENT**

THIS AGREEMENT is dated and will be effective on the \_\_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_\_\_, by and between the City of Lake Worth Beach (hereinafter called Owner) and **ROSSO SITE DEVELOPMENT, INC.** (hereinafter called Contractor).

Owner and Contractor, in consideration of the mutual covenants hereinafter set forth, agree as follows:

**ARTICLE 1. WORK.**

Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows: **Potable water and roadway infrastructure improvements.**

The Project, of which the Work under the Contract Documents is a part, shall be referred to as: **Neighborhood Road Program, District 2, Year 4 Roadway & Utility Project.**

**The Contractor understands that the potable water portion of the Work (inclusive of all water main work) for the Project (hereinafter the "Utility Work") shall not proceed until the Owner obtains funding to proceed with the Utility Work and provides the Contractor with a written Notice to Proceed with the Utility Work. If the Owner does not obtain the funding to proceed with the Utility Work, the cost of the Utility Work (as set forth in the Contractor's bid) will be deleted from the Contract Price. The cost of the Utility Work is Seven Hundred Seventy-Six Thousand Five Hundred Thirty-Four Dollars and Thirty-Nine Cents (\$776,534.39).**

**ARTICLE 2. ENGINEER**

The Project has been designed by **Baxter & Woodman, Inc.**, who is hereinafter called Engineer and who is to act as Owner's representative, assume all duties and responsibilities and have the rights and authority assigned to Engineer in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

**ARTICLE 3. CONTRACT TIME.**

3.1 The Work will be substantially completed within **150** days from the date when the Contract Time commences to run as provided in paragraph 4.01 of the General Conditions and shall be finally complete and ready for final payment in accordance with paragraph 15.06 of the General Conditions within **180** days from the date when the Contract Time commences to run.

3.2 All time limits for Milestones, if any, Substantial Completion and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

3.3 **LIQUIDATED DAMAGES.** Owner and Contractor recognize that time is of the essence of this Agreement and that Owner will suffer financial loss if the Work is not completed within the times specified in paragraph 3.1 above, plus any extensions thereof allowed in accordance with the Contract Documents. They also recognize the delays, expense and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a

penalty) Contractor shall pay Owner Five Hundred and 00/100 dollars (\$ 500.00) for each day that expires after the time specified in paragraph 3.1 for Substantial Completion until the Work is substantially complete. After Substantial Completion if Contractor shall neglect, refuse or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by Owner, Contractor shall pay Owner Five Hundred and 00/100 dollars (\$500.00) for each day that expires after the time specified in paragraph 3.1 for completion and readiness for final payment.

3.4 In the Owner's sole discretion, a requested extension of time may be denied for delays resulting from normal weather conditions prevailing from normal weather conditions prevailing in the area as defined by the average of the last five (5) years of weather recorded or otherwise established by the Owner.

#### **ARTICLE 4. CONTRACT PRICE.**

4.1 Owner shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents, subject to adjustment as provided therein, in current funds as follows:

A. For all Work other than Unit Price Work, a lump sum of: \$ \_\_\_\_\_

B. For all Unit Price Work, an amount equal to the sum of the extended prices (established for each separately identified item of Unit Price Work by multiplying the unit price times the actual quantity of that item):

TOTAL OF ALL UNIT PRICES TWO MILLION, THREE HUNDRED SIXTEEN THOUSAND, SIX HUNDRED ONE DOLLARS AND THIRTY-NINE CENTS  
(\$2,316,601.39) (use words)  
(figures)

which is based on the unit price(s) in the Bid Form Unit Price Schedule for Unit Bid Items numbered 1 to 111.

#### **ARTICLE 5. PAYMENT PROCEDURES.**

Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

5.1 PROGRESS PAYMENTS. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment as recommended by Engineer, on or about the 10<sup>th</sup> day of each month during construction as provided below. All progress payments will be on the basis of the progress of the Work measured by the schedule of values established in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided elsewhere in the Contract Documents.

5.1.1 Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below, but, in each case, less the aggregate of payments previously made and less such amounts as Engineer shall determine, or Owner may withhold, in accordance with the General Conditions, less liquidated damages, if any.

AGREEMENT

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90% of Work completed.

90% of materials and equipment not incorporated in the Work (but delivered, suitably stored and accompanied by documentation satisfactory to Owner as provided in the General Conditions).

95% of the work complete after the Contractor has completed over 50% of the Work.

5.1.2 Upon Substantial Completion, in an amount sufficient to increase total payments to Contractor to 98% of the Contract Price, less such amounts as Engineer shall determine, or Owner may withhold, in accordance with the General Conditions, less liquidated damages, if any.

5.2 FINAL PAYMENT. Upon final completion and acceptance of the Work in accordance with paragraph 15.06 of the General Conditions, and settlement of all claims, including liquidated damages, if any, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said paragraph 15.06.

#### **ARTICLE 6. INTEREST.**

6.1 All payments due and not made within the time prescribed by section 218.735, Florida Statutes, shall bear interest at the rate of 1 percent per month in accordance with section 218.735, Florida Statutes, as amended from time to time.

#### **ARTICLE 7. CONTRACTOR'S REPRESENTATIONS.**

In order to induce Owner to enter into this Agreement Contractor makes the following representations:

7.1 Contractor has examined and carefully studied the Contract Documents and any data and reference items identified in the Contract Documents.

7.2 Contractor has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and is satisfied as to the general, local and Site conditions that may affect cost, progress and performance of the Work.

7.3 Contractor is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress and performance of the Work.

7.4 Contractor has studied carefully all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical data in such reports and drawings, and (2) reports and drawings related to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, especially with respect to Technical data in such reports and drawings. Contractor accepts the determination set forth in the Contract Documents of the extent of the technical data contained in such reports and drawings upon which Contractor is entitled to rely, if any.

7.5 Contractor has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests, reports and studies, if any, (in addition to or to supplement those referred to in paragraph 7.4 above) which pertain to the subsurface or physical conditions at or adjacent to the Site or otherwise may affect the cost, progress, performance or furnishing of the Work as Contractor considers necessary for the performance or furnishing of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or will be required by Contractor for such purposes.

7.6 Contractor has reviewed and checked all information and data shown or indicated on the Contract Documents, if any, with respect to existing Underground Facilities at or adjacent to the Site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports, studies or similar information or data in respect of said Underground Facilities are or will be required by Contractor in order to perform and furnish the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents.

7.7 Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress and performance of the work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (3) Contractor's safety precautions and programs.

7.8 Contractor has correlated the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents and based on the information and observations referred to above, the Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.

7.9 Contractor has given Engineer written notice of all conflicts, errors or discrepancies that Contractor has discovered in the Contract Documents and the written resolution thereof by Engineer is acceptable to Contractor.

7.10 Contractor acknowledges that the Contract Documents are generally sufficient to indicate and convey an adequate understanding of all terms and conditions for performance and furnishing of the Work.

7.11 Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

7.12 Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.

## **ARTICLE 8. CONTRACT DOCUMENTS.**

The Contract Documents which comprise the entire Agreement between Owner and Contractor concerning the Work consist of the following:

- 8.1 This Agreement consisting of 10 pages.
- 8.2 Exhibits to this Agreement identified as:
  - a. The Project Manual (pages 1 to 471, inclusive);
  - b. Contractor's Bid (pages 1 to 65, inclusive);
  - c. Permits (pages 375 to 408, Ex. B, Project Manual, inclusive);
  - d. Other: \_\_\_\_\_
- 8.3 Performance Bond and Payment Bond consisting of \_\_\_\_ pages (plus Power of Attorney Forms as applicable).
- 8.4 Notice of Award and Notice to Proceed.
- 8.5 General Conditions consisting of 33 pages.
- 8.6 Supplementary Conditions consisting of 7 pages.
- 8.7 Bid documents as listed in the table of contents of the Project Manual.
- 8.8 Specifications consisting of 321 pages.
- 8.9 Drawings not attached hereto but are listed in Section 00860 List of Drawings.
- 8.10 Addenda numbers 1 to 1, inclusive.
- 8.11 Contractor's Bid consisting of 65 pages.
- 8.12 Documentation submitted by Contractor prior to Notice of Award.
- 8.13 The following which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto: All Written Amendments and other documents amending, modifying, or supplementing the Contract Documents pursuant to the General Conditions.
- 8.14 The documents listed under Article 8 above are attached to this Agreement (except as expressly noted otherwise above).
- 8.15 Any other document attached hereto or incorporated herein by the Owner.

There are no Contract Documents other than those listed above in this Article 8. The Contract Documents may only be amended, modified or supplemented as provided in the General Conditions.

*Governing Order of Contract Documents* - The Contract Documents include various divisions, sections and conditions which are essential parts for the work to be provided by the Contractor. A requirement occurring in one is as binding as though occurring in all. They are intended to be complementary and to describe and provide for a complete work. In case of discrepancy, the following precedence will govern the interpretation of the Contract Documents prior to award of the contract.

1. Agreement

2. Addenda
3. Instructions to Bidders
4. Special Conditions
5. Supplementary Conditions
6. General Conditions
7. Technical Specifications
8. Details
9. City Standard Details
10. Drawings/Plans
11. Bid Form

After award, Work Change Directives, Change Orders, amendments and revisions to plans and specifications will take precedence over any of the above. In case of discrepancy among technical specifications, drawings and plans, the most restrictive shall govern. Detailed plans shall have precedence over general plans. In the event that any conflicts cannot be resolved by reference to this Governing Order of Contract Documents provision, then City shall resolve the conflict in any manner which is acceptable to City and which comports with the overall intent of the Contract Documents.

#### **ARTICLE 9. MISCELLANEOUS.**

9.1 *Terms.* Terms used in this Agreement will have the meanings indicated in the General Conditions.

9.2 *Assignment.* Unless expressly agreed to elsewhere in the Contract documents, no assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

9.3 *Successors and assigns.* Owner and Contractor each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect of all covenants, agreements and obligations contained in the Contract Documents.

9.4 *Severability.* Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replaced such stricken provision or part thereof with a valid and enforceable provisions that comes as close as possible to expressing the intention of the stricken provision.

9.5 *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.

9.6 *Inspector General.* In accordance with Palm Beach County ordinance number 2011-009, the Contract Documents may be subject to investigation and/or audit by the Palm Beach County Inspector General. Contractor should review such ordinance in order to be aware of its rights and/or obligations under such ordinance and as applicable.

9.7 *Waiver.* Failure of either party to enforce or exercise any right(s) under the Contract Documents shall not be deemed a waiver of either party's right to enforce said right(s) at any time thereafter.

9.8 *Waiver of jury trial.* TO ENCOURAGE PROMPT AND EQUITABLE RESOLUTION OF ANY LITIGATION, EACH PARTY HEREBY WAIVES ITS RIGHTS TO A TRIAL BY JURY IN ANY LITIGATION RELATED TO THE CONTRACT DOCUMENTS.

9.9 *Independent Contractor.* The Contractor is, and shall be, in the performance of all Work under the Contract Documents, an Independent Contractor, and not an employee, agent, or servant of the Owner. All persons engaged in any of the Work performed pursuant to the Contract Documents shall at all times and in all places be subject to the Contractor's sole direction, supervision and control.

9.10 *Access and audits.* The Contractor shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing the Work for at least five (5) years after final payment is made. The Owner shall have access to such books, records, and documents as required for the purpose of inspection or audit during normal business hours at the Contractor's place of business. Under no circumstances will Contractor be required to disclose any confidential or proprietary information regarding its products and service costs.

9.11 *Preparation.* The Contract Documents shall not be construed more strongly against either party regardless of who was more responsible for its preparation.

9.12 *Public Records Law.* Contractor shall comply with Florida's Public Records Laws, and specifically agrees to:

- a) Keep and maintain public records required by the Owner to perform the service.
- b) Upon request from the Owner's custodian of public records, provide the Owner with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law.
- c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Contractor does not transfer the records to the Owner.
- d) Upon completion of the contract, transfer, at no cost, to the Owner all public records in possession of the Contractor or keep and maintain public records required by the Owner to perform the service. If the Contractor transfers all public records to the Owner 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 Owner, upon request from the Owner's custodian of public records, in a format that is compatible with the information technology systems of the Owner.

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS OR DESIGNEE AT: ATTENTION DEBBIE ANDREA, (561) 586-1660 OR [DANDREA@LAKEWORTHBEACHFL.GOV](mailto:DANDREA@LAKEWORTHBEACHFL.GOV) OR 7 NORTH DIXIE HIGHWAY, LAKE WORTH BEACH, FL 33460.**

9.13 *Enforcement costs.* If any legal action or other proceeding is brought for the enforcement of the Contract Documents, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of the Contract Documents, the parties agree that each party shall be responsible for its own attorney's fees.

9.14 *Binding authority.* Contractor's representative below has full power, authority and legal right to execute and deliver these Contract Documents and perform all of its obligations under the Contract Documents. By signing the Contract Documents, the representative hereby represents to the Owner that he/she has the authority and full legal power to execute the Contract Documents and any and all documents necessary to effectuate and implement the terms of the Contract Documents on behalf of the party for whom he or she is signing and to bind and obligate such party with respect to all provisions contained in the Contract Documents.

9.15 *Assignment of warranties.* Contractor shall assign to Owner all warranties extended to Contractor by material suppliers. If an assignment of warranty requires the material supplier to consent to same, then Contractor shall secure the material supplier's consent to assign said warranties to Owner.

9.16 *Contractor's certifications.* Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract Documents. For the purposes of this paragraph:

1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;
2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract Documents to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract Documents.

AGREEMENT

00500-8

9.17 *Construction defects.* PURSUANT TO SECTION 558.005, FLORIDA STATUTES, ANY CLAIMS FOR CONSTRUCTION DEFECTS ARE NOT SUBJECT TO THE NOTICE AND CURE PROVISIONS OF CHAPTER 558, FLORIDA STATUTES.

9.18 *Delays; Contractor's remedies.* NOTWITHSTANDING ANY PROVISION ELSEWHERE IN THE CONTRACT DOCUMENTS, NO CLAIM FOR DAMAGES OR ANY CLAIM OTHER THAN FOR AN EXTENSION OF TIME SHALL BE MADE OR ASSERTED AGAINST OWNER BY REASON OF ANY DELAYS. Contractor shall not be entitled to an increase in the Contract Price or payment or compensation of any kind from Owner for direct, indirect, consequential, impact or other costs, expenses or damages, including, but not limited to, costs of acceleration or inefficiency, arising because of delay, disruption, interference, or hindrance, be it reasonable or unreasonable, foreseeable or avoidable or unavoidable. Contractor shall be entitled only to extensions of the Contract Time as the sole and exclusive remedy for such resulting delays, in accordance with and the extent specifically provided herein.

9.19 *Termination for failure to provide Public Construction Bond.* If a Public Construction Bond is required under the Construction Documents and the Contractor fails to provide the fully executed Public Construction Bond, including a certified copy of the Public Construction Bond as recorded in the Official Records for Palm Beach County, within fifteen (15) calendar days after the Contractor's and Owner's execution of this Agreement, the Owner may immediately terminate this Agreement upon written notice to the Contractor and the Owner shall have no further obligation to the Contractor under the Contract. In the event of such termination, the Contractor shall also forfeit its bid security to the Owner.

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

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement in four parts. Two counterparts have been delivered to Owner, and one counterpart each to Contractor and Engineer. All portions of the Contract Documents have been signed or identified by Owner and Contractor or by Engineer on their behalf.

**CITY OF LAKE WORTH BEACH, FLORIDA**

By: \_\_\_\_\_  
Pam Triolo, Mayor

ATTEST

\_\_\_\_\_  
Deborah M. Andrea, City Clerk

Approved as to form and legal sufficiency:

Approved for Financial Sufficiency:

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

By: \_\_\_\_\_  
Bruce T. Miller, Financial Services Director

**CONTRACTOR: \_\_\_\_\_ Rosso Site Development, Inc. \_\_\_\_\_**

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

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

[Corporate Seal]

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_, Inc., a Florida corporation, and who is personally known to me or who has produced the following \_\_\_\_\_ as identification.

Notary Public:

\_\_\_\_\_

# EXECUTIVE BRIEF REGULAR MEETING

**AGENDA DATE:** May 19, 2020

**DEPARTMENT:** Public Works,  
Water & Electric Utilities

**TITLE:**

Final Change Order #4 to Hardrives of Delray, Inc. dba Hardrives, Inc. for the Park of Commerce Phase 1A Infrastructure Improvements Project

**SUMMARY:**

Final Change Order #4 authorizes Hardrives of Delray, Inc. dba Hardrives, Inc. to finalize quantities, credits, plan changes and a 271-day time extension on the project with a credit of \$150,992.26 to the City on the contract.

**BACKGROUND AND JUSTIFICATION:**

The Park of Commerce Phase 1A Infrastructure Improvements project is complete and this change order serves to close the project out. During construction, several delays occurred due to aboveground utility pole relocations, which involved franchise utilities (AT&T, Comcast) moving their infrastructure as well as the City electric department. This process took much longer than anticipated and delayed the contractor. The additional time also included extra storm drain cleaning and invasive tree removal along the Fitch Ditch. The other items in this change order include quantity reconciliation, additional utility pole and power distribution installation, barbed wire installation, and a credit for decorative light pole fixture arms provided by the City rather than purchased by contractor.

**MOTION:**

Move to approve/disapprove Final Change Order #4 to Hardrives of Delray, Inc. dba Hardrives, Inc. for the Park of Commerce Phase 1A Infrastructure Improvements Project with the addition of 271-day time extension and a credit of \$150,992.26 to the City.

**ATTACHMENT(S):**

Fiscal Impact Analysis  
Change Order #4

## FISCAL IMPACT ANALYSIS

### A. Five Year Summary of Fiscal Impact:

Fiscal Years	2020	2021	2022	2023	2024
Capital Expenditures	+\$150,992.260		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	+\$150,992.260		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
304-5020-541.63-15	POC Road	GV 1802	\$707,846	\$58,948.90	+\$130,958.89	\$189,907.79
304-5090-538.63-15	POC Storm	GV 1802	\$331,578	\$44,124.58	+\$23,754.90	\$67,879.48
304-6034-531.63-15	POC Electric	GV 1802	\$625,196	\$260,809.34	(\$157,111.39)	\$103,697.95
304-7034-533.63-15	POC Water	GV 1802	\$473,508	\$226,537.19	+\$93,137.99	\$319,675.18
304-7231-535.63-15	POC Sewer	GV 1802	\$145,496	\$36,416.13	+\$60,251.87	\$96,668.00

### C. Department Fiscal Review: \_\_\_\_\_

Brian Shields – Water Utilities Director  
 Jamie Brown – Public Works Director  
 Bruce Miller – Finance Director  
 Christy Goddeau – City Attorney  
 Michael Bornstein – City Manager



WATER UTILITIES DEPARTMENT  
301 COLLEGE STREET  
LAKE WORTH BEACH, FL 33460  
**561.586.1710**

## CHANGE ORDER #04 (FINAL)

**Project Number:** GV 1802 **Contractor:** Hardrives of Delray, Inc. dba Hardrives, Inc.

**Project Name:** Park of Commerce Phase 1A

**Change Order Number:** 04

**Change Order Effective Date:** On Execution **Contractor Phone:** 561-278-0456

**Change Order Type:** Lump Sum **Existing Purchase Order Number:** 178295

### Description of Change:

**Item #1, Quantity Reconciliation;** Final adjustment of Contract Quantities to account for contract bid item underruns and overruns during construction.

**Item #2, Utility Poles;** Installation of five 65ft utility poles at the request of City of Lake Worth beach Electric Utilities Department.

**Item #3, Power Distribution;** Installation of 1,680ft of 6" electrical conduit and 16 pull boxes at the request of the City of Lake Worth Beach Electrical Utilities Department.

**Item #4, Barbed Wire;** Installation of 550ft of barbed wire on fencing for Garabar Roofing supply per agreement with City of Lake Worth Beach Public Works Department.

**Item #5, Decorative Light Pole Fixture Arms;** Credit for 21 decorative fixture arms supplied by the City of Lake Worth Beach Electric Utilities Department.

**Item #6, Tree Removal and Storm Sewer Cleaning;** No Cost negotiated closeout settlement to Remove invasive trees on West side of Fitch Ditch North of Joyce Ave. and cleaning of 300ft of 18" and 290ft of 24"x38" RCP along 7<sup>th</sup> Ave. between Boutwell Rd. and Fitch Ditch. Requested by the City of Lake Worth Beach Water Utilities Department.

1	2	3	4	5
Item No.	Description	Unit	Time	Increase / Decrease In Contract Price
#1	Quantity Reconciliation	LS	0	-\$351,868.43
#2	Utility Pole Installation	LS	0	\$147,798.21
#3	Power Distribution	LS	0	\$52,434.90
#4	Barbed Wire	LS	0	\$3939.01
#5	Decorative Light Pole Banner Arms	LS	0	-\$3295.95
#6	Tree Removal and Storm Sewer Cleaning	LS	271	No cost
	<b>Total Time</b>		<b>271</b>	
	<b>Total Credit Amount:</b>			<b>-\$150,992.26</b>

Price of Original Contract: \$5,579,190.40 (authorized by Commission on 11/7/17 Agenda Item (#9L))

Current Price of Contract (including Change Order 03): \$5,817,251.97

Price of Current Change Order: -\$150,992.26

New Contract Price: \$5,666,259.71

Basis of Price Change:  Unit Price  Time & Material  Lump Sum

Contract Time Change

No Change  Extended  Decreased by 271 calendar days

*The CONTRACTOR and the OWNER agree that this CHANGE ORDER represents the complete agreement of the parties with respect to these matters as of the date of this CHANGE ORDER. By approving this Change Order, the CONTRACTOR releases any and all claims that it may have against the OWNER under the subject contract including, but not limited to claims for equitable adjustments, which occurred or accrued prior to the effective date of this CHANGE ORDER.*

This Change Order may be executed in counterparts and is not effective until approved by either the City Manager or City Commission (as designated on the last page of this Change Order). and Attachment A.

Reviewed and Accepted by: Hardrives of Delray, Inc., DBA Hardrives Inc.  
(Contractor Name)

 Contractor Representative (Signature)  Title 4-5-2020 Date  
**George T. Elmore**

Approved by:  (Department Director) 5/11/20 (Date)

IN WITNESS WHEREOF, the OWNER/CITY has approved this Change Order No. 4 to the Park of Commerce Phase 1A Project on \_\_\_\_\_, 2020.

**CITY OF LAKE WORTH BEACH, FLORIDA**

By: \_\_\_\_\_  
Pam Triolo, Mayor

ATTEST:

\_\_\_\_\_  
Deborah M. Andrea, City Clerk

Approved as to form and legal sufficiency:

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

Approved for Financial Sufficiency:

\_\_\_\_\_  
Bruce T. Miller, Financial Services Director

● DRIVEWAYS ● PARKING AREAS ● STREETS ● GRADING ● ROCK & FILL ● CONCRETE WORK

# HARDRIVES, INC.

2101 SOUTH CONGRESS AVENUE  
DELRAY BEACH, FLORIDA 33445-7398

PHONE 561-278-0456  
FAX 561-278-2147

## ATTACHMENT A

Attachment to Change Order No. 4 (Final) – GV 1802  
Between City of Lake Worth and Hardrives of Delray, Inc.

Although Hardrives has executed Change Order 4, our execution requires an explanation to ensure that all facts are clear. The net amount of the Change Order 4 and the Adjusted Contract Price are correct. However, we believe that there are errors in Item No. 1 Quantity Reconciliation.

To be clear, at the City's request, Hardrives did not install Item R-15 (Ped/Bicycle Railing). Nor did Hardrives perform, at the City's request, the work on line items R-14, R-15, D-7, D-10A, W-9, F-14, L-16, PD-10, PD-11, PD-14 and PD-16. Hardrives cannot be responsible for the omission of those items as they were directed by the City's representative. There are other items that are deducted for which Hardrives did perform the work. But, in the end, the net amount of the change order is correct.

Please feel free to contact me if you would like to discuss further.



George Elmore, President

Dated: May 4, 2020

**CHANGE ORDER #04**

PROJECT: **City of Lake Worth Beach Park of Commerce Phase 1**

**ITEM #1 QUANTITY RECONCILIATION**

ITEM NO.	DESCRIPTION OF WORK	CONTRACT			COMPLETED TO DATE		BALANCE TO FINISH
		UNIT	QTY	PRICE	QTY	TOTAL	(C - I)
					(D + F)	(E + G)	
A	B				H	I	J
GC-6	Construction Permits Allowance	AL	1	\$ 5,000.00	0.00	\$ -	\$ 5,000.00
DM-2	Concrete Pavement Removal	SY	550	\$ 44.00	325.00	\$ 14,300.00	\$ 9,900.00
R-1	Regular Excavation (Net)	CY	11,577	\$ 10.50	11,063.00	\$ 116,161.50	\$ 5,397.00
R-5	Mill 1" Asphalt	SY	659	\$ 11.10	2,440.00	\$ 27,084.00	\$ (19,769.10)
R-7	Concrete Shoulder Stabilization (6" Thick)	SY	364	\$ 5.10	316.80	\$ 1,615.68	\$ 240.72
R-9	Type F Curb and Gutter	LF	4,882	\$ 18.50	4,298.60	\$ 79,524.10	\$ 10,792.90
R-10	Type E Modified Curb and Gutter	LF	830	\$ 21.90	724.00	\$ 15,855.60	\$ 2,321.40
R-11	Concrete Sidewalk (4" Thick)	SY	3,016	\$ 36.00	2,747.00	\$ 98,892.00	\$ 9,684.00
R-12	Concrete Sidewalk (6" Thick) (inc. Driveway Aprons)	SY	899	\$ 45.00	688.90	\$ 31,000.50	\$ 9,454.50
R-14	Adjust Existing Valve Boxes	EA	10	\$ 310.00	0.00	\$ -	\$ 3,100.00
R-15	Ped/Bicycle Railing, Alum, 42" Type I	LF	620	\$ 91.00	0.00	\$ -	\$ 56,420.00
R-16	Chainlink Fence, 6' w/Black Vinyl Coating	LF	610	\$ 26.60	502.00	\$ 13,353.20	\$ 2,872.80
D-7	Desilting Existing Pipe, 0" - 36"	LF	1,619	\$ 20.30	0.00	\$ -	\$ 32,865.70
D-8	Desilting Existing Pipe, 61" or Greater	LF	1,650	\$ 64.00	1,456.00	\$ 93,184.00	\$ 12,416.00
D-9	Exfiltration Trench (3.5'H x 6'W)	LF	281	\$ 148.50	272.00	\$ 40,392.00	\$ 1,336.50
D-10	18" Reinforced Concrete Pipe	LF	1,810	\$ 56.60	2,030.50	\$ 114,926.30	\$ (12,480.30)
D-10A	15" Reinforced Concrete Pipe	LF	8	\$ 76.20	0.00	\$ -	\$ 609.60
D-11	24" Reinforced Concrete Pipe	LF	451	\$ 123.10	478.00	\$ 58,841.80	\$ (3,323.70)
D-12	30" Reinforced Concrete Pipe	LF	422	\$ 150.10	396.94	\$ 59,580.69	\$ 3,761.51
D-13	Connect to Existing Structure	EA	2	\$ 1,703.90	1.00	\$ 1,703.90	\$ 1,703.90
D-15	Concrete Revetment Mat	SY	101	\$ 158.20	24.00	\$ 3,796.80	\$ 12,181.40
D-16	Chain Link Fence, 8' w/ Black Vinyl Coating	LF	363	\$ 27.50	424.00	\$ 11,660.00	\$ (1,677.50)
D-17	Seed & Mulch (Bahia) (Retention Area)	SY	7,880	\$ 3.40	9,533.70	\$ 32,414.58	\$ (5,622.58)
D-18	Sod (Bahia) (Retention Area)	SY	2,033	\$ 6.70	2,122.30	\$ 14,219.41	\$ (598.31)
D-19	Adjust Storm Inlet	EA	3	\$ 5,605.50	1.00	\$ 5,605.50	\$ 11,211.00
S-1	Reflective Pavement Markers (White/Red)	EA	60	\$ 5.50	41.00	\$ 225.50	\$ 104.50
S-2	Reflective Pavement Markers (Amber/Amber)	EA	300	\$ 5.50	240.00	\$ 1,320.00	\$ 330.00
S-3	Reflective Pavement Markers (Blue/Blue)	EA	8	\$ 15.50	10.00	\$ 155.00	\$ (31.00)
S-4	6" Solid Pavement Markings (White)(Thermoplastic)	LF	5,801	\$ 1.20	6,394.00	\$ 7,672.80	\$ (711.60)
S-5	12" Solid Pavement Markings (White)(Thermoplastic)	LF	413	\$ 2.40	826.00	\$ 1,982.40	\$ (991.20)
S-6	18" Solid Pavement Markings (White)(Thermoplastic)	LF	0	\$ 5.60	26.00	\$ 145.60	\$ (145.60)
S-7	24" Solid Pavement Markings (White)(Thermoplastic)	LF	60	\$ 6.70	159.00	\$ 1,065.30	\$ (663.30)
S-8	6" Skip Pavement Markings (White)(Thermoplastic)	GLF	1,160	\$ 0.60	811.00	\$ 486.60	\$ 209.40
S-10	6" Solid Pavement Markings (Yellow)(Thermoplastic)	LF	5,664	\$ 1.20	5,885.00	\$ 7,062.00	\$ (265.20)
S-11	18" Solid Pavement Markings (Yellow)(Thermoplastic)	LF	383	\$ 3.60	252.00	\$ 907.20	\$ 471.60
S-12	6" Skip Pavement Markings (Yellow)(Thermoplastic)	GLF	265	\$ 0.60	379.00	\$ 227.40	\$ (68.40)
S-13	Regulatory Signs (Stop, Speed Limit, Keep Right)	AS	20	\$ 621.60	16.00	\$ 9,945.60	\$ 2,486.40
S-15	Flexible Delineator Post	EA	30	\$ 86.60	9.00	\$ 779.40	\$ 1,818.60
S-18	6" Solid Pavement Markings (White) (Paint)	LF	887	\$ 0.60	2,947.00	\$ 1,768.20	\$ (1,236.00)
S-19	18" Solid Pavement Markings (White) (Paint)	LF	450	\$ 1.60	525.00	\$ 840.00	\$ (120.00)
W-1	6" PVC (C900 DR 18) Watermain	LF	80	\$ 33.70	15.00	\$ 505.50	\$ 2,190.50
W-2	8" PVC (C900 DR 18) Watermain	LF	200	\$ 67.20	181.50	\$ 12,196.80	\$ 1,243.20
W-2A	8" DIP (CL 350) Cement Lined Watermain	LF	20	\$ 46.30	2.50	\$ 115.75	\$ 810.25
W-3	12" PVC (C900 DR 18) Watermain	LF	4,300	\$ 68.80	3,877.50	\$ 266,772.00	\$ 29,068.00
W-4	12" DIP (CL 350) Cement Lined Watermain	LF	300	\$ 68.80	417.50	\$ 28,724.00	\$ (8,084.00)
W-5	6" Gate Valve w/ box	EA	1	\$ 1,415.30	4.00	\$ 5,661.20	\$ (4,245.90)
W-6	8" Gate Valve w/box	EA	3	\$ 1,803.80	5.00	\$ 9,019.00	\$ (3,607.60)
W-7	12" Butterfly Valve w/box	EA	8	\$ 2,525.30	9.00	\$ 22,727.70	\$ (2,525.30)
W-9	8" Cut-in tee at 10th Avenue North	EA	1	\$ 2,358.80	0.00	\$ -	\$ 2,358.80

W-10	Connection to 6" Existing Watermain	EA	1	\$ 2,303.30	4.00	\$ 9,213.20	\$ (6,909.90)
W-13	Fire Hydrant Assembly (including gate valve & tee)	EA	8	\$ 4,828.50	9.00	\$ 43,456.50	\$ (4,828.50)
W-15	Remove Existing Watermain (including fittings)	LF	3,000	\$ 14.80	2,824.00	\$ 41,795.20	\$ 2,604.80
W-16	Asphalt Restoration Including Base	SY	1,100	\$ 45.00	87.40	\$ 3,933.00	\$ 45,567.00
W-17	Sidewalk Restoration	SY	550	\$ 54.00	603.20	\$ 32,572.80	\$ (2,872.80)
W-18	Curb Restoration	LF	800	\$ 30.00	162.50	\$ 4,875.00	\$ 19,125.00
W-19	Mill and Overlay	SY	500	\$ 35.00	617.00	\$ 21,595.00	\$ (4,095.00)
W-20	1" Water Service	EA	8	\$ 1,665.00	9.00	\$ 14,985.00	\$ (1,665.00)
W-21	2" Water Service	EA	6	\$ 2,303.30	2.00	\$ 4,606.60	\$ 9,213.20
W-22	Furnish Utility Crew & Equipment	HR	40	\$ 405.20	33.00	\$ 13,371.60	\$ 2,836.40
W-23	Furnish Additional Ductile Iron Fittings (cement lined)	LB	3,000	\$ 5.60	2,610.60	\$ 14,619.36	\$ 2,180.64
F-1	4" PVC (C900 DR 18) Forcemain	LF	50	\$ 48.60	35.50	\$ 1,725.30	\$ 704.70
F-2	6" PVC (C900 DR 18) Forcemain	LF	2,000	\$ 34.20	1,904.00	\$ 65,116.80	\$ 3,283.20
F-4	12" PVC (C900 DR 18) Forcemain	LF	20	\$ 582.80	9.00	\$ 5,245.20	\$ 6,410.80
F-5	4" Gate Valve w/box	EA	1	\$ 1,221.00	2.00	\$ 2,442.00	\$ (1,221.00)
F-10	Connection to Existing Forcemain	EA	2	\$ 2,442.00	3.00	\$ 7,326.00	\$ (2,442.00)
F-11	Remove Existing Forcemain	LF	2,400	\$ 13.30	29.00	\$ 385.70	\$ 31,534.30
F-14	Furnish Utility Crew & Equipment	HR	20	\$ 405.20	0.00	\$ -	\$ 8,104.00
F-15	Furnish Additional Ductile Iron Fittings (epoxy lined)	LB	1,000	\$ 8.90	449.70	\$ 4,002.33	\$ 4,897.67
F-16	Abandon Existing FM By Grouting	LF	900	\$ 16.90	1,809.00	\$ 30,572.10	\$ (15,362.10)
L-1	AR/Acer Rubrum 'Florida Flame'/Red Maple (12' Ht.)	EA	8	\$ 1,125.00	6.00	\$ 6,750.00	\$ 2,250.00
L-2	CS/Cordia sebestena/Orange Geiger Tree (8' Ht.)	EA	12	\$ 312.50	8.00	\$ 2,500.00	\$ 1,250.00
L-5	SP/Sabal palmetto/Sabal Palms (12' to 18' C.T. Ht. Staggered)	EA	139	\$ 250.00	112.00	\$ 28,000.00	\$ 6,750.00
L-6	SPI/Sabal palmetto/Sabal Palms (24' to 26' C.T. Ht.)	EA	15	\$ 438.00	13.00	\$ 5,694.00	\$ 876.00
L-10	TRF/Tripsacum floridanum/Gamma G	EA	909	\$ 11.30	824.00	\$ 9,311.20	\$ 960.50
L-11	Sod (Floritam)	SY	1,700	\$ 6.30	1,944.00	\$ 12,247.20	\$ (1,537.20)
L-12	Sod (Bahia)	SY	1,300	\$ 6.30	3,466.00	\$ 21,835.80	\$ (13,645.80)
L-13	Irrigation System	LS	1	\$ 54,862.50	1.03	\$ 56,714.23	\$ (1,851.73)
L-14	Root Barrier (24" deep minimum)	LF	2,025	\$ 15.00	2,468.00	\$ 37,020.00	\$ (6,645.00)
L-15	Amenities Allowance	AL	1	\$ 37,500.00	0.67	\$ 25,206.28	\$ 12,293.72
L-16	Off-Site Vegetation Replacement	AL	1	\$ 10,000.00	0.00	\$ -	\$ 10,000.00
E-1	Light Pole and Fixture	EA	26	\$ 10,101.00	21.00	\$ 212,121.00	\$ 50,505.00
E-2	1" Conduit	LF	6,000	\$ 9.80	4,005.00	\$ 39,249.00	\$ 19,551.00
E-3	#6 Wire	LF	21,000	\$ 2.80	25,065.00	\$ 70,182.00	\$ (11,382.00)
PD-1	2" PVC Sch. 40 Conduit	LF	1,550	\$ 3.50	2,310.00	\$ 8,085.00	\$ (2,660.00)
PD-2	2 1/2" PVC Sch. 40 Conduit	LF	230	\$ 4.60	430.00	\$ 1,978.00	\$ (920.00)
PD-8	750 KCMIL AL., 25KV Cable	LF	4,700	\$ 19.60	8,690.00	\$ 170,324.00	\$ (78,204.00)
PD-10	Concrete Pad for 1Ph 150KVA Transformer	EA	1	\$ 1,380.00	0.00	\$ -	\$ 1,380.00
PD-11	Concrete Pad for Switch Cabinet	EA	1	\$ 460.00	0.00	\$ -	\$ 460.00
PD-14	150KVA, 15.2KV, 120/240V, 3 Ph. Pad Mounted Transformer	EA	1	\$ 34,500.00	0.00	\$ -	\$ 34,500.00
PD-16	Concrete Duct Bank (2' x 3')	LF	100	\$ 92.00	0.00	\$ -	\$ 9,200.00
T-1	4" Conduit	LF	25,000	\$ 23.00	27,990.00	\$ 643,770.00	\$ (68,770.00)
A-1	General Allowance for Material Testing	AL	1	\$ 50,000.00	0.39	\$ 19,355.00	\$ 30,645.01
A-2	General Allowance for Utility Conflicts	AL	1	\$ 100,000.00	0.16	\$ 15,577.45	\$ 84,422.55
A-3	General Allowance for Drainage Conflicts and Adjustment	AL	1	\$ 50,000.00	1.34	\$ 67,152.50	\$ (17,152.50)
CO-002	WCD #4 Mock-Roos Plan Revisions at 7th & Boutwell	LS	1	\$ 37,207.87	0.33	\$ 12,374.00	\$ 24,833.87
CO-002	WCD #6 Sidewalk Revisions on 7th Ave.	LS	1	\$ 5,353.88	0.72	\$ 3,853.86	\$ 1,500.02
CO-004	QUANTITY RECONCILIATION	LS	1	\$ (351,868.43)	0.00	\$ -	\$ (351,868.43)

## Item #02 Utility Pole Installation

● SITework ● ASPHALT PAVING ● ROADWAYS ● PARKING AREAS ● CONCRETE WORK

# HARDRIVES, INC.

2101 SOUTH CONGRESS AVENUE  
DELRAY BEACH, FLORIDA 33445-7398

PHONE 561-278-0456  
FAX 561-278-2147

9/10/2019

### CHANGE ORDER REQUEST

To: Mathews Consulting  
477 S. Rosemary Ave., Suite 330  
West Palm Beach, FL. 33401

Project Number 17-120  
P.O. 178295

Name of Project: Park of Commerce, Phase 1A Infrastructure Improvements  
Location: Lake Worth, FL.  
Plans and Specifications: As per plans by Mock-Roos, Revision date April 19, 2018

#### Utility Pole Installation

784	HR	Crew - Installation of 65' kip poles and transfer power lines to new poles	@	\$ 145.00	\$ 113,680.00
5	EA	75 Ton Crane	@	\$ 3,900.00	\$ 19,500.00
5	EA	Vacuum Excavation	@	\$ 1,100.00	\$ 5,500.00
					\$ 138,680.00
				Mark Up 5%	\$ 6,934.00
					\$ 145,614.00
				BOND 1.5%	\$ 2,184.21
				<b>TOTAL</b>	<b>\$ 147,798.21</b>

Contract Time will be increased by 3 days for delay and construction.

Hardrives of Delray, Inc.

Eric T Willenberg  
Digitally signed by Eric T Willenberg  
Date: 2019.09.10 09:37:11 -04'00'

Eric Willenberg  
Project Manager

Wilco Electrical IIc  
 430 Business Park Way  
 Royal Palm Beach, FL 33411

# Estimate

Date	Estimate #
6/26/2019	Poles

Name / Address
Hardrives 2101 South Congress Ave Delray Beach, FL 33445-7398

P.O. No.
LWU

Description	Qty	Rate	Total
Labor to install 5 65' 8 kip poles and transfer power lines to new poles.	784	145.00	113,680.00
75 ton Crane to install poles	1	19,500.00	19,500.00
Vacum excavation of poles and utility locating	1	5,500.00	5,500.00
		<b>Total</b>	<b>\$138,680.00</b>

## Item #3 Power Distribution

● SITWORK ● ASPHALT PAVING ● ROADWAYS ● PARKING AREAS ● CONCRETE WORK

# HARDRIVES, INC.

2101 SOUTH CONGRESS AVENUE  
DELRAY BEACH, FLORIDA 33445-7398

PHONE 561-278-0466

FAX 561-278-2147

1/24/2020

### CHANGE ORDER REQUEST

To: Mathews Consulting

477 S. Rosemary Ave., Suite 330  
West Palm Beach, FL. 33401

Project Number  
P.O.

17-120  
178295

Name of Project: Park of Commerce, Phase 1A Infrastructure Improvements

Location: Lake Worth, FL.

Plans and Specifications: As per plans by Mock-Roos, dated November 2017

Plan Sheets: C1-4, C1-5, C1-9, C1-10, C3-4, C3-6, C3-7, C3-8, C3-16

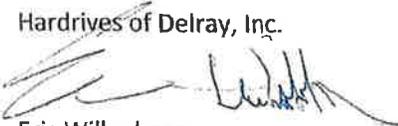
C3-19, C3-20, C3-21, C3-22, C3-23 & C4-5

Latest plan revision dated, November 2017

#### Power Distribution

1,680	LF	CH- 6" HDPE	@	\$	25.00	\$	42,000.00
16	EA	CH-2 Pull Box (Install Only)	@	\$	450.00	\$	7,200.00
						\$	49,200.00
					5% Mark-Up	\$	2,460.00
						\$	51,660.00
					<u>BOND 1.5%</u>	\$	<u>774.90</u>
					<b>TOTAL</b>	\$	<b>52,434.90</b>

Hardrives of Delray, Inc.

  
Eric Willenberg  
Project Manager



# HARDRIVES, INC.

2101 SOUTH CONGRESS AVENUE  
DELRAY BEACH, FLORIDA 33445-7398

## Item #4 Barbed Wire

● SITework ● ASPHALT PAVING ● ROADWAYS ● PARKING AREAS ● CONCRETE WORK

PHONE 561-278-0456  
FAX 561-278-2147

2/20/2020

### CHANGE ORDER REQUEST

To: Mathews Consulting  
477 S. Rosemary Ave., Suite 330  
West Palm Beach, FL. 33401

Project Number 17-120  
P.O. 178295

Name of Project: Park of Commerce, Phase 1A Infrastructure Improvements  
Location: Lake Worth, FL.  
Plans and Specifications: As per plans by Mock-Roos, Revision date April 19, 2018

#### Black barbed wire, removal and core drill new fence

550	LF	Black Barbed Wire to proposed fence and gates	@	\$	5.72	\$	3,146.00
1	LS	Remove existing fence and gates from concrete slab	@	\$	350.00	\$	350.00
1	LS	Core drill new fence and gate into concrete slab	@	\$	200.00	\$	200.00
						\$	3,696.00
					Mark-Up 5%	\$	184.80
						\$	3,880.80
					<u>BOND 1.5%</u>	\$	<u>58.21</u>
					TOTAL	\$	3,939.01

Contract Time will be increased by 0 days for construction.

Hardrives of Delray, Inc.

  
Eric Willenberg  
Project Manager

**PROPOSAL**  
ANYTHING IN FENCE  
1207 S. SWINTON AVE.  
DELRAY BEACH, FL. 33444  
(561)274-4300  
FAX (561)274-8900

7/18/19  
HARDRIVES, INC.  
2101 CONGRESS AVENUE  
DELRAY BEACH, FL. 33445

JOB: CITY OF LAKE WORTH - PARK OF COMMERCE PHASE 1A

ATTN: ERIC (561)441 - 4004; (561)278-2147 FAX; eric@hardrivespaving.com

PROVIDE LABOR, MATERIALS AND EQUIPMENT FOR THE FOLLOWING:

INSTALL \$3,146.00  
550L/FT OF BLACK BARBED WIRE TO THE PROPOSED FENCE AND GATES @ \$5.72  
PER L/FT

REMOVE AND DISPOSE \$350.00  
REMOVE THE EXISTING FENCE AND GATES THAT ARE CORE DRILLED INTO THE  
EXISTING SLAB

CORE DRILL \$200.00  
CORE DRILL NEW FENCE AND GATES INTO THE EXISTING CONCRETE SLAB

TOTAL FOR ABOVE \$3,696.00

NOTES:

- 1- PERMITS, PERMIT FEES AND ASSOCIATED COSTS ARE NOT INCLUDED AND WILL BE BILLED AT COSTS
- 2- A.I.F. NOT RESPONSIBLE FOR UNMARKED UNDERGROUND UTILITIES ETC. DAMAGED DURING THE INSTALLATION OF THE FENCE
- 3- A.I.F. NOT RESPONSIBLE FOR DAMAGE TO IRRIGATION DURING THE INSTALLATION OF THE FENCE
- 4- FENCE LINES MUST BE CLEARED AND STAKED BY OTHERS PRIOR TO THE INSTALLATION OF THE FENCE
- 5- WORK MAY BE PERFORMED BY SUBCONTRACTORS AT SOLE DISCRETION OF ANYTHING IN FENCE

PAYMENT TO BE MADE AS FOLLOWS     X     NET 30

AUTHORIZED  
SIGNATURE 

ACCEPTANCE OF PROPOSAL: THE ABOVE PRICES AND CONDITIONS ARE  
SATISFACTORY AND ARE HEREBY ACCEPTED. YOU ARE HEREBY  
AUTHORIZED TO DO THE WORK AS SPECIFIED. PAYMENT WILL BE  
MADE AS OUTLINED ABOVE.

DATE OF ACCEPTANCE 9.23.19 SIGNATURE 

## Item #5 Decorative Light Pole Arms

● SITework ● ASPHALT PAVING ● ROADWAYS ● PARKING AREAS ● CONCRETE WORK

# HARDRIVES, INC.

2101 SOUTH CONGRESS AVENUE  
DELRAY BEACH, FLORIDA 33445-7398

PHONE 561-278-0456

FAX 561-278-2147

4/3/2020

### CHANGE ORDER REQUEST

To: Mathews Consulting

477 S. Rosemary Ave., Suite 330  
West Palm Beach, FL. 33401

Project Number

17-120

P.O.

178295

Name of Project: Park of Commerce, Phase 1A Infrastructure Improvements

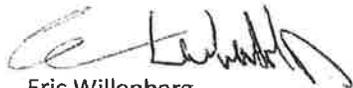
Location: Lake Worth, FL.

Plans and Specifications: As per plans by Mock-Roos, Revision date April 19, 2018

#### Credit for decorative street light arms provided by City

21	EA	Brackets with arms (in contract)	@	\$	266.95	\$	5,605.95
21	EA	Credit for arms supplied by CLWB	@	\$	(110.00)	\$	(2,310.00)
		Credit to Contract				\$	3,295.95
					5% Mark up		
					1.5% Bond		
					Total Credit to Contract	\$	3,295.95

Hardrives of Delray, Inc.



Eric Willenberg  
Project Manager



Electrical, LLC.

• Bus: (877) 945-2655 • Fax: (888) 583-4901

An *ENERGIZING* Company

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Miami, FL

Royal Palm Beach, FL

Riviera Beach, FL

Port Saint Lucie, FL

4/1/2020

RE: Boutwell Rd Light Pole Pricing Adjustments

There were two price adjustments to make to the light poles on this project. Line item 1 is a credit for the light pole fixture arms that were supplied by the city. Line item 2 is a debit for the addition of banner arms to the poles.

1 Light pole decorative fixture arms	\$266.95 ea x 21 poles =	-\$5605.95
2 Addition of banner arms	\$110.00 ea x 21 poles =	\$2310.00
Total credit		\$3295.95

## Shea Connors

---

**From:** Richard M. Chipman <RChipman@baxterwoodman.com>  
**Sent:** Thursday, April 30, 2020 3:05 PM  
**To:** Eric Willenberg  
**Cc:** Shea Connors  
**Subject:** POC CO #4 Final  
**Attachments:** Change Order #04 FINAL.pdf

Please sign the attached in blue ink and send back **ALL PAGES OF ENTIRE DOCUMENT** for final processing.

**Richard M. Chipman, CGC**  
**Construction Manager**

Direct: 561-425-7708 | mobil: 561-294-9821

email: [RChipman@baxterwoodman.com](mailto:RChipman@baxterwoodman.com)

[www.baxterwoodman.com](http://www.baxterwoodman.com)

477 S. Rosemary Ave., Suite 228

West Palm Beach, FL 33401



# EXECUTIVE BRIEF REGULAR MEETING

**AGENDA DATE:** May 19, 2020

**DEPARTMENT:** Legal

**TITLE:**

Consideration of settlement with Ferol Lynne Voltaggio in the amount of \$110,000 (inclusive of attorney's fees)

**SUMMARY:**

This is a request to settle a lawsuit with Ms. Voltaggio for injuries she sustained in a trip and fall accident that occurred in January 2017. If approved, the claimant will execute a general release in favor of the City.

**BACKGROUND AND JUSTIFICATION:**

This case arises out of a trip and fall that occurred on January 14, 2017, when Plaintiff, Ferol Lynne Voltaggio, was walking on Lake Avenue near Starbucks (514 Lake Avenue). Plaintiff alleges she tripped and fell over a paver brick which was sticking up approximately a ½ inch above the other pavers. As a result of the fall, Plaintiff sustained an acute severe comminuted displaced distal humeral fracture of the left elbow and an acute comminuted displaced distal humeral fracture of the right elbow. These injuries required open reduction internal fixation of both elbows with plates and screws. Two surgeons operated on her simultaneously.

Plaintiff, who is the Program Developer and Career Pathways facilitator for Seminole State College as well as an adjunct professor, was out of work for a lengthy amount of time after her initial surgery and her adult son had to care for her following surgery as she could not do any activities of daily living on her own. Plaintiff underwent extensive physical therapy after surgery. Eventually, Plaintiff would have two more surgeries on her elbows and she may have to undergo additional surgery as time goes on. Plaintiff's medical expenses incurred to date total over \$130,000.

On April 29, 2020, the parties participated in court ordered mediation, and a settlement agreement was entered into for \$110,000, which is inclusive of attorney's fees and costs. The settlement agreement is contingent upon City Commission approval. Settlement is recommended.

**MOTION:**

Move to approve the settlement with Ms. Voltaggio in the amount of \$110,000 (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	\$110,000	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	\$110,000	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: \_\_\_\_\_

D. : \_\_\_\_\_

# EXECUTIVE BRIEF REGULAR MEETING

**AGENDA DATE:** May 19, 2020

**DEPARTMENT:** Manager

**TITLE:**

Second Amendment to Lease with RTT-Benny's on the Beach, Inc.

**SUMMARY:**

The Second Amendment to the Lease with RTT-Benny's on the Beach, Inc. ("Benny's") seeks to address issues related to COVID-19 restrictions. This item is a related item to the Second Amendment to the Lease with Mulligan's.

**BACKGROUND AND JUSTIFICATION:**

On February 11, 2013, the City and Benny's entered a lease for the location on the Lake Worth Beach Municipal Pier ("Pier") for use as a restaurant with incidental pier management, retail sales, and a bait shop. On August 5, 2015, the City and Benny's amended the lease (First Amendment) to address Benny's use of the additional outdoor patio area. Due to the COVID-19 pandemic, on March 20, 2020, Florida Governor Ron DeSantis issued Executive Order 20-70, which closed indoor premise service by restaurants with seating of more than ten (10) people. This resulted in Benny's having to close the leased premises on March 20, 2020 except for take-out and delivery services. On May 11, 2020, the Governor through Executive Order 20-120 (based on Executive Order 20-112) authorized restaurants to re-open indoor premise service so long as the restaurants adopted appropriate social distancing measures and limited the indoor occupancy to no more than 25 percent of a restaurant's building occupancy. This Executive Order also allowed restaurants to start serving their outdoor areas (subject to mandatory social distancing between tables and limited to groups of 10 or less people). It is anticipated (but not known) that the Governor will continue to ease the COVID-19 restrictions and allow for further indoor premise service by restaurants.

In order to document the proposed lease amendments, the City Manager and City Attorney have been working on a draft Second Amendment to the Lease with Benny's. The proposed Second Amendment provides:

- Provisions addressing current COVID-19 impact on indoor seating capacity:
  - June 1, 2020 through November 1, 2020, if any governmental restrictions on indoor capacity exist, 50% of rent will be abated and 50% will be deferred for one year starting from the earlier of November 1, 2020, or the date when the full capacity is restored.
- Provision addressing future Infectious Disease governmental restrictions:
  - If on November 1, 2020 and thereafter, if governmental restrictions are imposed on indoor capacity, the capacity restricted will be applied to the rent and deferred for one year with repayment starting on the earlier of the

date that full capacity is restored or one year from the date of initial deferment.

- Payment of rent for March, April, and May 2020 with no abatement for Pier closure.
- Scrutinized Companies language added due to Pier management services.

While the City retains the absolute discretion as to whether to amend the Lease with Benny's, City staff is supportive of the considering the amendment in view of its good working relationship with Benny's and Lee Lipton's desire to take over and renovate Mulligan's.

**MOTION:**

Move to approve / not approve the Second Amendment to Lease with RTT-Benny's on the Beach, Inc.

**ATTACHMENT(S):**

Fiscal Impact Analysis - n/a  
Second Amendment

## SECOND AMENDMENT TO LEASE

**THIS SECOND AMENDMENT TO THE LEASE** (“Second Amendment” hereinafter) is made this \_\_\_\_\_ day of \_\_\_\_\_, 2020, between the **City of Lake Worth Beach**, Florida, a municipal corporation (the “Landlord”), and **RTT-Benny’s on the Beach, Inc.**, a Florida corporation (the “Tenant”).

### RECITALS

**WHEREAS**, on February 11, 2013, the Landlord and Tenant (collectively, the “Parties”) entered into a Lease for the lease of certain space located at the Lake Worth Municipal Ocean Pier for use by the Tenant as a restaurant with incidental pier management, retail sales and a bait shop (the “Lease”); and,

**WHEREAS**, the Landlord and Tenant entered into the First Amendment to the Lease on August 5, 2015, which addressed the use of the additional outdoor patio area by the Tenant; and,

**WHEREAS**, the Landlord and Tenant desire to amend the Lease to address changes to the terms and conditions of the Lease associated with the COVID-19 pandemic; and,

**WHEREAS**, the Landlord finds amending the Lease as set forth herein serves a valid public purpose.

**NOW THEREFORE**, the Landlord and Tenant, in consideration of the mutual promises herein contained and contained in the Lease, the sufficiency of which is hereby acknowledged by both parties, agree to amend the Lease as follows:

1. **RECITALS.** The foregoing recitals are hereby incorporated into this Second Amendment as true and correct statements of the Parties.
2. **NO DEFAULT.** The Parties agree that the Lease remains in full force and effect, that there are no defaults or disagreements with regard to the terms and conditions set forth in the Lease.
3. **LANDLORD.** Subsection 1.1 of the Lease, entitled “Landlord”, is amended to reflect the new name of the Landlord as follows:

**1.1 Landlord.** CITY OF LAKE WORTH BEACH, a municipal corporation under the laws of the State of Florida.

4. **RENT ABATEMENT/DEFERRAL.** Subsection 4.4 of the Lease, entitled “Rent”, is amended to include a new sub-subsection, 4.4.1, as follows:

**“4.4.1 General.** Due to the COVID-19 pandemic, on March 20, 2020, Florida Governor Ron DeSantis issued Executive Order 20-70, which closed indoor premise service by restaurants with seating of more than ten (10) people. This resulted in Tenant having to close the leased premises on March 20, 2020. On May 11, 2020, the Governor through Executive Order 20-120 (based on Executive Order 20-112) authorized the Tenant to re-open indoor premise service so long as the Tenant adopted appropriate social distancing measures and limited Tenant’s indoor occupancy to no more than 25 percent of Tenant’s building occupancy. This Executive Order also allowed Tenant to start serving its outdoor areas (subject to mandatory social distancing between tables and limited to groups of 10 or less people). It is anticipated (but not known) that the Governor will continue to ease the COVID-19 restrictions and allow for further indoor premise service by Tenant. Based on the foregoing, the following amendments are made to this Subsection 4.4:

4.4.1.1 Tenant and Landlord agree that despite the COVID-19 restrictions, Tenant shall pay all March, April and May Rent as due under the Lease without any abatement or deferral of any amounts due as Rent.

4.4.1.2 If on **June 1, 2020 and each month thereafter until November 1, 2020**, there are still governmental COVID-19 pandemic restrictions in place on Tenant's indoor occupancy which restricts the Tenant's existing occupancy level, the Landlord agrees to abate and defer Tenant's Base Rent as follows: 50 percent of all Base Rent will be abated ("Abated Rent") and 50 percent of all Base Rent will be deferred ("Deferred Rent"). The Abated Rent amount shall not be paid by Tenant and not collected by Landlord. Tenant shall have one (1) year from the Date of Reopening (as defined below) to pay the Deferred Rent. If Tenant fails to pay the Deferred Rent within one (1) year from the Date of Reopening (as defined below), the Landlord, in addition to all other rights and remedies under this Lease and under applicable law, shall have the right to declare all Rent due under the then existing Lease term, including the Deferred Rent plus interest, as immediately due and payable. Failure to pay the Deferred Rent shall also be considered a Monetary Default under section 7 of the Lease. The Deferred Rent shall accrue interest from the Date of Reopening (as defined below) until paid in full at the rate set forth in section 55.03, Florida Statutes, regarding interest on judgments.

4.4.1.3 As of the Date of Reopening (as defined below), Tenant shall resume payment of all Rent due under the Lease without abatement or deferral under any provision of the Lease or under subsection 4.4.1.2 above.

4.4.1.4 For subsections 4.4.1.2 and 4.4.1.3 above, the "Date of Reopening" is defined as the earlier of the following dates: (1) the date that all federal, state and local restrictions related to COVID-19 are released; or, (2) **November 1, 2020**."

5. **IMPOSSIBILITY OF PERFORMANCE.** Under Section 28 of the Lease, payment of Rent is not excused in the event of an "Unavoidable Delay" as defined therein. In light of COVID-19 restrictions and impacts on the Tenant, the Landlord and Tenant agree to add the following provision under Section 28:

"Notwithstanding the foregoing, **if on November 1, 2020 or thereafter**, governmental restrictions are imposed due to an infectious disease which restrictions limit the Tenant's use of its existing indoor occupancy, Tenant's payment of the then accruing Base Rent shall be deferred consistent with the extent that the governmental regulations restrict Tenant's existing indoor occupancy ("Additional Deferred Rent"). By way of example only, if governmental restrictions due to an infectious disease limits Tenant's existing indoor occupancy to 25 percent of Tenant's indoor occupancy, 75 percent of Tenant's then accruing Base Rent shall be deferred until the Date of Reopening (as defined below). During the period of time in which Tenant's Base Rent is deferred under this provision, Tenant shall not be entitled to any abatement of the Rent under this Lease or otherwise. Tenant shall have one (1) year from the Date of Reopening (as defined below) to pay the Additional Deferred Rent to the Landlord. If Tenant fails to pay the Additional Deferred Rent within one (1) year from the Date of Reopening (as defined below), the Landlord, in addition to all other rights and remedies under this Lease and under applicable law, shall have the right to declare all Rent due under the then existing Lease term, including the Additional Deferred Rent plus interest, as immediately due and payable. Failure to pay the Additional Deferred Rent shall also be considered a Monetary Default under section 7 of the Lease. The Additional Deferred Rent shall accrue interest from the Date of Reopening (as defined below) until paid in full at the rate set forth in section 55.03, Florida Statutes, regarding interest on judgments. As of the Date of Reopening (as defined below), Tenant shall resume payment of all Rent due under the Lease without abatement or deferral under any provision of the Lease or otherwise. For this provision regarding Additional Deferred Rent, the "Date of Reopening" is defined as the earlier of the following dates: (1) the date that all governmental restrictions related to the infectious disease are released; or, (2) one year from the date the governmental restrictions were put in place (even if governmental restrictions are still in place). If new governmental restrictions are mandated during the one

(1) year of Tenant's repayment of the Additional Deferred Rent due to a new infectious disease, the Tenant's repayment of the Additional Deferred Rent shall not be abated or deferred. However, this provision will apply to the new infectious disease and will allow for the deferral of the Tenant's Base Rent then accruing consistent with the extent of the new mandated governmental restrictions on Tenant's indoor occupancy."

6. **SCRUTINIZED COMPANIES. A new Section 32.15 is added to the Lease as follows:**

32.15 **SCRUTINIZED COMPANIES.**

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

32.15.2 The Tenant agrees to observe the above requirements for applicable subleases entered into for performance under the Lease.

32.15.3 The Tenant agrees that the certifications in this section shall be effective and relied upon by the Landlord for the term of the Lease, including any and all renewals.

32.15.4 The Tenant agrees that if it or any of its sublessees' status changes in regards to any certification herein, the Tenant shall immediately notify the Landlord of the same.

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

7. **COUNTERPARTS.** Each party may sign one copy of this Second Amendment and together, whether by signed original or facsimiled or e-mailed copy, the signed copies shall constitute one, fully executed Second Amendment.

8. **ENTIRE AGREEMENT.** This Second Amendment is intended to amend the Lease as specified herein and shall take precedence over the Lease and the First Amendment. All other terms of the Lease, as previously amended by the First Amendment, that are not amended by this Second Amendment shall remain in full force and effect. No other agreements, statement, or promise relating to the subject matter of this Second Amendment and the Lease, as amended by the First Amendment, which are not contained herein or therein shall be valid or binding.

9. **EFFECTIVE DATE.** This Second Amendment shall not be binding upon the parties until approved by the Tenant and the City Commission of the City of Lake Worth Beach, as the Landlord. The Effective Date of this Second Amendment shall be the date this Second Amendment is approved and fully executed by the Landlord.

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

**IN WITNESS WHEREOF**, the Parties have caused this Second Amendment to the Lease (with RTT-Benny's on the Beach, Inc., as the Tenant) to be executed by their duly authorized representatives on the date(s) set forth below.

**LANDLORD: CITY OF LAKE WORTH BEACH, FLORIDA**

**Witness:**

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_

By: \_\_\_\_\_  
Pam Triolo, Mayor

**ATTEST:**

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

\_\_\_\_\_  
Deborah M. Andrea, CMC, City Clerk

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY:

APPROVED FOR FINANCIAL  
SUFFICIENCY

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

By: \_\_\_\_\_  
Bruce T. Miller, Financial Services Director

**TENANT: RTT-BENNY'S ON THE BEACH, INC.**

Witnesses (two):

\_\_\_\_\_  
Signature

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Print Name

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

STATE OF FLORIDA            )  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me, by means of [ ] physical presence or [ ] online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by \_\_\_\_\_, as the \_\_\_\_\_ (title) of \_\_\_\_\_, and who is personally known to me or who has produced the following \_\_\_\_\_ as identification.

Notary Public

\_\_\_\_\_  
Print name: \_\_\_\_\_

My commission expires: \_\_\_\_\_

# EXECUTIVE BRIEF REGULAR MEETING

**AGENDA DATE:** May 19, 2020

**DEPARTMENT:** City Manager

**TITLE:**

Second Amendment to Retail Lease with Mulligans Lake Worth Acquisition, LLC.

**SUMMARY:**

The Second Amendment to the Retail Lease with Mulligans Lake Worth Acquisition, LLC (“Mulligans”), seeks authorization from the City to assign the Lease to NUSTART, LLC, for use as a Mexican restaurant with related amendments to the Lease’s term, rent and related provisions.

**BACKGROUND AND JUSTIFICATION:**

On March 19, 2012, the City and Mulligans entered a retail lease for Units #7 and #8 at the Lake Worth Beach Municipal Casino Building (“Lease”). On January 19, 2016, the City and Mulligan’s amended the Lease to allow Mulligan’s to be acquired by a third party with George Hart remaining involved and as a guarantor. In April 2020, NUSTART, LLC’s owner, Lee Lipton (current owner of Benny’s at the Beach), contacted the City about an assignment of the Lease in order to renovate the premises for the operation of a Mexican restaurant. Consistent with the prior assignment of this Lease and other Casino Tenant leases, NUSTART, LLC, has submitted the following:

- A cover letter providing the name and address of the proposed assignee;
- A summary of the assignment agreement;
- A statement as to the proposed use and reconfiguration of the premises;
- Financial information on NUSTART, LLC, the assignee; and,
- The \$1,000 administrative fee required to be paid to the City for the consideration of the assignment.

In order to document the proposed assignment and related revisions, the City Manager and City Attorney have been working on a draft Second Amendment to the Lease with Mr. Lipton. At this point, the proposed Second Amendment is not yet finalized but should be finalized before the meeting. The proposed Second Amendment will address some of the following:

- Payment of rent in consideration of the City’s consent to the assignment and release of Mulligans (and George Hart);
- Potential new term of 10 year initial term (with two, five year renewal options);
- A free rent period for renovations;
- Rental payments with annual increase to retain market value; and,

- Provisions addressing potential COVID-19 restrictions if they remain in place after the renovations are completed.

While the City retains the absolute discretion as to whether to consent to the assignment under the Lease, City staff is supportive of the assignment in view of its good working relationship with Lee Lipton and Benny's continued success at the beach.

**MOTION:**

Move to approve / not approve the Second Amendment to the Retail Lease with Mulligans Lake Worth Acquisition, LLC.

**ATTACHMENT(S):**

Fiscal Impact Analysis - n/a

Second Amendment (to be provided upon conclusion of negotiations)

## SECOND AMENDMENT TO RETAIL LEASE

**THIS SECOND AMENDMENT TO RETAIL LEASE** (“Second Amendment”) is made effective on the \_\_\_ day of \_\_\_\_\_, 2020, by and between the CITY OF LAKE WORTH BEACH, a Florida Municipal Corporation (“Landlord”) and MULLIGANS LAKE WORTH ACQUISITIONS, LLC, a Delaware Corporation registered to do business in the State of Florida (“Tenant/Assignor”) and NUSTART LLC d/b/a Casa de la Playa (“Tenant/Assignee”) (collectively Landlord, Tenant/Assignor and Tenant/Assignee are referred to as the “Parties”).

### RECITALS

**WHEREAS**, on March 19, 2012, the Landlord and the Tenant/Assignor’s predecessor entered a retail lease for Units #7 and #8 at the Lake Worth Beach Municipal Casino Building (“Lease”); and

**WHEREAS**, on January 19, 2016, the Landlord and the Tenant/Assignor’s predecessor entered that First Amendment to the Lease allowing Tenant/Assignor’s predecessor to assign the Lease to Tenant/Assignor; and

**WHEREAS**, in April 2020, Tenant/Assignee’s manager, Lee Lipton, contacted the Landlord about an assignment of the Lease to the Tenant/Assignee for the purposes of renovating the premises for the operation of a Mexican restaurant; and

**WHEREAS**, Tenant/Assignee has committed to invest approximately \$150,000 into the premises; and

**WHEREAS**, as specifically set forth in this Second Amendment, the Parties desire to amend the Lease to consent to and address the assignment to Tenant/Assignee and related matters; and,

**WHEREAS**, the City Commission finds amending the Lease as set forth herein serves a valid public purpose.

**NOW THEREFORE**, in consideration of the promises and mutual covenants contained in the Lease and this Second Amendment, and for other good and valuable consideration, the receipt of which the Parties expressly acknowledge, the Parties agree to amend the Lease as follows:

1. **Recitals and Definitions:** The foregoing recitals are hereby incorporated into this Second Amendment as true and correct statements of the Parties and form part of the consideration for this Second Amendment. All material terms as utilized in this Second Amendment are as defined in the Lease.
2. **No Default:** The Parties agree that the Lease remains in full force and effect, that there are no defaults or disagreements with regard to the terms and conditions set forth in the Retail Lease. As of the Effective Date, **Tenant/Assignor has paid all Rent that is due to the Landlord for the months of March, April, and May 2020.**
3. **Assignment and Release.** **Subject to the Landlord’s receipt of all Rent due for the month of June by no later than June 1, 2020**, the Parties agree to and the Landlord consents to the assignment of the Lease to the Tenant/Assignee, NUSTART LLC d/b/a Casa de la Playa and Landlord releases Tenant/Assignor (including George Hart) from the Lease. If the Landlord fails to receive all Rent due for the month of June by June 1, 2020, this Second Amendment shall be deemed null and void and the Tenant/Assignor (including George Hart) shall remain liable for all Tenant obligations under the Lease.

4. **Waiver of Right of Termination and Assignment Payment.** Sections 6.1 of the Lease authorizes the Landlord to terminate the Lease upon notice of a requested assignment and Section 6.2 requires the Tenant/Assignor to pay the Landlord any amount received from Tenant/Assignee for the assignment of the Lease in excess of the Rent then being paid by the Tenant/Assignor to the Landlord. Solely for the purposes of this Second Amendment, the Landlord waives its right of termination under Section 6.1 of the Lease and waives its right to any payment that may be due from the Tenant/Assignor under Section 6.2.
5. **Amended Sections.** The following specific amendments are made to the Lease (with the Tenant/Assignee recognized as the “Tenant”):
  - a. **Landlord.** Subsection 1.1 is deleted and amended in full to reflect the new name of the Landlord as, “CITY OF LAKE WORTH BEACH, a municipal corporation under the laws of the State of Florida.”
  - b. **Tenant.** Subsection 1.2 is deleted and amended in full to reflect the new name of the Tenant as, “Nustart LLC.”
  - c. **Tenant’s Trade Name.** Subsection 1.3 is deleted and amended in full to reflect the new trade name (fictitious name) of Tenant as, “Casa de la Playa.”
  - d. **Permitted Use of the Premises.** Subsection 1.8 is deleted and amended in full to reflect the new permitted use as, “Tenant is leasing the subject property for use as a Mexican-themed Family Restaurant and Bar for on and off-premises consumption, and for no other purpose whatsoever. Restaurant shall be allowed to have a full service bar during all hours of operation serving beer, wine, spirits, and other alcoholic beverages with its SRX or COP license.”
  - e. **Commencement Date.** Subsection 1.9, is deleted and amended in full to reflect the Commencement Date as, “The Commencement Date is the Effective Date of the Second Amendment to this Lease.”
  - f. **Rental Concessions.** Subsection 1.10, is deleted and amended in full to reflect the Rental Concessions as, “Tenant shall not pay Rent during Tenant’s renovation period with the maximum renovation period ending **September 30, 2020** (“Free Rent Period”). If Tenant opens for business prior to September 30, 2020, Tenant shall start paying Rent, on a pro rata basis as of the date of opening.”
  - g. **Rent Commencement Date.** Subsection 1.12 is deleted and amended in full to reflect the Rent Commencement Date as, “Except for the Rent to be paid as set forth in the Second Amendment for June 2020, all Rent shall be due from Tenant upon the earlier of the expiration of the Free Rent Period or when Tenant opens for business.”
  - h. **Lease Term.** Subsection 1.13 is deleted and amended in full to reflect the Lease Term as, “A term commencing on the Rent Commencement Date and continuing for one hundred and twenty (120) months (plus any partial calendar month in which the Rent Commencement Date falls), as extended or sooner terminated under the terms of this Lease. If the Rent Commencement Date falls on a day other than the first day of a month, the first month of the Lease Term shall commence on the first day of the calendar month immediately following the Rent Commencement Date and the pro rata portion of the Rent shall be paid by the Tenant for the partial month. Following the initial one hundred and twenty (120) month base term, two (2) options for renewal are provided for five (5) years each. After the first sixty (60) months of the initial base term of one hundred and twenty

(120) months (plus any partial calendar month in which the Rent Commencement Date falls), Tenant shall have the right to terminate the Lease upon 12 months written notice to Landlord.”

- i. **Renewal Option Rates.** Subsection 1.14 is deleted and amended in full to reflect the Renewal Option Rates as, “Both five (5) year renewal options shall be based on a Base Rent increase of 3.5% per year.”
- j. **Base Rent.** Subsection 1.15 is deleted and amended in full to reflect the Base Rent as set forth in **Exhibit “1”**, which is attached hereto and incorporated herein. Base Rent as shown in Exhibit “1” does not include applicable tax which Tenant must pay to Landlord.
- k. **Security Deposit.** Subsection 1.17 is deleted and amended in full to reflect the Security Deposit as, “The Security Deposit shall be due upon the Tenant’s execution of the Second Amendment to the Lease. **The Security Deposit shall cover the first two months of Base Rent and shall be in the amount of \$31,820.22.** The Security Deposit may be provided in the form of a Letter of Credit generally in the form attached to the Lease, Exhibit “L”. The Security Deposit or Letter of Credit shall be kept in force and effect for the first sixty (60) months of the initial one hundred and twenty (120) month base term. If the Tenant timely pays all Rent due under the Lease, the Landlord shall return the Security Deposit or Letter of Credit and no further Security Deposit shall be required of Tenant for the remainder of the Lease.”
- l. **First Month’s Rent.** Subsection 1.18 is deleted and amended in full to reflect the First Month’s Rent as, “\$ \_\_\_\_\_ to be paid to the Landlord upon the Rent Commencement Date by Tenant.”

Base Rent:	\$15,910.11
CAM:	\$ 5,314.50
Patio Rental:	\$ 2,753.95
Employee Parking:	\$ _____
Tax:	\$ _____
Total:	\$ _____.”

- m. **Tenant’s Notice Address.** Subsection 1.19 is deleted and amended in full to reflect the Tenant’s Notice Address as, “NUSTART, LLC, Attn: Lee Lipton, Manager, 10 S. Ocean Blvd., Lake Worth Beach, FL 33460.”
- n. **Landlord’s Notice Address.** Subsection 1.20 is deleted and amended in full to reflect Landlord’s Notice Address as, “c/o City Manager, City of Lake Worth Beach, 7 N. Dixie Highway, Lake Worth Beach, FL 33460.”
- o. **Landlord and Tenant Broker.** Subsections 1.21 and 1.22 and Section 24 are deleted as the Parties have not utilized a broker for this Second Amendment.
- p. **Guarantor.** Subsection 1.23 and Exhibit “C” are deleted as the Tenant will be providing a security deposit as set forth above.
- q. **Rent.** Section 4 regarding the Rent is amended by adding the following Subsections:

“4.1 **COVID-19 Deferral.** If on the Rent Commencement Date, and each month thereafter until **no later than December 31, 2020 (midnight)**, Tenant is limited in its ability to utilize its existing indoor occupancy due to COVID-19 based restrictions mandated by a

governmental entity, the Landlord agrees to abate and defer Tenant's Base Rent as follows: 50 percent of all Base Rent will be abated ("Abated Rent") and 50 percent of all Base Rent will be deferred ("Deferred Rent"). The Abated Rent amount shall not be paid by Tenant and not collected by Landlord. Tenant shall have one (1) year from the Date of Reopening (as defined below) to pay the Deferred Rent to Landlord. If Tenant fails to pay the Deferred Rent within one (1) year from the Date of Reopening (as defined below), the Landlord, in addition to all other rights and remedies under this Lease and under applicable law, shall have the right to declare all Rent due under the then existing Lease term, including the Deferred Rent plus interest, as immediately due and payable. Failure to pay the Deferred Rent shall also be considered a Monetary Default under section 7 of the Lease. The Deferred Rent shall accrue interest from the Date of Reopening (as defined below) until paid in full at the rate set forth in section 55.03, Florida Statutes, regarding interest on judgments.

4.2 If on **January 1, 2021 until no later than March 31, 2021 (midnight)**, Tenant is limited in its ability to utilize its existing indoor occupancy due to COVID-19 based restrictions mandated by a governmental entity, the Landlord agrees to defer the Tenant's Base Rent consistent with the restrictions in place on the Tenant's indoor occupancy (the "Additional Deferred Rent"). By way of example only, if on January 1, 2021, Tenant is limited to only utilizing 25 percent of its indoor occupancy due to COVID-19 restrictions mandated by a governmental entity, 75 percent of Tenant's Base Rent shall be deferred and Tenant shall be required to pay the Landlord 25 percent of its Base Rent. Tenant shall have one (1) year from the Date of Reopening (as defined below) to re-pay the Additional Deferred Rent. If Tenant fails to pay the Additional Deferred Rent within one (1) year from the Date of Reopening (as defined below), the Landlord, in addition to all other rights and remedies under this Lease and under applicable law, shall have the right to declare all Rent due under the then existing Lease term, including the Additional Deferred Rent plus interest, immediately due and payable. Failure to pay the Additional Deferred Rent shall also be considered a Monetary Default under section 8 of the Lease. The Additional Deferred Rent shall accrue interest from the Date of Reopening (as defined below) until paid in full at the rate set forth in section 55.03, Florida Statutes, regarding interest on judgments.

4.3 As of the Date of Reopening (as defined below), Tenant shall resume payment of all Rent due under the Lease without any abatement or deferral.

4.4 For Subsections 4.1, 4.2 and 4.3 above, the "Date of Reopening" is defined as the earlier of the following dates: (1) the date that all governmental restrictions related to COVID-19 are released and Tenant is allowed to utilize 100 percent of its indoor occupancy; or, (2) **April 1, 2021**."

- r. **Common Area Maintenance Costs (CAM)**. Subsection 5.3 is amended by deletion of the second to last sentence of Subsection 5.3; specifically, the following sentence is deleted, "CAM shall not exceed \$7 per square foot for the first year".
- s. **Insurance**. Subsection 7.1, regarding the Tenant's insurance is amended for commercial general liability insurance, including contractual liability, on an occurrence basis, on the then most current Insurance Services Office ("ISO") form by reducing the combined single limits from "\$3 million per occurrence" to a combined single limits of "\$2 million per occurrence". No other changes to the Tenant's insurance requirements shall be made. Within thirty (30) days of the Commencement Date, the Tenant shall provide the Landlord with certificates of insurance as required in the Lease.

- t. **Grease Traps.** Subsection 15.6 is deleted and amended in full to clarify the current operation of Grease Traps at the Project: “Landlord and/or a prior tenant has installed grease trap and other equipment necessary to maintain the Tenant’s restaurant in a clean and sanitary manner and free from insects, rodents, vermin, and other pests. No discharge of grease or grease laden water or other materials or food stuffs shall be introduced by Tenant into the waste water disposal or drainage systems serving the Project; however, if such discharge occurs, in addition to all other rights and remedies under this Lease, Tenant shall be responsible for all costs and expenses (including any fines or penalties imposed by governmental authorities) which may be assessed against Landlord or Landlord may incur. Tenant shall contract with a licensed and qualified vendor for the regular maintenance and pumping of the grease trap and proper disposal of the same. Tenant shall provide a copy of the grease trap contract to the Landlord upon the Rent Commencement Date. In the event Tenant fails to have the grease trap regularly and properly maintained and/or pumped, the Landlord shall be entitled to utilize Tenant’s contracted vendor (or another vendor of Landlord’s choice) to timely and properly maintain and/or pump the grease trap. Tenant shall be responsible for all costs incurred for the maintenance and pumping of the grease trap. Tenant shall also be responsible for all costs and expense to repair the grease trap if the grease trap is damaged by the negligence of the Tenant, its employees, or its contracted vendor.”
- u. **Impossibility of Performance.** Under Section 28 of the Lease, payment of Rent is not excused in the event of an “Unavoidable Delay” as defined therein. In light of COVID-19 restrictions and impacts on the Tenant, the Landlord and Tenant agree to add the following provision under Section 28:

“Notwithstanding the foregoing, **if on April 1, 2021** or thereafter, governmental restrictions are imposed due to an infectious disease which restrictions limit the Tenant’s use of its existing indoor occupancy, Tenant’s payment of Base Rent shall be deferred consistent with the extent that the governmental regulations restrict Tenant’s existing indoor occupancy (“I.D. Deferred Rent”). By way of example only, if governmental restrictions due to an infectious disease limits Tenant’s existing indoor occupancy to 25 percent of Tenant’s existing indoor occupancy, 75 percent of Tenant’s Base Rent shall be deferred until the I.D. Date of Reopening (as defined below) and Tenant shall be required to pay the Landlord 25 percent of its Base Rent. During the period of time in which Tenant’s Base Rent is deferred under this provision, Tenant shall not be entitled to any abatement of the Rent under this Lease or otherwise. Tenant shall have one (1) year from the I.D. Date of Reopening (as defined below) to pay the I.D. Deferred Rent to the Landlord. If Tenant fails to pay the I.D. Deferred Rent within one (1) year from the I.D. Date of Reopening (as defined below), the Landlord, in addition to all other rights and remedies under this Lease and under applicable law, shall have the right to declare all Rent due under the then existing Lease term, including the I.D. Deferred Rent plus interest, as immediately due and payable. Failure to pay the I.D. Deferred Rent shall also be considered a Monetary Default under section 7 of the Lease. The I.D. Deferred Rent shall accrue interest from the I.D. Date of Reopening (as defined below) until paid in full at the rate set forth in section 55.03, Florida Statutes, regarding interest on judgments. As of the I.D. Date of Reopening (as defined below), Tenant shall resume payment of all Rent due under the Lease without abatement or deferral under any provision of the Lease or otherwise. For this provision regarding I.D. Deferred Rent, the “I.D. Date of Reopening” is defined as the earlier of the following dates: (1) the date that all governmental restrictions on Tenant’s indoor capacity related to the infectious disease are released; or, (2) one year from the date the governmental restrictions were put in place (even if governmental restrictions are still in place). If new governmental restrictions are mandated during the one (1) year of Tenant’s repayment of the I.D. Deferred Rent due to a new infectious disease, the Tenant’s

repayment of the I.D. Deferred Rent shall not be abated or deferred. However, this provision will apply to the new infectious disease and will allow for the deferral of the Tenant's Base Rent then accruing consistent with the extent of the new mandated governmental restrictions on Tenant's indoor occupancy."

- v. **Financial Reporting.** Section 29 is amended to remove the reference to "Mulligans" and insert "Tenant's".
  - w. **Exhibit "E", Tenant Improvements.** Exhibit "E", entitled, "Tenant Improvements" is amended as follows:
    - i. The Landlord's Work provision in subsection 1 is deleted in full.
    - ii. The Tenant's Work in Subsection 2 is amended by replacing the first two full sentences as follows: "Tenant shall, but is not required to, at its sole cost and expense, perform all work necessary or desirable for Tenant's occupancy of the Premises (the "Tenant's Work or Improvements"). **Within thirty (30) days of the Commencement Date**, Tenant shall furnish to Landlord, for Landlord's written approval, two complete permit sets (final construction drawings) of plans and specifications for the Tenant's Work (the "Plans")."
    - iii. The Tenant Delays provision in Subsection 4 is deleted in full.
    - iv. The Changes provision in Subsection 5 is deleted in full.
    - v. Exhibit "E-1" regarding the Landlord's Work Schedule is deleted in full.
  - x. **Exhibit "K", Prohibited/Restricted Uses.** Exhibit "K", entitled "Prohibited/Restricted Uses" is amended to add the following: "Other Restricted Uses: The Tenant is prohibited from selling pizza. The Tenant is encouraged to be mindful of the other Project tenants and the products they sell so as not to unnecessarily compete with the other tenants."
  - y. **Exhibit "H", Special Requirements.** Exhibit "H", entitled "Special Requirements" is amended to remove all references to "Mulligans" and insert "Tenant".
  - z. **Lease and all Exhibits.** Except as otherwise specifically addressed in this Second Amendment, throughout the Lease and all Exhibits, the reference to "Mulligans" is deleted and "Tenant" is inserted.
6. **Right of First Refusal.** Tenant/Assignee has expressed an interest in the vacant commercial space of approximately 5,000 sq. ft. directly above the Premises in the Building (the "Vacant Space"). In consideration of this Second Amendment and the Landlord and Tenant/Assignee existing relationship, the Landlord grants the Tenant/Assignee a six (6) month right of first refusal to expand into or otherwise use the Vacant Space. The six (6) month right of first refusal shall run from the Rent Commencement Date and expire six (6) months thereafter. If the Landlord receives an offer from a third party to use the Vacant Space during the pendency of said six (6) months, Landlord shall provide notice of the offer to Tenant/Assignee and Tenant/Assignee shall have fifteen (15) days to activate its right of first refusal or decline. If the Tenant/Assignee fails to respond to the Landlord's notice, it will be assumed that Tenant/Assignee declined to activate its right of first refusal. If Tenant/Assignee seeks to activate its right of first refusal during the aforementioned six (6) months or upon notice of a third party offer from the Landlord, this Lease shall be amended to include the Vacant Space as part of Tenant/Assignee's total square footage at the then applicable rate for all Rent under this Lease including all applicable tax. Tenant/Assignee and Landlord may further negotiate additional terms and conditions for the Tenant/Assignee's assumption of the Vacant Space.

7. **Agreement Unchanged.** Except as amended herein, all other provisions of the Lease shall remain in full force and effect.
8. **Controlling Documents.** To the extent that there exists a conflict between this Second Amendment and the Lease, the terms and conditions of this Second Amendment shall prevail. Whenever possible, the provisions of such documents shall be construed in such a manner as to avoid conflicts between the provisions of the various documents.
9. **Entire Agreement.** The Parties agree that the Lease (as amended) and this Second Amendment represent the entire agreement between the Parties and supersede all other negotiations, representations, or agreements, either written or verbal.
10. **Counterparts.** Each party may sign one copy of this Second Amendment and together, whether by signed original or facsimiled or e-mailed copy, the signed copies shall constitute one, fully executed Second Amendment.
11. **Effective Date.** This Second Amendment shall not be binding upon the Parties until approved by Tenant/Assignor, Tenant/Assignee and the City Commission of the City of Lake Worth Beach. The Effective Date of this Second Amendment shall be the date this Second Amendment is approved and fully executed by the Landlord.

**IN WITNESS WHEREOF**, the Parties have caused this Second Amendment to the Lease (with Mulligan's Lake Worth Acquisition, LLC) to be executed by their duly authorized representatives on the date(s) set forth below.

**CITY OF LAKE WORTH BEACH, FLORIDA**

**Witness:**

By: \_\_\_\_\_  
 Print Name: \_\_\_\_\_

By: \_\_\_\_\_  
 Pam Triolo, Mayor

**ATTEST:**

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

\_\_\_\_\_  
 Deborah M. Andrea, CMC, City Clerk

APPROVED AS TO FORM AND  
 LEGAL SUFFICIENCY:

APPROVED FOR FINANCIAL  
 SUFFICIENCY

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

By: \_\_\_\_\_  
 Bruce T. Miller, Financial Services Director

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**SIGNATURE PAGE FOR TENANT/ASSIGNOR AND TENANT/ASSIGNEE FOLLOWS**

**Witnesses:**

**TENANT/ASSIGNOR:  
MULLIGANS LAKE WORTH ACQUISITION,  
LLC**

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_

By: \_\_\_\_\_  
George Hart,  
Managing Member

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_

[Corporate Seal]

STATE OF FLORIDA)  
COUNTY OF \_\_\_\_\_)

The foregoing instrument was acknowledged before me, by means of [ ] physical presence or [ ] online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by \_\_\_\_\_, as the \_\_\_\_\_ (title) of \_\_\_\_\_, and who is personally known to me or who has produced the following \_\_\_\_\_ as identification.

Notary Public

\_\_\_\_\_  
Print name: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

**TENANT/ASSIGNEE:  
NUSTART, LLC d/b/a Casa de la Playa**

**Witnesses:**

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_

By: \_\_\_\_\_  
Lee Lipton,  
Manager

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_

[Corporate Seal]

STATE OF FLORIDA)  
COUNTY OF PALM BEACH)

The foregoing instrument was acknowledged before me, by means of [ ] physical presence or [ ] online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by Lee Lipton, as the Manager of NUSTART, LLC, a Florida limited liability company and who (\_\_\_\_) is personally known to me or (\_\_\_\_) who has produced the following \_\_\_\_\_ as identification.

Notary Public

\_\_\_\_\_  
Print name: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

**EXHIBIT "1"**  
**Section 1.15 Base Rent**

<u>Period</u>	<u>Rate P/S/F Per Annum</u>	<u>Monthly Base Rent</u>	<u>Period Base Rent</u>
1 <sup>st</sup> year	\$38.169	\$15,910.11	\$190,921.34
2 <sup>nd</sup> year			
3 <sup>rd</sup> year			
4 <sup>th</sup> year			
5 <sup>th</sup> year			
6 <sup>th</sup> year			
7 <sup>th</sup> year			
8 <sup>th</sup> year			
9 <sup>th</sup> year			
10 <sup>th</sup> year			

DRAFT