CITY OF LAKE WORTH

7 North Dixie Highway · Lake Worth, Florida 33460 · Phone: 561-586-1600· Fax: 561-586-1750

AGENDA
CITY OF LAKE WORTH
CITY COMMISSION MEETING
CITY HALL COMMISSION CHAMBER
TUESDAY, JANUARY 07, 2014 - 6:00 PM

1. **ROLL CALL:**

2. **INVOCATION:** Offered by Pastor Tony Cato of New Hope Baptist Church

3. **PLEDGE OF ALLEGIANCE:** Led by Vice Mayor Scott Maxwell

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

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

   A. Proclamation recognizing January 2014 as Stalking Awareness Month

   B. Proclamation recognizing January 18, 2014 as Arbor Day

   C. City recognition of Scott Althouse for his years of service and contributions

   D. Living Shoreline Planters by the Dept. of Environmental Resources Management

   E. Update provided by the Planning & Zoning Board

   F. Update provided by the Neighborhood Association Presidents' Council

6. **COMMISSION LIAISON REPORTS AND COMMENTS:**

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

8. **APPROVAL OF MINUTES:**

   A. City Commission Meeting - December 3, 2013
   B. Special City Commission Meeting - December 10, 2013

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

   A. Resolution No. 01-2014 - not renew an agreement with Street Outdoors, LLC formerly known as City Solutions, Inc. for placement of modular newsracks

   B. Resolution No. 02-2014 - authorize CDBG Interlocal Agreement with Palm Beach County for the 9th Avenue South greenway

C. Resolution No. 03-2014 - authorize the City Manager to execute standard mural removal agreements

D. Revise Interlocal Agreement with the County for the City's Youth Empowerment Centers

E. Amendment 2 to the DW501700 State Revolving Fund Loan Agreement for the Reverse Osmosis Water Treatment Plant

F. Amendment 1 to the DW051701 State Revolving Fund Loan Agreement for the Reverse Osmosis Water Treatment Plant

G. Amended Contract and Purchase Order with Burton & Associates, Inc. for master plan financial impact analysis and Fiscal Year 2015 water and sewer revenue sufficiency analysis

H. Purchase and Sale Contract with Trojan House, Inc. for property located at 1702 Lake Worth Road to establish a construction lab for Lake Worth students

10. <u>PUBLIC HEARINGS:</u>

A. Ordinance No. 2014-01 - Second Reading and Public Hearing - amend alcoholic beverage regulations regarding proximity waivers

B. Ordinance No. 2014-02 - Second Reading and Second Public Hearing - amend various sections and tables in the Land Development Regulations

C. Ordinance No. 2014-03 - Second Reading and Public Hearing - designate the FEC Railway Freight Depot at 1105 Second Avenue South as a local Lake Worth Historic Landmark

D. Ordinance No. 2014-04 - Second Reading and Public Hearing - regulate the hours of construction activities

E. Ordinance No. 2014-05 Second Reading and Public Hearing - establish restrictions, requirements and penalties for use of public rights of way, sidewalks, and properties

F. Ordinance No. 2014-06 - Second Reading and Public Hearing - amend Business Tax Receipts and Business Regulations by creating a two-part City Business License

11. <u>UNFINISHED BUSINESS:</u>

A. Discuss Park of Commerce and Boutwell Road Project - Owner's Representation, Engineering and Design, and Right of Way Ownership

1) Professional Services Agreement with Mock Roos & Associates for Engineering, Design and Construction Phase Services for the Park of Commerce Project Phase I - Boutwell Road from 2nd Avenue North to 10th Avenue North

2) Professional Services Agreement with Mathews Consulting, Inc. for Owner's Representation Services for the Park of Commerce Project Phase I - Boutwell Road from 2nd Avenue North to 10th Avenue North

3) Discuss right of way ownership for Boutwell Road and the Park of Commerce Project

12. NEW BUSINESS:

A. Resolution No. 04-2014 - Fiscal Year 2014 first quarter budget amendment

B. Resolution No. 05-2014 - amend the Fiscal Year 2014 Comprehensive Fee Schedule to include special events at the Beach Complex and permit and review fees for right of way usage

C. Lease Agreement with the County to create and maintain a nature preserve

13. LAKE WORTH ELECTRIC UTILITY:

A. PRESENTATION: (There is no public comment on Presentation items)

1) Update on the electric utility system

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

C. PUBLIC HEARING:

D. NEW BUSINESS:

1) Contractor Agreements with Davey Tree Experts for line clearance and easement/right of way alley clearing services

14. CITY ATTORNEY'S REPORT:

15. CITY MANAGER'S REPORT:

A. January 28, 2014 draft Commission agenda

16. 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)

NOTE: ONE OR MORE MEMBERS OF ANY BOARD, AUTHORITY OR COMMISSION MAY ATTEND AND SPEAK AT ANY MEETING OF ANOTHER CITY BOARD, AUTHORITY OR COMMISSION.

National Stalking Awareness Month

Whereas, under the laws of all fifty states, the District of Columbia, and federal government, stalking is a crime; and

Whereas, 3.4 million people over the age of 18 are stalked each year in the United States, and nearly 75% of victims are stalked by someone they know; and

Whereas, 3 in 4 women killed by an intimate partner had been stalked by that intimate partner; and

Whereas, many stalking victims are forced to protect themselves by relocating, changing their identities, changing jobs, and obtaining protection orders; and

Whereas, many stalkers use increasingly sophisticated devices, such as global positioning systems, cameras, and computer spyware, to track their victims; and

Whereas, laws and public policies must be continually adapted to keep pace with new tactics used by stalkers; and

Whereas, Aid to Victims of Domestic Abuse, Inc. and Legal Aid Society of Palm Beach County continue their project to better combat stalking by coordinating a multidisciplinary response of local agencies and organizations and by increasing victim services; and

Whereas, the Palm Beach County Anti-Stalking Multidisciplinary Collaborative has released an Anti-Stalking Toolkit and Victim's Right brochure which will assist service providers and victims in coordinating and accessing the most appropriate and effective services for each victim of stalking in Palm Beach County; and

Whereas, Aid to Victims of Domestic Abuse and Legal Aid Society of Palm Beach County are joining forces with victim service providers, criminal justice officials, and concerned citizens throughout Palm Beach County and the United States to observe **National Stalking Awareness Month** and to promote the 2014 theme, "Stalking: Know it. Name it. Stop it."

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

JANUARY 2014
as
STALKING AWARENESS MONTH

and applaud the efforts of Aid to Victims of Domestic Abuse, Legal Aid Society of Palm Beach County, and the many victim service providers, police officers, prosecutors, national and community organizations, and private sector supporters for their efforts in promoting awareness about stalking.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the City of Lake Worth, Florida, to be affixed this 7th day of January, 2014.

_____
Pam Triolo, Mayor

ATTEST:

_____
Pamela J. Lopez, City Clerk

PROCLAMATION

WHEREAS, In 1872, J. Sterling Morton proposed to the Nebraska Board of Agriculture that a special day be set aside for the planting of trees; and

WHEREAS, the holiday, called Arbor Day, was first observed with the planting of more than a million trees in Nebraska; and

WHEREAS, Arbor Day is now observed throughout the nation and the world; and

WHEREAS, trees can reduce the erosion of our precious topsoil by wind and water, lower our heating and cooling costs, moderate the temperature, clean the air, produce oxygen and provide habitat for wildlife; and

WHEREAS, trees are a renewable resource giving us paper, wood for our homes, fuel for our fires and countless other wood products; and

WHEREAS, trees in our city increase property values, enhance the economic vitality of business areas, and beautify our community; and

WHEREAS, trees, wherever they are planted, are a source of joy and spiritual renewal.

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

JANUARY 18, 2014
as
ARBOR DAY

and urge all citizens to celebrate Arbor Day and to support efforts to protect our trees and woodlands and to plant and care for trees to gladden the heart and promote the well-being of this and future generations.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the City of Lake Worth, Florida, to be affixed this 7th day of January, 2014.

_____
Pam Triolo, Mayor

ATTEST:

_____
Pamela J. Lopez, City Clerk

CITY OF LAKE WORTH

7 North Dixie Highway · Lake Worth, Florida 33460 · Phone: 561-586-1600· Fax: 561-586-1750

AGENDA DATE: January 7, 2014, Regular Meeting **DEPARTMENT:** City Clerk

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EXECUTIVE BRIEF

TITLE:
Update provided by the Update provided by the Planning & Zoning Board

SUMMARY:
Mr. John Rinaldi, Board Chair, will update the Commission on activities that have taken place over the past several months.

BACKGROUND AND JUSTIFICATION:
The Board members review and approve site plans for three-units or more of residential development and all commercial development. The members also review community appearance and have the ability to grant variances from the Lake Worth Zoning Code. The members also serve as the Board of Sign Appeals and Nuisance Abatement Board. The members serve three-year terms. Last update from the Planning and Zoning board was on May 7, 2013.

MOTION:
Not applicable

ATTACHMENT(S):
Fiscal Impact Analysis – not applicable

CITY OF LAKE WORTH

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AGENDA DATE: January 7, 2014, Regular Meeting **DEPARTMENT:** City Clerk

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EXECUTIVE BRIEF

TITLE:
Update provided by the Neighborhood Association Presidents' Council

SUMMARY:
Ms. Mary Lindsey, Council Chair, will advise the Commission on activities in the neighborhoods.

BACKGROUND AND JUSTIFICATION:
At the City Commission meeting on July 20, 2010, the City Commission requested that all neighborhood associations provide an update. The last update from the Neighborhood Association Presidents' Council was on March 5, 2013.

MOTION:
Not applicable

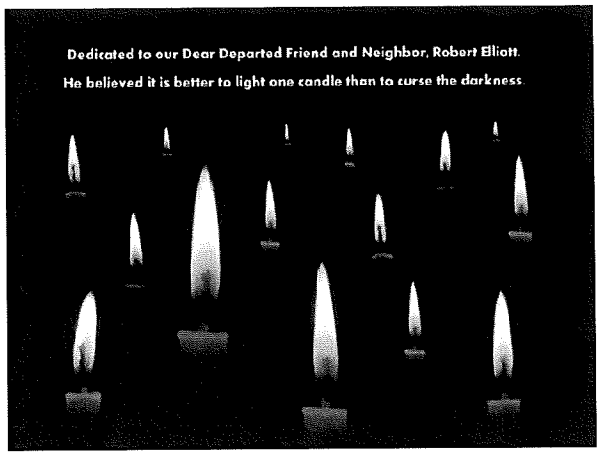
ATTACHMENT(S):
Fiscal Impact Analysis – not applicable

NEIGHBORHOOD ASSOCIATION PRESIDENTS' COUNCIL

"Serving Neighborhood Associations across the City of Lake Worth"

Strategic Partnerships & *effective* Collaboration

Report to the Lake Worth City Commission
January 7, 2014

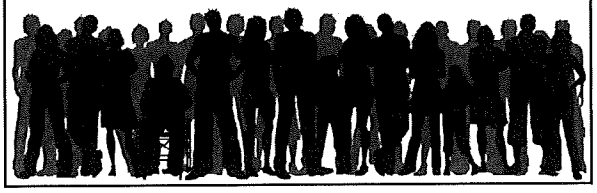


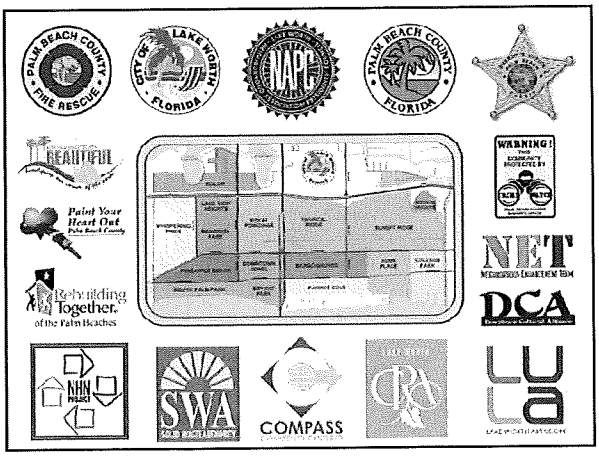
NEIGHBORHOOD ASSOCIATION PRESIDENTS' COUNCIL

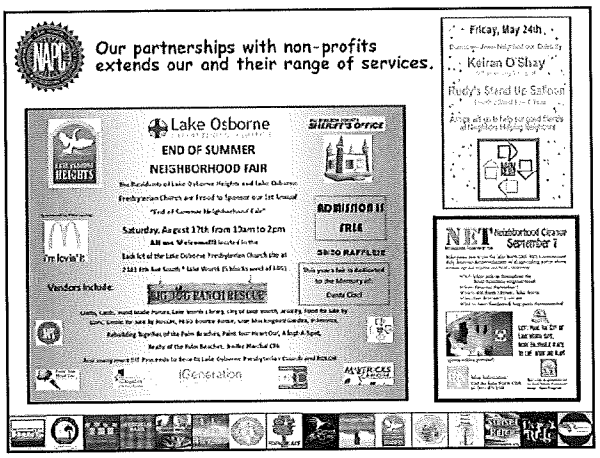
"Serving Neighborhood Associations Across the City of Lake Worth"

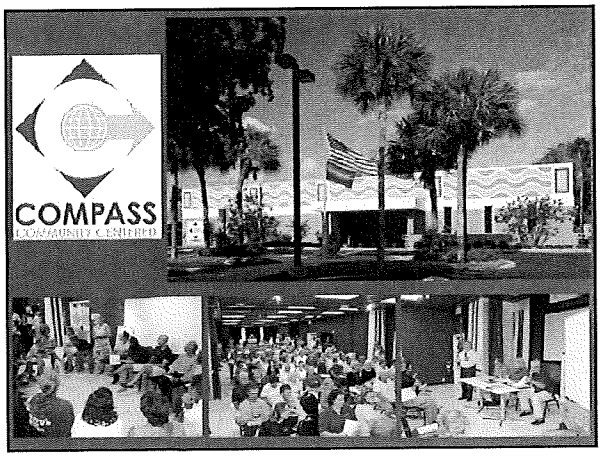
What is it?

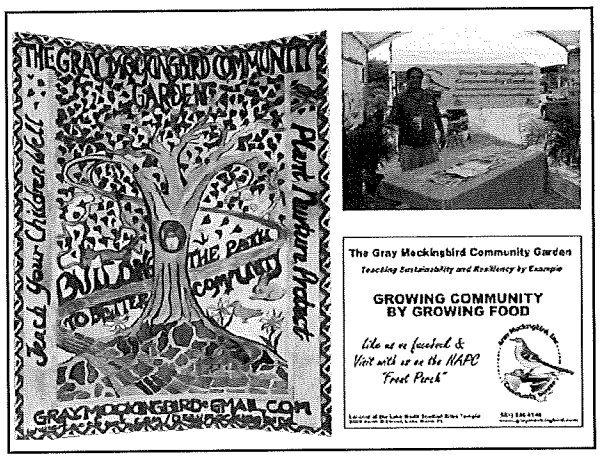
Neighborhoods And Partners Collaborating

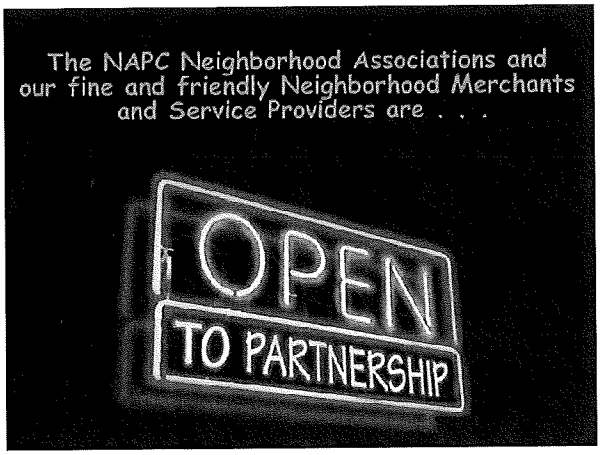


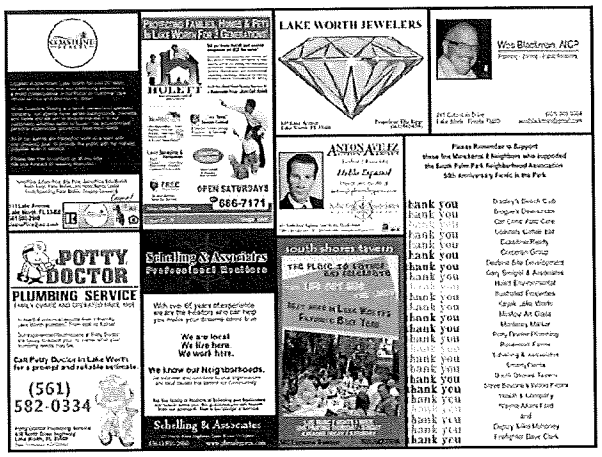

PALM BEACH COUNTY FIRE RESCUE
CITY OF LAKE WORTH FLORIDA
NAPC
PALM BEACH COUNTY FLORIDA
BEAUTIFUL
Paint Your Heart Out Palm Beach County
Rebuilding Together of the Palm Beaches
WARNING!
NET
DCA
NHN PROJECT
SWA
COMPASS
CRA
LULA


Our partnerships with non-profits extends our and their range of services.
Lake Osborne
END OF SUMMER NEIGHBORHOOD FAIR
Saturday, August 17th from 12am to 2pm
ADMISSION IS FREE
Vendors include:
BIG DOG RANCH RESCUE
Friday, May 24th
Kelran O'Shay
NET Neighborhood Cleanup September 7

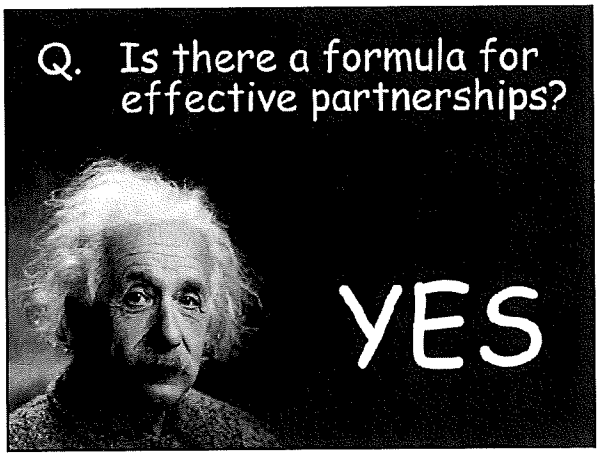

COMPASS
COMMUNITY CENTERED


THE GRAY MOCKINGBIRD COMMUNITY GARDEN
Teach Your Children Well
Plant Nurture Produce
BUILDING THE PATH TO BETTER COMMUNITY
GRAYMOCKINGBIRD@GMAIL.COM
The Gray Mockingbird Community Garden
Teaching Sustainability and Resiliency by Example
GROWING COMMUNITY BY GROWING FOOD
Like us on facebook & Visit with us on the NAPC "Front Porch"

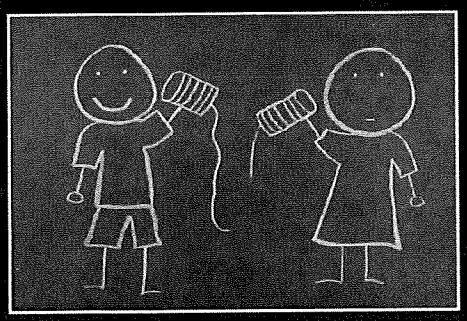

The NAPC Neighborhood Associations and our fine and friendly Neighborhood Merchants and Service Providers are . . .
OPEN
TO PARTNERSHIP


LAKE WORTH JEWELERS
Wes Blackman, NCP
POTTY DOCTOR
PLUMBING SERVICE
(561) 582-0334
Schelling & Associates
Professional Realtors
OPEN SATURDAYS
686-7171
Thank you

The Lake Worth Herald
Welcome to Paul and Marta's
Amelia's SmartyPlants
your full-service garden center
Dixie Highway
540-6296
The Juice Bar @ STUDIO 205
OPEN 7 DAYS A WEEK
MON-SAT 10am-6pm
SUN 10am-5pm
603 LAKE AVENUE
LAKE WORTH, FL 33460
(Downtown next to Starbucks)
PHONE: (561)533-5272
Kilwins

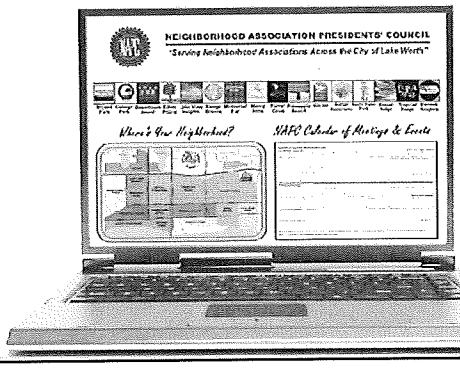

Q. Is there a formula for effective partnerships?
YES

E = our ability to COMMUNICATE



WEBSITE • FACEBOOK • DOORHANGERS • MEETINGS • EMAIL • PHONETREES

lwnapc.com



napcinfo@gmail.com

Emails to one address get forwarded to every NAPC President.

User Friendly means Friends will use it!

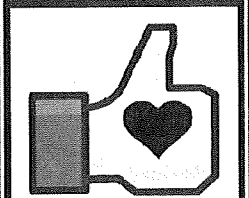
We go where neighbors go to chat & stay

CONNECTED

facebook is a power tool for communication

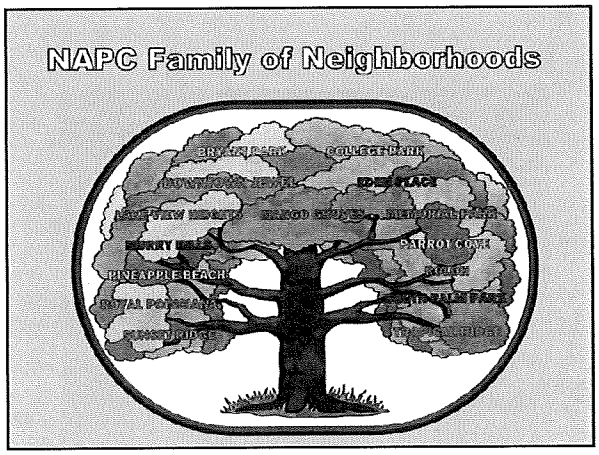
thank you

to all our neighbors for "liking" the NAPC

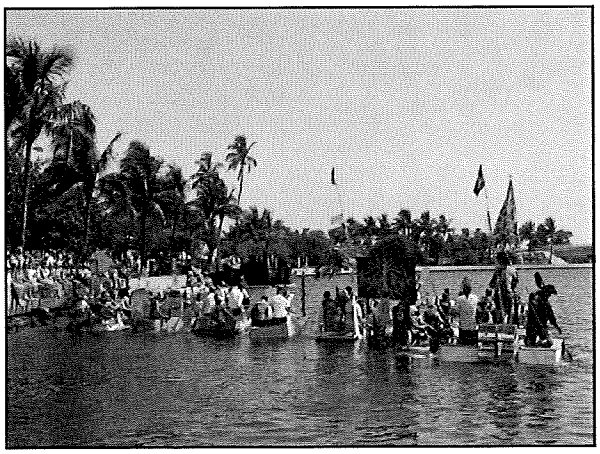


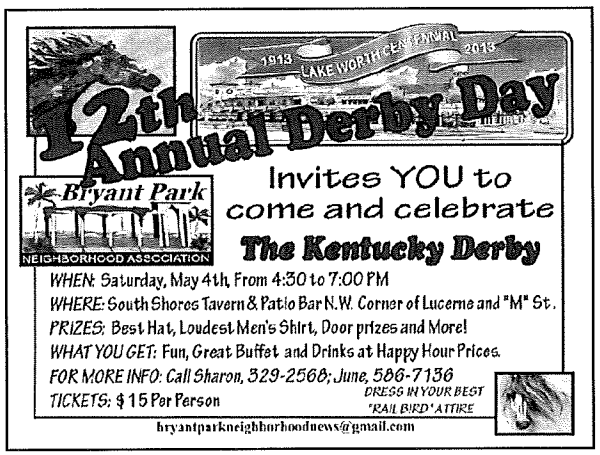
We like you too

We announce meetings and MORE on
facebook
like the NAPC on facebook
FREE Movie Night
EVERYONE INVITED!
MEETING
Sunset Ridge
Mango Groves
Meeting
All are Welcome
Bryant Park
COLLEGE PARK


NAPC Family of Neighborhoods
BRYANT PARK
COLLEGE PARK
DOWNTOWN NEWAL
EDGE PLACE
NEW VIEW HEIGHTS
GRAND CANYON
MEMORIAL PARK
BERRY HILL
CARROLLCOVE
PINEAPPLE BEACH
ROYAL POINCIANA
PALM PARK
SUNSET RIDGE

Bryant Park
NEIGHBORHOOD ASSOCIATION




1913
LAKE WORTH CENTENNIAL
2013
12th Annual Derby Day
Bryant Park
NEIGHBORHOOD ASSOCIATION
Invites YOU to
come and celebrate
The Kentucky Derby
WHEN: Saturday, May 4th, From 4:30 to 7:00 PM
WHERE: South Shores Tavern & Patio Bar N.W. Corner of Lucerne and "M" St.
PRIZES: Best Hat, Loudest Men's Shirt, Door prizes and More!
WHAT YOU GET: Fun, Great Buffet and Drinks at Happy Hour Prices.
FOR MORE INFO: Call Sharon, 329-2568; June, 586-7136
TICKETS: $15 Per Person
DRESS IN YOUR BEST
"RAIL BIRD" ATTIRE
bryantparkneighborhoodnews@gmail.com

COLLEGE PARK
Historic Neighborhood
collegeparklakeworth.com

MEETING

Next Monday

1st Congregational Church
1415 North K Street 6:30 pm

COLLEGE PARK invites everyone to attend our Neighborhood Meeting on Monday, September 23rd at 6:30 PM
First Congregational Church
1415 North K Street

Special presentation by City Manager Michael Bornstein and City officials on the Lake Worth 2020 Master Plan.

Bring your questions - Get your answers!

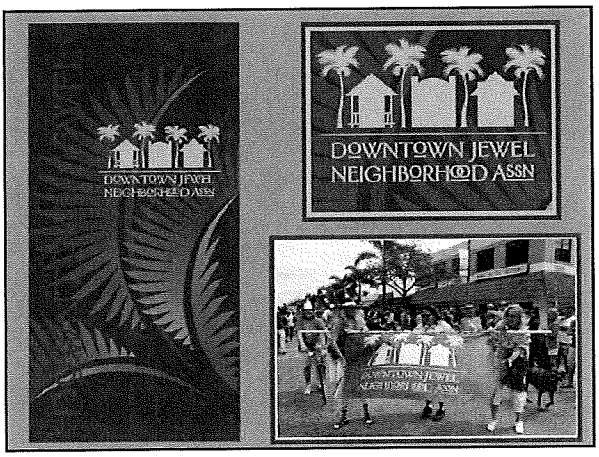
COLLEGE PARK
LAKE WORTH, FL
EST. 1924

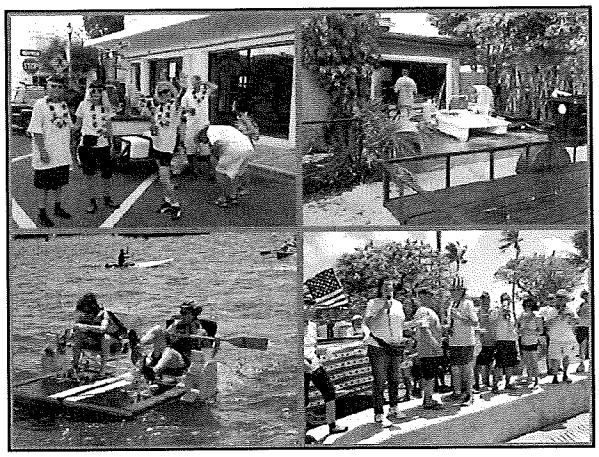
COLLEGE PARK
Neighborhood Association

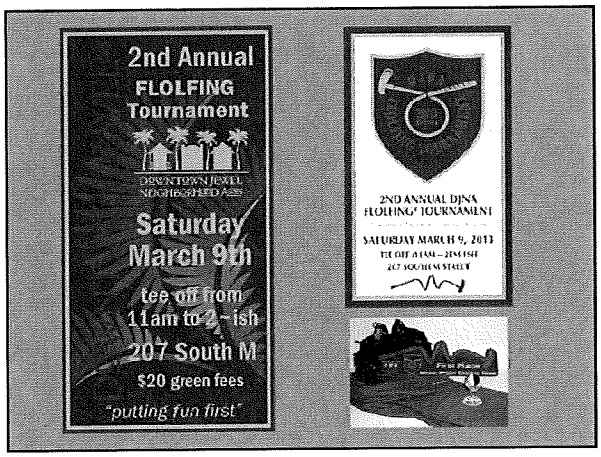
Neighborhood Survey Report
To the City Commission

Tuesday, July 16th

City Hall, 6PM


DOWNTOWN JEWEL
NEIGHBORHOOD ASSN




2nd Annual
FLOLFING
Tournament
DOWNTOWN JEWEL
NEIGHBORHOOD ASSN
Saturday
March 9th
tee off from
11am to 2 - ish
207 South M
$20 green fees
"putting fun first"
2ND ANNUAL DJNA
FLOLFING TOURNAMENT
SATURDAY MARCH 9, 2013

LAKE WORTH
HIGH SCHOOL
NORTH GRADE ELEMENTAR
BARTON

EDEN PLACE
neighborhood association

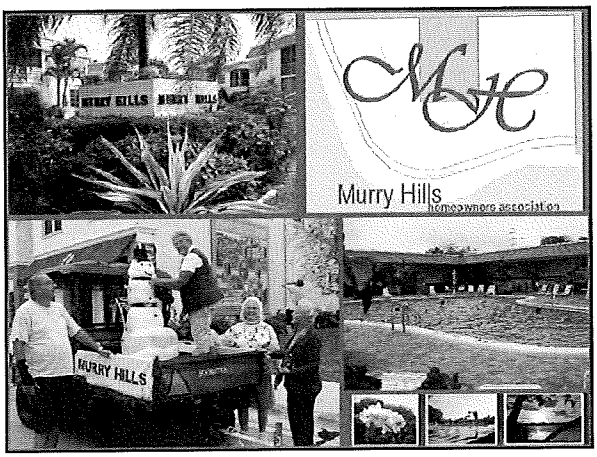
Lake View Heights

Mango Groves Neighborhood Association
LAKE WORTH, FLORIDA

Mango Groves Neighborhood Association
Art & Wine at the Eco
Celebrate the bounty of the season with music, art, wine and design!
ART STROLL
FEBRUARY 10, 2015
SUNDAY NOON-5pm
COCONUT WALK
LAKE WORTH
Art & Wine at the Eco

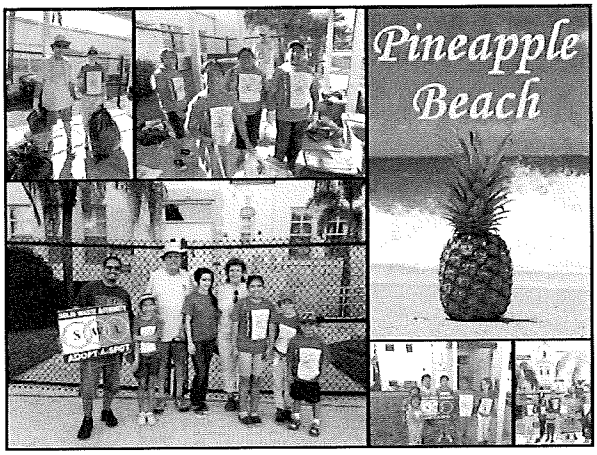
Mango Groves
FEATURED HOME

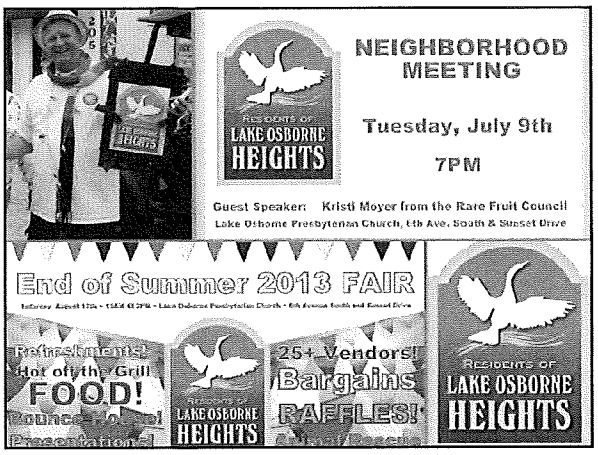
MEMORIAL PARK
neighborhood association

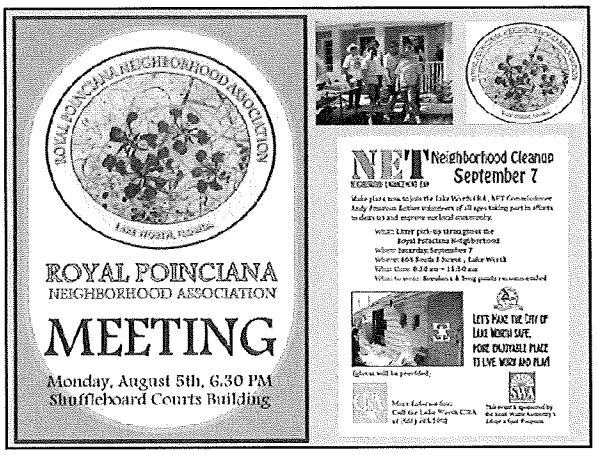

MURRY HILLS
Murry Hills
homeowners association

Parrot
Cove

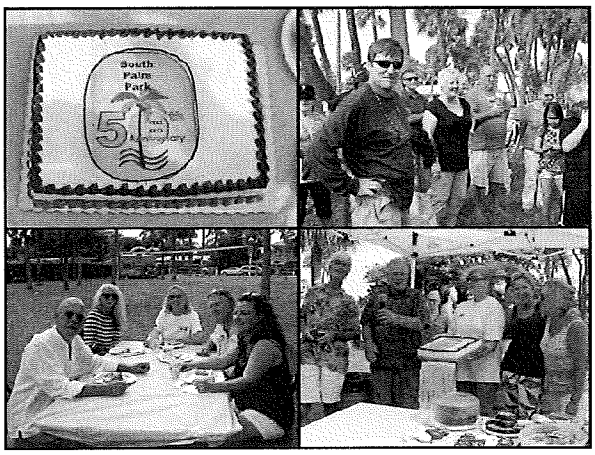
TOUR EIGHT EXCEPTIONAL HOMES
art walk • antique cars • pedicabs
Parrot Cove
Home Tour
03/04/2012
ParrotCove.org
Tonight!
Parrot Cove
Parrot Cove Presentation
To the City Commission
Tuesday, July 2, 2013
City Hall at 6pm


Pineapple
Beach

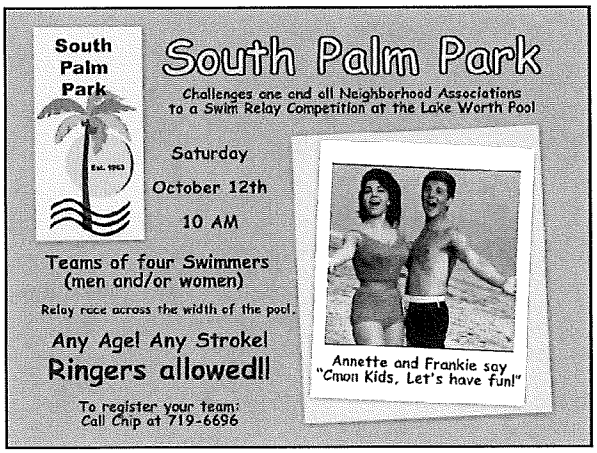

NEIGHBORHOOD MEETING
Tuesday, July 9th
7PM
Guest Speaker: Kristi Moyer from the Rare Fruit Council
Lake Osborne Presbyterian Church, 6th Ave. South & Sunset Drive
RESIDENTS OF LAKE OSBORNE HEIGHTS
End of Summer 2013 FAIR
Refreshments!
Hot off the Grill
FOOD!
25+ Vendors!
Bargains
RAFFLES!
RESIDENTS OF LAKE OSBORNE HEIGHTS


ROYAL POINCIANA NEIGHBORHOOD ASSOCIATION
ROYAL POINCIANA
NEIGHBORHOOD ASSOCIATION
MEETING
Monday, August 5th, 6:30 PM
Shuffleboard Courts Building
NET
Neighborhood Cleanup
September 7
LET'S MAKE THE CITY OF LAKE WORTH SAFE, MORE ENJOYABLE PLACE TO LIVE, WORK AND PLAY

South Palm Park
1963
2013
Celebrating
50
years!
1963 ≋ 2013

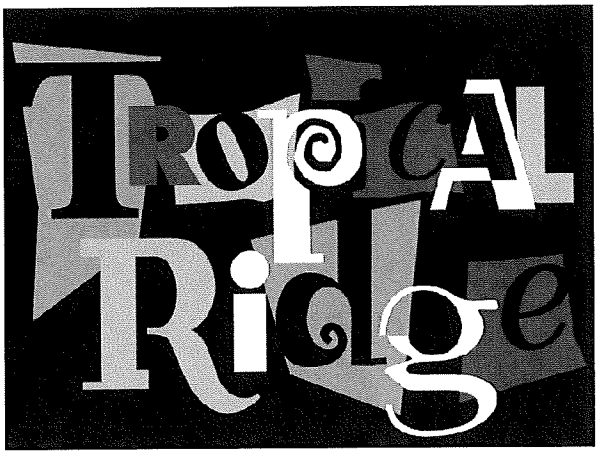

South Palm Park
50

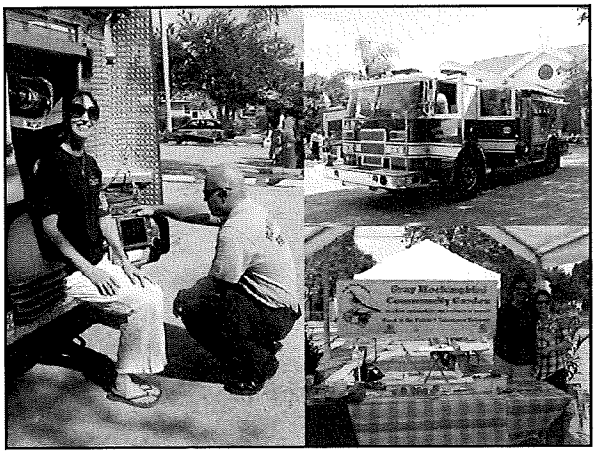
Born in
South
Palm
Park
Est. 1963
1963

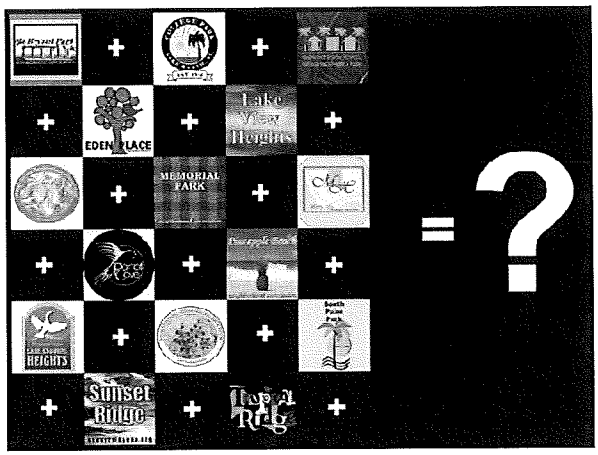

South
Palm
Park
Est. 1963
South Palm Park
Challenges one and all Neighborhood Associations
to a Swim Relay Competition at the Lake Worth Pool
Saturday
October 12th
10 AM
Teams of four Swimmers
(men and/or women)
Relay race across the width of the pool.
Any Age! Any Stroke!
Ringers allowed!!
To register your team:
Call Chip at 719-6696
Annette and Frankie say
"C'mon Kids, Let's have fun!"

SUNSET RIDGE
neighborhood association
sunsetridgena.org

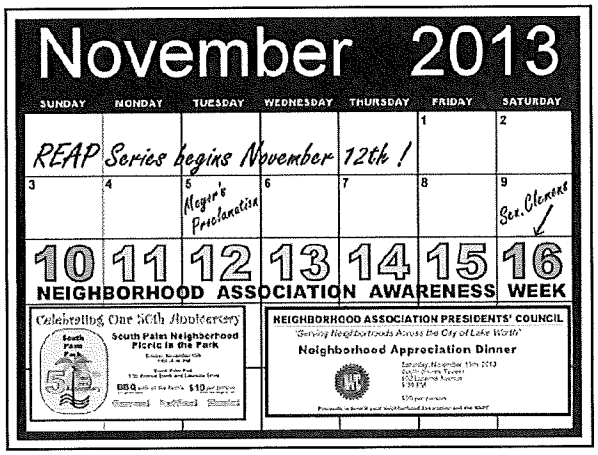
Sunset Ridge Estates

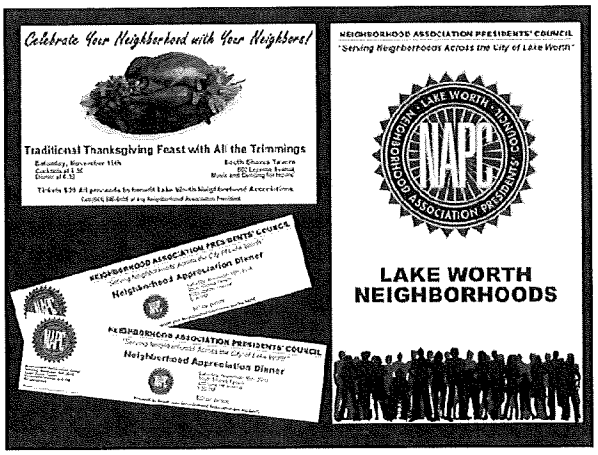

TROPICAL
Ridge

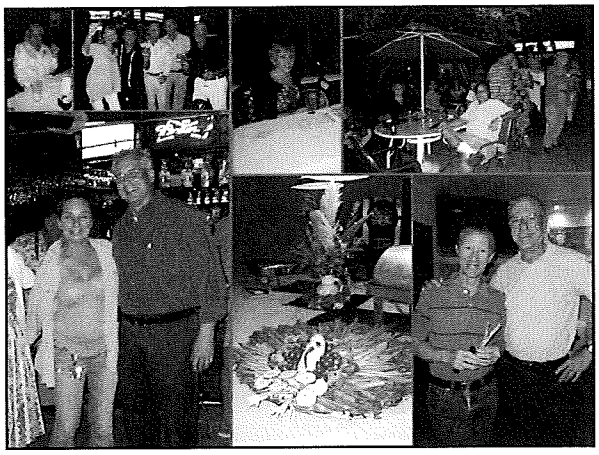



EDEN PLACE
Lake View Heights
MEMORIAL PARK
Sunset Ridge
Top A Ridge
= ?

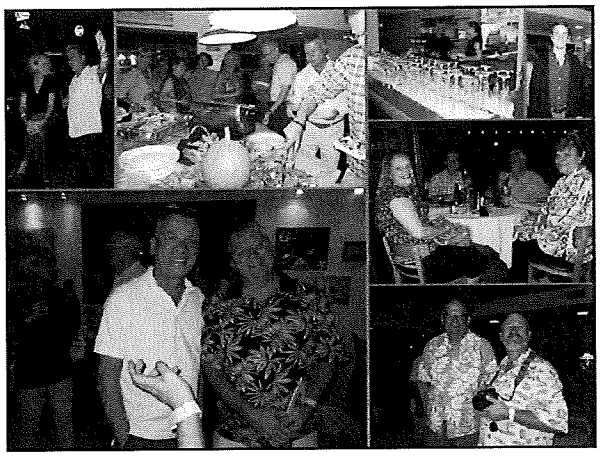
1+1+1+1+1+1+1+1+1+1+1+1+1+1+1+1 = 16[16]
Together,
We are greater than
the sum of our parts.
EDEN PLACE
Lake View Heights
MEMORIAL PARK
Sunset Ridge
Top A Ridge

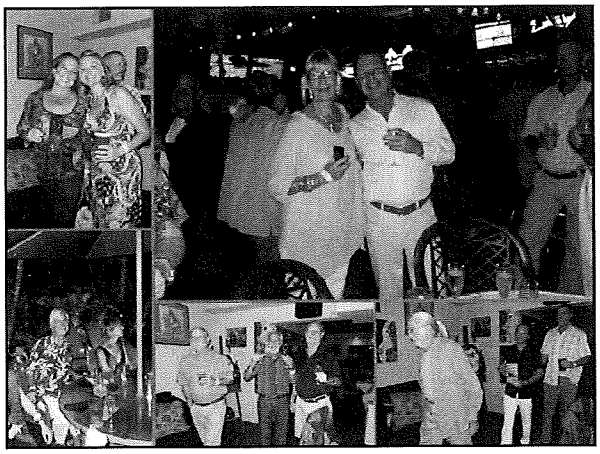

November 2013
SUNDAY MONDAY TUESDAY WEDNESDAY THURSDAY FRIDAY SATURDAY
REAP Series begins November 12th !
Mayor's Proclamation
Sen. Clemons
10 11 12 13 14 15 16
NEIGHBORHOOD ASSOCIATION AWARENESS WEEK
Celebrating One 50th Anniversary
South Palm Neighborhood Picnic in the Park
NEIGHBORHOOD ASSOCIATION PRESIDENTS' COUNCIL
Neighborhood Appreciation Dinner

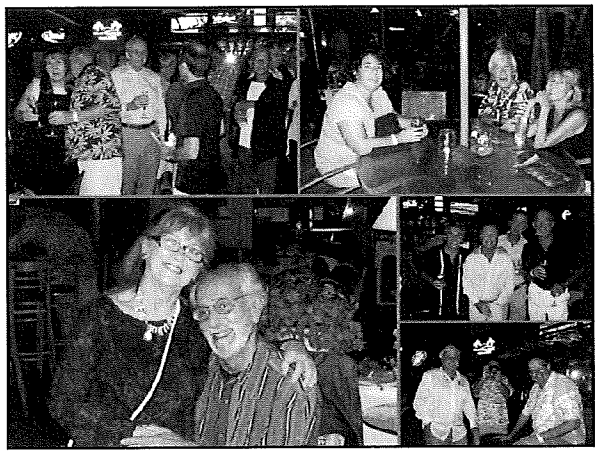

Celebrate Your Neighborhood with Your Neighbors!
Traditional Thanksgiving Feast with All the Trimmings
NEIGHBORHOOD ASSOCIATION PRESIDENTS' COUNCIL
"Serving Neighborhoods Across the City of Lake Worth"
LAKE WORTH NAPC ASSOCIATION PRESIDENTS' COUNCIL
LAKE WORTH NEIGHBORHOODS
NEIGHBORHOOD ASSOCIATION PRESIDENTS' COUNCIL
Neighborhood Appreciation Dinner
NEIGHBORHOOD ASSOCIATION PRESIDENTS' COUNCIL
Neighborhood Appreciation Dinner

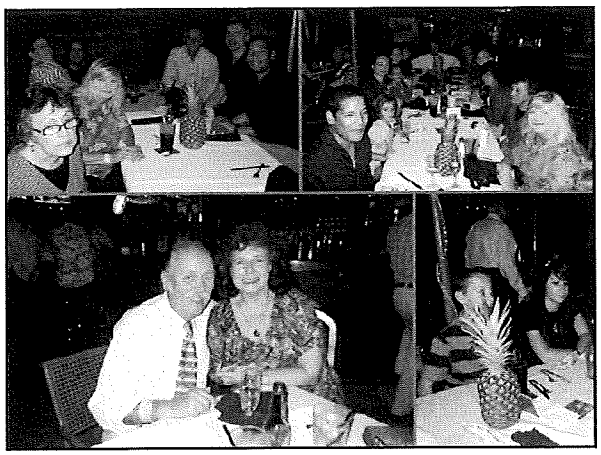


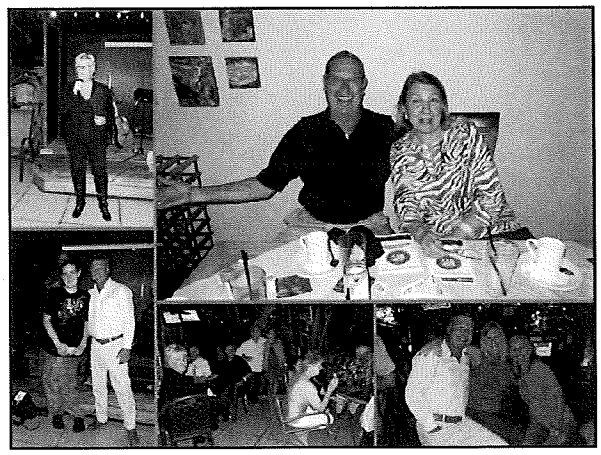
SOUTH SHORES

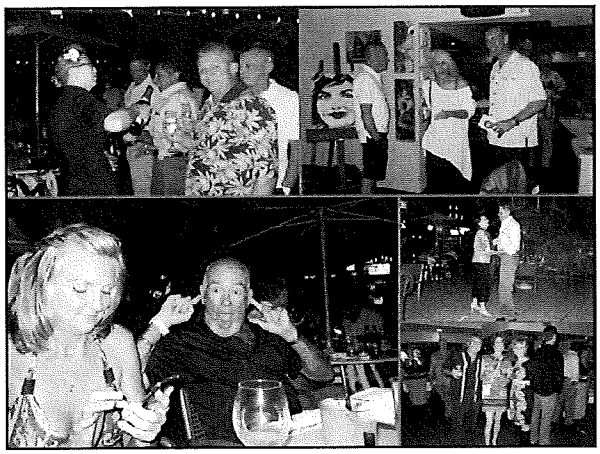


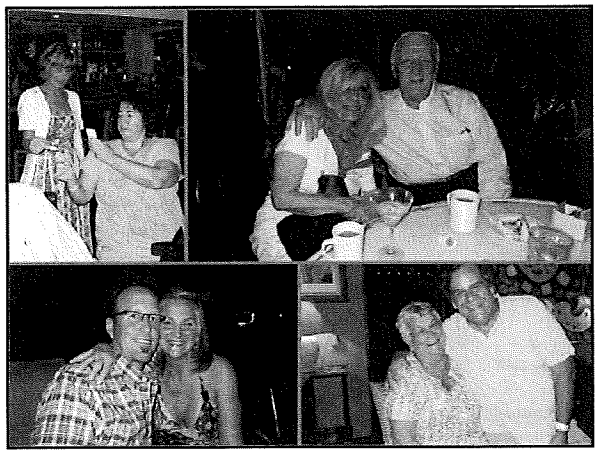


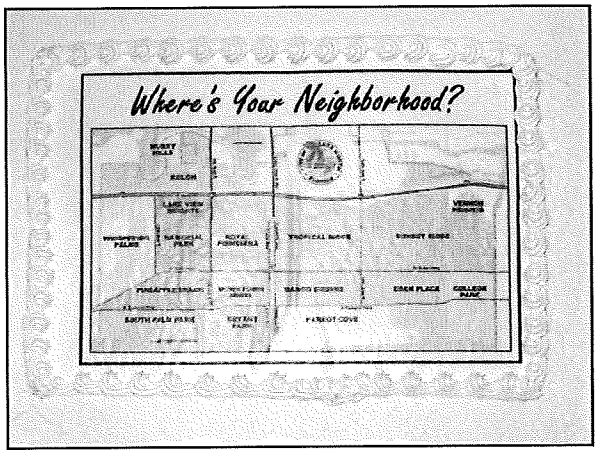


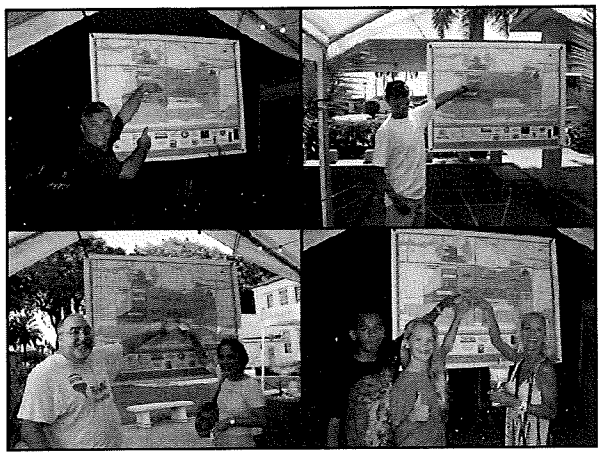


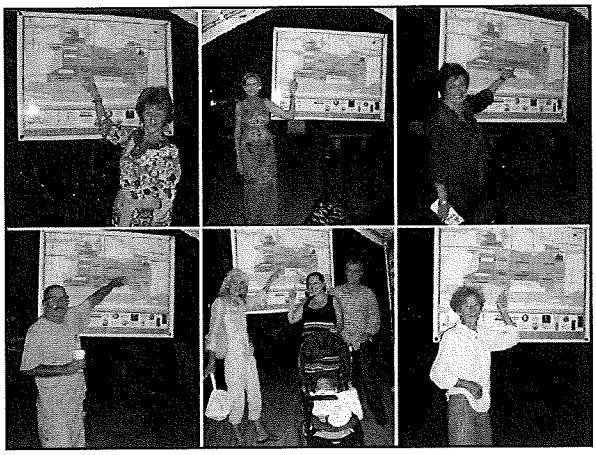




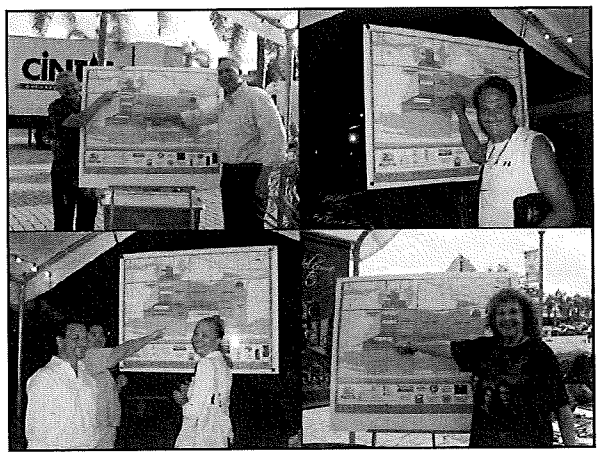


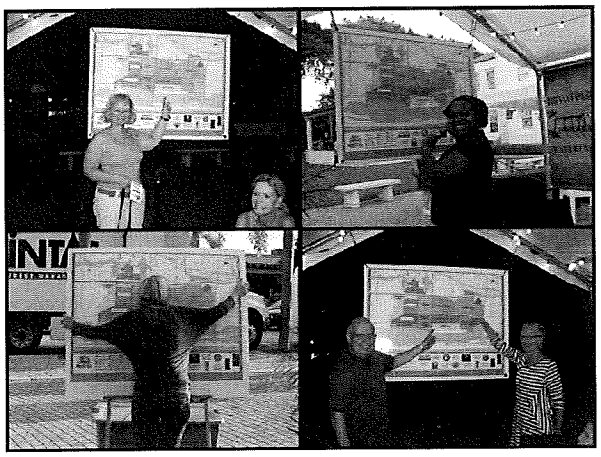

Where's Your Neighborhood?



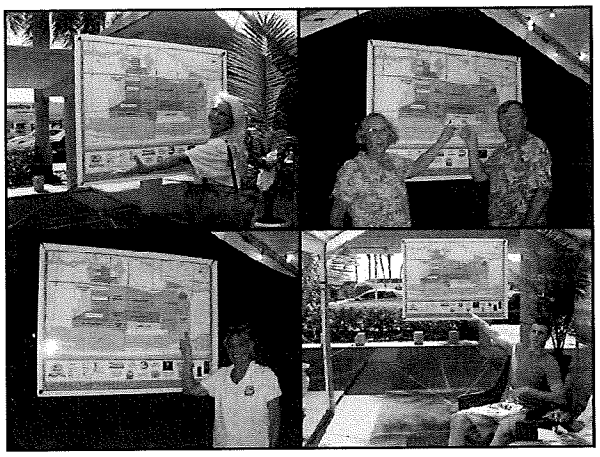


Welcome

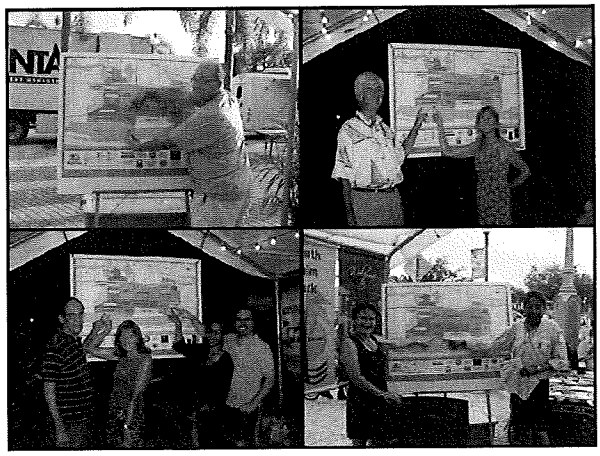




South
Palm
Park



Welcome Neighbors



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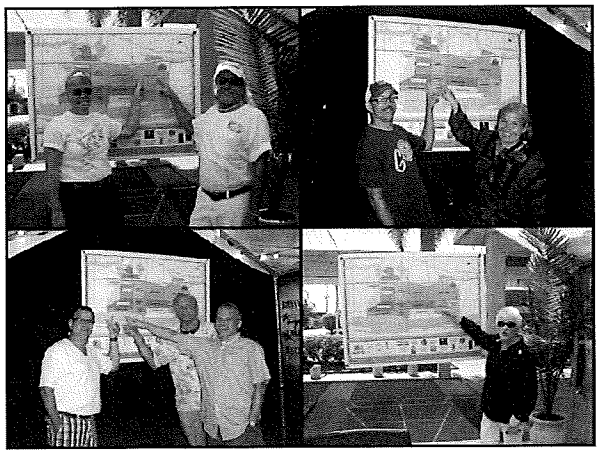
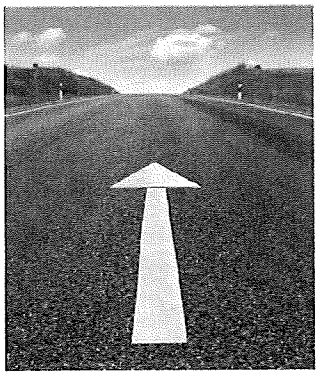


So what's next for the NAPC in 2014?



Neighborhood Guide Books,
in partnership with our local businesses and PBSO,
goal: 5,000 new Guide Books printed in Early Spring 2014

A new improved "Front Porch" at more events serving more Neighbors across the City of Lake Worth.
goal: to make the "Front Porch" all inclusive and easy for Neighborhood Associations to maintain and promote all the Neighborhood Associations and non-profit partners.

Continued support for our new Neighborhood Associations working towards our goal of every Neighbor in Lake Worth being represented by an Active and Lively Neighborhood Association.

To build on the strength and success of our partnerships: the City of Lake Worth, PBSO, PBC Fire/Rescue and all our non-profit, business and government partners

"The Neighborhood Guide"

First introduced at the NAPC Thanksgiving Banquet with 32 pages, the new Neighborhood Guide for 2014 will again feature each Neighborhood Association with important at a glance information on meetings (when and where), Association boundaries, who the Officers and Directors are and how to contact each Association for more information.

Included in this second expanded edition (40 pages), will be even more information on programs & services provided by PBSO.

This new expanded edition will be funded through the generosity of our local merchants, service providers and businesses who share our vision of lively, engaged Neighborhood Associations and through the generosity of PBSO who share our goal of safe, family friendly Neighborhoods throughout the City of Lake Worth.

Thank You to all our partners for supporting this effort. Members of the NAPC Council will be offering sponsorship opportunities to all our local business partners beginning in January 2014.

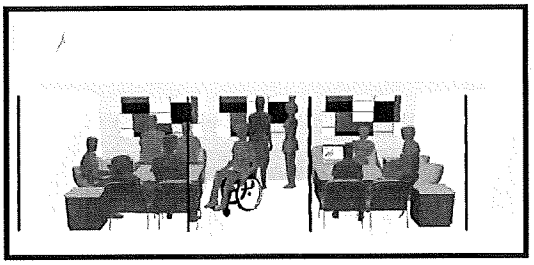
Our goal is to fully fund a reprinting of 5,000 Neighborhood Guide Books to distribute at the "Front Porch", public buildings and Neighborhood Association meetings and events throughout the year.

For new Neighbors and those Neighbors just learning about their representative Associations, this will be an invaluable guide to what's best about Lake Worth - Our Neighbors.

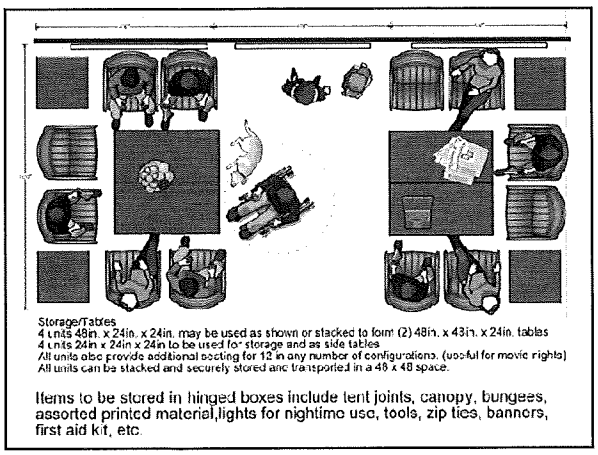
NEIGHBORHOOD ASSOCIATION PRESIDENTS' COUNCIL
"Serving Neighborhoods Across the City of Lake Worth"

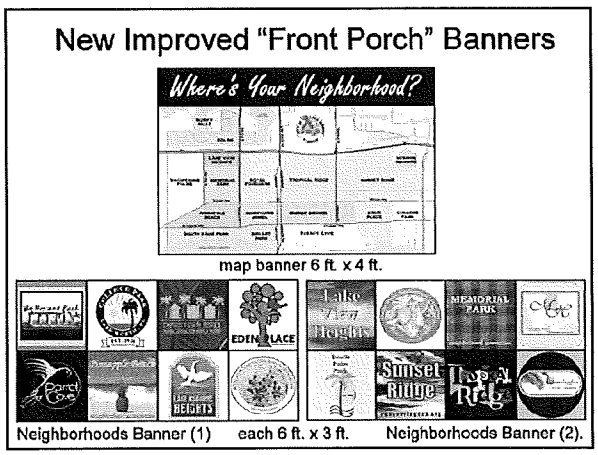
LAKE WORTH NEIGHBORHOODS

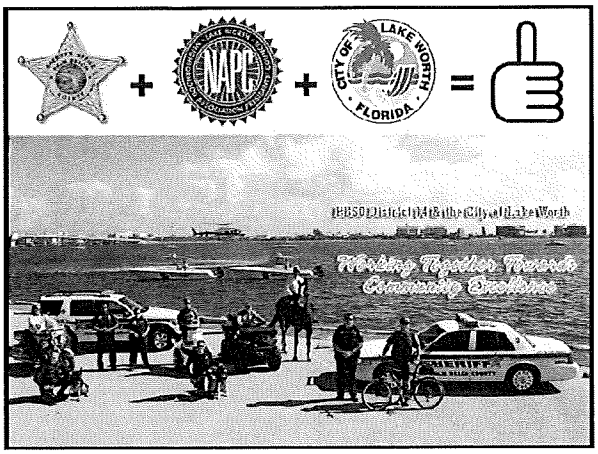
The New Improved "Front Porch"



"Front Porch" with three new banners and 12 new more easily transportable, lightweight, stackable chairs with 8 new storage units/tables, allowing for maximum flexibility and easier set-up/tear down. Chairs and tables can be stored in minimal space and transported on one pick-up truck (currently needs two). Tables/storage units will also provide additional seating (up to 12 additional seats) for movie nights and can be stacked and configured as display tables when needed.


Storage/Tables
4 units 48in. x 24in. x 24in. may be used as shown or stacked to form (2) 48in. x 48in. x 24in. tables
4 units 24in x 24in x 24in to be used for storage and as side tables
All units also provide additional seating for 12 in any number of configurations. (useful for movie nights)
All units can be stacked and securely stored and transported in a 48 x 48 space.
Items to be stored in hinged boxes include tent joints, canopy, bungees, assorted printed material,lights for nightime use, tools, zip ties, banners, first aid kit, etc.


New Improved "Front Porch" Banners
Where's Your Neighborhood?
map banner 6 ft. x 4 ft.
Neighborhoods Banner (1)
each 6 ft. x 3 ft.
Neighborhoods Banner (2).

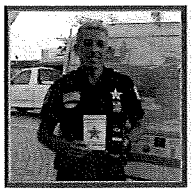

NAPC
CITY OF LAKE WORTH FLORIDA
Working Together Towards Community Excellence

Make the Call Y'all
For Emergencies 911
To Report Suspicious Activity
(561) 688-3400
WHEN IS IT A GOOD TIME TO CALL PBSO?
Any Time & Every Time
(561) 688-3400
NEVER CONFRONT SUSPICIOUS PERSONS YOURSELF
Get To Know Your Neighbors
Light The Night
Keep Doors and Vehicles Locked
Mark Your Valuables
NEIGHBORHOOD ASSOCIATION PRESIDENTS' COUNCIL
lwnapc.com
napcinfo@gmail.com

02/24/2010 -- Dist. 14 deputies responded to a possible burglary in progress in a vacant apartment building. Witness descriptions yielded an arrest and the suspect was taken into custody.

03/06/2010 -- "Please see the attached report that summarizes yesterday's Prostitution Detail in which 20 arrests were made. Together we will assuredly make significant headway in removing this problem which has historically cast a negative stigma on our city."

04/22/2011 -- "Please let the Residents know we appreciate all their assistance in putting together the original case. The collaborative work has turned out to be very fruitful indeed in assailing the overall narcotics problem in Lake Worth and the region." (multiple arrests for narcotics, possession of firearms by convicted felons) . . . Capt. Silva to Neighbors in the College Park Neighborhood Assn.



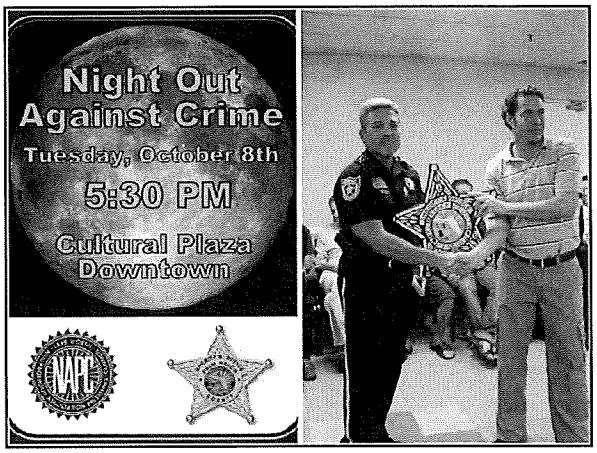
02/27/2012 -- "In reference to a suspicious person jumping a fence into a backyard. Further investigation yielded that the suspect made entry into the residence and was arrested."

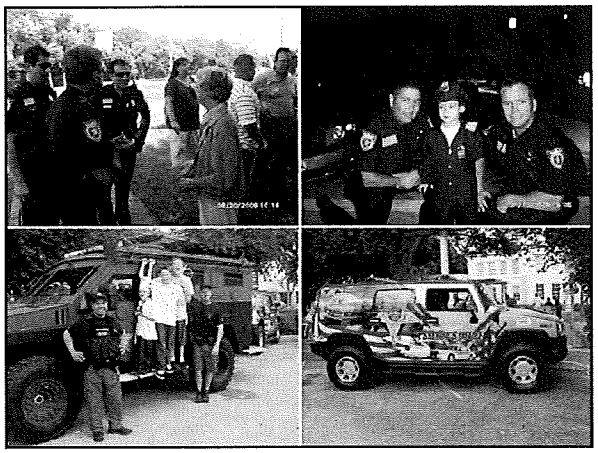
06/26/2013 -- "The District 14 Community Policing Team made multiple narcotics arrests in the area of North A Street after receiving citizens' complaints. All suspects, except one, plead guilty to the charges. The remaining suspect was found guilty at trial and was sentenced to 8 years.

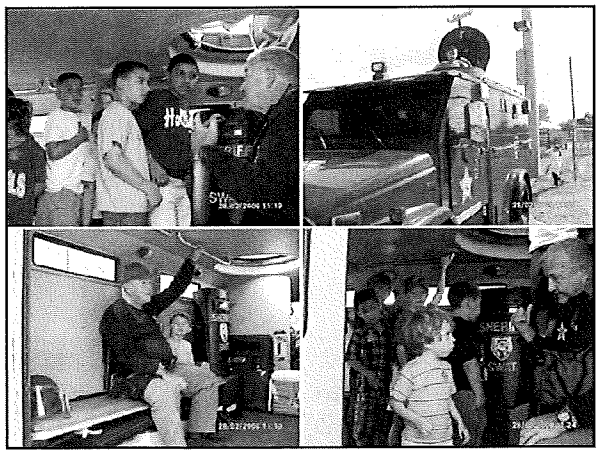
10/23/2103 -- "PBSO Narcotics Unit received information regarding drug activity. Undercover agents responded resulting in four felony charges."

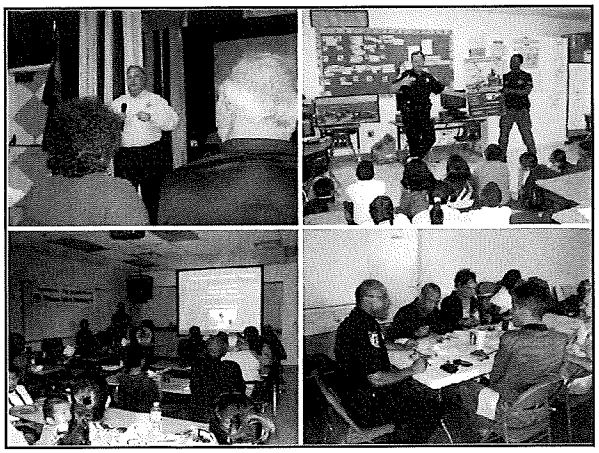
06/14/2013 -- From Captain Silva to the Presidents of the Lake Worth Neighborhood Associations . . .

"On behalf of PBSO District 14, Thank You for attending last night's meeting and for everything you all do to be a part of the solution. Our city has many formidable challenges and I believe overcoming each one of them lies in our ability to keep thinking creatively, planning strategically and working collaboratively to bring about real change."









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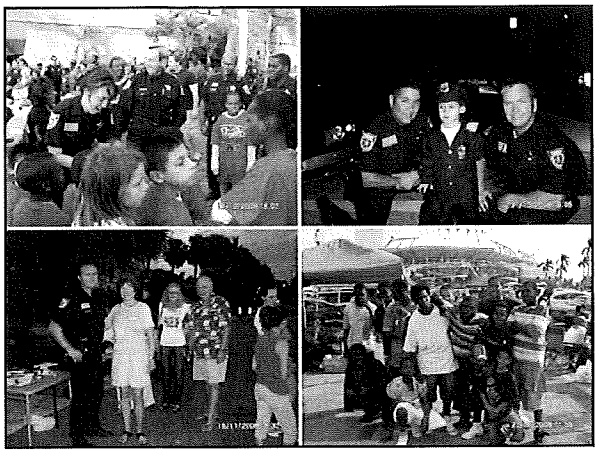

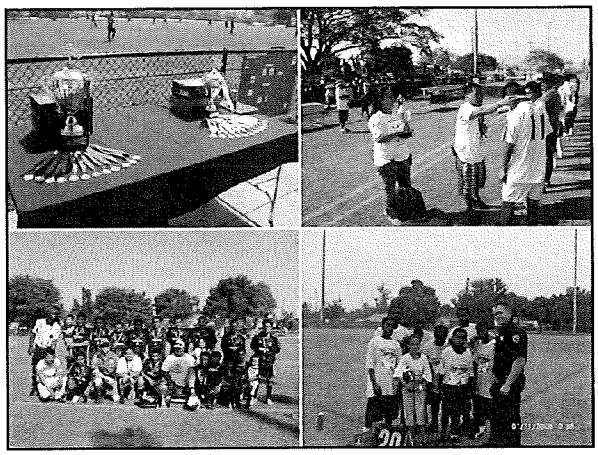

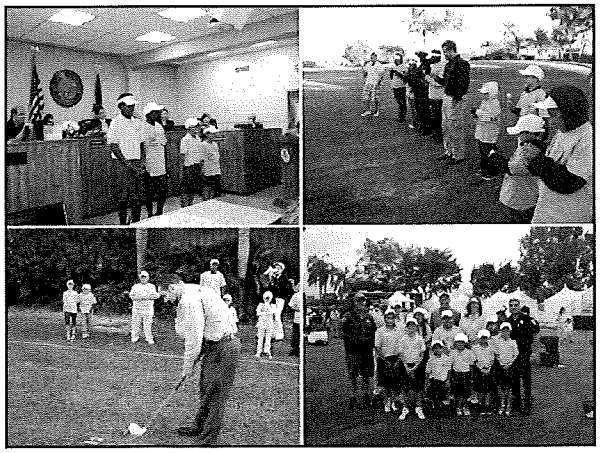

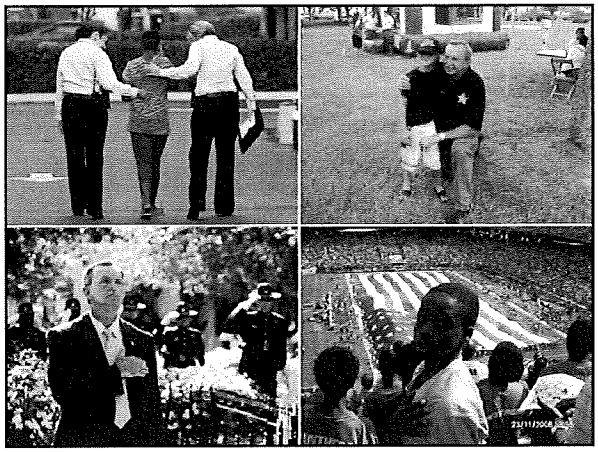

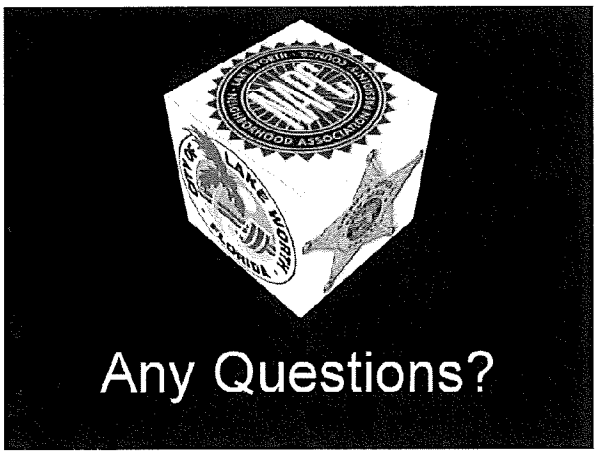
Any Questions?

MINUTES
CITY OF LAKE WORTH
REGULAR MEETING OF THE CITY COMMISSION
DECEMBER 3, 2013 – 6:00 PM

The meeting was called to order by Mayor Triolo on the above date at 6:01 PM in the City Commission Chamber located at City Hall, 7 North Dixie Highway, Lake Worth, Florida.

1. ROLL CALL:

Present were Mayor Pam Triolo; Vice Mayor Scott Maxwell (arrived 7:33 PM); and Commissioners Christopher McVoy (arrived 6:08 PM), Andy Amoroso, and John Szerdi. Also present were City Manager Michael Bornstein, City Attorney Glen Torcivia, and City Clerk Pamela Lopez.

2. INVOCATION:

The invocation was offered by Reverend Elie Louissaint of the Salem Haitian Evangelical Church.

3. PLEDGE OF ALLEGIANCE:

The pledge of allegiance was led by Commissioner Andy Amoroso.

4. AGENDA - Additions/Deletions/Reordering:

Action: Motion made by Commissioner Amoroso and seconded by Commissioner Szerdi to waive the rules to:

- Delete Presentations Item C; and
- Approve the agenda as amended.

Vote: Voice vote showed: AYES: Mayor Triolo and Commissioners Amoroso and Szerdi. NAYS: None.

5. PRESENTATIONS:

A. City recognition of Doug Lovelace for his years of service and contributions

Mayor Triolo read Doug Lovelace's historical employment background.

Larry Johnson, Water Director, presented a glass trophy to Mr. Lovelace in recognition of his years of service.

Commissioner McVoy arrived at the meeting; the time being 6:08 PM.

B. The Cottages of Lake Worth

Roger Hendrix, President, explained that The Cottages of Lake Worth was a group of residents who were working on a plan to catalog, publicize, and organize tours of the cottages constructed in Lake Worth. He explained the history on the cottages' construction.

Teresa Miller, Vice President, said the members were photographing residences to create a map, informational material, and website to attract national and international tourism.

C. (Deleted) Update provided by the Community Redevelopment Agency

D. Update provided by the Sunset Ridge Neighborhood Association

Ryan Oblander, President, provided an update on the Sunset Ridge Neighborhood Association's membership, meeting schedule, and upgrades to Sunset Ridge Park. He asked why the signage in Sunset Ridge Park read "Sunset Park", thanked City staff and Palm Beach Sheriff's Office for keeping the association members updated on issues and crime activities related to their neighborhood, commented about their potholes and street conditions, said there was a lack of sidewalks in their neighborhood, said the neighborhood had a feral cat problem, and asked why the City permitted the construction of a large garage without a residence on North D Street.

Request/comment summary:

1. Commissioner McVoy requested an update on trapping, spaying/neutering, then releasing feral cats.

6. <u>COMMISSION LIAISON REPORTS AND COMMENTS:</u>

<u>Commissioner McVoy:</u> said he was invited, by the League of Women Voters, to join County Commissioner Shelley Vana in the discussion about climate change issues; and asked about trimming the mangroves at Bryant Park.

<u>Commissioner Amoroso:</u> thanked City staff for their work on the Art at the Beach event held on November 30, 2013; and announced a Job Fair at the Shuffleboard Courts on December 4, 2013, Christmas Parade on December 14, 2013, and other events scheduled on December 14, 2013.

<u>Commissioner Szerdi:</u> announced an Art at the Eco Center event on December 7, 2013, and said he would be offering tours at the Eco Center; announced his reappointment to the Treasure Coast Regional Planning Council and said the members were involved with a planning exercise on a

regional study of mass transit and tri-rail; said he hoped everyone had a good Thanksgiving holiday; and wished everyone a Season's Greeting.

Mayor Triolo: announced that the Metropolitan Planning Organization rescheduled their meeting to December 9, 2013, and the members were discussing finding financial assistance to create quiet zone railway crossings; announced the Residence of Lake Osborne Neighborhood Association was holding a pet event; and said the author of the Downtown Pioneer Jewel Book would be at the Library.

Request/comment summary:

1. City Manager Bornstein commented that the County could provide an update on the mangroves at Bryant Park at a future meeting.

7. PUBLIC PARTICIPATION OF NON-AGENDAED ITEMS AND CONSENT AGENDA:

The following individuals spoke on various issues; however, they did not write anything on their comment cards: Peter Timm, Stephanie Zachary, and Barbara Jean Weber.

The following individual spoke on issues written on his comment card:

Michael Kase said there was no Bryant Park signage to identify the park's name, suggested the tree grates in the downtown area be removed because the tree roots were raising them, and said there was a house on South B Street that had caught on fire twice.

Request/comment summary:

1. Commissioner Amoroso asked for discussion about covering vacant business windows be addressed at the same time as the discussion about sidewalk enforcement.

2. Commissioner Szerdi requested the Building Sales, Marketing and Event Manager provide an update on Beach and Casino events at a future Commission meeting.

3. Mayor Triolo requested a financial report on the City's revenue and expense generated during the Arts at the Beach event.

8. APPROVAL OF MINUTES:

Action: Motion made by Commissioner Szerdi and seconded by Commissioner McVoy to approve the following minutes as submitted:

A. City Commission Meeting – November 5, 2013

Vote: Voice vote showed: AYES: Mayor Triolo and Commissioners McVoy, Amoroso, and Szerdi. NAYS: None.

9. CONSENT AGENDA:

Action: Motion made by Commissioner Amoroso and seconded by Commissioner Szerdi to approve the Consent Agenda.

A. Resolution No. 62-2013 – interlocal agreement with the County Criminal Justice Commission to accept a $150,000 grant for the City's Youth Empowerment Centers

City Attorney Torcivia did not read the following resolution by title only:

RESOLUTION NO. 62-2013 OF THE CITY OF LAKE WORTH, FLORIDA, AUTHORIZING THE ACCEPTANCE OF AN AWARD FROM THE PALM BEACH COUNTY CRIMINAL JUSTICE COMMISSION FOR GRANT FUNDS IN THE AMOUNT OF $150,000.00 FOR THE CONTINUED DEVELOPMENT OF THE CITY'S YOUTH VIOLENCE PREVENTION/YOUTH EMPOWERMENT CENTER; AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT BETWEEN PALM BEACH COUNTY AND THE CITY SETTING FORTH THE TERMS AND CONDITIONS FOR THIS GRANT AWARD; PROVIDING FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

B. Resolution No. 63-2013 – amendment 001 to the CDBG 7th Avenue South Reconstruction Project Agreement between Palm Beach County and the City

City Attorney Torcivia did not read the following resolution by title only:

RESOLUTION NO. 63-2013 OF THE CITY OF LAKE WORTH, FLORIDA, APPROVING AMENDMENT 001 TO THE 7TH AVENUE SOUTH RECONSTRUCTION PROJECT AGREEMENT TO MODIFY THE SCOPE OF PROFESSIONAL SERVICES AND SCOPE OF WORK TO INCLUDE THE DESIGN AND INSTALLATION OF WATER MAINS AND APPURTENANCES; AUTHORIZING THE MAYOR TO EXECUTE AMENDMENT 001 TO THE PROJECT AGREEMENT; PROVIDING FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

C. Resolution No. 64-2013 – agreement with the Supervisor of Elections Office for equipment use and election services

City Attorney Torcivia did not read the following resolution by title only:

RESOLUTION NO. 64-2013 OF THE CITY OF LAKE WORTH, FLORIDA, APPROVING AN AMENDED AGREEMENT FOR VOTE PROCESSING EQUIPMENT USE AND ELECTION SERVICES BY AND BETWEEN THE PALM BEACH COUNTY SUPERVISOR OF ELECTIONS AND THE CITY OF LAKE WORTH; DESIGNATING THE CITY'S CANVASSING BOARD; AND PROVIDING AN EFFECTIVE DATE.

D. Resolution No. 65-2013 – update the City's Investment Policy

City Attorney Torcivia did not read the following resolution by title only:

RESOLUTION NO. 65-2013 OF THE CITY OF LAKE WORTH, FLORIDA ESTABLISHING A REVISED INVESTMENT POLICY; PROVIDING FOR THE REPEAL OF CONFLICTING RESOLUTIONS; PROVIDING FOR SEVERABILITY AND PROVIDING AN EFFECTIVE DATE

E. Resolution No. 66-2013 – declare the purchase of food for certain events to be a public purpose

City Attorney Torcivia did not read the following resolution by title only:

RESOLUTION NO. 66-2013 OF THE CITY OF LAKE WORTH, DECLARING EXPENDITURES OF CITY FUNDS FOR FOOD/REFRESHMENTS FOR CERTAIN EVENTS - AS VALID PUBLIC PURPOSES; AND, PROVIDING FOR AN EFFECTIVE DATE.

F. Resolution No. 67-2013 – request funding assistance from the State for quiet zones at railroad crossings within the City

City Attorney Torcivia did not read the following resolution by title only:

RESOLUTION NO. 67-2013 OF THE CITY OF LAKE WORTH, FLORIDA, REQUESTING THAT THE STATE OF FLORIDA FUND THE COST OF QUIET ZONES AT THE MUNICIPAL RAILROAD CROSSINGS LOCATED WITHIN THE ALL ABOARD FLORIDA PROJECT; AND PROVIDING AN EFFECTIVE DATE.

G. Mural Removal Agreement with Bachman Marine Group, Inc. commonly known as Tuppen's Marine located at 1002 North Dixie Highway

H. Contract with Rosso Site Development, Inc. for Lynn Way Ditch Storm Water Improvement Project

Vote: Voice vote showed: AYES: Mayor Triolo and Commissioners McVoy, Amoroso, and Szerdi. NAYS: None.

10. PUBLIC HEARINGS:

A. Ordinance No. 2013-52 – Second Reading and Public Hearing – adopt the form of budget amendments

City Attorney Torcivia read the following ordinance by title only:

ORDINANCE NO. 2013-52 OF THE CITY COMMISSION OF THE CITY OF LAKE WORTH, FLORIDA, ADOPTING CHAPTER 2 "ADMINISTRATION", ARTICLE XXII "FINANCE ADMINISTRATION" TO PROVIDE THE FORM OF THE BUDGET AND PROCEDURES FOR THE ADOPTION OF THE BUDGET AND BUDGET AMENDMENTS; PROVIDING FOR SEVERABILITY, CONFLICTS, CODIFICATION, AND AN EFFECTIVE DATE.

Action: Motion made by Commissioner Amoroso and seconded by Commissioner Szerdi to approve Ordinance No. 2013-52 on second reading.

Mayor Triolo announced that it was time for public comment.

Peter Timm commented that the Commission would still need to approve the budget amendments.

Vote: Voice vote showed: AYES: Mayor Triolo and Commissioners McVoy, Amoroso, and Szerdi. NAYS: None.

B. Ordinance No. 2013-53 – Second Reading and Public Hearing – amend beach parking regulations

City Attorney Torcivia read the following ordinance by title only:

ORDINANCE NO. 2013-53 OF THE CITY OF LAKE WORTH, FLORIDA, AMENDING CHAPTER 7, BEACHES, PARKS AND RECREATION, ARTICLE II, BEACH PARKING, TO REVISE SAID ARTICLE TO BE CONSISTENT WITH THE DEVELOPMENT AND THE CHANGES IN THE MUNICIPAL BEACH PARKING AREAS EAST OF THE INTRACOASTAL WATERWAY; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF LAWS IN CONFLICT; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE

Action: Motion made by Commissioner Amoroso and seconded by Commissioner Szerdi to approve Ordinance No. 2013-53 on second reading.

Mayor Triolo announced that it was time for public comment.

Peter Timm said all cars had to pay for parking, asked if he had to pay because he had a handicap parking decal, said ¾ ton trucks and buses had

to park in the lower parking lot, said he hoped the public bus system would service the beach area again, and said it was difficult for him to walk from the lower parking lot to the beach area.

Juan Ruiz, Leisure Services, explained that individuals with handicap parking decals were not required to pay for parking.

Vote: Voice vote showed: AYES: Mayor Triolo and Commissioners McVoy, Amoroso, and Szerdi. NAYS: None.

C. Ordinance No. 2013-54 – Second Reading and Public Hearing – amend general parking regulations

City Attorney Torcivia read the following ordinance by title only:

ORDINANCE NO. 2013-54 OF THE CITY OF LAKE WORTH, FLORIDA, AMENDING CHAPTER 21, ARTICLE II, TRAFFIC, PARKING, STANDING AND STOPPING, TO REVISE SAID ARTICLE TO BE CONSISTENT WITH THE NEW USE OF TIME ZONES AND OTHER MODIFICATIONS TO THE CITY'S PARKING SYSTEM AND TO REMOVE THE CIVIL PENALTIES FOR SUCH VIOLATIONS FROM THE CITY CODE; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF LAWS IN CONFLICT; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE

Action: Motion made by Commissioner Szerdi and seconded by Commissioner Amoroso to approve Ordinance No. 2013-54 on second reading.

Mayor Triolo announced that it was time for public comment.

Peter Timm said this ordinance would create a provision for paid parking in the downtown area.

Barbara Jean Weber asked if she would get a parking ticket if she parked longer than one hour at the Library.

Vote: Voice vote showed: AYES: Mayor Triolo and Commissioners McVoy, Amoroso, and Szerdi. NAYS: None.

D. Ordinance No. 2014-02 – First Reading and First Public Hearing – amend various sections and tables in the Land Development Regulations and schedule the second public hearing date for January 7, 2014

City Attorney Torcivia read the following ordinance by title only:

ORDINANCE NO. 2014-02 OF THE CITY COMMISSION OF LAKE WORTH, FLORIDA, AMENDING CHAPTER 23 LAND DEVELOPMENT REGULATIONS OF THE CODE OF ORDINANCES TO ADDRESS MINOR REVISIONS NEEDED TO THE NEWLY ADOPTED LAND DEVELOPMENT REGULATIONS BY AMENDING ARTICLE 1 GENERAL PROVISIONS, DIVISION 2, SECTION 23.1-12 DEFINITIONS; ARTICLE 2, DIVISION 1, SECTION 23.2-8 PLANNING AND ZONING BOARD; ARTICLE 2, DIVISION 1, SECTION 23.2-9, TABLE 2-1; ARTICLE 2, DIVISION 2, SECTION 23.2-15, TABLE 2-2; ARTICLE 2, DIVISION 3, SECTION 23.2-28 ADMINISTRATIVE ADJUSTMENTS/ADMINISTRATIVE USE PERMITS; ARTICLE 3, DIVISION 1, SECTION 23.3-6 USE TABLE; ARTICLE 4, SECTION 23.4-5 GARAGES; ARTICLE 4, SECTION 23.4-16 MECHANICAL EQUIPMENT; ARTICLE 4, SECTION 23.4-17 STANDBY GENERATOR/PERMANENT; ARTICLE 5 SUPPLEMENTAL REGULATIONS, SECTION 23.5-1, H), 3 SIGNS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICT, CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

Action: Motion made by Commissioner Amoroso and seconded by Commissioner Szerdi to approve Ordinance No. 2014-02 on first reading and schedule the second public hearing date for January 7, 2014.

William Waters, Community Sustainability Director, explained in detail amendments to the General Provisions, Administration, Zoning Districts, Development Standards, and Supplemental Regulations. Additionally, he said the ordinance revised the permitted use, public noticing, and review authority tables.

Vice Mayor Maxwell arrived at the meeting; the time being 7:33 PM.

Mayor Triolo announced that it was time for public comment.

Peter Timm said he was confused by the Commission's questions, staff's answers, and allowing changes to be made without Commission action.

Barbara Jean Weber said she was stunned by Mr. Waters's understanding of the issue, asked for the definition of a mobile food vendor, and asked if a mobile food vendor would be allowed to deliver food to shut-ins or to individuals in need at a park. If not, then she asked that the mobile food vendor be allowed to deliver food to those individuals in a respectful way.

Vote: Voice vote showed: AYES: Mayor Triolo; Vice Mayor Maxwell, and Commissioners McVoy, Amoroso, and Szerdi. NAYS: None.

Mayor Triolo recessed the meeting at 7:42 PM and reconvened at 8:00 PM.

11. UNFINISHED BUSINESS:

There were no Unfinished Business items on the agenda.

12. NEW BUSINESS:

A. Resolution No. 68-2013 – revise the City's Comprehensive Fee schedule to separate and update fees and fines throughout the City, Beach and Pier

City Attorney Torcivia did not read the following resolution by title only:

RESOLUTION NO. 68-2013 OF THE CITY OF LAKE WORTH, FLORIDA, UPDATING THE USE OF PARKING TIME ZONES, ALLOWING FOR CIVIL PENALTIES TO BE SET BY RESOLUTION, SEPARATING OF GENERAL PARKING FEES FROM BEACH AND POOL, ESTABLISHING REASONABLE FEES FOR FISHING AND BEACH PARKING PASSES: AMENDING RESOLUTION NO. 41-2013; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

Steven Carr, Finance Director, explained that the resolution added parking fines for a violation or imposed civil penalties to the City's Comprehensive Fee schedule as required by newly adopted Ordinance Nos. 2013-53 and 2013-54.

Action: Motion made by Commissioner Amoroso and seconded by Commissioner Szerdi to approve Resolution No. 68-2013.

Mayor Triolo announced that it was time for public comment.

Peter Timm spoke about the beach parking fee increase.

Vote: Voice vote showed: AYES: Mayor Triolo; Vice Mayor Maxwell; and Commissioners McVoy, Amoroso, and Szerdi. NAYS: None.

B. Amend the City's Comprehensive Financial Policies to reflect the change in budget amendment methodology

Steven Carr, Finance Director, explained that, with the adoption of Ordinance 2013-52 which changed the methodology for amending the budget during a fiscal year, necessitated the need to change to the City's Comprehensive Financial Policies.

Action: Motion made by Vice Mayor Maxwell and seconded by Commissioner McVoy to approve the amended City Comprehensive Financial Policies to

reflect the change in budget amendment methodology.

Mayor Triolo announced that it was time for public comment.

Peter Timm said he did not read the backup material because it was confusing to him.

Vote: Voice vote showed: AYES: Mayor Triolo; Vice Mayor Maxwell; and Commissioners McVoy, Amoroso, and Szerdi. NAYS: None.

C. Discuss Park of Commerce and Boutwell Road Project – Owner's Representation, Engineering and Design, and Right of Way Ownership:

Mayor Triolo explained that there were three agenda items related to the Park of Commerce and that the public would be allowed to comment on all three items during their allotted two minute time.

William Waters, Community Sustainability Director, explained that, over the past 15 years, the City, in collaboration with a variety of governing entities, had been working toward establishing the Park of Commerce (Park) as a shovel ready light industrial, research, and development park to serve not only the County but also the Gold Coast Region. To achieve the goal, he said the City was embarking on a multi-phase infrastructure improvement plan for the Park and an Annexation Inter Service Boundary Agreement to facilitate annexing the remaining County parcels in the Park. In addition, the City and County were collaborating on the future of Boutwell Road and the intersection of 10th Avenue North. He said moving all of these issues forward was critical to establishing the Park as a premier development location and to facilitate shovel ready sites ready for investment.

C-1 Professional Services Agreement with Mathews Consulting, Inc. for Owner's Representation Services for the Park of Commerce Project Phase 1 – Boutwell Road from 2nd Avenue North to 10th Avenue North

William Waters, Community Sustainability Director, explained that, in order to move forward on the infrastructure improvements for Boutwell Road in the Park of Commerce, the City issued a Request for Proposals to select an Owner's Representative for the initial phase of the project. He said an array of services, provided by Mathews Consulting, Inc., would ensure a professional level of coordination and oversight between staff and the provider of the design and engineering services for the project.

Request/comment summary:

1. Vice Mayor Maxwell requested a simple scope of services and progress report so that the public could understand how their money was being

spent and if the City was receiving its deliverables.

2. Commissioner Szerdi requested Mock, Roos & Associates visit the site more than twice per month.

3. Vice Mayor Maxwell requested monthly update reports on the project's status.

Consensus: To include language in the agreement about providing timely deliverables and schedules and to visit the site more than twice per month.

Action: Motion made by Commissioner Szerdi and seconded by Commissioner Amoroso to approve a Professional Services Agreement with Mathews Consulting, Inc. in an amount not to exceed $349,930 for a term of 30 months.

Mayor Triolo announced that it was time for public comment.

Peter Timm commented that the cost for Phase 1 was almost $1 Million with more phases to come. He said the City did not receive any firm commitments from other entities to help fund the project before it threw away almost $1 Million.

Barbara Jean Weber said former Commissioners trusted staff, but false information was provided to them. She said she could understand why this Commission was cautious about the scope of work. She asked for visits more than twice per month be included in the agreement.

Request/comment summary:

1. City Manager Bornstein commented that Mathews Consulting, Inc. needed to add clearer language in the agreement about the deliverables and schedules and Mock Roos & Associates need to add language in their agreement about visiting the site more than twice a month.

Action: Amended motion made by Commissioner Szerdi and seconded by Commissioner Amoroso to postpone Agenda Items C-1, C-2, and C-3 to an uncertain meeting in January 2014.

Vote: Voice vote showed: AYES: Mayor Triolo; Vice Mayor Maxwell; and Commissioners McVoy, Amoroso, and Szerdi. NAYS: None.

C-2 Professional Services Agreement with Mock Roos & Associates for Engineering, Design and Construction Phase Services for the Park of Commerce Project Phase 1 – Boutwell Road from 2nd Avenue North to 10th Avenue North

NOTE: The below motion was made during Agenda Item C-1; however, for clarity, it was copied again under this item.

Action: Amended motion made by Commissioner Szerdi and seconded by Commissioner Amoroso to postpone Agenda Items C-1, C-2, and C-3 to an uncertain meeting in January 2014.

Vote: Voice vote showed: AYES: Mayor Triolo; Vice Mayor Maxwell; and Commissioners McVoy, Amoroso, and Szerdi. NAYS: None.

C-3 Discuss right of way ownership for Boutwell Road and Park of Commerce Project

NOTE: The below motion was made during Agenda Item C-1; however, for clarity, it was copied again under this item.

Action: Amended motion made by Commissioner Szerdi and seconded by Commissioner Amoroso to postpone Agenda Items C-1, C-2, and C-3 to an uncertain meeting in January 2014.

Vote: Voice vote showed: AYES: Mayor Triolo; Vice Mayor Maxwell; and Commissioners McVoy, Amoroso, and Szerdi. NAYS: None.

D. Resolution No. 69-2013 – authorize negotiation process to establish an Interlocal Service Area Boundary Agreement with the County

City Attorney Torcivia did not read the following resolution by title only:

RESOLUTION NO. 69-2013 OF THE CITY COMMISSION OF LAKE WORTH, FLORIDA, AUTHORIZING THE CITY OF LAKE WORTH TO INITIATE THE NEGOTIATION PROCESS FOR AN INTERLOCAL SERVICE BOUNDARY AGREEMENT BETWEEN THE CITY OF LAKE WORTH AND PALM BEACH COUNTY, PURSUANT TO CHAPTER 171, PART II, FLORIDA STATUTES; PROVIDING THAT THIS RESOLUTION SHALL ACT AS THE REQUIRED INITIATING RESOLUTION UNDER CHAPTER 171.23, FLORIDA STATUTES; AND PROVIDING FOR AN EFFECTIVE DATE

Commissioner Szerdi left the meeting at 9:07 PM.

William Waters, Community Sustainability Director, explained that the resolution authorized staff to initiate negotiations with the County to develop an Interlocal Service Area Boundary Agreement, which would lead to Comprehensive Plan amendments for both the County and the City. Once the agreement was in place, he said individual County parcels would be qualified for possible annexation into the City on an individual basis.

He said the City had not established a formal annexation boundary area or included one in its Comprehensive Plan. The resolution was the first step toward coordinating with the County to establish a formal annexation area, which would facilitate individual parcels being annexed into the City. The entire process included the drafting of a formal annexation agreement, amendments to both the City and County's Comprehensive Plans, and appropriate notice to affected and adjacent property owners. He said the process would take between 18 months and two years to complete.

Action: Motion made by Commissioner McVoy and seconded by Commissioner Amoroso to approve Resolution No. 69-2013 authorizing the negotiation process to establish an Interlocal Service Area Boundary Agreement with the County.

Mayor Triolo announced that it was time for public comment.

Peter Timm said the City did not know which properties were in or out of its limits, and the issue should have been handled many years ago.

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

E. Ordinance No. 2014-01 – First Reading – amend alcoholic beverages regulations regarding proximity waivers and schedule the public hearing date for January 7, 2014

William Waters, Community Sustainability Director, explained that the ordinance would allow the Planning and Zoning and Historic Resource Preservation Boards to approve proximity waivers for consumption on premises and for the City Commission to have final approval for package alcohol sales.

Commissioner Szerdi returned to the meeting at 9:09 PM.

City Attorney Torcivia read the following ordinance by title only:

ORDINANCE NO. 2014-01 OF THE CITY COMMISSION OF LAKE WORTH, FLORIDA, AMENDING CHAPTER 5, SECTION 5-5, ZONING REGULATIONS AND LIMITATIONS; SECTION 5-6 MINIMUM DISTANCES; AND 5-7 SPECIAL EXCEPTION, OF THE CODE OF ORDINANCES; REGARDING ALCOHOLIC BEVERAGES; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICT; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

Action: Motion made by Commissioner Szerdi and seconded by Commissioner Amoroso to approve Ordinance No. 2014-01 on first reading and schedule the public hearing date for January 7, 2014.

Mayor Triolo announced that it was time for public comment.

Peter Timm said the Commission had approved too many beer and wine consumption establishments and now consumption could be approved without the Commission.

Vote: Voice vote showed: AYES: Mayor Triolo; Vice Mayor Maxwell; and Commissioners McVoy, Amoroso, and Szerdi. NAYS: None.

Mayor Triolo reopened the public comment.

Barbara Jean Weber said there was a Dollar Store near the bridge that sold alcohol and asked if this type of sale would be allowed in the ordinance.

F. Ordinance No. 2014-03 – First Reading – designate the FEC Railway Freight Depot at 1105 Second Avenue South as a local Lake Worth Historic Landmark and schedule the public hearing date for January 7, 2014

City Attorney Torcivia read the following ordinance by title only:

ORDINANCE NO. 2014-03 OF THE CITY COMMISSION OF LAKE WORTH, FLORIDA, DESIGNATING PROPERTY LOCATED AT 1105 2ND AVENUE SOUTH, A LOCAL HISTORIC LANDMARK; AMENDING ZONING MAP OF THE CITY OF LAKE WORTH; PROVIDING THAT A NOTICE SHALL BE RECORDED IN THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA; PROVIDING FOR SEVERABILITY, CONFLICT, AND AN EFFECTIVE DATE.

Action: Motion made by Commissioner McVoy and seconded by Commissioner Szerdi to approve Ordinance No. 2014-03 on first reading and schedule the public hearing and second reading date on January 7, 2014.

Mayor Triolo announced that it was time for public comment.

Peter Timm said there was nothing historic about the building.

William Waters, Community Sustainability Director, explained that the ordinance would designate the Florida East Coast (FEC) Railway Freight Depot, located at 1105 Second Avenue South, as a local historic landmark. On November 5, 2013, the Commission approved a contract with The Living Arts Foundation, Inc. to lease the FEC Train Depot and convert it into a multi-use arts center. Language was incorporated into the lease to ensure that the lessee respected the historic nature of the property. If the property were a historic landmark, then all future work on the exterior of the property would be reviewed, pursuant to the Certificate of Appropriateness process.

He provided a history of the structure.

Vote: Voice vote showed: AYES: Mayor Triolo; Vice Mayor Maxwell; and Commissioners McVoy, Amoroso, and Szerdi. NAYS: None.

G. Ordinance No. 2014-04 – First Reading – regulate the hours of construction activities and schedule the public hearing date for January 7, 2014

City Attorney Torcivia read the following ordinance by title only:

ORDINANCE NO. 2014-04 OF THE CITY COMMISSION OF LAKE WORTH, FLORIDA, AMENDING CHAPTER 9 BUILDING AND STRUCTURAL REGULATIONS, ARTICLE 1 IN GENERAL, OF THE CODE OF ORDINANCES; REGARDING HOURS FOR CONSTRUCTION; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Triolo explained that the ordinance would create construction activities regulations between 7 AM and 7 PM on weekdays and between 8 AM and 6 PM on Saturday.

Action: Motion made by Commissioner Amoroso and seconded by Commissioner McVoy to approve Ordinance No. 2014-04 on first reading and schedule the public hearing date on January 7, 2014.

Mayor Triolo announced that it was time for public comment.

Barbara Jean Weber said 7:00 AM was too early to start construction activities in residential areas.

Peter Timm said, according to City Staff, the hours for construction activities were the same as the hours being proposed in the ordinance. He said he did not understand why this issue was being brought up.

Lynn Anderson commented that there were rules in her community limiting construction activities between 8:00 AM and 5:00 PM. She asked if this ordinance would now extend the hours of construction activities in her neighborhood.

Marty Welfeld said the real issue was noise in residential neighborhoods. He said he supported the Commission getting into the “residents’ concern” business because residents were being disturbed by the early hours of construction activities.

Commissioners Amoroso and McVoy withdrew their motion and second.

Action: Motion made by Commissioner Amoroso and seconded by Commissioner McVoy to change the hours of construction activities from 7:00 AM to 8:00 AM on weekdays, approve amended Ordinance No. 2014-04 on first reading, and schedule the public hearing date on January 7, 2014.

Vote: Voice vote showed: AYES: Mayor Triolo; Vice Mayor Maxwell; and Commissioners McVoy, Amoroso, and Szerdi. NAYS: None.

Action: Motion made by Commissioner Amoroso and seconded by Commissioner Szerdi to extend the meeting one hour in accordance with the Commission's Rules and Procedures Rule 1(3).

Vote: Voice vote showed: AYES: Mayor Triolo; Vice Mayor Maxwell; and Commissioners McVoy, Amoroso, and Szerdi. NAYS: None.

Mayor Triolo recessed the meeting at 9:58 PM and reconvened at 10:12 PM.

H. Ordinance No. 2014-05 – First Reading – establish restrictions, requirements and penalties for use of public rights of way, sidewalks, and properties and schedule the public hearing date for January 7, 2014

City Attorney Torcivia read the following ordinance by title only:

ORDINANCE NO. 2014-05 OF THE CITY OF LAKE WORTH, FLORIDA, AMENDING CHAPTER 19, STREETS AND SIDEWALKS, TO ADD ARTICLE VI, ENTITLED "PEDESTRIAN AND VEHICULAR RIGHT OF WAYS AND OTHER PUBLIC PROPERTY"; PROVIDING FOR THE REGULATION OF BUSINESS IN PEDESTRIAN AND VEHICULAR RIGHT OF WAYS AND ON OTHER PUBLIC PROPERTY IN THE CITY; PROVIDING FOR THE CONDITIONED ISSUANCE OF PEDESTRIAN RIGHT OF WAY USE PERMITS; PROVIDING PROHIBITIONS FOR PEDDLERS AND BUSINESS CONDUCTED IN VEHICULAR RIGHT OF WAYS AND ON OTHER PUBLIC PROPERTY; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF LAWS IN CONFLICT; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE

Action: Motion made by Commissioner Szerdi and seconded by Commissioner McVoy to approve Ordinance No. 2014-05 on first reading and schedule the public hearing date on January 7, 2014.

William Waters, Community Sustainability Director, explained the ordinance would create regulations for the use of the City's public right of ways, parking lots and other public properties. Specifically, he said the public right

of ways and public properties adjacent to the City's major thoroughfares and downtown areas.

Request/comment summary:

1. Vice Mayor Maxwell requested the ordinance include a provision to require taxicabs to stop only to pick up or drop off customers. He requested the ordinance prohibit taxicabs from parking on Lake and Lucerne Avenues.

2. Vice Mayor Maxwell requested the civil penalty fine be increased.

Mayor Triolo announced that it was time for public comment.

Peter Timm said there were problems with sidewalk café tables blocking the pedestrian area; the City allowed encroachment into the sidewalks, which was continuing; and blocking sidewalk access was not allowed.

Barbara Jean Weber asked if the ordinance regulated chained bicycles that were blocking the sidewalks and said the Code required bicycles to be licensed.

Mark Easton commented that Key West required all outdoor musicians to be licensed or they were arrested. He requested the ordinance be enforceable.

Marty Welfeld said bicycle riders, over the age of 18, were not allowed to ride on the sidewalks in the North.

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

13. LAKE WORTH ELECTRIC UTILITY:

A. PRESENTATION:

1) Update on the electric utility system

No update was provided.

B. CONSENT AGENDA:

There were no Lake Worth Electric Utility Consent Agenda items on the agenda.

C. PUBLIC HEARING:

There were no Lake Worth Electric Utility Public Hearing items on the agenda.

D. NEW BUSINESS:

1) Purchase Order with ABB Power Technologies, Inc. for six 38kV outdoor vacuum circuit breakers

Action: Motion made by Commissioner McVoy and seconded by Commissioner Amoroso to approve a Purchase Order with ABB Power Technologies, Inc. for six 38kV outdoor vacuum circuit breakers for a purchase price of $218,442.

Mayor Triolo announced that it was time for public comment.

Peter Timm said he did not read the backup material, but the City was anticipating doing something with its electric system. He asked why the City was spending money.

Clayton Lindstrom, Utilities Director, explained that the purchase was part of the City's capital project for long range plan improvements. He said the circuits complied with the City's published specifications and all current industry standards.

Vote: Voice vote showed: AYES: Mayor Triolo; Vice Mayor Maxwell; and Commissioners McVoy, Amoroso, and Szerdi. NAYS: None.

2) Contracts with FPL to provide Network Transmission Services to the City

Clayton Lindstrom, Utilities Director, explained that three contracts between Florida Power & Light (FPL) Company and the City included transmission service and interconnection agreements to transmit power over FPL's network. He said the interconnection was required in order to obtain purchased power from Orlando Utilities Commission and receipt of St. Lucie and Stanton power. He commented that this service was identical to the existing service provided through the Florida Municipal Power Agency and granted the City the same rates.

Action: Motion made by Commissioner McVoy and seconded by Commissioner Amoroso to approve a Network Integration Transmission Service Agreement, Network Operating Agreement, and Interconnected Operations contract with Florida Power & Light Company to provide network transmission services to the City.

Mayor Triolo announced that it was time for public comment.

Peter Timm asked how much money the City would have to pay Florida Power & Light Company.

Vote: Voice vote showed: AYES: Mayor Triolo; Vice Mayor Maxwell; and Commissioners McVoy, Amoroso, and Szerdi. NAYS: None.

3) Resolution No. 70-2013 – establish utility deposit requirements and provide for interest payments

City Attorney Torcivia did not read the following resolution by title only:

RESOLUTION NO. 70-2013 OF THE CITY OF LAKE WORTH, FLORIDA, ESTABLISHING UTILITY DEPOSIT REQUIREMENTS AND REFUNDS; PROVIDING FOR INTEREST PAYMENTS ON ALL DEPOSITS; PROVIDING THAT CONFLICTING RESOLUTIONS ARE REPEALED; PROVIDING AN EFFECTIVE DATE.

Clayton Lindstrom, Utilities Director, explained that the resolution would revise the City's rules governing utility deposits to be consistent with a contract with ONLINE Information Services, Inc. He said the City entered into a contract with ONLINE Information Services, Inc. to assist the City in determining the appropriate residential deposit for utility service based on an applicant's credit history and other factors.

Action: Motion made by Commissioner McVoy and seconded by Commissioner Szerdi to approve Resolution No. 70-2013 to establish utility deposit requirements and provide for interest payments.

Mayor Triolo announced that it was time for public comment.

Peter Timm said he did not understand why the City had to hire an outside source.

Action: Motion made by Commissioner Amoroso and seconded by Commissioner Szerdi to extend the meeting one hour in accordance with the Commission's Rules and Procedures Rule 1(3).

Vote: Voice vote showed: AYES: Mayor Triolo; Vice Mayor Maxwell; and Commissioners McVoy, Amoroso, and Szerdi. NAYS: None.

Commissioners McVoy and Szerdi withdrew their motion and second.

Action: Motion made by Vice Mayor Maxwell and seconded by Commissioner Szerdi to change the deposit for moderate risk individuals from $150 to one

times the average estimated monthly billing, change the word "may" to "shall" for those individuals who fail to provide proper identification, and approve amended Resolution No. 70-2013 to establish utility deposit requirements and provide for interest payments.

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

14. CITY ATTORNEY'S REPORT:

City Attorney Torcivia provided the following report:

- Announced his desire for advice concerning pending litigations in the case of Street Outdoor, LLC versus the City of Lake Worth and the case of Joseph Viera versus the City of Lake Worth during a closed door attorney-client session at 4:00 PM on January 7, 2014.

15. CITY MANAGER'S REPORT

A. January 7, 2014 – draft Commission agenda

City Manager Bornstein did not provide a report.

16. ADJOURNMENT:

Action: Motion made by Commissioner McVoy and seconded by Commissioner Szerdi to adjourn the meeting at 11:12 PM.

Vote: Voice vote showed: AYES: Mayor Triolo; Vice Mayor Maxwell; and Commissioners McVoy, Amoroso, and Szerdi. NAYS: None.

_____
PAM TRIOLO, MAYOR

ATTEST:

_____
PAMELA J. LOPEZ, CITY CLERK

Minutes Approved: January 7, 2014

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

MINUTES
CITY OF LAKE WORTH
CITY COMMISSION SPECIAL MEETING
DECEMBER 10, 2013 – 6:00 PM

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

1. ROLL CALL:

Present were Mayor Pam Triolo; Vice Mayor Scott Maxwell; and Commissioners Christopher McVoy, Andy Amoroso, and John Szerdi. Also present were City Manager Michael Bornstein, Assistant City Attorney Barbara Alterman, and City Clerk Pamela Lopez.

2. PLEDGE OF ALLEGIANCE:

The pledge of allegiance was led by Commissioner John Szerdi.

3. AGENDA - Additions/Deletions/Reordering:

Action: Motion made by Commissioner McVoy and seconded by Commissioner Szerdi to waive the rules to:

- Add to Presentations, Item A – 1000 Friends of Florida's Community Steward Award;
- Add to New Business, Item C – Request letter of support for the County Community Revitalization, Resident Education to Action Program (REAP) grant application; and
- Approve the agenda as amended.

Vote: Voice vote showed: AYES: Mayor Triolo; Vice Mayor Maxwell; and Commissioners McVoy, Amoroso, and Szerdi. NAYS: None.

4. PRESENTATIONS:

A. (Added) 1000 Friends of Florida's Community Steward Award

Charles Patterson, President of 1000 Friends of Florida, presented the Community Redevelopment Agency Consortium with an original painting of the Lake Worth Loft building for their accomplishments in the Neighborhood Stabilization Program 2 efforts.

5. NEW BUSINESS:

A. Ordinance No. 2014-06 – First Reading – amend Business Tax Receipts and Business Regulations by creating a two-part City Business License and schedule the public hearing date for January 7, 2014

Assistant City Attorney Alterman read the following ordinance by title only:

ORDINANCE NO. 2014-06 OF THE CITY COMMISSION OF THE CITY OF LAKE WORTH, FLORIDA, AMENDING THE CODE OF ORDINANCES, AT CHAPTER 14, BUSINESS TAX RECEIPTS AND BUSINESS REGULATIONS, BY CREATING A TWO-PART CITY OF LAKE WORTH BUSINESS LICENSE CONSISTING OF A LOCAL BUSINESS TAX RECEIPT AND USE AND OCCUPANCY CERTIFICATE; BY RENAMING ARTICLE I FROM "IN GENERAL" TO "LOCAL BUSINESS TAX RECEIPT"; BY RENAMING ARTICLE II FROM "RESERVED" TO "USE AND OCCUPANCY CERTIFICATES"; BY AMENDING THE PROVISIONS REGARDING THE ISSUANCE OF A LOCAL BUSINESS TAX RECEIPT AND A USE AND OCCUPANCY CERTIFICATE; PROVIDING A SAVINGS CLAUSE, A CONFLICTS CLAUSE, A CODIFICATION CLAUSE, AND A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

William Waters, Community Sustainability Director, explained that the ordinance would significantly update the Business Tax Receipts and Use and Occupancy Certificates programs to create a unified Lake Worth Business License that included both activities on one license. The ordinance would also clarify the application process, review procedures, enforcement, penalties, and revocation of licenses. He commended the City Attorney Office staff for the work they did to revamp the entire chapter of the code.

Request/comment summary:

1. Vice Mayor Maxwell suggested a work session with various social and religious entities invited to discuss the new ordinance, which could result in residential tenants being displaced.

Action: Motion made by Commissioner Amoroso and seconded by Commissioner McVoy to approve Ordinance No. 2014-06 on first reading and schedule the public hearing date for January 7, 2014.

Mayor Triolo announced that it was time for public comment.

Peter Timm said the Code Enforcement Division was ridiculously run, the ordinance did not include any "teeth", wanted code enforcement corrections to be fixed within 30 days, and wanted the landlord to pay for tenant housing while the corrections were being made.

Lynn Anderson said a tenant/landlord informational packet needed to be signed by both, most of the landlords in her community did not have renter licenses, and asked for information about renters so that she could provide it to her condominium association.

Request/comment summary:

2. Commissioner McVoy requested staff discuss with the City Attorney whether or not the City could force landlords to pay hotel costs to house tenants until a violation was being remedied.

Vote: Voice vote showed: AYES: Mayor Triolo; Vice Mayor Maxwell; and Commissioners McVoy, Amoroso, and Szerdi. NAYS: None.

B. Lake Worth 2020

City Manager Bornstein said staff would provide an update on data research collected since the last Lake Worth 2020 work session. He said Lake Worth 2020 was a process and wanted the Commission to be comfortable with the scope of issues. This presentation and future presentations were informational and not the final product.

Sidewalks

Jamie Brown, Public Services Director, provided a recap on the sidewalk study which included the number of miles for Pavement Condition Index (PCI) ratings between 84-100. He said the results of the sidewalk study showed that there were 86 miles of good, repair, poor, and missing sidewalks.

Lengthy discussion ensued regarding constructing continuous sidewalks rather than being constructed lot by lot and installing green space between sidewalks and rights-of-way.

Road/Pavement Cores

Jamie Brown, Public Services Director, advised that a roadway study had been performed by A.D.A. Engineering using the method of grading roadway conditions based on a visual analysis. He said the result of the study showed that there was a significant amount of current roadway deficiencies and potholes. Because of the results, it was staff's determination that another roadway analysis was needed. He explained that A.D.A. Engineering took 100 core samples of roadways and analyzed them for asphalt thickness, base material type, base material thickness, and sub-grade composition. The results of the core analysis showed that the roadways had a deficient base and deficient asphalt. It was recommended the City follow its Roadway Master Plan.

Mayor Triolo left the meeting at 7:27 PM and passed the gavel to Vice Mayor Maxwell.

Commissioner McVoy left the meeting at 7:33 PM.

Larry Johnson, Water/Sewer Director, recommended constructing new watermains in the road to replace carbon steel pipes during a road project.

Commissioner McVoy returned to the meeting at 7:35 PM.

Mayor Triolo returned to the meeting at 7:36 PM and resumed the gavel.

Mr. Johnson said there would be approximately 3.7 miles of watermains to replace, which would bring improvements to 330 properties.

Alleys & Easements

Larry Johnson, Water/Sewer Director, explained that alleys were 10 feet wide and located between rear property lines and an easement encroached five feet into the rear of each property lot.

Vice Mayor Maxwell left the meeting at 7:42 PM.

Mr. Johnson said there were 23 miles of shellrock alleys in the City. It was recommended that unstable materials and undergrowth be removed, current shellrock be replaced with new shellrock, and existing alleyways be re-graded to promote more efficient drainage. He explained in detail the current condition of the water pipes located in the alleys. It was recommended that 18.6 miles of carbon steel piping be replaced in the alley and meters be changed to radio read. He said the improvements would affect approximately 2,800 properties. It was recommended that 11 miles of water pipes located in the easements be replaced.

He explained in detail the usage of radio read water meters and the City's alleys and easement access policy.

Lengthy discussion ensued regarding staff's accessibility to easements, working through the City Attorney's Office to gain easement access, how staff reported alleyway encroachments when found, updating water meters, and identify missing fire hydrants.

Vice Mayor Maxwell returned to the meeting at 8:04 PM.

Request/comment summary:

1. Commissioner Amoroso requested notification emails be sent to the Commission on the locations where work was being done.

Street Lighting

Larry Johnson, Water/Sewer Director, showed a drawing of recommended street lights. He said there were about 2,500 current City street lights and an additional 1,500 in private areas.

City Manager Bornstein said more conversations with neighborhood associations were needed because residents may not want mid-block street lights.

C. (Added) Request letter of support for the County Community Revitalization, Resident Education to Action Program (REAP) grant application

Mayor Triolo explained that neighborhood associations were applying for Revitalization, Resident Education to Action Program (REAP) grant monies to pay for projects. Individual Commissioners had been asked to write a letter of support, including herself. She explained that she asked the City Attorney if she could sign the letter of support because it was a federal grant. According to the City Attorney, the Commission could write letters of support as an individual, but not collectively as a Commissioner without Commission approval at a public meeting. She said this item was added to the agenda requesting consensus to collectively sign a letter of support for the REAP grant applications.

Consensus: To authorize the Mayor and City Commissioners to sign a letter of support for the Revitalization, Resident Education to Action Program (REAP) grant applications.

5. ADJOURNMENT:

Action: Motion made by Commissioner Szerdi and seconded by Commissioner McVoy to adjourn the meeting at 8:43 PM.

Vote: Voice vote showed: AYES: Mayor Triolo; Vice Mayor Maxwell; and Commissioners McVoy, Amoroso, and Szerdi. NAYS: None.

_____
PAM TRIOLO, MAYOR

ATTEST:

_____
PAMELA J. LOPEZ, CITY CLERK

Minutes Approved: January 7, 2014

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

CITY OF LAKE WORTH

7 North Dixie Highway · Lake Worth, Florida 33460 · Phone: 561-586-1600· Fax: 561-586-1750

AGENDA DATE: January 7, 2014, Regular Meeting **DEPARTMENT:** City Attorney

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EXECUTIVE BRIEF

TITLE:
Resolution No. 01-2014 - not to renew an agreement with Street Outdoors, LLC, formerly known as City Solutions, Inc., for placement of modular newsracks within the City.

SUMMARY:
The Resolution authorizes the City Manager to exercise the City's option not to renew a professional services agreement for modular newsracks within the City's boundaries.

BACKGROUND AND JUSTIFICATION:
On or about May 18, 2004, the City entered into a Professional Services Agreement with Street Outdoors, LLC, f/k/a City Solutions, Inc., for the provision of modular newsracks within the City's boundaries (the "Agreement"). The initial term of the Agreement was for ten (10) years with two consecutive five (5) year extensions, unless the Contractor or City gives written notice at least one hundred and twenty (120) days prior to the expiration of the initial term that it desires to discontinue the Agreement. The initial term is currently set to expire on May 17, 2014. Based on the agreement, there is no fiscal impact to the City if the agreement is not renewed.

In accordance with Article 1, Term; Extension; Termination, Section 1.02 Extension of the Agreement, the City wishes to provide Street Outdoors, LLC f/k/a City Solutions, Inc., written notice of its intention not to extend or renew the subject Agreement after its expiration on May 17, 2014.

MOTION:
I move to approve/not approve Resolution No. 01-2014.

ATTACHMENT(S):
Fiscal Impact Analysis – Not Applicable
2004 Agreement
Resolution

C# 775

RM 5/18/04
CON-B

May 18, 2004

PROFESSIONAL SERVICES AGREEMENT

This professional services agreement (hereinafter referred to as "Agreement"), entered into by and between the City of Lake Worth, Florida (hereinafter referred to as "City"), and CITY SOLUTIONS, INC., a California corporation (hereinafter referred to as "Contractor'),

WITNESSETH THAT:

WHEREAS, Ordinance 2003-47 provides that the City shall enter into a contract with a modular newsrack provider for the placement and maintenance of modular newsracks in the modular newsrack district; and

WHEREAS, Contractor has demonstrated the ability to provide, own and maintain modular newsracks, and its willingness to do so;

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the City and Contractor hereby agree, as follows.

ARTICLE 1. TERM; EXTENSION; TERMINATION

1.01 Term. This Agreement shall be effective for an initial term of ten (10) years, from and after the date it is executed by the City and Contractor, and continuing in full force and effect unless the term is amended or the Agreement is terminated prior to that date in accordance with this Agreement.

1.02 Extension: After the initial ten (10) year term, this Agreement shall be extended for two (2) consecutive five (5) year terms, unless Contractor gives the City, or the City gives the Contractor written notice at least one hundred and twenty (120) days prior to the expiration of the initial term, or prior to the expiration of the second term, that it desires to discontinue the Agreement.

1.03 Termination. This Agreement may only be terminated, as follows: by mutual agreement of the parties hereto; by either party, upon a material breach by the other party, within thirty (30) business days following notice of such breach if the breaching party fails to cure such breach; or, by Contractor, as provided in Part 3.02 herein. However, if the material breach is not susceptible of a cure within such thirty (30) day period, but the breaching party has commenced and diligently pursues such cure, then the breaching party shall have a total of ninety (90) days to cure.

ARTICLE II. CONTRACTOR'S SERVICES AND REPRESENTATIONS

2.01 In General; Compliance with Applicable Laws. During the term of this Agreement, Contractor in a professional manner shall provide and maintain modular newsracks in the modular newsrack district, in compliance with Lake Worth Ordinance 2003-47. Contractor further represents that it will abide and comply fully with any other applicable statute, ordinance, rule, regulation, order or restriction of any governmental authority, federal, state or municipal, lawfully exercising jurisdiction over the Contractor's use of

the City's public rights-of-way for the modular newsracks as provided in this Agreement.

2.02 Delivery. For and in consideration of the execution of this Agreement by the City, Contractor agrees to cause to be designed, constructed and installed at the Contractor's sole cost and expense modular newsracks in compliance with Ordinance 2003-47 throughout the modular newsrack district in locations which are agreed to by the parties and which afford easy, convenient service to pedestrians, but which do not obstruct or interfere with access to abutting properties, and which do not impede or endanger pedestrian, bicycle or vehicular traffic. Site plans for each of the locations within the modular newsrack district where the parties agree modular newsracks shall be placed, showing their address and their placement relative to existing buildings, curbs and other fixtures and appurtenances in the surrounding public rights-of-way for a minimum of twenty-five (25) feet in any direction, are attached hereto and incorporated herein as "Exhibit A." Newsracks will be installed within 60 days of execution of this contract.

In the event that Contractor is required to obtain permits, licenses, certificates or other approvals from governmental or related bodies (collectively, "Approval") prior to the installation of any modular newsrack as contemplated hereunder, then Contractor shall use reasonable efforts to obtain the Approval for the modular newsrack and any advertising which may appear thereon. City agrees that it will also assist Contractor with reasonable efforts to obtain any Approvals.

2.03 Title; Financing.

A. The parties acknowledge and agree that title in and to all modular newsracks installed by or on behalf of the Contractor in the public rights-of-way in the City pursuant to this Agreement and all improvements, additions or alterations to such modular newsracks, if any, shall be and remain the sole property of the Contractor, its successors and assigns.

B. The City agrees that the design, construction and installation of modular newsracks under this Agreement may be financed by Contractor in the manner of Contractor's choosing, in its sole and absolute discretion. Contractor shall have the right to assign its interest in this Agreement and/or encumber the modular newsracks installed pursuant to this Agreement by pledge or other instrument during the term hereof to reputable lenders or lending institutions for the purpose of financing the design, construction and installation of the modular newsracks, including any betterments or additions thereto.

C. At the end of the contract term, CSI may choose to remove existing Modular Newsracks, or sell existing Modular Newsracks, to the City, at a fair market price to be determined by the average of three qualified appraisals.

2.04 Physical Characteristics and Appearance of Modular Newsracks; Advertisements.

A. Each modular newsrack provided and maintained under this Agreement shall conform to the requirements of Ordinance 2003-47 and shall have a minimum of nine (9) and a maximum of eighteen (18) separate compartments. A detailed description and photograph or scale drawing of the modular newsracks, including their dimensions, is attached hereto and incorporated herein as "Exhibit B."

B. Contractor agrees that it will only permit advertising on the modular newsracks that is

consistent with Contractor's advertising policy, attached hereto and incorporated herein as "Exhibit C."

C. Select modular newsracks shall bear a single, commercial advertising sign, located only on the side of the modular newsrack which faces the nearest street; such sign shall not be larger than eighteen (18) square feet and may be back-lighted according to city specifications.

2.05 Number of Compartments in Modular Newsrack District. The total number of compartments in the FREE modular newsracks in the modular newsrack district may be increased or decreased only on the basis of market supply or demand, or consistent with the purposes stated in Section 19-60 of Ordinance 2003-47.

2.06 Allocation of Compartments in Modular Newsracks; Abandonment by Publisher.

A. Contractor agrees that it shall make the compartments in modular newsracks provided under this Agreement available to publishers, and to allocate such compartments, in the manner set forth in Sections 19-63 of Ordinance 2003-47.

B. Contractor shall promptly notify the City if any publisher abandons its compartment, or to the Contractor's knowledge, is in violation of any other provision of Ordinance 2003-47.

2.07 Maintenance of Modular Newsracks. The Contractor shall maintain each modular newsrack it provides under this Agreement, in a manner consistent with Section 19-69 of Ordinance 2003-47.

2.08 Agreements with Publishers. The Contractor shall enter into written space notification agreements with the publishers who wish to have their newspapers and/or other publications distributed in any modular newsrack authorized by this Agreement. The forms of such space notification agreements shall be substantially the same as those attached hereto and incorporated herein as "Exhibit D"

2.09 Taxes. Contractor shall pay all taxes that may be levied or charged upon the personal property comprised on the modular newsracks and all improvements, additions or alterations thereto, if any.

2.10 Authority to Execute this Agreement. Contractor represents and warrants to the City that it has all necessary corporate power and authority to enter into this Agreement and that the execution, delivery and performance of this Agreement by Contractor has been duly and validly authorized by all necessary corporate action on the part of Contractor.

ARTICLE III. CONSIDERATION AND CITY'S REPRESENTATIONS

3.01 Consideration. In consideration of all services performed by Contractor the City hereby grants to the Contractor, for the entire stated term, including any extension a license with respect to the real property where the modular newsracks shall be placed. The parties agree that it is their understanding and intention that such grant of license, and this Agreement, shall not confer upon or vest in Contractor any title, interest, or estate in the real property comprising any part of the public rights-of-way.

3.02 Amendments to Code of Ordinances. If the City intends to adopt or amend any other ordinance, rule, regulation, order or restriction relating to modular newsracks or to the ability to place or sell advertising on billboards or any other visual medium within the modular newsrack district, the City shall promptly advise the Contractor of the contents and proposed timing for the adoption of the same; and to the extent that the proposed amendment would materially change any of the rights or obligations of the Contractor pursuant to this Agreement, or would materially impair the economics related to this Agreement, Contractor shall have the right, but not the obligation, to terminate this Agreement upon sixty (60) days advance written notice to the City if such notice is given at any time after the date of the adoption of such action.

3.03 Access to Public Rights-of-way. The City hereby agrees to make available to the Contractor, at no charge to the Contractor or to any of the publishers distributing publications through the modular newsracks, the City's public rights-of-way as necessary to allow Contractor to place and/or install its modular newsracks at the locations agreed to by the parties. Throughout the term of this Agreement, the Contractor and its officers, agents, servants, employees and business invitees, and its equipment and other property, shall have full and free right of ingress to and egress from the public rights-of-way on which the modular newsracks are located, without charge from the City, in order to enable the Contractor to meet its obligations under this Agreement, including but not limited to those relating to the maintenance, repair and administration of publications to be housed in the modular newsracks.

3.04 Individual Newsracks in the Modular Newsrack District. The City represents that at the time of execution of this Agreement, there are no individual newsracks located on public rights-of-way in the modular newsrack district under the authority of any encroachment license issued by the City.

3.05 Defense of Ordinance 2003-47. City agrees to be responsible for defending, at City's expense, including attorneys' fees, any claims made by third parties relating to the constitutionality, enforceability or validity of any provision of Ordinance 2003-47 or this Agreement, against the City or Contractor for compliance of or consistent with Ordinance 2003-47 or this Agreement.

3.06 Relocation and Out-of-Service Units. City may require the Contractor to relocate or take out of service either temporarily or permanently a modular newsrack due to nearby public or private construction or repair, or due to other legitimate reasons under which the public right-of-way in or around the area of the modular newsrack would be closed to pedestrian traffic.

If the reason for such displacement is due to a public works project or similar project performed by or for the City, then the City shall use all reasonable efforts to relocate the modular newsrack, either permanently or temporarily, to a site as close as possible to the site subject to relocation. If such relocation is temporary, the modular newsrack shall be returned as soon as reasonably possible after the interruption.

If the reason for such displacement is due to the work of a private person or entity, including the work of a private utility, then the City shall cause the private party requesting such relocation to reimburse the Contractor for all costs of removal, storage, relocation and reinstallation of such modular newsrack and all revenues lost as a result thereof during the period of displacement, subject to the limitation below for a permanent

displacement. If the City causes a private party to be so responsible, Contractor shall not be obligated to remove a modular newsrack and the City shall not close such public right-of-way unless Contractor has reasonable assurance of payment from such private party.

In the event that a modular newsrack is to be permanently taken out of service as a result of the action of a private party, then such private party shall be responsible for the reimbursement of lost revenue until the earliest of (i) the date that particular modular newsrack is placed back in service at that location or to a nearby location reasonably acceptable to Contractor, (ii) two years after the date such modular newsrack was taken out of service and not relocated, or (iii) the expiration of this Agreement.

3.07 Authority to Execute this Agreement. City represents and warrants to Contractor that it has all necessary power and authority to enter into this Agreement and that the execution, delivery and performance of this Agreement by the City has been duly and validly authorized by all necessary action on the part of the City.

ARTICLE IV. GENERAL PROVISIONS

4.01 Independent Contractor. The parties hereto agree that nothing in this Agreement shall make either party the agent, employee, servant, representative, partner, or co-venturer of the other. As such, Contractor shall be solely responsible for the supervision, daily direction and control of its officers, agents and employees, and for the payment of all compensation, benefits and employer taxes relating to such persons (including workers' compensation and disability). The Contractor has no authority, either express or implied, to bind or obligate the City in any manner.

4.02 Conflict of Interest. Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services under this Agreement. The Contractor further covenants that in the performance of services under this Agreement, no person having any such interest shall be employed without the prior written consent of the City, which consent shall not be unreasonably withheld.

4.03 Nondiscrimination. Contractor shall not discriminate against any employee or applicant for employment, to be employed in the performance of this Agreement, with respect to hire, tenure, terms, conditions or privileges of employment, because of race, religion, color, sex, age, disability, national origin, ancestry, disabled veteran or Vietnam-era veteran status. Breach of this paragraph shall be deemed a material breach of this Agreement.

4.04 Necessary Documentation. Contractor certifies that it will furnish to the City, upon request, any and all documentation, certification, authorization, license, permit or registration required by the laws or rules and regulations of the City of Lake Worth, the County of Palm Beach, other units of local government, the State of Florida, and the United States of America. Contractor further certifies that it is now in and will maintain its good standing with such governmental agencies, and that it will keep its license, permit, registration, authorization, or certification in force during the term of this Agreement. Failure of Contractor to comply with this Section shall constitute a material breach of this Agreement.

4.05 Insurance. Contractor shall maintain in full force and effect during the term of this Agreement, a comprehensive general liability insurance policy insuring itself and the City against all damages arising out of any act or omission of Contractor or its officers, agents, employees, or invitees. The policy shall have a minimum limit of total coverage in the amount of three hundred thousand dollars ($300,000.00) per occurrence and combined single limit for bodily injury liability and property damage liability.

Contractor shall furnish a certificate evidencing such coverage with the City and D.O.T. named as additional insured parties, and the certificate shall be delivered on or before the effective date of this Agreement. No newsracks shall be installed until they are in compliance with all Florida Department of Transportation requirements. These certificates shall contain a provision that coverages afforded under the policies will not be canceled, reduced, limited, or restricted until thirty (30) days after the City receives notice of such change. Contractor further agrees to furnish satisfactory proof to the City of Contractor's purchase and continuing coverage of a policy with an insurance carrier or carriers with a Best's Rating of "A" or better, covering statutory obligations of Contractor under the Worker's Compensation Act (Chapter 441 of Florida Statutes).

It is the understanding of the parties to this Agreement that the failure to provide the required insurance certificates shall constitute a material breach of this Agreement; however, in the event Contractor fails to provide such certificates within the time periods provided in this section, then Contractor shall deliver them within ten (10) business days after written notice by the City.

4.06 Indemnification. Contractor agrees to indemnify, hold harmless and defend the City and its respective officers, agents, and employees from any and all claims, actions, causes of action, judgments, liens, loss, liability or damage arising out of any negligent or willful act or omission by Contractor or any of its officers, agents, employees or subcontractors, and sustained by any person, as a result of the installation, use or maintenance of the modular newsracks installed by Contractor in the City pursuant to this Agreement. Such indemnity shall include attorney's fees and all costs and other expenses arising therefrom or incurred in connection therewith and shall not be limited by reason of the enumeration of any insurance coverage required herein.

To the extent permissible by law the City agrees to indemnify, hold harmless and defend Contractor and its directors, officers, agents, and employees from any loss, liability or damage sustained by such persons relating to the following: any amendment to Ordinance 2003-47 or adoption by the City or any other governmental authority controlled by the city of any ordinance, rule, regulation, order or restriction that materially changes any of the rights or obligations of the Contractor pursuant to this Agreement or Ordinance 2003-47, or any other action taken by the City which would materially impair the Contractor's rights pursuant to Ordinance 2003-47 or this Agreement regardless of whether or not the Contractor chooses to terminate this Agreement pursuant to Part 3.02. The City's liability under such indemnity shall not exceed three hundred thousand dollars ($300,000.00) for injury to or death of one (1) person in any one (1) occurrence and shall not exceed five million dollars ($5,000,000.00) for injuries to or deaths of all persons in that occurrence. Such indemnity shall include attorney's fees and all costs and other expenses arising therefrom or incurred in connection therewith and shall not be limited by reason of the enumeration of any insurance coverage required herein. The foregoing indemnification shall not constitute a waiver of sovereign immunity beyond the limits set forth in Section 768.28, Florida Statutes nor shall the same be construed to

constitute an agreement by the City to indemnify the Contractor for the Contractor's negligence, willful or intentional acts or omissions.

A party shall promptly notify the respective other party in writing of any claim or demand for which indemnification is sought under this Section; however, the failure to give immediate notification shall not constitute waiver of the right to indemnification. The provisions of this Section shall survive the termination of this Agreement.

4.07 Notice. All notices, required or permitted under this Agreement shall be in writing and shall be given by certified mail, return receipt requested, addressed to the representative of such party to be notified, as set forth below.

To the City:	*To the Contractor:*
CITY OF LAKE WORTH Office of City Attorney 7 North Dixie Highway Lake Worth, Florida 33460	CITY SOLUTIONS, INC. Mr. Tom Trento, President 2200 4th Ave. North, #3 Lake Worth, Florida 33461

In the event the designated representative is changed during the term of this Agreement, then the respective party shall give prompt written notice of the name and address of the new representative to each of the other parties.

4.08 Exclusivity. The parties agree that consistent with the provisions of Sec. 19-62 of Ordinance 2003-47, Contractor shall be the exclusive FREE modular newsrack provider within the modular newsrack district during the stated term, including any extension if applicable, as set forth in Article I of this Agreement.

4.09 Assignment.

a. The City shall not assign this Agreement or any of its rights, duties or obligations hereunder without the prior written consent of the Contractor, which consent shall not be unreasonably withheld.

b. The Contractor shall not assign this Agreement or any of its rights, duties or obligations hereunder without the prior written consent of the City, which consent shall not be unreasonably withheld; provided, however, CSI shall be permitted to (i) assign this Agreement or any of its rights, duties or obligations hereunder to any entity that is an affiliate or subsidiary of CSI or under common control or ownership with CSI, and (ii) assign its duties and obligations relating to maintenance, cleaning, repair, replacement, installation or advertising sales assistance.

4.10 Subcontracting. Contractor shall not subcontract, sublet, assign or delegate any duties or responsibilities under this Agreement, except for maintenance, cleaning, repair, replacement, or advertising sales assistance, without the prior express written consent of the City, which consent shall not be unreasonably withheld. The City's consent to subcontract, sublet, assign or delegate shall not be construed to relieve Contractor of any responsibility for the fulfillment of the Agreement. Contractor has the sole responsibility for the quality and quantity of any services which Contractor subcontracts, sublets, assigns or delegates, and the City has no obligation whatsoever toward any

entity to which Contractor has subcontracted, sublet, assigned or delegated any duties or responsibilities under this Agreement.

4.11 Dispute Resolution; Remedies; Applicable Laws

A. The parties agree that in the event of a dispute between them, including an assertion of termination of this Agreement as the result of a breach and a failure to cure, they shall resolve the matter through the dispute resolution mechanism set out herein. If the dispute has not resulted in an assertion of termination of this Agreement as a result of a breach and a failure to cure, then the parties shall negotiate in good faith for at least ten (10) days to resolve the dispute. If the parties are unable to agree as a result of such negotiation or if there is an assertion of a termination of this Agreement as the result of a breach and a failure to cure, then the parties shall submit the issue to a mediator and the parties shall share equally in the cost of the mediator. If the matter cannot be resolved within thirty (30) days after submission to the mediator, then either party may seek arbitration in accordance with the provisions of subsection B of this section.

B. In the event of a breach of this Agreement, the non-breaching party shall be entitled to seek damages if determinable, or injunctive relief for breach, and reasonable attorneys' fees and expenses incurred for the enforcement of such provisions. The non-breaching party may recover lost profits demonstrated through proof of prior, current or reasonably-predictable future profits. However, in no event shall either party be liable to the other for any other special, consequential or indirect damages, including without limitation, lost business opportunity or good will.

C. In the event that this Agreement is terminated by the Contractor pursuant to Part 3.02, then, independent of the indemnity in Part 4.06 of this Agreement, the City shall compensate the Contractor for all demonstrable loss of investment and/or profit based upon the difference between the economic circumstances in existence at the inception of this Agreement and those in existence after the action that gave rise to the termination. However, the Contractor shall not be entitled to recover under both the indemnity provisions of Part 4.06 and this Part.

D. The remedies herein provided shall be cumulative and no one remedy shall be construed as inclusive of any other or of any remedy provided by law. Failure of any party to exercise any remedy at any time shall not operate as a waiver of that party's right to exercise any remedy for the same or subsequent default at any time thereafter.

E. This Agreement shall be governed by the laws of the State of Florida, and by all municipal ordinances and codes as the same shall be in full force and effect in Palm Beach County, Florida, or in any jurisdiction which lies in whole or in part therein, upon the date this Agreement is executed, or thereafter during the remainder of its stated term.

4.12 Force Majeure. No party to this Agreement shall be held responsible or incur any liability for any delay or failure in the performance of any part of this Agreement to the extent that such delay or failure results from causes beyond its control, including but not limited to fire, flood, explosion, war, labor dispute, embargo, government requirement, civil or military authority, natural disasters, or other similar types of situations. If such situation occurs, the party delayed or unable to perform shall give prompt notice to the other party and shall use its commercially reasonable best efforts to resume services, to the extent

possible, as soon as practicable after the cessation of the situation. If services cannot be resumed within a period of sixty (60) days after a force majeure situation ceases, this Agreement shall automatically terminate at the end of such sixty (60) days, provided, however, that in the event of a labor dispute the party whose employees are not involved in the labor dispute may terminate this Agreement by giving five (5) days prior written notice if such dispute has not ceased after fifteen (15) days.

4.13 Severability; Waiver

A. If any provision of this Agreement, other than Parts 3.02, 4.06 or 4.11(D), is to any extent held invalid, void or unenforceable by a court of competent jurisdiction, the remainder of the Agreement shall not be impaired or affected thereby, and each term, provision, and part shall continue in full force and effect, and shall be valid and enforceable to the fullest extent permitted by law.

B. No failure to exercise and no delay in exercising on the part of either party, any right, power or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise of any right, power or privilege hereunder preclude further exercise of the same right or the exercise of any right hereunder.

4.14 Survival. The termination or expiration of this Agreement shall not affect any rights of either party with respect to any previous breach of this Agreement.

4.15 Extent of Agreement; Amendment

A. All prior agreements, representations, statements, negotiations, and undertakings between the City and the Contractor with respect to the subject matter provided herein are superseded by this Agreement and the Exhibits hereto.

B. This Agreement may be amended only by written instrument signed by all parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates indicated below.

CITY OF LAKE WORTH, FLORIDA, OFFICE OF THE Mayor **("City")**

By: _____ Date: 5/18/04

ATTEST: _____ 5/18/04

CITY SOLUTIONS, INC. ("Contractor")

By: Angelo Trento Date: 5/13/04

Printed: ANGELO TRENTO Witnessed by: _____

Title: OPERATIONS MGR.

Witnessed by: _____

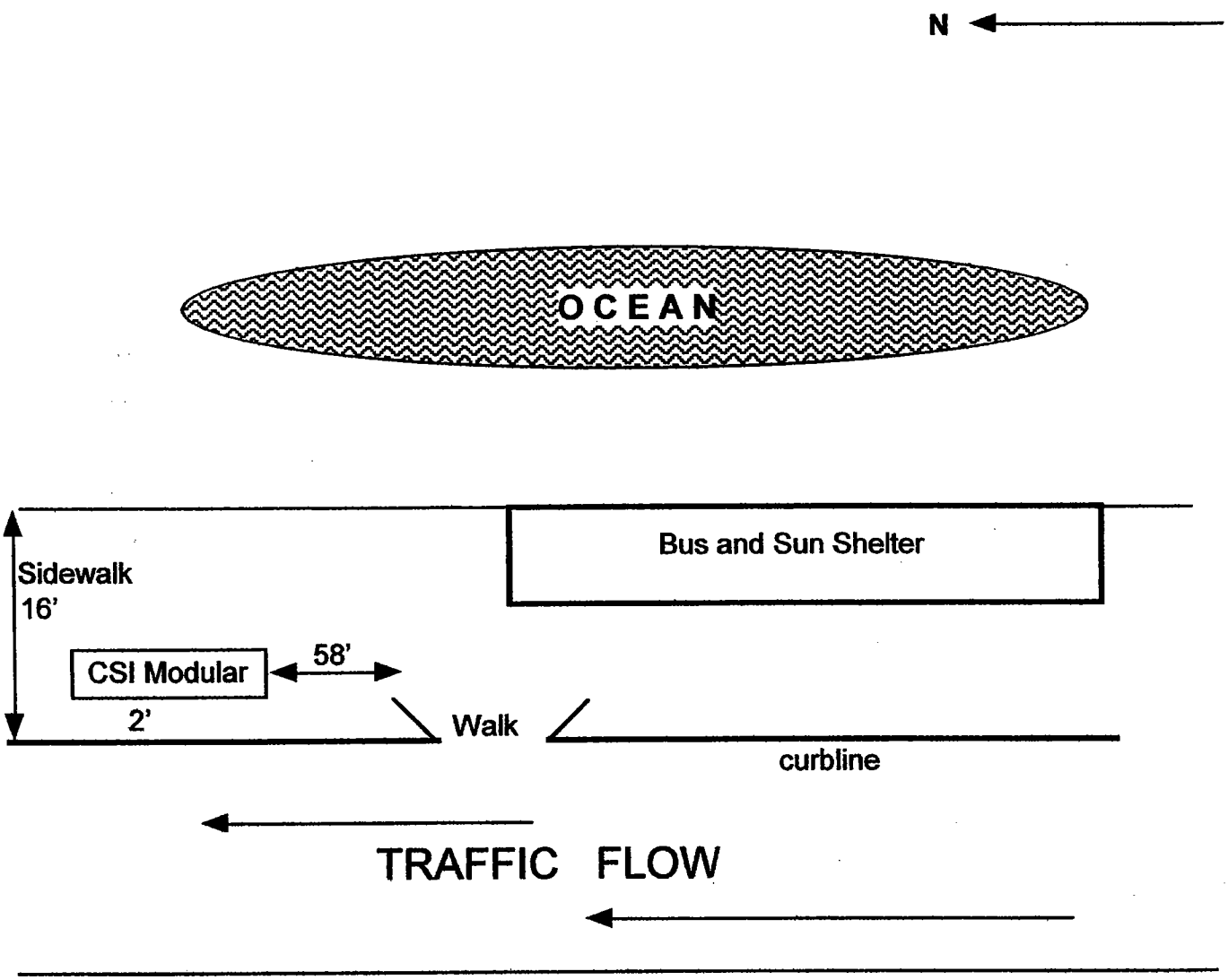
APPROVED AS TO FORM AND LEGALITY:

By: _____
Counsel, City of Lake Worth

EXHIBIT A

LOC #	PHYSICAL ADDRESS	ORIENTATION	LANDMARK	TYPE
1	Beach Area	North End	Shelter	18
2	Beach Area	South End	Shelter	18
3	Beach Pier	Pier Swale	Pier	18
4	Bryant Park	Entrance	Park	9
5	Lake Ave & S. Lakeside	SE Corner	Gulf Stream Hotel	18
6	Lake Ave & Federal Hwy	SW Corner	Majestic	18
7	Lake Ave & S. M Street	SE Corner	Too Jays	18
8	Lucerne & M Street	NW Corner	South Seas	9
9	Lucerne & S. J Street	SE Corner	Across from P.O.	18
10	Lake Ave & J Street	SE Corner	L'Anjou Restaurant	18
11	Lake Ave & Dixie Hwy	NE Corner	Arcade Antique Pk Lot	18
12	120 Dixie Hwy	Mid-block	Wachovia Bank	9
13	Dixie Hwy & 10th Ave	SE Corner	Insurance Mall	9
14	Dixie Hwy & 10th Ave	NW Corner	Walgreens	18
15	Tri-Rail Station	Entrance	Tri-Rail	18
16	Lake Worth Rd & Akron St	Swale	Publix	18
17	Dixie Hwy & 6th Ave	NW Corner	Walgreens	18
18	Federal Hwy & 8th Ave	NE Corner	Parking Lot	9
19	Federal Hwy & 3rd Ave	SW Corner	1st Presbyterian	9
20	Federal Hwy & 6th Ave	NE Corner	Motel	9

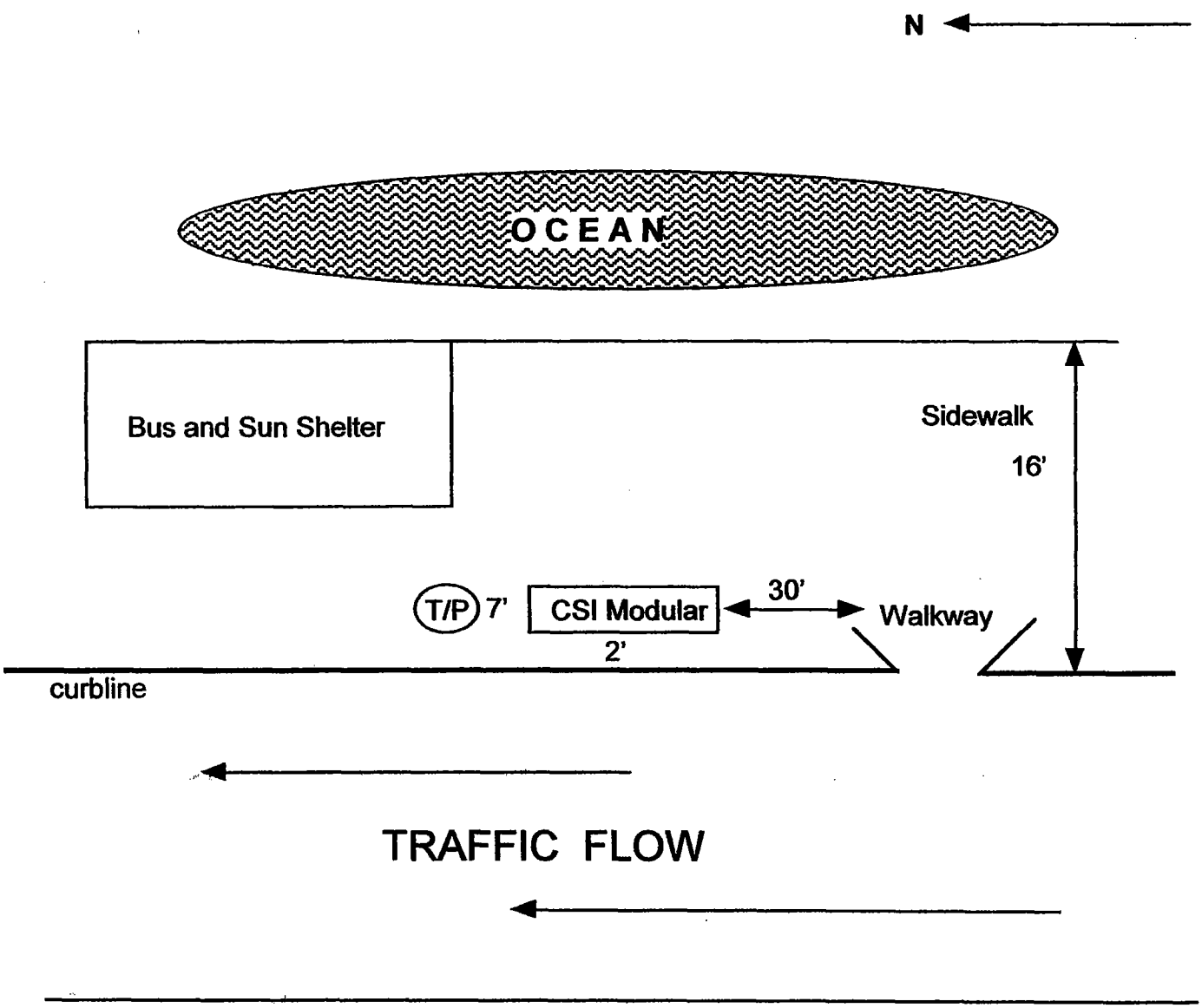
Proposed Location
City Solutions Modular Newsrack
Location # 1
Beach Area- North end of Shelter



Drawings not to scale

Mar 22, 2004

Proposed Location
City Solutions Modular Newsrack
Location # 2
Beach Area - South end of Shelter

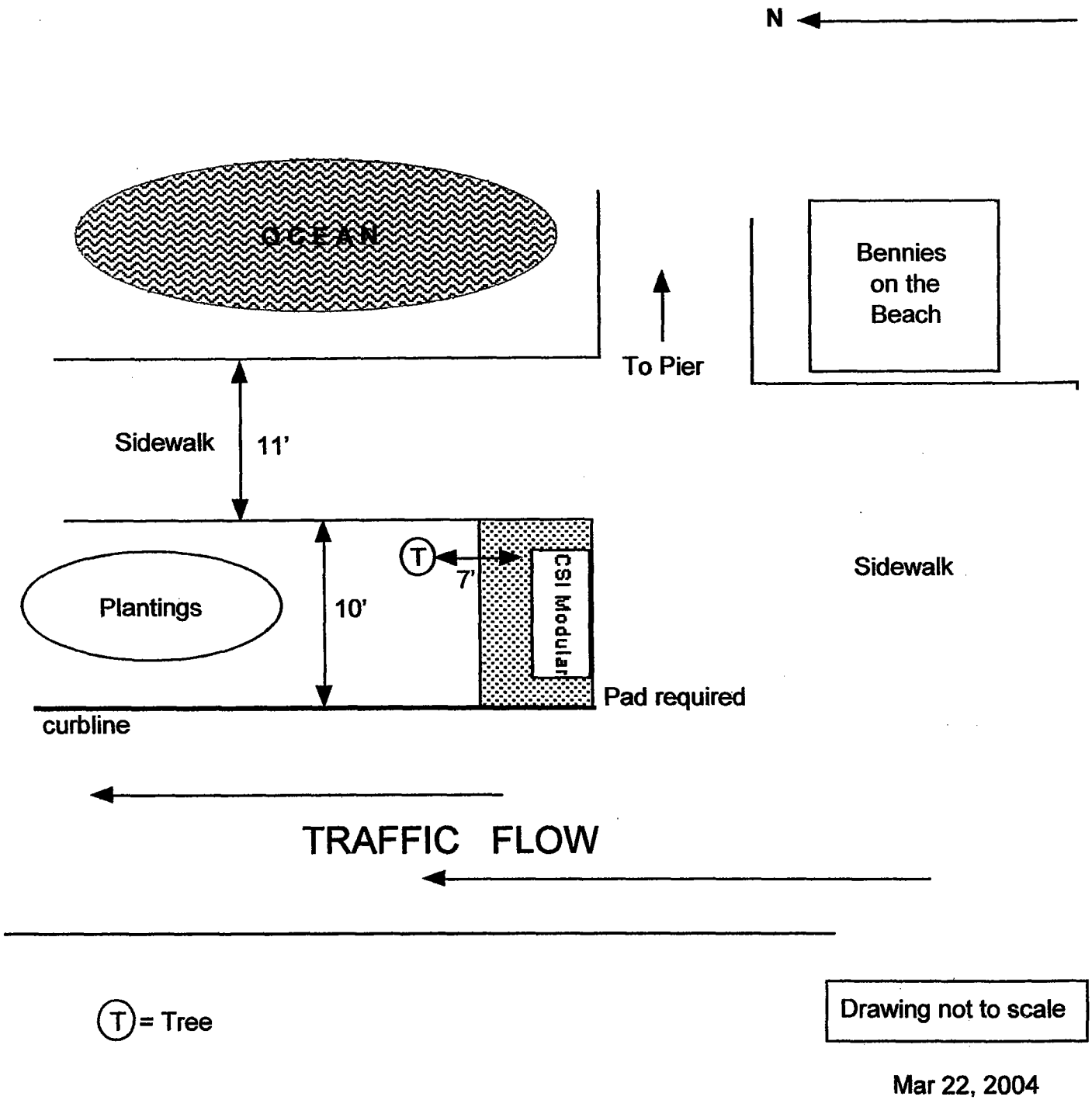


T/P = Telephone Pole

Drawing not to scale

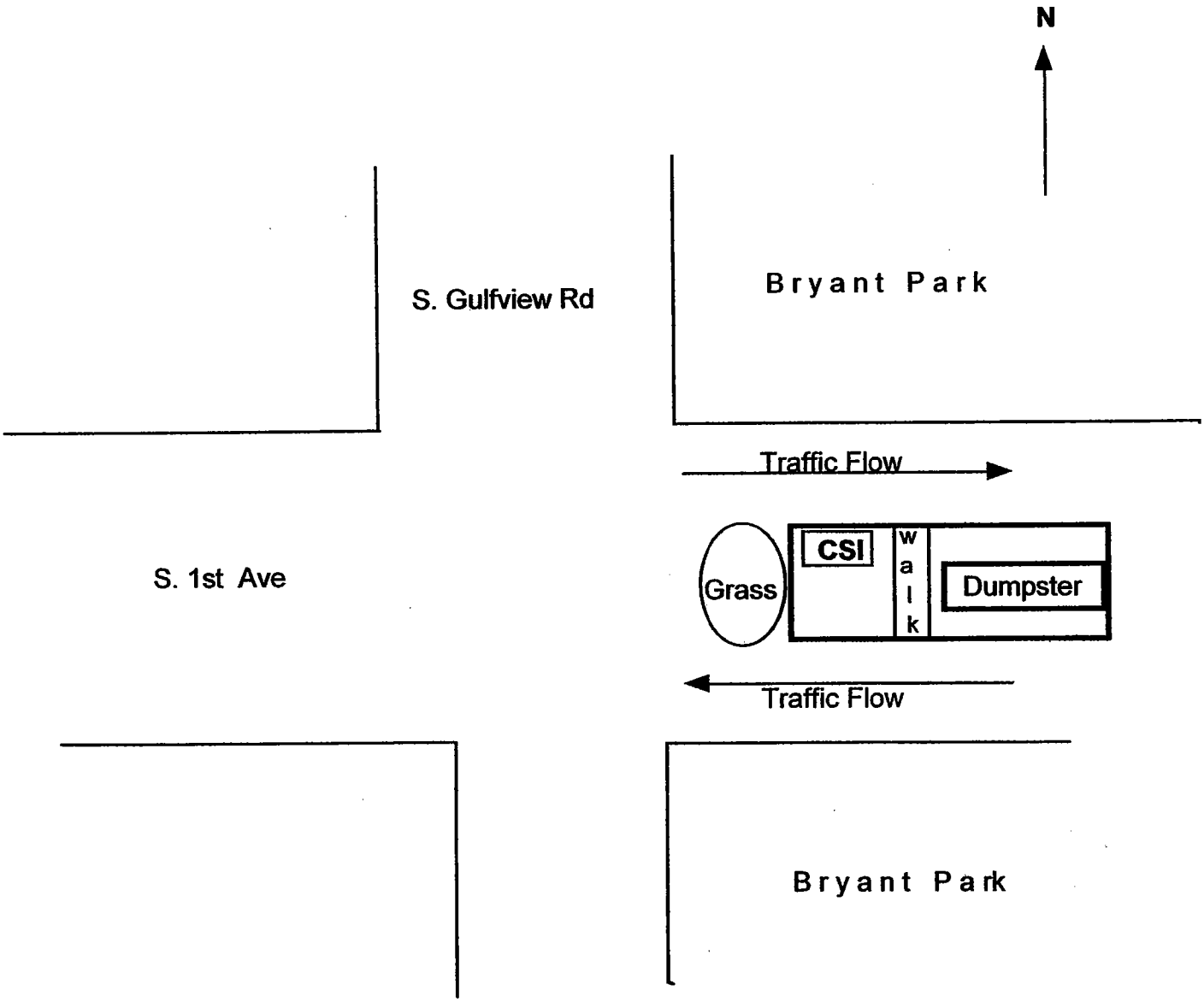
Mar 22, 2004

Proposed Location
City Solutions Modular Newsrack
Location # 3
Beach Area at Pier



Mar 22, 2004

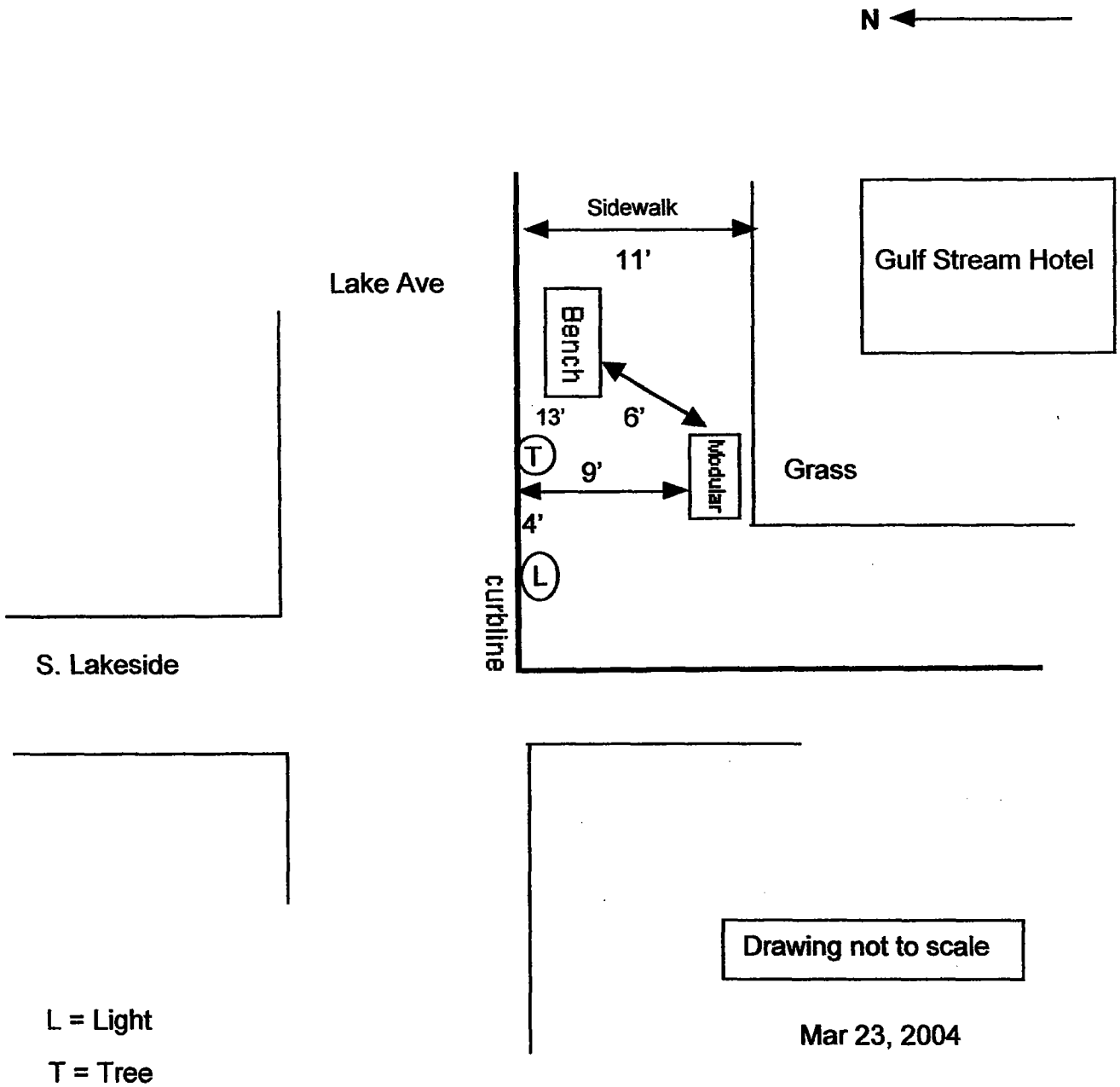
Proposed Location
City Solutions Modular Newsrack
Location # 4
Bryant Park Entrance



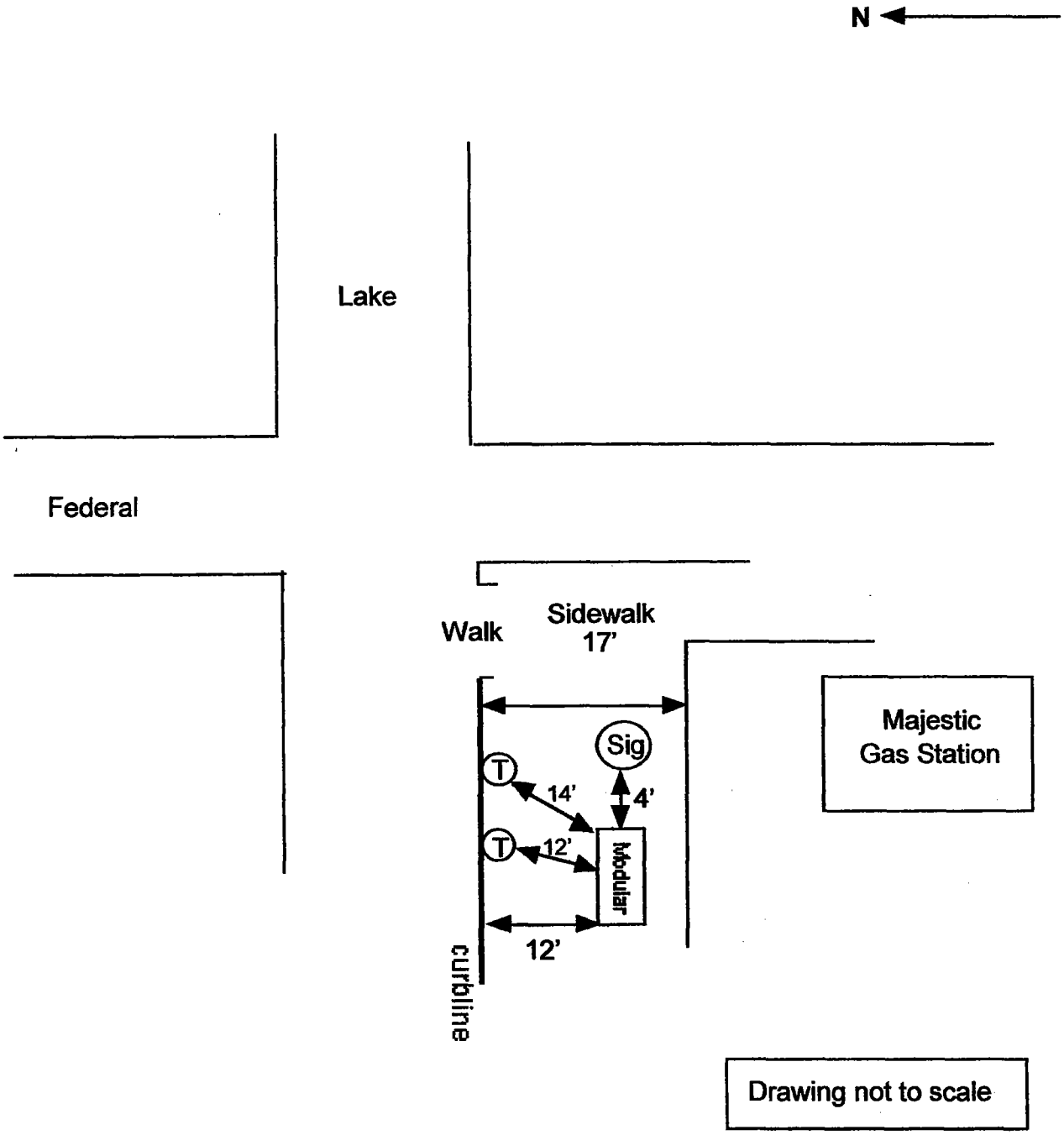
Drawing not to scale

Mar 22, 2004

Proposed Location
City Solutions Modular Newsrack
Location # 5
SE Corner of Lake and S. Lakeside



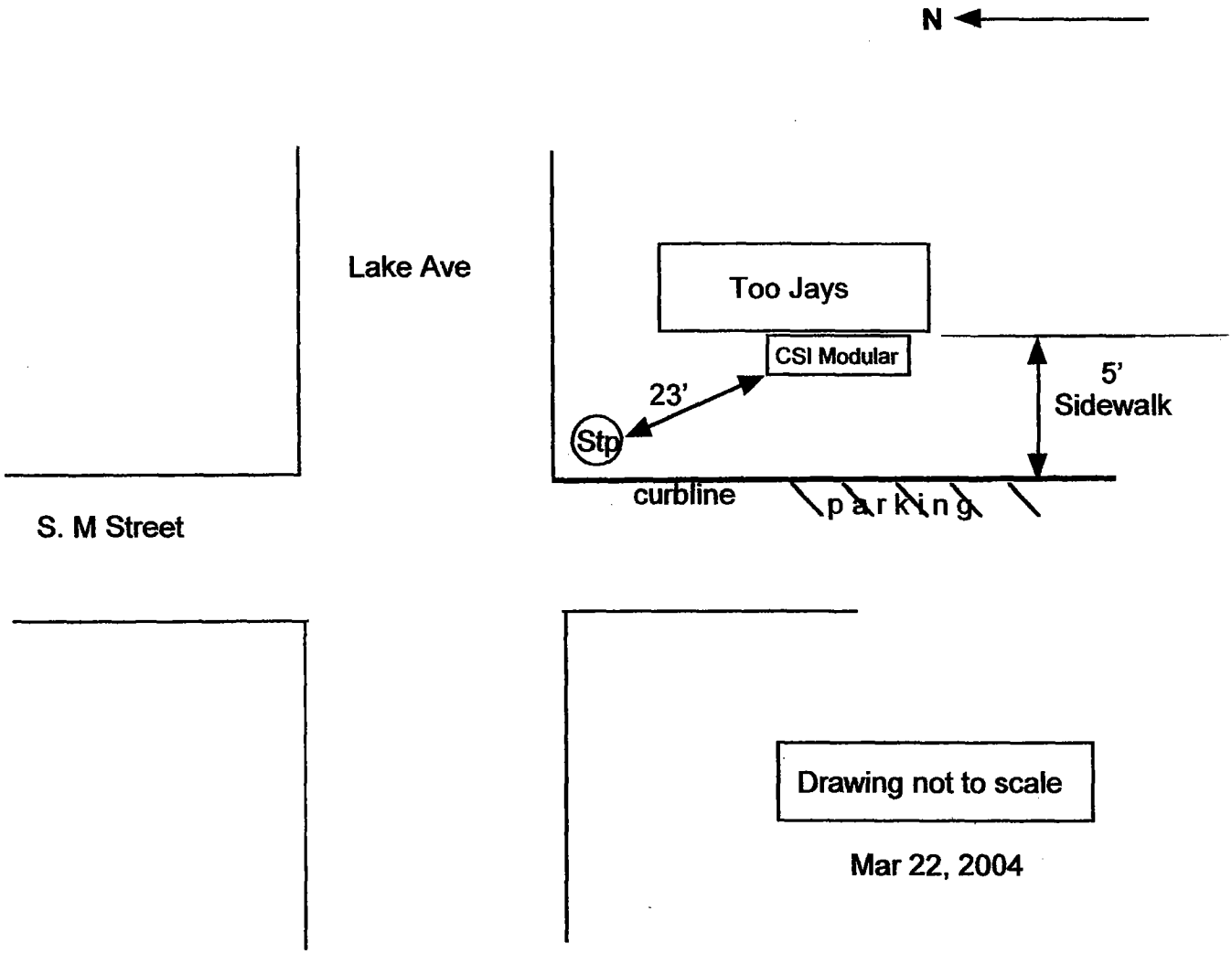
Proposed Location
City Solutions Modular Newsrack
Location # 6
SW Corner of Lake and Federal



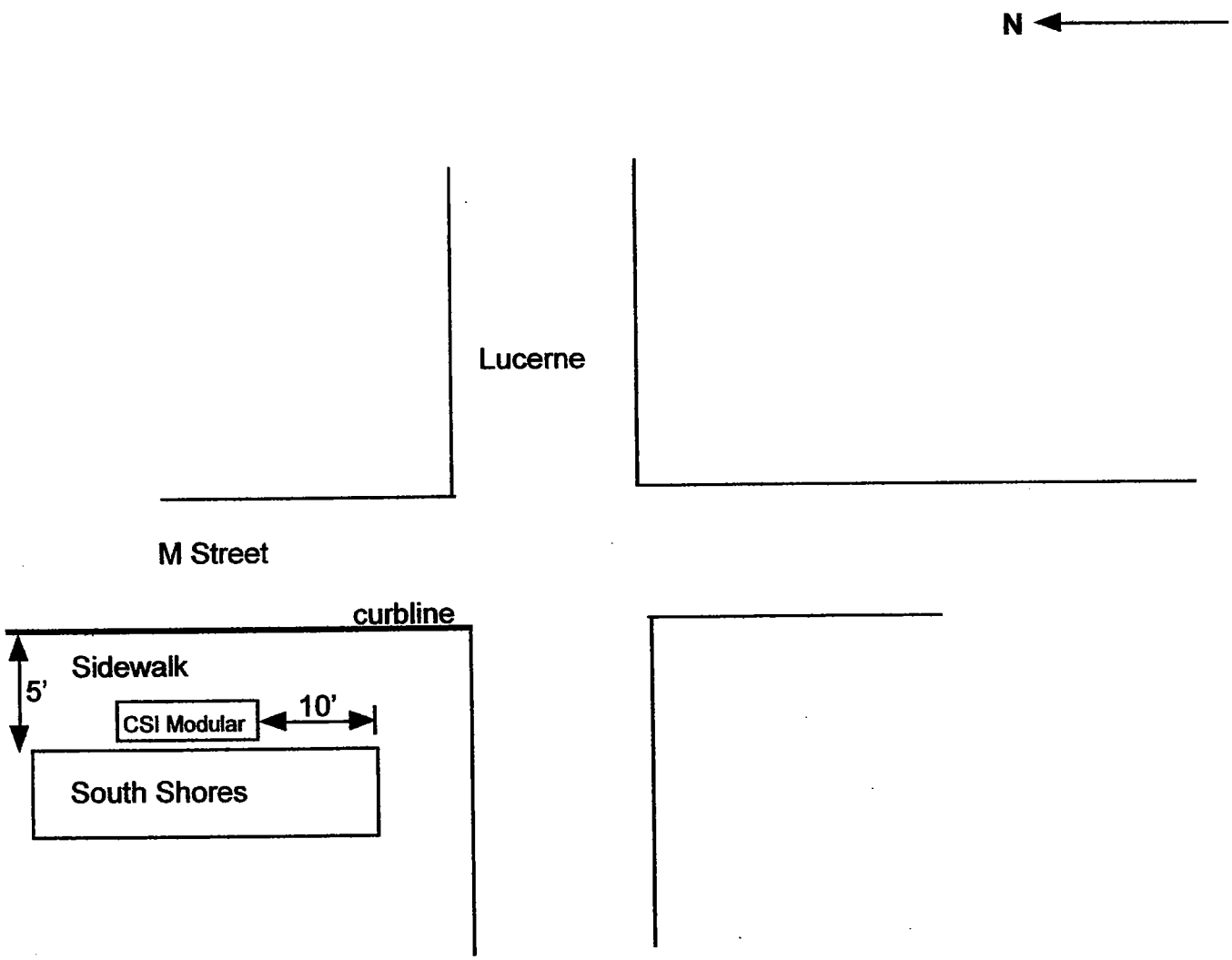
T = Tree
Sig = Signal Light

Mar 23, 2004

Proposed Location
City Solutions Modular Newsrack
Location # 7 Too Jays
SE Corner of Lake and S. M Street



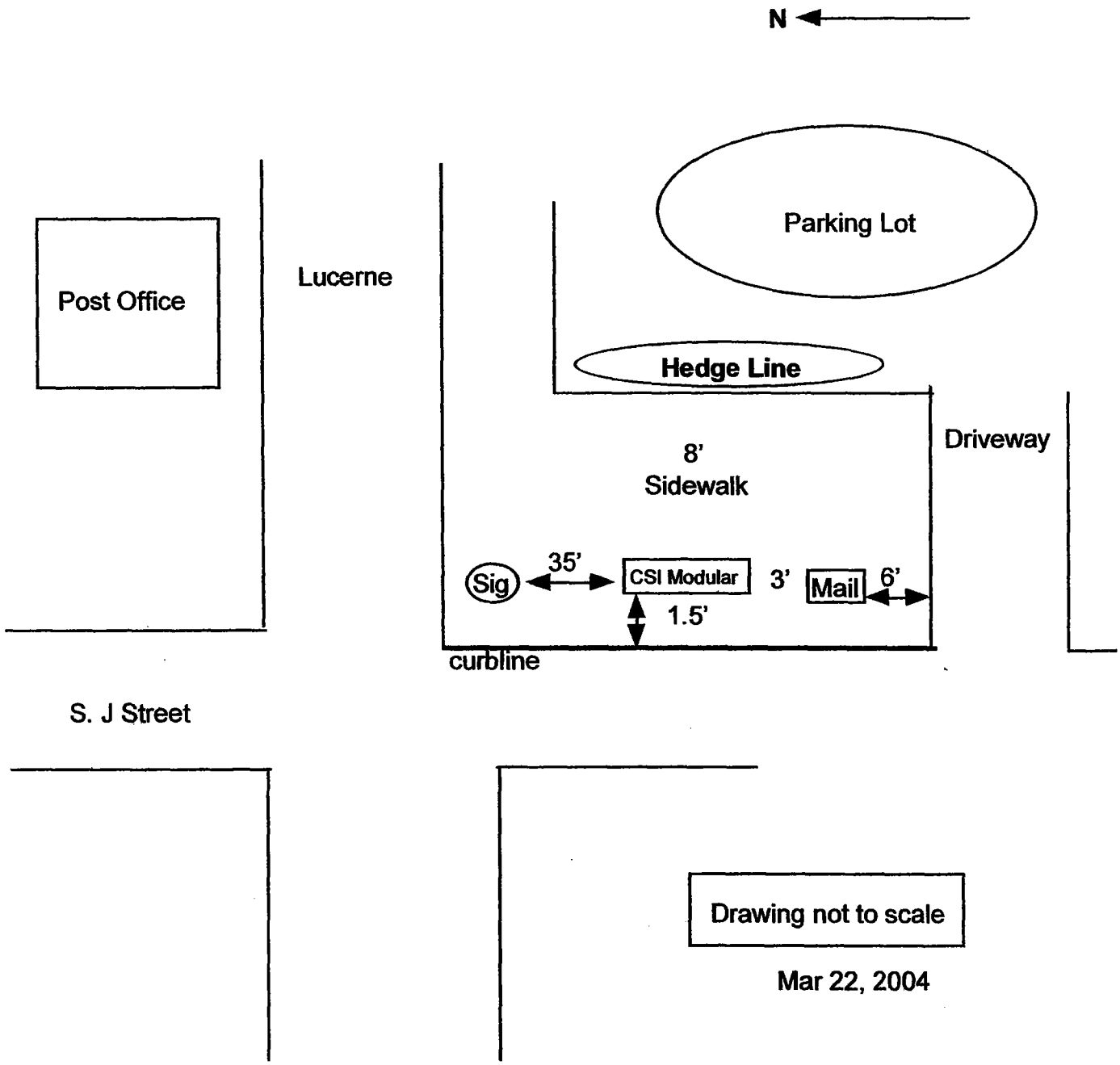
Proposed Location
City Solutions Modular Newsrack
Location # 8 South Shores
NW Corner of Lucerne & M Street



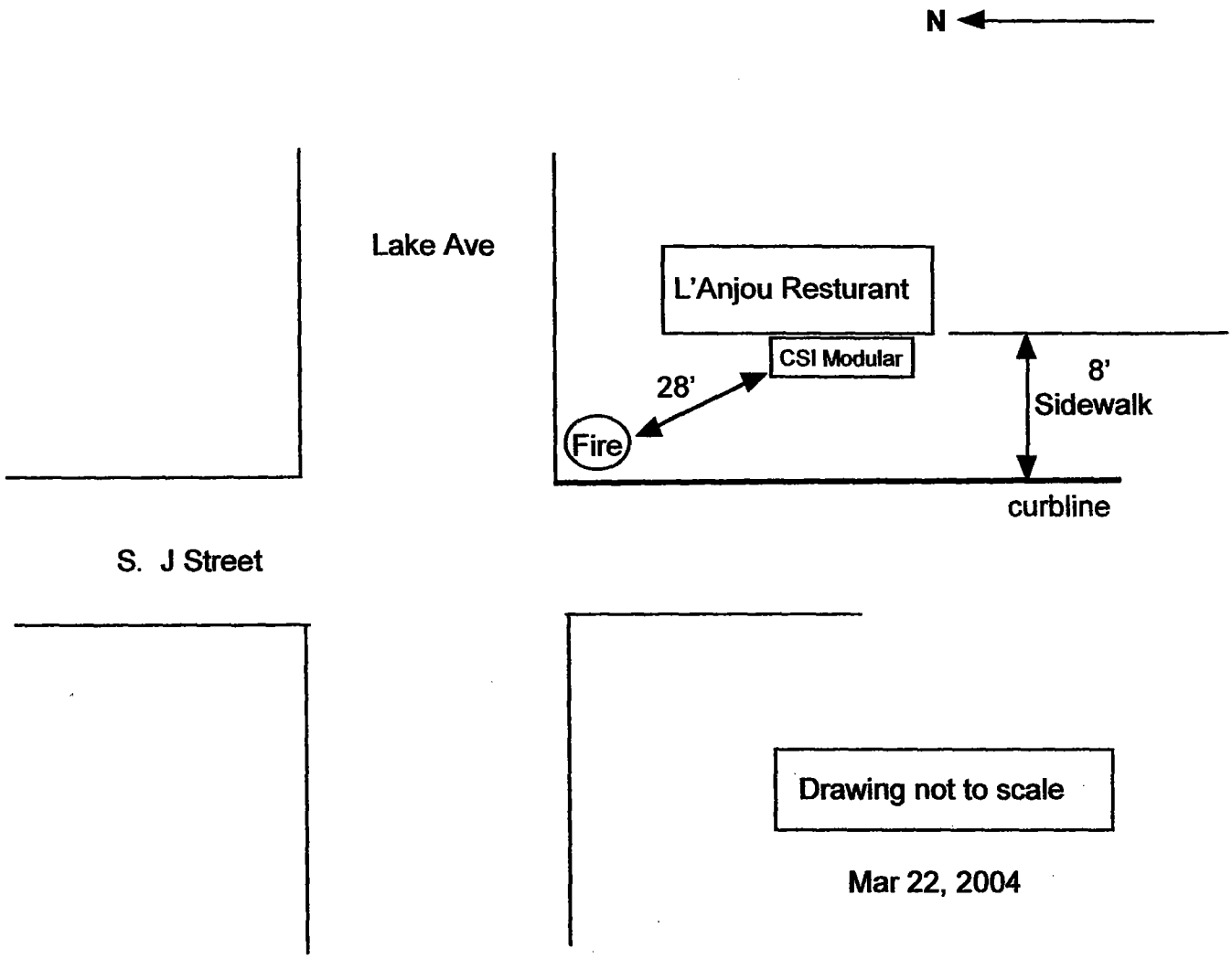
Drawing not to scale

Mar 22, 2004

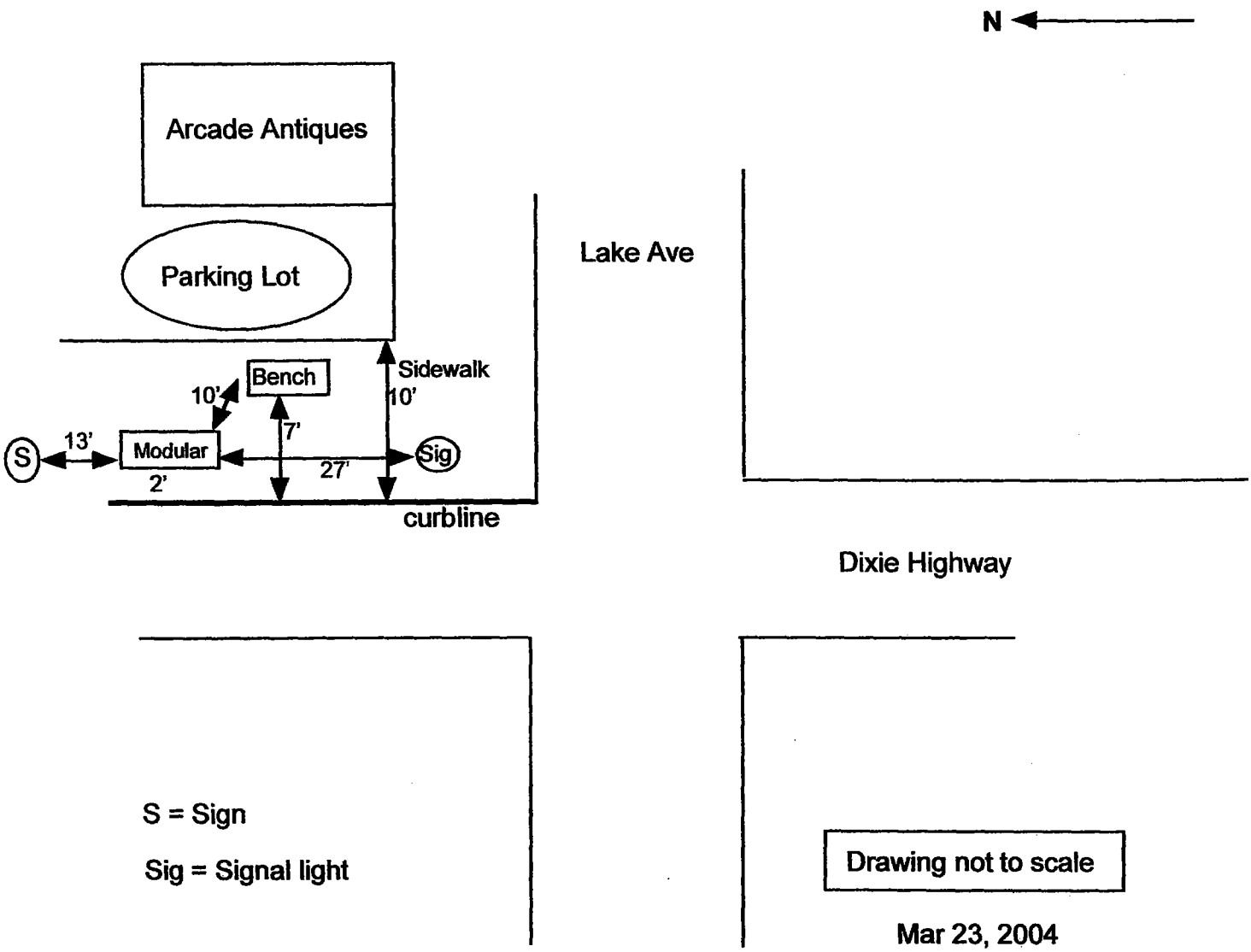
Proposed Location
City Solutions Modular Newsrack
Location # 9 Across from P.O.
SE Corner of Lucerne & S. J Street



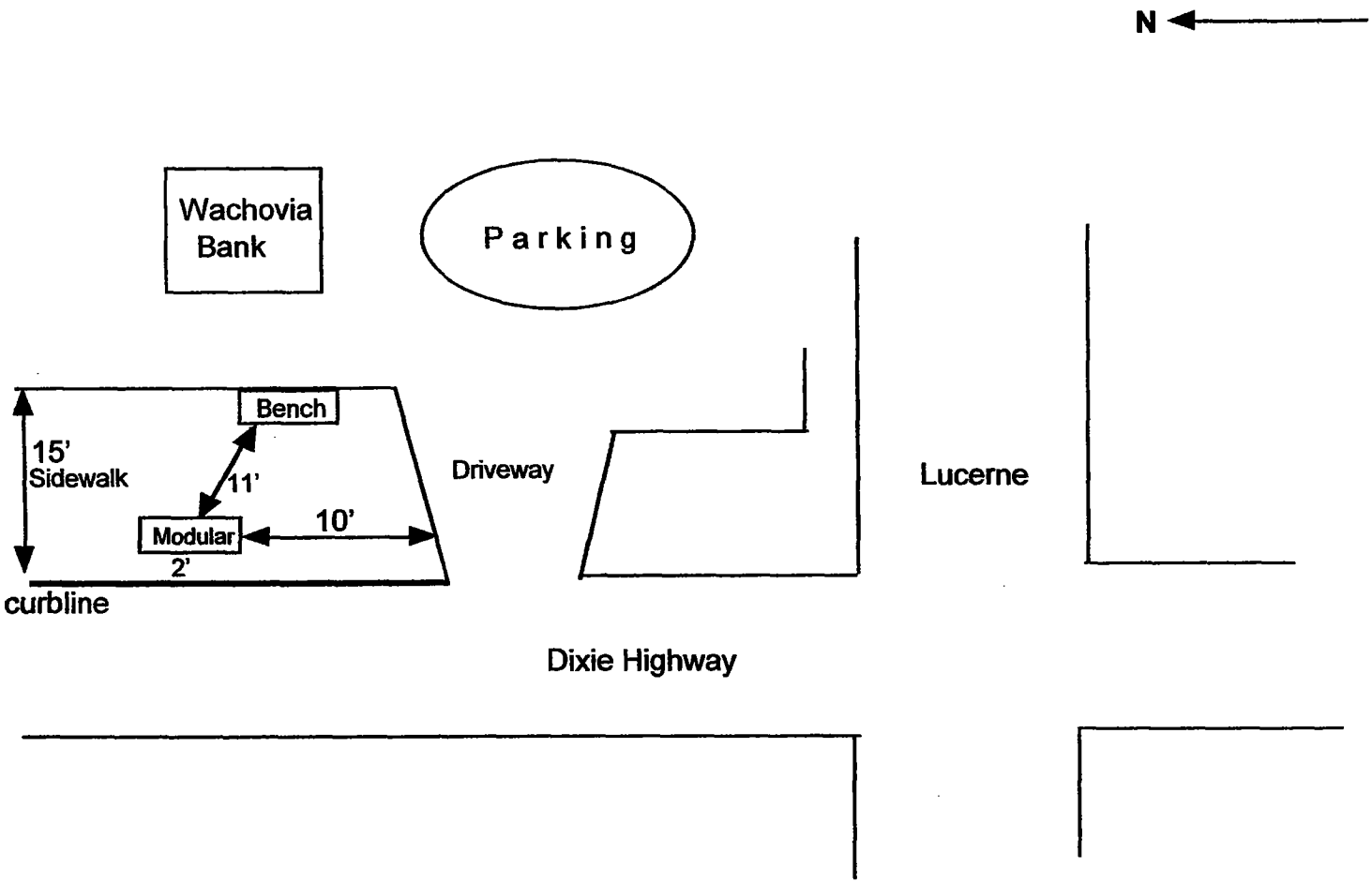
Proposed Location
City Solutions Modular Newsrack
Location # 10 L'Anjou Resturant
SE Corner of Lake and S. J Street



Proposed Location
City Solutions Modular Newsrack
Location # 11
NE Corner of Dixie and Lake Ave



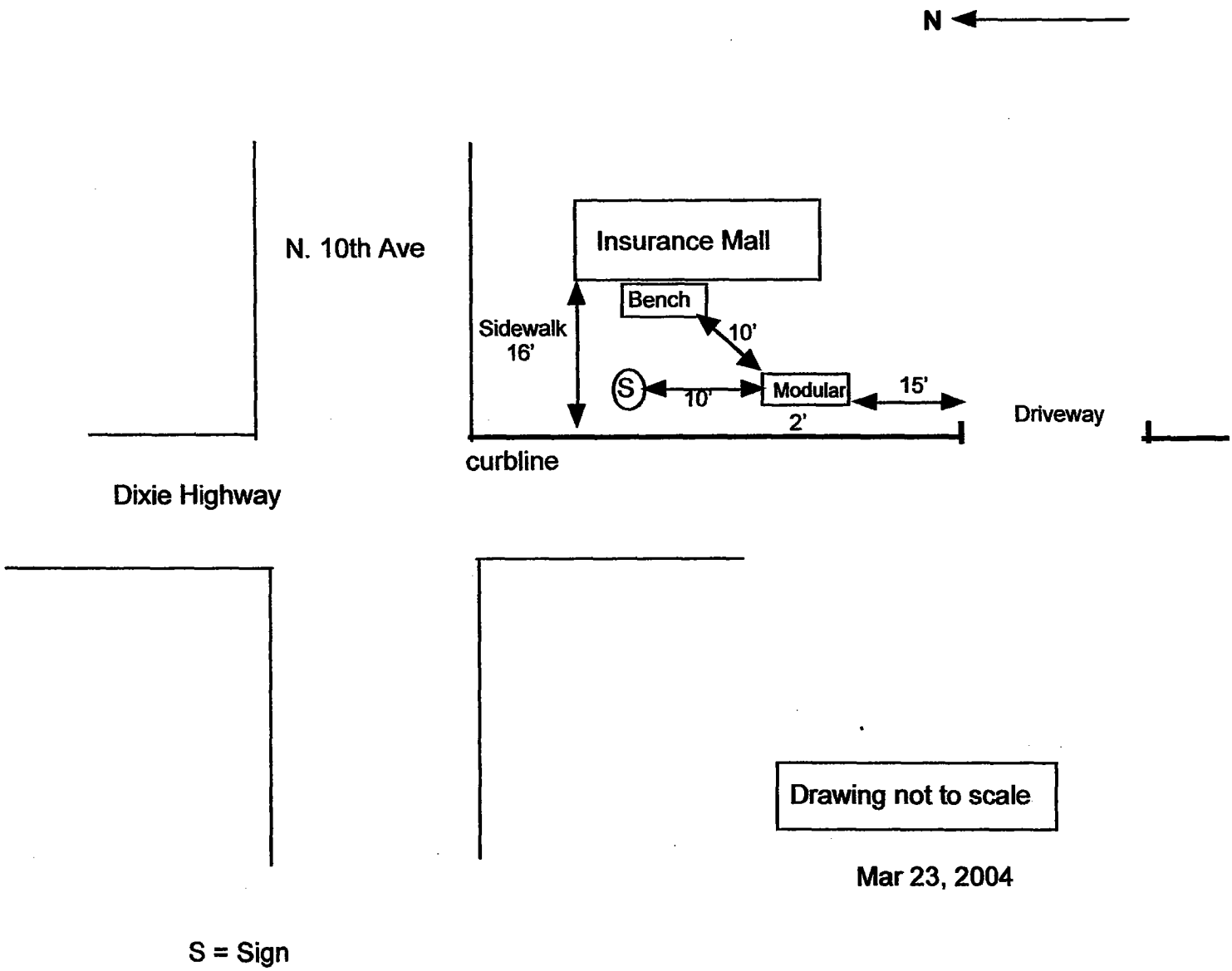
Proposed Location
City Solutions Modular Newsrack
Location # 12
NE Corner of Dixie and Lucerne



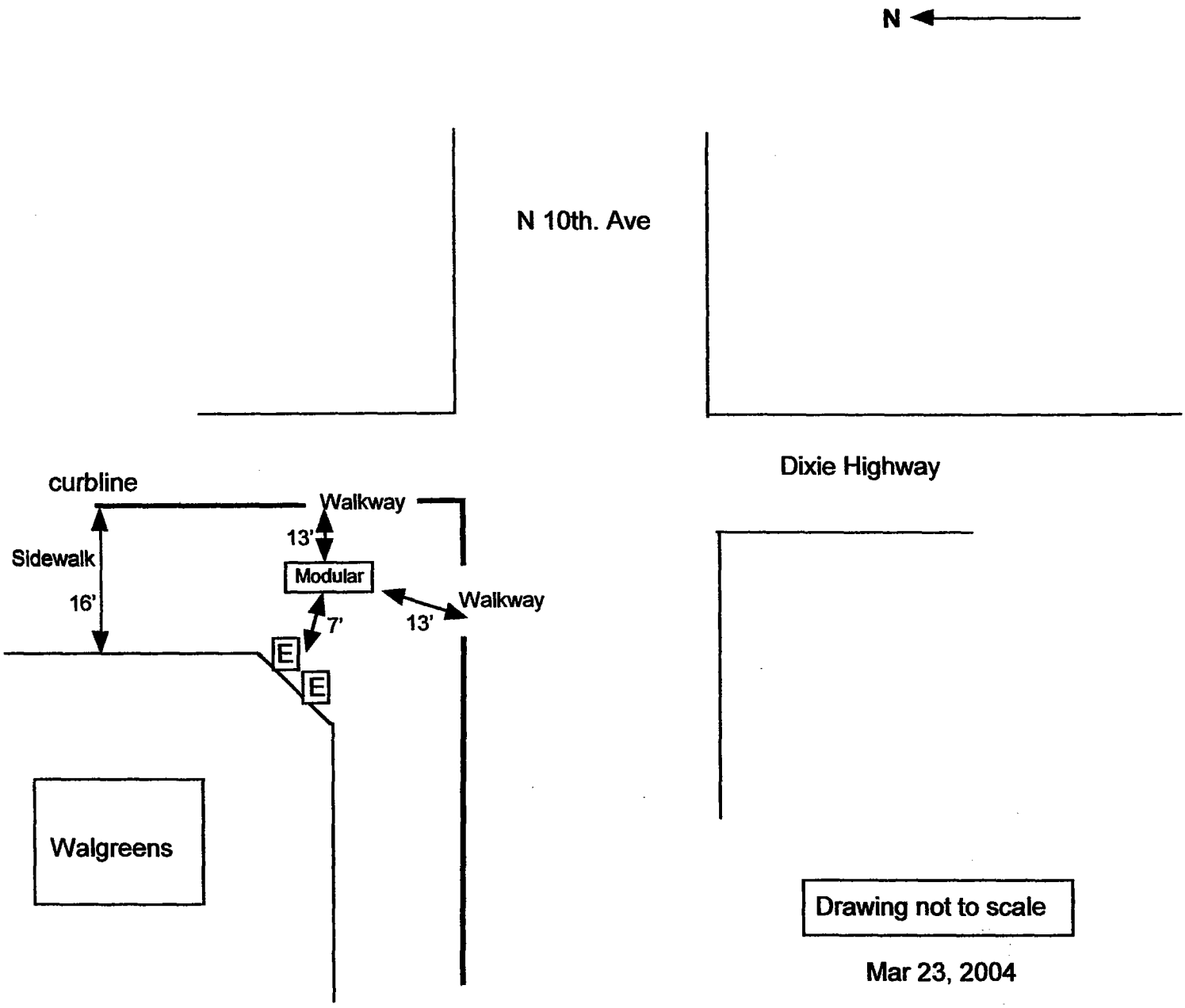
Drawing not to scale

Mar 23, 2004

Proposed Location
City Solutions Modular Newsrack
Location # 13
SE Corner of Dixie and N. 10th Ave



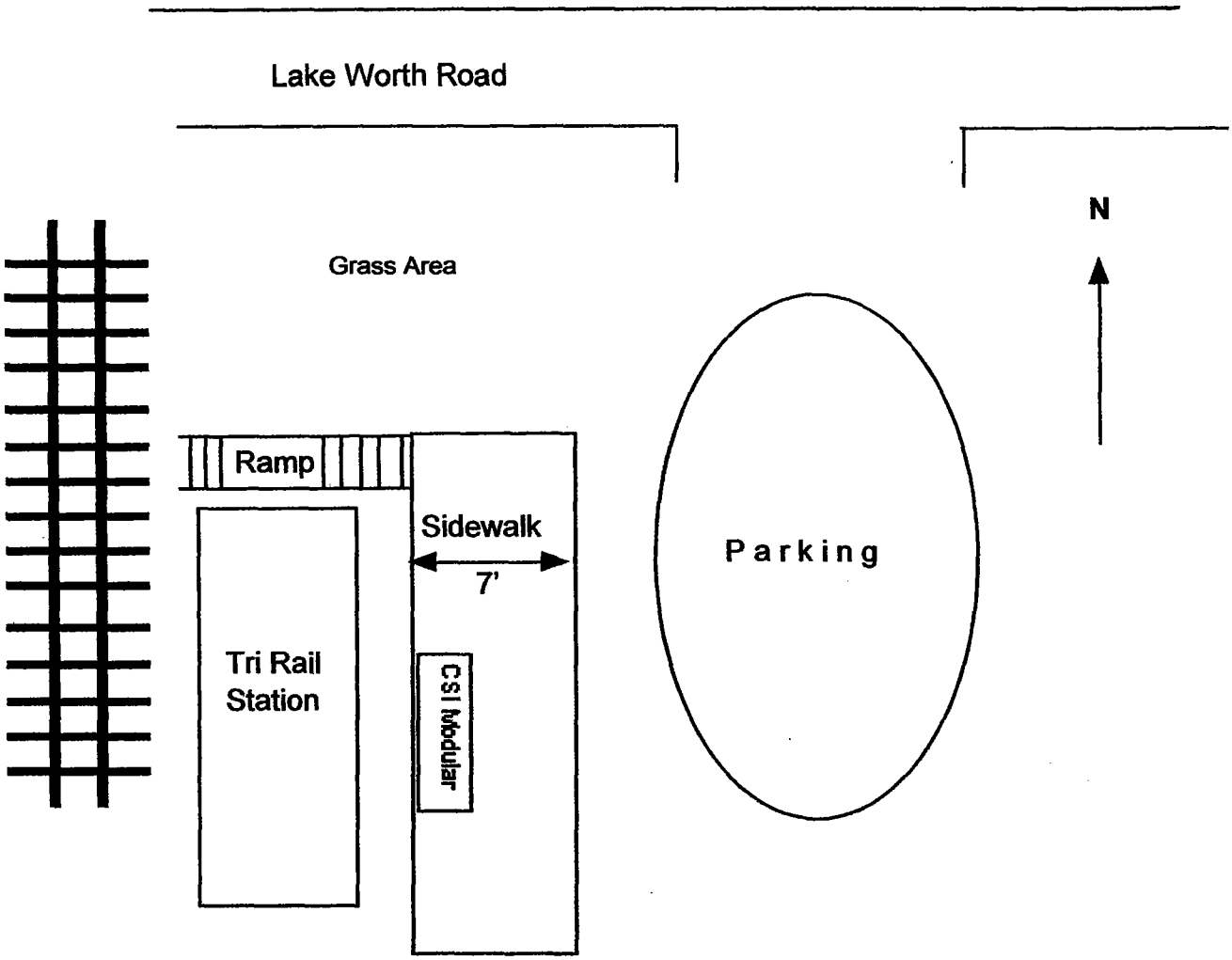
Proposed Location
City Solutions Modular Newsrack
Location # 14
NW Corner of Dixie and N.10th Ave



E = Electric Box

Proposed Location
City Solutions Modular Newsrack
Location # 15
Tri Rail Station

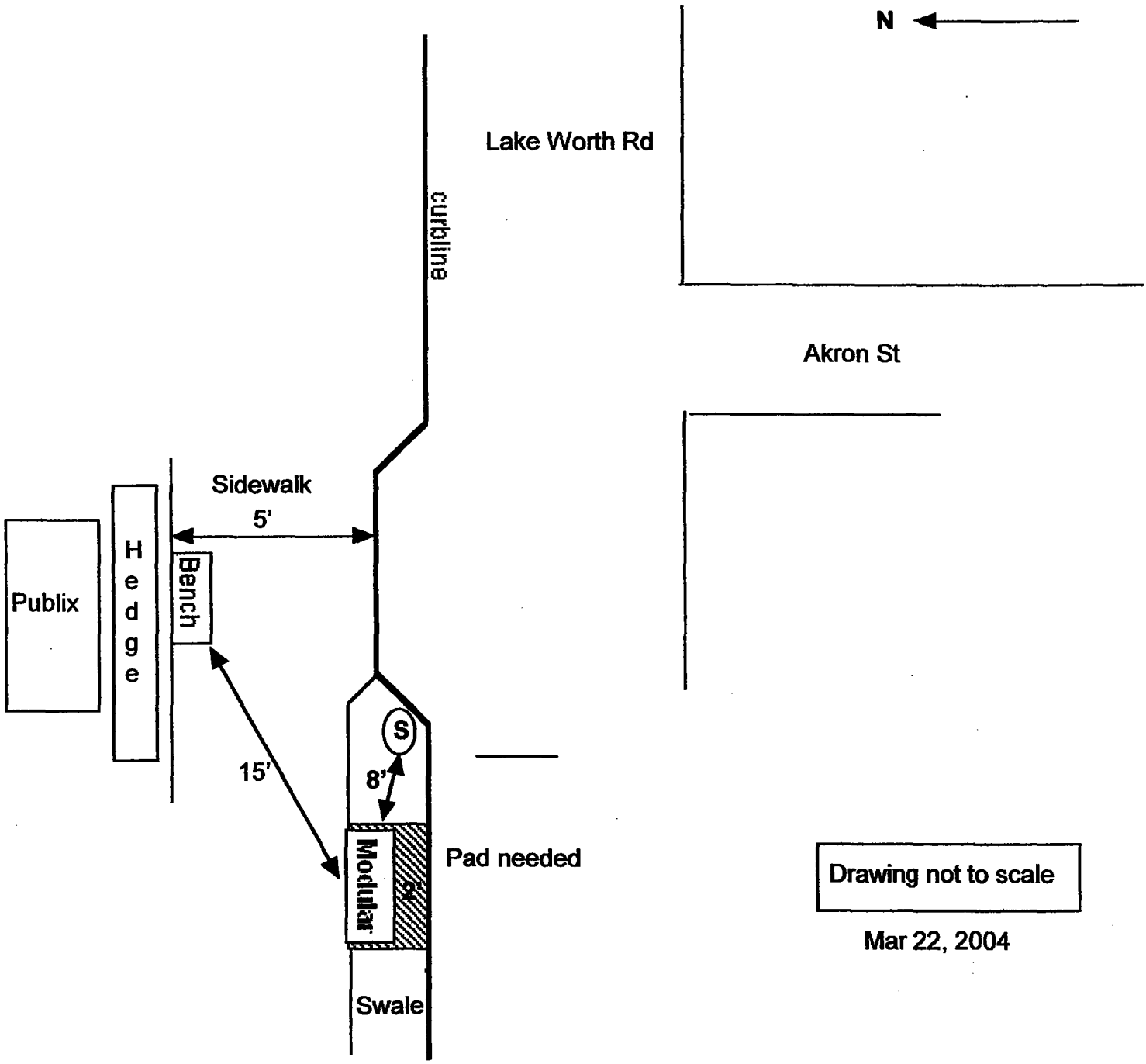
THIS LOCATION STILL UNDER CONSTRUCTION



Drawing not to scale

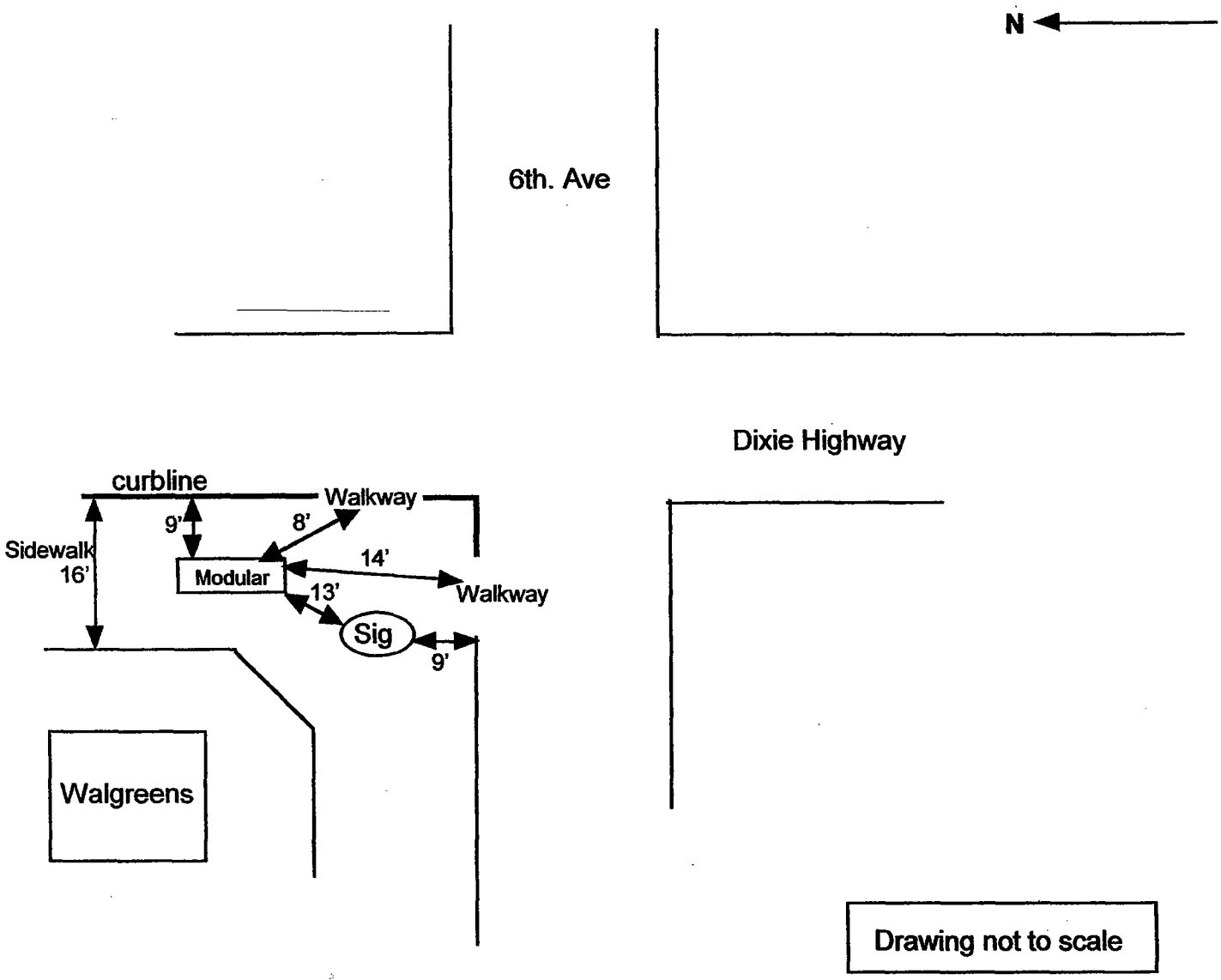
Mar 23, 2004

Proposed Location
City Solutions Modular Newsrack
Location # 16
Lk Worth Rd at Akron St



S = Sign

Proposed Location
City Solutions Modular Newsrack
Location # 17
NW Corner of Dixie and 6th Ave

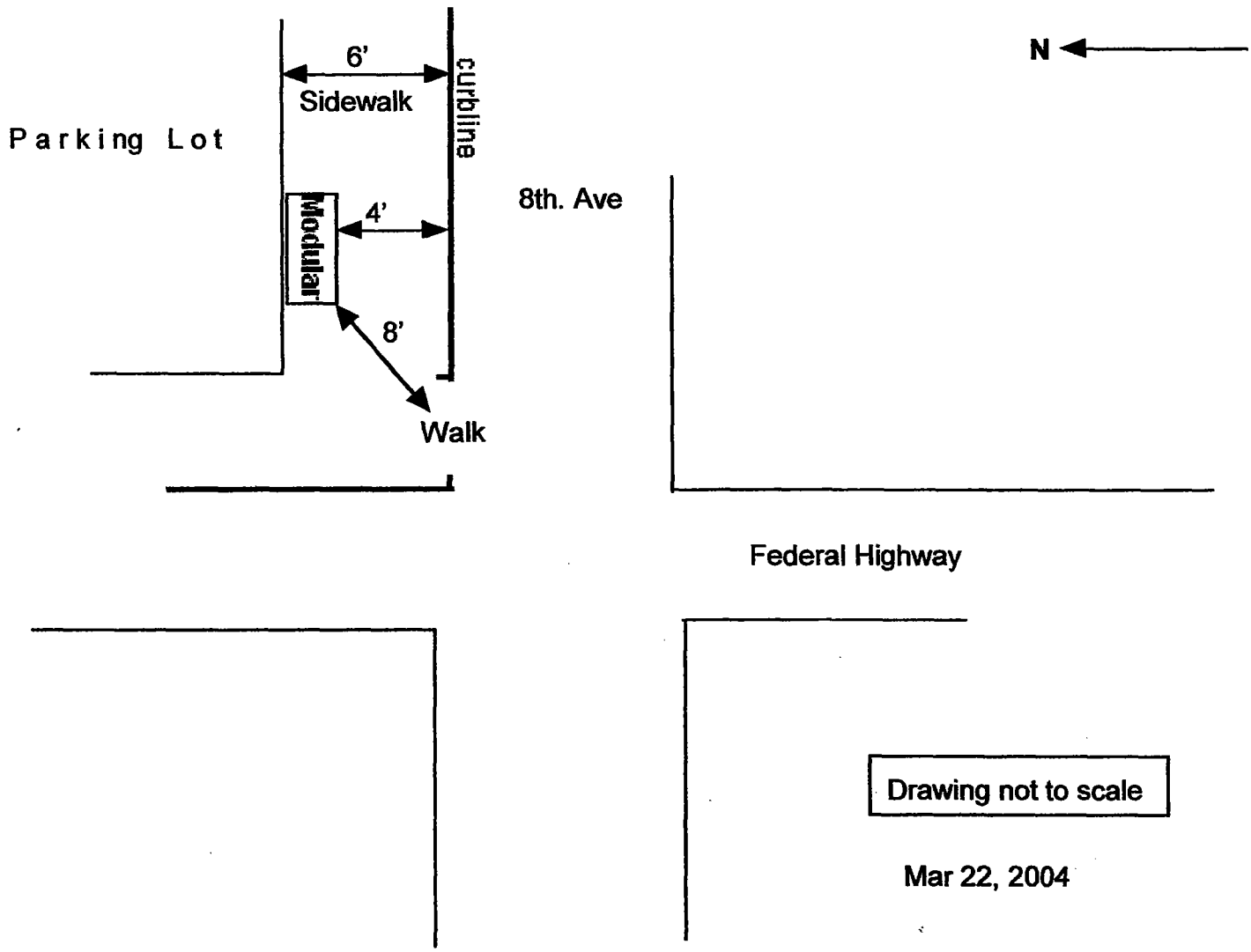


Drawing not to scale

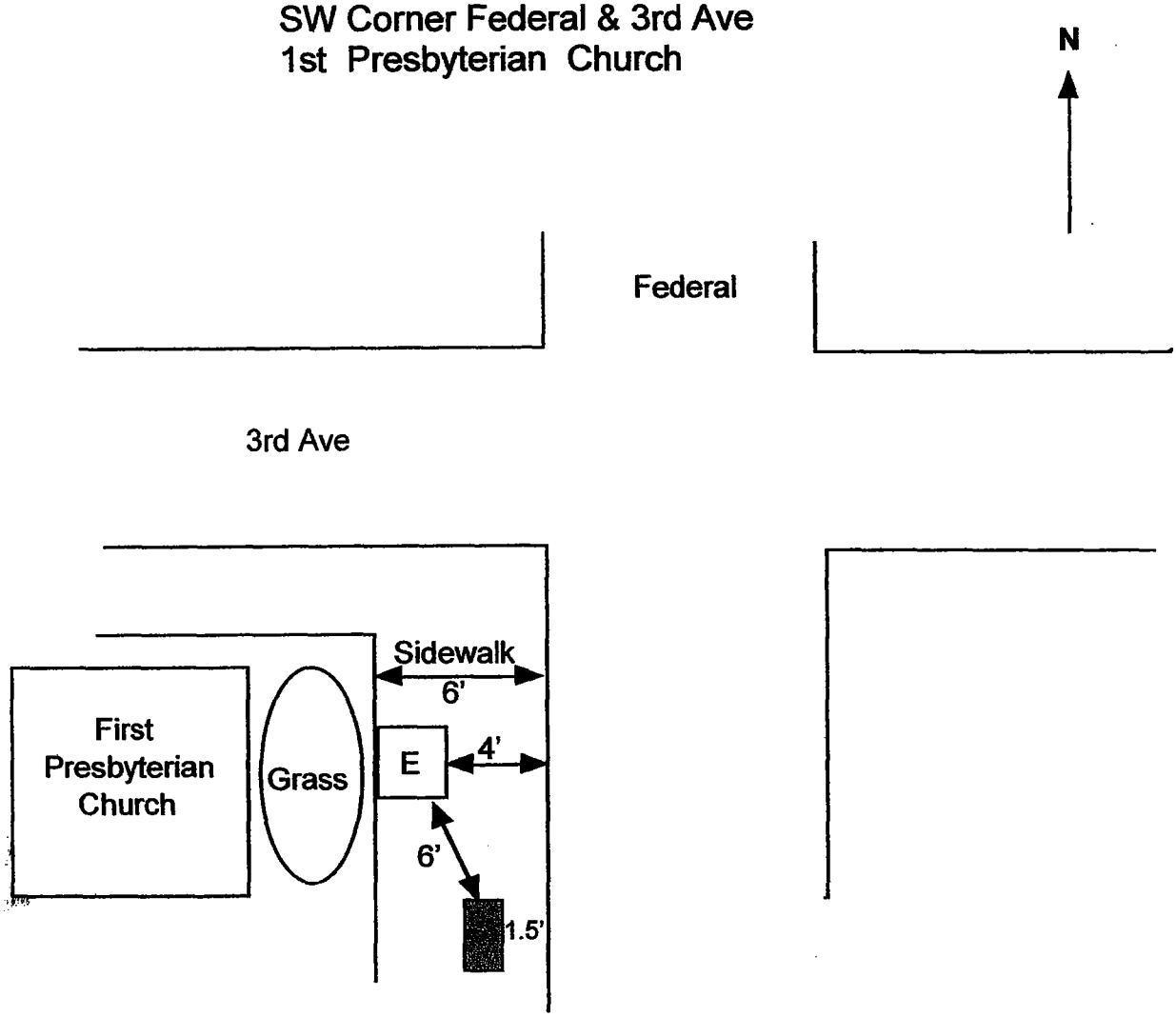
Mar 23, 2004

Sig = Signal light

Proposed Location
City Solutions Modular Newsrack
Location # 18
NE Corner Federal and 8th Ave



Proposed Location
City Solutions Modular Newsrack
Location # 19
SW Corner Federal & 3rd Ave
1st Presbyterian Church



E= Electric Box

Drawing not to scale

Mar 22, 2004

Proposed Location
City Solutions Modular Newsrack
Location # 20
NE Corner Federal and 6th Ave

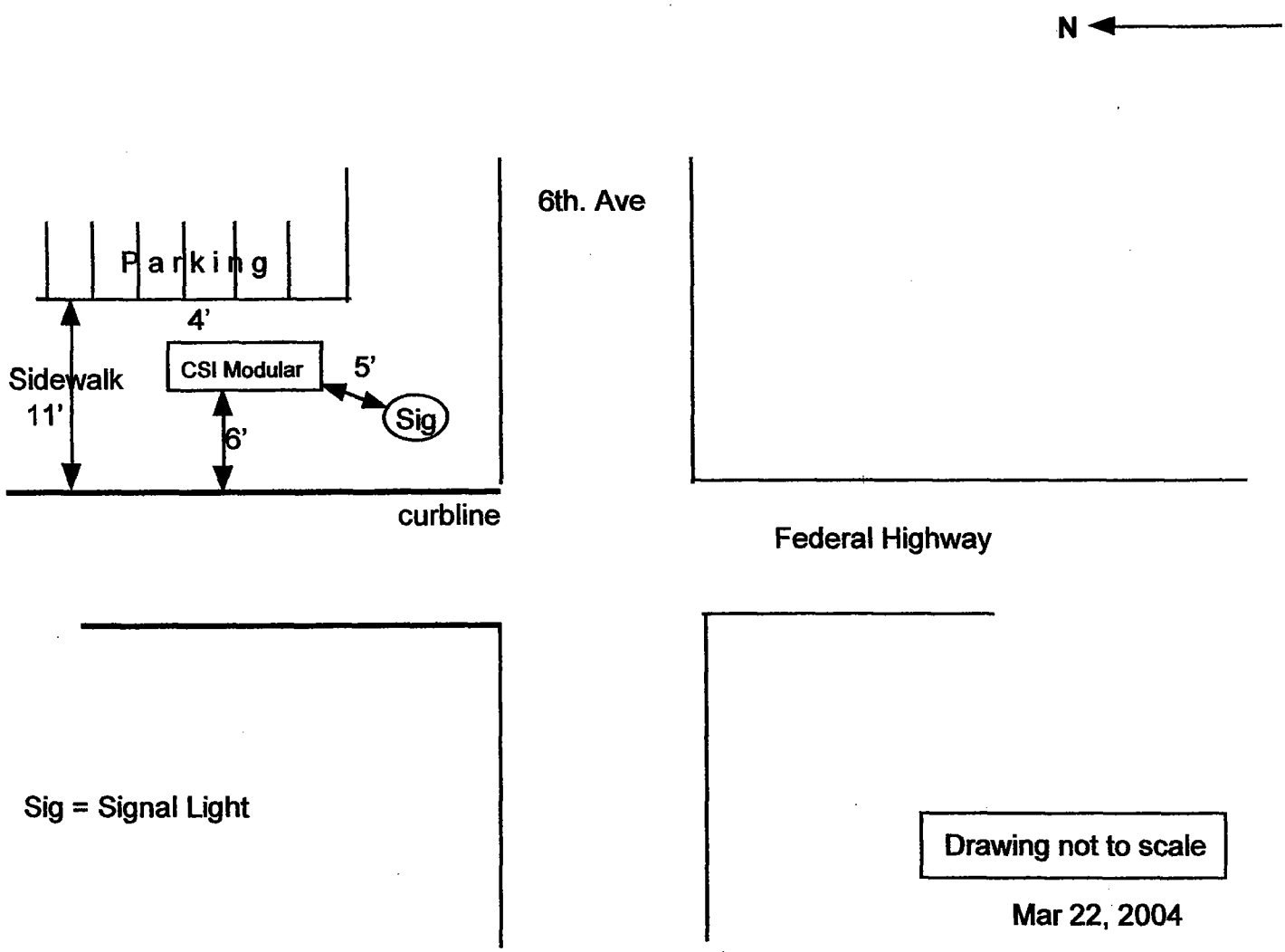


EXHIBIT B

City Solutions' Newsrack Summary

City of Lake Worth, 5/5/04

LOC #	PHYSICAL ADDRESS	ORIENTATION	LANDMARK	TYPE	AD / PSA
1	Beach Area	North End	˙Shelter	18	Yes
2	Beach Area	South End	Shelter	18	Yes
3	Beach Pier	Pier Swale	Pier	18	Yes
4	Bryant Park	Entrance	Park	9	Yes / PSA
5	Lake Ave & S. Lakeside	SE Corner	Gulf Stream Hotel	18	No
6	Lake Ave & Federal Hwy	SW Corner	Majestic	18	Yes
7	Lake Ave & S. M Street	SE Corner	Too Jays	18	No
8	Lucerne & M Street	NW Corner	South Shores	9	No
9	Lucerne & S. J Street	SE Corner	Across from P.O.	18	Yes
10	Lake Ave & J Street	SE Corner	Lan Jau Restaurant	18	No
11	Lake Ave & Dixie Hwy	NE Corner	Arcade Antique Pk Lot	18	PSA
12	120 Dixie Hwy	Mid-block	Wachovia Bank	9	Yes
13	Dixie Hwy & 10th Ave	SE Corner	Insurance Mall	9	Yes
14	Dixie Hwy & 10th Ave	NW Corner	Walgreens	18	Yes
15	Tri-Rail Station	Entrance	Station	18	Yes
16	Lake Worth Rd & Akron St	Swale	Publix	18	Yes
17	Dixie Hwy & 6th Ave	NW Corner	Walgreens	18	Yes
18	Federal Hwy & 8th Ave	NE Corner		9	Yes
19	Federal Hwy & 3rd Ave	Mid-block	First Presbyterian	9	Yes
20	Federal Hwy & 6th Ave	NE Corner		9	Yes

CITY SOLUTIONS
OUTDOOR

CITY SOLUTIONS
OUTDOOR

Gen I	Footprint		Compartment Size
9 Pocket	14" x 43"	Height with arch -52"	9 @ 14" x 14.5"
18 Pocket	14" x 86"	Height with arch -52"	18 @ 14" x 14.5"

3 Tower	Footprint		Compartment Size
	93"x 25"	Height with arch -56"	3 @ 26" x 17" x 16" deep 6 @ 14" x 15.5" x 16' deep

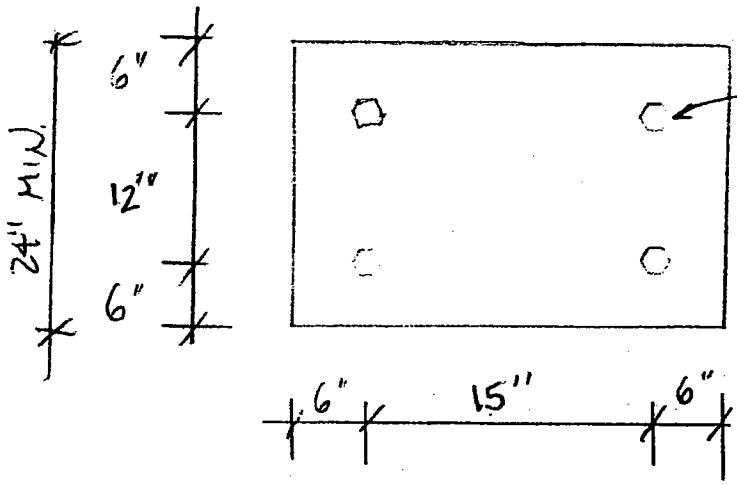
4 Tower	Footprint		Compartment Size
	112" x 25"	Height with arch 54"	16 @ 14"x 15.5" x 16' deep

Ginsburg Engineering, LLC
9858 Glades Road, #237
Boca Raton, Florida 33434
Phone: 483-5547
Fax: 483-0563
ge_llc@bellsouth.net

CALCULATED BY NJG DATE 12-10-
CHECKED BY _____ DATE _____
JOB 01-008 CITY SOLUTIONS
SUBJECT _____

THE DESIGN OF THIS FOUNDATION IS BASED ON ASCE 7-98, V=115 MPH, EXP B FOR 60" TALL X 152½ LONG X 22" DEEP 2 PEDASTAL SYSTEM

BASE UNIT WEIGHT = 150# / PEDASTAL



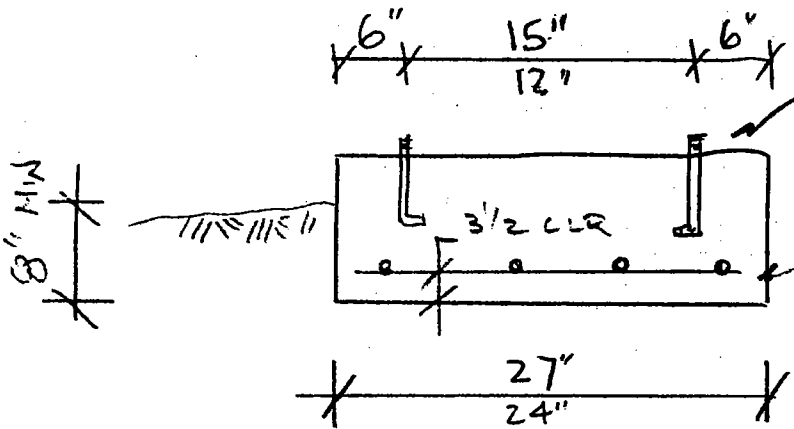
5/8"Ø x 6" EMBEDDED ANCHOR BOLTS (4 TYP.)

27" x 24" x 12" FOOTING W/ #5 @ 12" O.C. BOT

PLAN

SCALE 3/4" = 1'-0"

NOTE: A MINIMUM 6" THICK PAD x 24" WIDE AND TOTAL VOLUME OF CONCRETE = 6 CF



5/8"Ø x 6" EMBEDDED ANCHOR BOLTS (TYP 4)

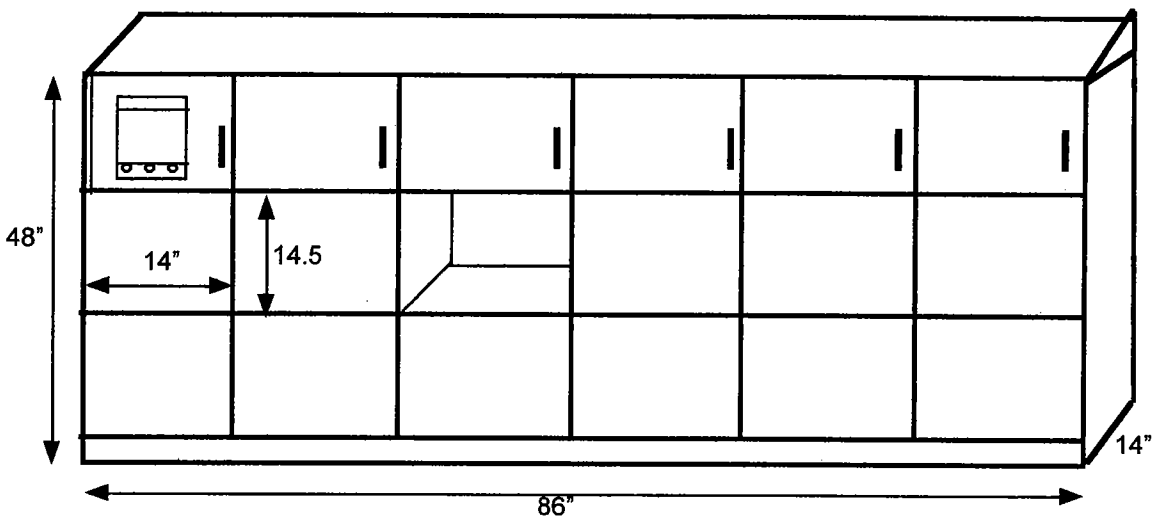
27 x 24 x 12" FOOTING W/ #5 @ 12" O.C. BOT

ELEVATION

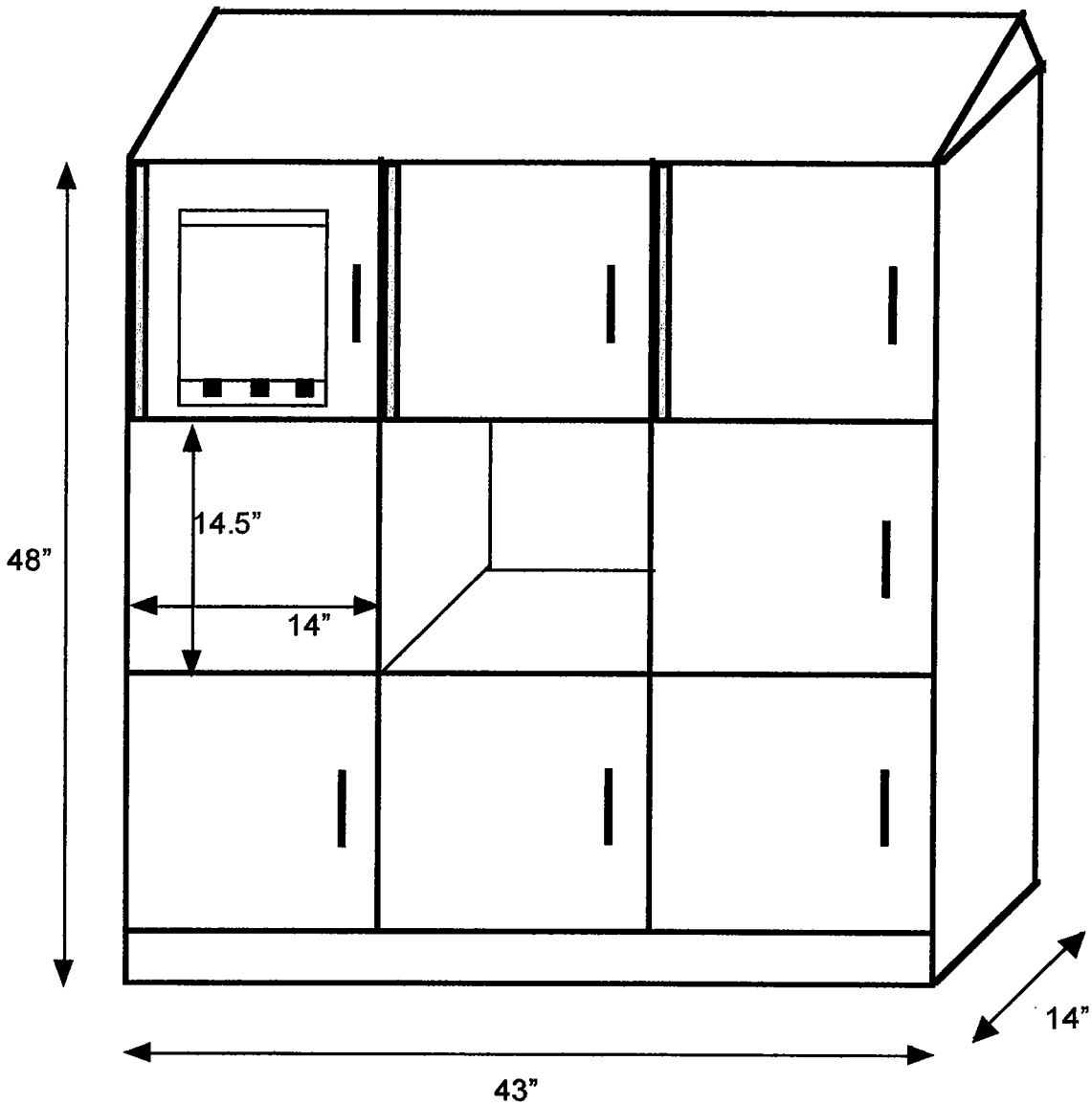
SCALE 3/4" = 1'-0"

3/22/04

Typical 18 Pocket



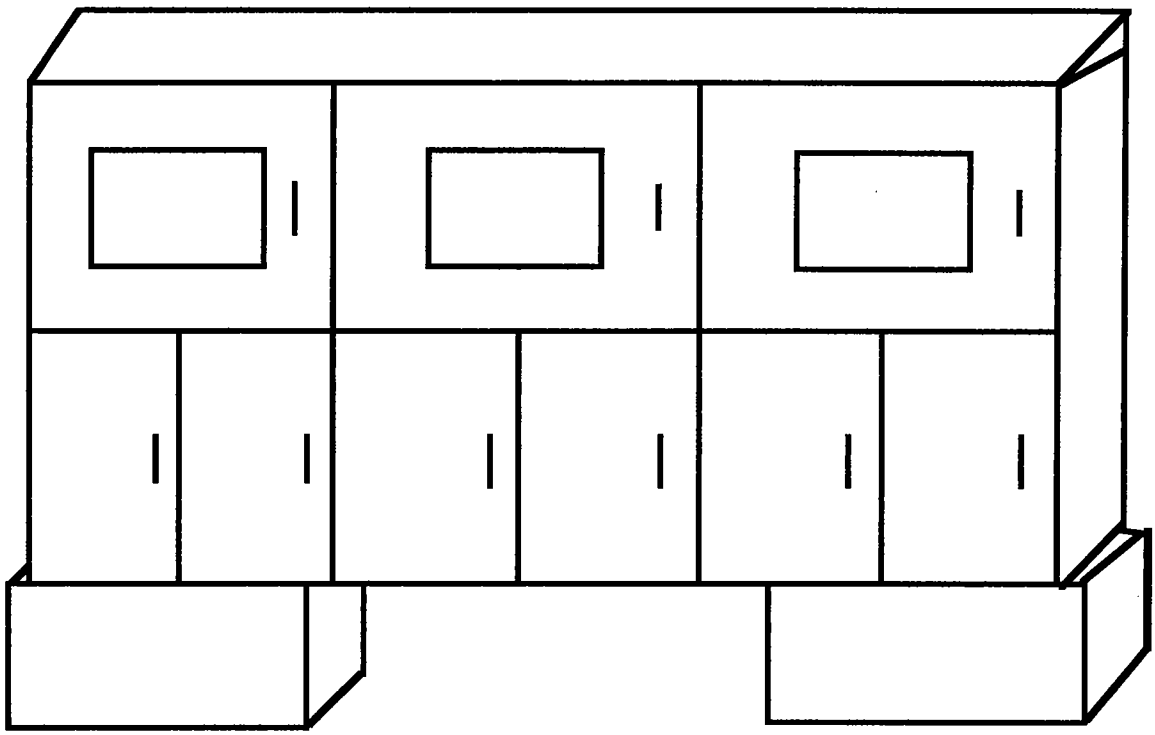
CITY SOLUTIONS
OUTDOOR



Typical 9 Pocket

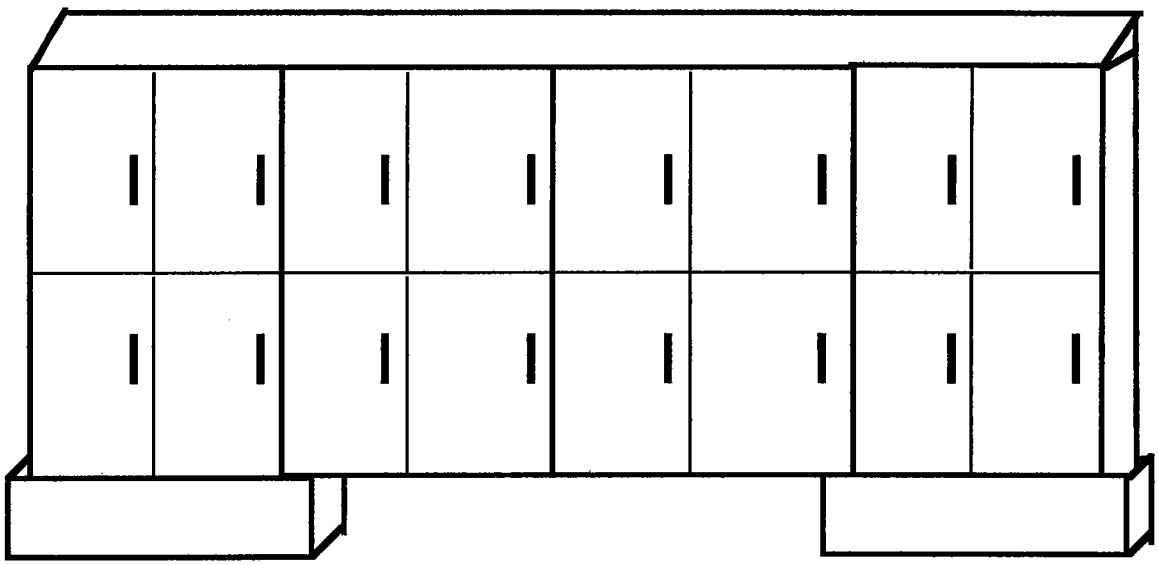
CITY SOLUTIONS
OUTDOOR

Typical 3 Tower



CITY SOLUTIONS
OUTDOOR

Typical 4 Tower



CITY SOLUTIONS
OUTDOOR

EXHIBIT C

CITY SOLUTIONS' ADVERTISING POLICY

***CITY SOLUTIONS'* desires to enhance the quality of life for**
All people who come into contact with our newsracks.

Newsracks play an integral role in every community. At *CITY SOLUTIONS* we are sensitive to reasonable concerns and community standards regarding advertisements displayed on our INFORMATION CENTERS. *CITY SOLUTIONS* also recognizes that standards vary from community to community. For example, advertisements considered appropriate in certain areas of San Francisco or New York may be considered inappropriate in other areas of the country. Advertisements considered acceptable in tobacco producing areas of North Carolina or liquor-producing areas of Kentucky or Tennessee may be unacceptable in other areas of the country. Therefore, *CITY SOLUTIONS'* advertising policy is based upon the specific standards of each community it serves. In Lake Worth, no tobacco advertisements will be allowed.

In addition, *CITY SOLUTIONS* will accept no advertising which is misleading; sexually exploits minors; is legally obscene or overly suggestive; advocates or supports criminal activity; attacks or demeans the character, integrity, or standing of any organization or individual; or that is, in the opinion of *CITY SOLUTIONS'* management, morally reprehensible. Notwithstanding *CITY SOLUTIONS'* stated policies, *CITY SOLUTIONS* will make no attempt to censor or restrict political speech.

CITY SOLUTIONS supports the display of public service messages for worthy community causes by charging a reduced rate for such messages on a space available basis. During the Lake Worth Newsrack Program, *CITY SOLUTIONS* will prioritize advertising for local merchants.

CITY SOLUTIONS
OUTDOOR

East Coast Office: 2200 4th Avenue North #3, Lake Worth, FL 33461 Tel: 561/582-8621
Midwest Office: 6505 East 82nd Street, Suite 101, Indianapolis, IN 46250 Tel: 317/842-6200
West Coast Office: PO Box 40759, Santa Barbara, CA 93140 Tel: 805/969-2294

CITY SOLUTIONS' policy is to never display an advertisement on any of its INFORMATION CENTERS which offends the reasonable sensibilities of the citizens it seeks to serve.

To accomplish this goal, *CITY SOLUTIONS'* advertising representatives are sensitive to particular community's standards in its solicitation and acceptance of advertising for display. Moreover, in every community, *CITY SOLUTIONS* convenes an advisory panel, comprised of concerned citizens and civic leaders who are informed and sensitive to the values of their community.

This panel serves in an advisory capacity, assuring that no advertisement which will offend a segment of the community is allowed to proceed to display. While it is not always possible to please every individual, it is possible to assure that the community as a whole is not offended. In the event that *CITY SOLUTIONS* and its community based advertising panel accepts an advertisement which generates a legitimate complaint to the city, *CITY SOLUTIONS* will, within three business days, begin a review of the offending advertisement. This review, conducted by *CITY SOLUTIONS* staff, and the community based advertising panel will consider the merits of the complaint.

Should this process result in a decision that the complaint is valid; *CITY SOLUTIONS* will remove all copies of said advertising in the city within 5 business days. Additionally, if the community based advertising panel determines that the advertising content is seriously objectionable on grounds which are reasonable and lawful *CITY SOLUTIONS* will remove the advertisement in question.

Conversely, if this process results in allowing the advertisement to remain, then every effort will be made to properly and professionally explain the decision to the offended party, and maintain good corporate relations with all citizens.

EXHIBIT D

PUBLISHER AGREEMENT

(3 pages)

CITY SOLUTIONS, INC. 2200 4th Ave. N. #3, Lake Worth, Florida 33461, (hereinafter **CITY SOLUTIONS**) and_____(hereinafter **COMPANY**), on behalf of the following publication_____
doing business at _____
_____
_____
agree as follows:

1. **AGREEMENT**: This Agreement sets forth an exchange of services between **CITY SOLUTIONS** and **COMPANY**.

COMPANY, WITHIN THE LAKE WOTH MODULAR NEWSRACK DISTRICT:

a) **COMPANY** is not required to participate in the Modular Newsrack Program. The decision to participate is purely voluntary.

b) Once **COMPANY** agrees to participate, **COMPANY** will remove, and keep removed, all individual newsracks, under **COMPANY'S** control, from locations where Publication is contained in a Modular Newsrack, within forty-eight (48) hours after notification of the installation of a **CITY SOLUTIONS'** Newsrack.

c) **COMPANY** agrees to have **CITY SOLUTIONS** move **COMPANY'S** Publication from individual newsracks to their assigned Modular compartment.

d) **COMPANY** shall report all damage, (graffiti, vandalism, etc.) or any need for necessary repairs to **CITY SOLUTIONS**.

e) **COMPANY** agrees to **CITY SOLUTIONS'** "Compartment Etiquette Policy."
   (1) keep compartment well-stocked with current publications
   (2) remove old Publications
   (3) remove trash
   (4) stay in assigned compartment
   (5) do not "sub-lease" compartment
   (6) A compartment will be considered abandoned if two consecutive distribution cycles pass without any current publications distributed therein.

CITY SOLUTIONS, WITHIN THE MODULAR NEWSRACK DISTRICT:

a) provides Modular Newsrack compartments to **COMPANY** for distribution of **COMPANY'S** Publications.

b) provides each compartment with label naming the Publication

c) provides **COMPANY** with a complete list of all locations and compartment positions assigned to **COMPANY** for its use in the Program.

d) provides complete liability insurance for the Newsracks.

e) provides complete maintenance on the Newsracks

2. **TERM**: The term of this Agreement shall run concurrently with, and be the same as, **CITY SOLUTIONS'** contract with the City of Lake Worth, Florida.

3. **TERMINATION**: **COMPANY** agree to provide thirty (30) days notification when terminating participation in this Program

4. **LIABILITIES**: **COMPANY** agrees to indemnify and hold **CITY SOLUTIONS** harmless from and against, any and all, liabilities arising out of the content of its Publication(s).

5. **THIRD PARTY**: Agreement shall terminate upon the sale of Publication to any third party.

6. **NOTICES**: Any notice required under this agreement shall be in writing and it is the responsibility of the sender to verify, and document receipt to the recipient.

7. **DISCLAIMER**: **COMPANY** shall not hold **CITY SOLUTIONS** responsible for unforeseen events that may hinder, disrupt, or terminate the operation of the Lake Worth newsrack program.

8. **LEGAL**: **CITY SOLUTIONS** recommends that **COMPANY** consult an attorney before signing this legal agreement. In the event **CITY SOLUTIONS** is compelled to institute legal actions to enforce any of its rights under this Agreement, **CITY SOLUTIONS** shall be entitled to recover from **COMPANY** all costs thereof, including but not limited to, reasonable attorneys fees. Venue shall be Palm Beach County, State of Florida.

9. **NO FEES TO PUBLISHERS:** At no time will **CITY SOLUTIONS** charge **COMPANY** any fees for using this newsrack system.

10. **ENTIRE AGREEMENT**: This Agreement contains the entire agreement of the parties and there are no other promises or conditions in any other agreement whether oral or written. This agreement supersedes any prior written or oral agreements between the parties.

10. **SIGNATURES**: This agreement may be signed in counterparts which, when taken together, shall constitute one document. Signatures transmitted by facsimile shall be deemed to be the equivalent of original signatures.

Signature Page

CITY SOLUTIONS INC.,

Tom Trento, President

_____

DATE_____

PUBLICATION_____

NAME_____

TITLE_____

ADDRESS_____

_____

_____

PHONE_____

FAX_____

EMAIL_____

SIGNATURE_____

DATE_____

CITY SOLUTIONS
OUTDOOR

DISTRIBUTION AFFIDAVIT

(3 pages)

STATE OF FLORIDA
COUNTY OF PALM BEACH

BEFORE ME, the undersigned authority, personally appeared _____ _____, who upon oath, deposes and says:

1. I am over the age of eighteen (18) years.

2. I am currently employed by _____ (hereinafter referred to as the "Publisher") in the position of _____.

3. In my position with the Publisher, I am authorized to make representations and provide information on behalf of the Publisher of the type of information contained in this affidavit.

4. In my position I have knowledge of the Publisher's operations and have access to the Publisher's records.

5. The Publisher publishes _____ (hereinafter Publication Title), which is a newspaper and/or periodical distributed in Palm Beach County, Florida.

6. The highest number of distribution locations at any one time of the Publication Title through newsracks within Lake Worth Modular Newsrack District between December 12, 2002 and December 12, 2003 was:
TOTAL NEWSRACKS_____ ---- _____(i.e., 9 – Nine)

7. Attached hereto as Exhibit A is a list of the locations of those newsracks referenced in paragraph 6 above.

8. Attached hereto as Exhibit B are those distribution records of the Publisher which establish and confirm that the Publication Title was in fact distributed at those newsrack locations listed in Exhibit A.

9. I have read the information contained in this affidavit and declare that the facts stated in it are true and correct to the best of my knowledge and belief as a representative of the Publisher on behalf of me and the Publisher.

_____
Affiant's signature

Print Affiant's name: _____

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this ____ day of _____, 2004 by _____ (list affiant's name).

_____
Signature of Notary Public

_____
(Print Notary Name)

My Commission Expires:_____
Commission No.:_____
☐ Personally known, or
☐ Produced Identification
Type of Identification Produced

_____

AFFIX NOTARY STAMP

F:\USR\PChipok\57060-1 City Solutions\Docs\Affidavit.wpd

EXHIBIT - A

Please list all locations within the MND (Modular Newsrack District) that your publication has been distributed to on a continual basis for the period starting Dec 12, 2002 and ending Dec. 12, 2003. All listed MND locations must be confirmed and supported by distribution reports/records.

Publication Name: _____

Location (nearest street address)	**Corner** n/e, n/w, s/e, s/w , mid-block	**Landmark**

RESOLUTION NO. 01-2014 OF THE CITY OF LAKE WORTH, FLORIDA, AUTHORIZING THE CITY MANAGER TO EXERCISE THE CITY'S OPTION NOT TO RENEW THE PROFESSIONAL SERVICES AGREEMENT WITH STREET OUTDOORS, LLC, FORMERLY KNOWN AS CITY SOLUTIONS, INC. FOR PLACEMENT OF MODULAR NEWSRACKS WITHIN THE CITY'S BOUNDARIES; AUTHORIZING THE EXECUTION OF ANY NECESSARY DOCUMENTS; AND PROVIDING FOR AN EFFECTIVE DATE.

* * *

WHEREAS, by Resolution No. 2003-47, the City Commission approved a modular newsrack program in the City; and

WHEREAS, on or about May 18, 2004, the City entered into a Professional Services Agreement with Street Outdoors, LLC, f/k/a City Solutions, Inc., for the provision of modular newsracks within the City's boundaries (the "Agreement"); and

WHEREAS, the initial term of the Agreement was for ten (10) years with two consecutive five (5) year extensions, unless the Contractor or City gives written notice at least one hundred and twenty (120) days prior to the expiration of the initial term that it desires to discontinue the Agreement; and

WHEREAS, the initial term of the Agreement is currently set to expire on May 17, 2014; and

WHEREAS, in accordance with Article 1, Term; Extension; Termination, Section 1.02 Extension, of the Agreement, the City wishes to provide Street Outdoors, LLC, f/k/a City Solutions, Inc., written notice of its intention not to extend or renew the Agreement after its expiration on May 17, 2014; and

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

Section 1. The recitals set out above are true and accurate and are hereby a ratified and adopted and are made part of this Resolution.

Section 2. The City Commission hereby approves of the non-renewal of the Agreement with Street Outdoors, LLC, f/k/a City Solutions, Inc., for the provision of modular newsracks within the City's boundaries.

Section 3. The City Commission authorizes the City Manager to provide the required written notice to provide Street Outdoors, LLC f/k/a City Solutions, Inc. written notice of the City's intent not to renew the Agreement and to execute any other document that may be necessary to effectuate the non-renewal.

Section 4. This Resolution shall be effective immediately upon its passage.

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

Mayor Pam Triolo
Vice Mayor Scott Maxwell
Commissioner Christopher McVoy
Commissioner Andy Amoroso
Commissioner John Szerdi

The Mayor thereupon declared this Resolution duly passed and adopted on this 7th day of January, 2014.

LAKE WORTH CITY COMMISSION

By: _____
Pam Triolo, Mayor

ATTEST:

_____
Pamela J. Lopez, City Clerk

CITY OF LAKE WORTH

7 North Dixie Highway · Lake Worth, Florida 33460 · Phone: 561-586-1600· Fax: 561-586-1750

AGENDA DATE: January 7, 2014, Regular Meeting **DEPARTMENT:** Public Services

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EXECUTIVE BRIEF

TITLE:
Resolution No. 02-2014 - authorize CDBG Interlocal Agreement with Palm Beach County for the 9th Avenue South greenway

SUMMARY:

The Resolution authorizes $212,396 in Fiscal Year 2013-2014 Community Development Block Grant (CDBG) funds for the development of a pedestrian friendly greenway in the unimproved public right-of–way of 9th Avenue South between South B and South F Streets.

BACKGROUND AND JUSTIFICATION:
At its meeting of April 16, 2013, the City Commission approved Resolution No. 23-2013 authorizing the submission of an application to Palm Beach County Department of Economic Sustainability (DES) for Fiscal Year 2013-2014 Community Development Block Grant Program funding for infrastructure improvements to develop a pedestrian friendly greenway in the unimproved right-of way of 9th Avenue South from South B Street to South F Street. The actual amount of funding available was initially estimated to be $194,859, subject to final determination by the U.S. Department of Housing and Urban Development (HUD). The amount of funding available has since been announced by HUD to be $212,396.

Specific improvements for the project will consist of clearing and grubbing, fine grading to provide positive surface drainage, sidewalk construction, installation of sod, landscaping, and an irrigation system, and certain site amenities, including fixed trash receptacles and benches. All improvements will be ADA compliant.

It is estimated that the cost for the improvements will be $194,160.75. The project budget provides for a project contingency amount of $18,235.25 (8.6%). There are no matching funds required from the City. An amendment to the Fiscal Year 2014 Budget in this amount is included in the budget amendment agenda item being adopted at this meeting to reflect this grant.

MOTION:
I move to approve/not approve Resolution No. 02-2014

ATTACHMENT(S):
Fiscal Impact Analysis
Resolution
Interlocal Agreement

FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2014	2015	2016	2017	2017
Capital Expenditures	0	0	0	0	0
Operating Expenditures	0	0	0	0	0
External Revenues	212,396	0	0	0	0
Program Income	0	0	0	0	0
In-kind Match	0	0	0	0	0
Net Fiscal Impact	212,396	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:
The Interlocal Agreement sets forth the terms and conditions for the use and reimbursement of these CDBG funds. The City FY 2014 budget is being amended to include this grant.

C. Department Fiscal Review: _____

RESOLUTION NO. 02-2014 OF THE CITY OF LAKE WORTH, FLORIDA, APPROVING THE INTERLOCAL AGREEMENT BETWEEN PALM BEACH COUNTY AND THE CITY IN THE AMOUNT OF $212,396 IN FISCAL YEAR 2013-2014 COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS FOR THE 9TH AVENUE SOUTH PUBLIC RIGHT-OF-WAY IMPROVMENTS PROJECT; AUTHORIZING THE MAYOR TO EXECUTE THE INTERLOCAL AGREEMENT; PROVIDING FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, the City desires to develop a pedestrian friendly greenway in the public right-of-way along 9th Avenue South between South B Street and South F Street, which is currently an unimproved roadway, in order to provide for safer and more efficient flow for pedestrians and bicyclists; and

WHEREAS, the City Commission has approved Resolution No. 26-2013 authorizing the City's application to Palm Beach County for $212,396 in Fiscal Year 2013-2014 Community Development Block Grant (CDBG) funds that have been made available to the City for this project; and

WHEREAS, the proposed infrastructure improvements are an eligible use of CDBG funds; and

WHEREAS, Palm Beach County has prepared an Interlocal Agreement that sets forth the terms and conditions for the use of these CDBG funds for this project; and

WHEREAS, the City desires to enter into this Interlocal Agreement with Palm Beach County for the purpose of developing a pedestrian friendly greenway in the unimproved public right-of-way along 9th Avenue South between South B Street and South F Street.

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

SECTION 1: The City Commission of the City of Lake Worth, Florida, hereby approves the Interlocal Agreement between Palm Beach County and the City in the amount of $212,396 in CDBG funds for the 9th Avenue South Public Right-of-Way Improvements Project.

SECTION 2: The City Commission of the City of Lake Worth, Florida, hereby authorizes the Mayor to execute three originals of the Interlocal Agreement between Palm Beach County and the City for this stated purpose.

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

SECTION 4: This Resolution shall become effective upon adoption.

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

Mayor Pam Triolo
Vice Mayor Scott Maxwell
Commissioner Christopher McVoy
Commissioner Andy Amoroso
Commissioner John Szerdi

Mayor Pam Triolo thereupon declared this Resolution duly passed and adopted on the 7th day of January, 2014.

LAKE WORTH CITY COMMISSION

By:_____
Pam Triolo, Mayor

ATTEST:

_____
Pamela J. Lopez, City Clerk

AGREEMENT BETWEEN PALM BEACH COUNTY

AND

CITY OF LAKE WORTH

THIS AGREEMENT, entered into on _____, by and between Palm Beach County, a political subdivision of the State of Florida, for the use and benefit of its Community Development Block Grant Program, and the City of Lake Worth, a Municipality duly organized and existing by virtue of the laws of the State of Florida, having its principal office at 7 North Dixie Highway, Lake Worth, FL 33460.

WHEREAS, Palm Beach County has entered into an agreement with the United States Department of Housing and Urban Development for a grant for the execution and implementation of a Community Development Block Grant Program in certain areas of Palm Beach County, pursuant to Title I of the Housing and Community Development Act of 1974 (as amended); and

WHEREAS, Palm Beach County, in accord with the annual Action Plan, and the City of Lake Worth, desire to provide the activities specified by this Agreement; and

WHEREAS, Palm Beach County desires to engage the City of Lake Worth to implement such undertakings of the Community Development Block Grant Program.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, it is agreed as follows:

1. DEFINITIONS

(A) "County" means Palm Beach County.
(B) "CDBG" means the Community Development Block Grant Program of Palm Beach County.
(C) "DES" means Palm Beach County Department of Economic Sustainability
(D) "Municipality" means the City of Lake Worth.
(E) "DES Approval" means the written approval of the DES Director or his designee.
(F) "U.S. HUD" means the Secretary of Housing and Urban Development or a person authorized to act on its behalf.
(G) "Low- and Moderate- Income Persons" means the definition set by U.S. HUD.

2. PURPOSE

The purpose of this Agreement is to state the covenants and conditions under which the Municipality will implement the Scope of Services set forth in this Agreement.

3. CDBG ELIGIBLE ACTIVITIES AND NATIONAL OBJECTIVE

The Municipality shall implement the herein described improvements on 9th Avenue South, which activities have been determined to be **Public Facilities and Improvements,** under 24 Code of Federal Regulations (CFR) 570.201(c). Both Parties acknowledge that the eligible activities carried out under this Agreement, as described in the scope of work in Exhibit A, will benefit **Low- and Moderate- Income Persons on an Area-Wide Basis** and meet the National Objective as defined in 24 CFR 570.208(a)(1)(i).

4. **SCOPE OF SERVICES**

The Municipality shall, in a satisfactory and proper manner as determined by DES, perform the tasks necessary to conduct the program outlined in Exhibit A as attached hereto and made a part hereof.

5. **MAXIMUM COMPENSATION**

The Municipality agrees to accept as full payment for services rendered pursuant to this Agreement the actual amount of budgeted, eligible, and DES Director or designee-approved expenditures and encumbrances made by the Municipality, which shall not be unreasonably withheld. These services shall be performed in a manner satisfactory to DES. In no event shall the total compensation or reimbursement to be paid hereunder exceed the maximum and total authorized sum of $212,396 for the period of February 4, 2014, through and including May 31, 2015. Any funds not obligated by the expiration date of this Agreement shall remain with the County and not be eligible for reimbursement to the Municipality.

6. **TIME OF PERFORMANCE**

The effective date of this Agreement and all rights and duties designated hereunder are contingent upon the timely release of funds for this project by U. S. HUD under Grant Numbers B-13-UC-12-0004. The effective date shall be the date of execution of this Agreement, and the services of the Municipality shall be undertaken and completed in light of the purposes of this Agreement. In any event, all services required hereunder shall be completed by the Municipality prior to May 31, 2015.

7. **METHOD OF PAYMENT**

The County agrees to make payments and to reimburse the Municipality for all budgeted costs permitted by Federal, State, and County guidelines. The Municipality shall not request reimbursement for payments made by the Municipality before the effective date of this Agreement, nor shall it request reimbursement for payments made after the expiration date of this Agreement, and in no event shall the County provide advance funding to the Municipality or any subcontractors hereunder. The Municipality shall request payments or reimbursements from the County by submitting to DES proper documentation of expenditures consisting of originals of invoices, receipts, or other evidence of indebtedness, and when original documents cannot be presented, the Municipality may furnish copies if deemed acceptable by DES. Each request for payment or reimbursement submitted by the Municipality shall be accompanied by a letter from the Municipality, provided on the Municipality's letterhead, referencing the name of the project funded herein, the date of this Agreement and/or its document number, and containing a statement requesting the payment or reimbursement and its amount, as well as the name and signature of the person making the request. Payment shall be made by the Palm Beach County Finance Department upon presentation of the aforesaid proper documentation of expenditures as approved by DES. The Municipality may at any time after the expiration of this agreement request from the County reimbursement for payments made by the Municipality during the term of this Agreement by submitting to DES the aforesaid proper documentation of expenditures, and the Palm Beach County Finance Department shall make payment as stated above, provided that DES has determined that the funds allocated to the Municipality through this agreement are still available for payment, and provided that DES approves such payment.

8. **CONDITIONS ON WHICH PAYMENT IS CONTINGENT**

(A) IMPLEMENTATION OF PROJECT ACCORDING TO REQUIRED PROCEDURES

The Municipality shall implement this Agreement in accordance with applicable Federal, State, County, and local laws, ordinances and codes. The Federal, State, and County laws, ordinances and codes are minimal regulations supplemented by more restrictive guidelines set forth by DES. No payments for projects funded by more than one funding source will be made until a cost allocation plan has been approved by the DES Director or designee. Should a project receive additional funding after the commencement of this Agreement, the Municipality shall notify DES in writing

within thirty (30) days of receiving notification from the funding source and submit a cost allocation plan for approval by the DES Director or designee within forty-five (45) days of said official notification.

(B) FINANCIAL ACCOUNTABILITY

The County may have a financial systems analysis and/or an audit of the Municipality or of any of its subcontractors, by an independent auditing firm employed by the County or by the County Internal Audit Department at any time the County deems necessary to determine if the project is being managed in accordance with Federal, State, and County requirements.

(C) SUBCONTRACTS

Any work or services subcontracted hereunder shall be specifically by written contract, written agreement, or purchase order. All subcontracts shall be submitted by the Municipality to DES and approved by DES prior to execution of any subcontract hereunder. All subcontracts shall be subject to Federal, State and County laws and regulations. This includes ensuring that all consultant contracts and fee schedules meet the minimum standards as established by Palm Beach County and HUD. Contracts for architecture, engineering, survey, and planning shall be fixed fee contracts. All additional services shall have prior written approval with support documentation detailing categories of persons performing work plus hourly rates including benefits, number of drawings required, and all items that justify the "Fixed Fee Contract." Reimbursables will be at cost. None of the work or services covered by this Agreement, including, but not limited to, consultant work or services, shall be subcontracted or reimbursed without prior written approval of the DES Director or his designee.

(D) PURCHASING

Purchases for services and goods, including capital equipment, shall be made by purchase order or by a written contract and in conformity with the procedures prescribed by the Palm Beach County Purchasing Code, as well as Federal Management Circulars A-87, A-102, A-128, and 24 CFR Part 85 (a/k/a the Common Rule), which are incorporated herein by reference.

(E) REPORTS, AUDITS, AND EVALUATIONS

Payment will be contingent on the timely receipt of complete and accurate reports required by this Agreement, and on the resolution of monitoring or audit findings identified pursuant to this Agreement.

(F) ADDITIONAL DES, COUNTY, AND U.S. HUD REQUIREMENTS

DES shall have the right under this Agreement to suspend or terminate payments if after fifteen (15) days written notice the Municipality has not complied with any additional conditions that may be imposed, at any time, by DES, the County, or U.S. HUD.

(G) PRIOR WRITTEN APPROVALS - SUMMARY

The following activities among others require the prior written approval of the DES Director or designee to be eligible for reimbursement or payment:

(1) All subcontracts and agreements pursuant to this Agreement;
(2) All capital equipment expenditures of $1,000 or more;
(3) All out-of-county travel; (travel shall be reimbursed in accordance with Florida Statutes, Chapter 112.061);
(4) All change orders;
(5) All requests to utilize uncommitted funds after the expiration of this Agreement for programs described in Exhibit A; and
(6) All rates of pay and pay increases paid out of CDBG funds, whether for merit or cost of living.

(H) PROGRAM - GENERATED INCOME

All income earned by the Municipality from activities financed, in whole or in part, by funds provided hereunder must be reported and returned annually to DES. Such income shall only be used to undertake the activities authorized by this Agreement. DES must verify and approve the eligibility and reasonableness of all expenses which the Municipality requests to be deducted. Accounting and disbursement of such income shall comply with OMB Circular A-110 and other applicable regulations incorporated herein by reference.

The Municipality may request that said program income be used to fund other eligible uses, subject to DES approval, and provided that the Municipality is in compliance with its obligations as contained within this Agreement (including the attached Exhibits herein). The Municipality shall only use such program income to fund "basic eligible activities" as defined by Federal Community Development Block Grant Regulations (24 CFR Part 570). The Municipality hereby agrees that the provisions of this Agreement shall also apply to these "basic eligible activities" as funded with the Municipality's program income.

The requirements of this section shall survive the expiration of this Agreement.

9. OPPORTUNITIES FOR RESIDENTS AND CIVIL RIGHTS COMPLIANCE

The Municipality agrees that no person shall on the ground of race, color, ancestry, disability, national origin, religion, age, familial status, marital status, sex, gender, sexual orientation, or gender identity or expression, be excluded from the benefits of, or be subjected to discrimination under any activity carried out by the performance of this Agreement. Upon receipt of evidence of such discrimination, the County shall have the right to terminate this Agreement. To the greatest extent feasible, lower-income residents of the project areas shall be given opportunities for training and employment; and to the greatest feasible extent eligible business concerns located in or owned in substantial part by persons residing in the project areas shall be awarded contracts in connection with the project. The Municipality shall comply with the Section 3 Clause of the Housing and Community Development Act of 1968.

10. OPPORTUNITIES FOR SMALL AND MINORITY/WOMEN-OWNED BUSINESS ENTERPRISES

In the procurement of supplies, equipment, construction, or services to implement this Agreement, the Municipality shall make a positive effort to utilize small business and minority/women-owned business enterprises of supplies and services, and provide these sources the maximum feasible opportunity to compete for contracts to be performed pursuant to this Agreement. To the maximum extent feasible these small business and minority/women- owned business enterprises shall be located in or owned by residents of the CDBG areas designated by Palm Beach County in the CDBG Annual Consolidated Plan approved by U.S. HUD.

11. PROGRAM BENEFICIARIES

At least fifty-one percent (51%) of the beneficiaries of a project funded through this Agreement must be Low- and Moderate- Income Persons. If the project is located in an entitlement city, as defined by U.S. HUD, or serves beneficiaries countywide, at least fifty-one percent (51%) of the beneficiaries directly assisted through the use of funds under this Agreement must reside in unincorporated Palm Beach County or in municipalities participating in the County's Urban County Qualification Program. The project funded under this Agreement shall assist beneficiaries as defined above for the time period designated in this Agreement. Upon request from DES, the Municipality shall provide written verification of compliance.

12. EVALUATION AND MONITORING

The Municipality agrees that DES will carry out monitoring and evaluation activities as determined necessary by DES and that payment, reimbursement, or the continuation of this Agreement is dependent upon satisfactory evaluation conclusions based on the terms of this Agreement. The Municipality agrees to furnish upon request to

DES, or the County's designees copies of transcriptions of such records and information as is determined necessary by DES. The Municipality shall submit status reports required under this Agreement on forms approved by DES to enable DES to evaluate progress. The Municipality shall provide information as requested by DES to enable DES to complete reports required by the County or HUD. The Municipality shall allow DES, or HUD to monitor the Municipality on site. Such visits may be scheduled or unscheduled as determined by DES or HUD.

13. AUDITS AND INSPECTIONS

At any time during normal business hours and as often as DES, the County, U.S. HUD, or the Comptroller General of the United States may deem necessary, there shall be made available by the Municipality to DES, U.S. HUD, or the Comptroller General for examination all its records with respect to all matters covered by this Agreement. If during the year, the Municipality expends over $500,000 of Federal awards, the Municipality shall comply with the provisions of OMB Circular A-133. The Municipality shall submit a single audit, including any management letter, made in accordance with the general program requirements of OMB Circulars A-110, A-122, A-133, and other applicable regulations within the earlier of, 30 days after receipt of the auditor's report(s), or nine (9) months after the end of the audit period in which DES-administered funds are expended. Said audit shall be made by a Certified Public Accountant of the Municipality's choosing, subject to the County's approval. In the event the Municipality anticipates a delay in producing such audit, the Municipality shall request an extension in advance of the deadline. The cost of said audit shall be borne by the Municipality. In the event the Municipality is exempt from having an audit conducted under A-133, the Municipality shall submit audited financial statements and/or the County reserves the right to conduct a "limited scope audit" of the Municipality as defined by A-133. Technical assistance will be provided to the Municipality, as deemed necessary by the County.

14. UNIFORM ADMINISTRATIVE REQUIREMENTS

The Municipality agrees to comply with the applicable uniform administrative requirements as described in Federal CDBG Regulations 24 CFR 570.502.

15. CDBG FUNDING AT EXPIRATION

Upon expiration or termination of this Agreement, any funds not obligated by the Municipality shall remain with the County and shall no longer be available for reimbursement to the Municipality. Municipality shall transfer to the County any accounts receivable that are attributable to the use of CDBG funds. Any real property under the Municipality's control upon expiration of this Agreement which was acquired or improved in whole or part with CDBG in the excess of $25,000 must either be used to meet one of the national objectives in Federal CDBG Regulations 24 CFR 570.508 for a period of five years after expiration of this Agreement (unless a longer period is specified elsewhere in this Agreement), or, the Municipality shall pay the County an amount equal to the current market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for the acquisition of, or improvement to, the property.

16. DATA BECOMES COUNTY PROPERTY

All reports, plans, surveys, information, documents, maps, and other data procedures developed, prepared, assembled, or completed by the Municipality for the purpose of this Agreement shall be made available to the County by the Municipality upon request by the County, DES, or the Palm Beach County Inspector General's office, as indicated herein. Upon completion of all work contemplated under this Agreement copies of all documents and records relating to this Agreement shall be surrendered to DES, if requested. The Municipality shall keep all documents and records for five (5) years after expiration of this Agreement.

17. INDEMNIFICATION

Each party to this Agreement shall be liable for its own actions and negligence and, to the extent permitted by law, the County shall indemnify, defend, and hold harmless the Municipality against any actions, claims, or damages arising out of the County's negligence in connection with this Agreement, and the Municipality shall indemnify,

defend, and hold harmless the County against any actions, claims, or damages arising out of the Municipality's negligence in connection with this Agreement. The foregoing indemnification shall not constitute a waiver of sovereign immunity beyond the limits set forth in Florida Statute, section 768.28, nor shall the same be construed to constitute agreement by either party to indemnify the other party for such other party's negligent, willful or intentional acts or omissions. The Municipality shall hold the County harmless and shall indemnify the County for funds which the County is obligated to refund the Federal Government arising out of the conduct of activities and administration of the Municipality. The provisions of this indemnification clause shall survive the termination of this Agreement.

18. INSURANCE BY MUNICIPALITY:

Without waiving the right to sovereign immunity as provided by S. 768.28 F.S., the Municipality acknowledges to be self-insured for General Liability and Automobile Liability under Florida sovereign immunity statutes with coverage limits of $200,000 Per Person and $300,000 Per Occurrence; or such monetary waiver limits that may change and be set forth by the legislature.

In the event the Municipality maintains third-party Commercial General Liability and Business Auto Liability in lieu of exclusive reliance of self-insurance under s.768.28 F.S., the Municipality shall agree to maintain said insurance policies at limits not less than $500,000 combined single limit for bodily injury or property damage

The Municipality agrees to maintain or to be self-insured for Workers' Compensation & Employer's Liability insurance in accordance with Florida Statute 440.

When requested, the Municipality shall agree to provide an affidavit or Certificate of Insurance evidencing insurance, self-insurance and/or sovereign immunity status, which County agrees to recognize as acceptable for the above mentioned coverage.

Compliance with the foregoing requirements shall not relieve the Municipality of its liability and obligations under this Agreement.

19. MAINTENANCE OF EFFORT

The intent and purpose of this Agreement is to increase the availability of the Municipality's services. This Agreement is not to substitute for or replace existing or planned projects or activities of the Municipality. The Municipality agrees to maintain a level of activities and expenditures, planned or existing, for projects similar to those being assisted under this Agreement which is not less than that level existing prior to this Agreement.

20. CONFLICT OF INTEREST

The Municipality covenants that no person who presently exercises any functions or responsibilities in connection with the Project, has any personal financial interest, direct or indirect, in the target areas or any parcels therein, which would conflict in any manner or degree with the performance of this Agreement and that no person having any conflict of interest shall be employed by or subcontracted by the Municipality. Any possible conflict of interest on the part of the Municipality or its employees shall be disclosed in writing to DES provided, however, that this paragraph shall be interpreted in such a manner so as not to unreasonably impede the statutory requirement that maximum opportunity be provided for employment of and participation of low and moderate-income residents of the project area.

21. CITIZEN PARTICIPATION

The Municipality shall cooperate with DES in the implementation of the Citizen Participation Plan by establishing a citizen participation process to keep residents informed of the activities the Municipality is undertaking in carrying out the provisions of this Agreement. Representatives of the Municipality shall attend meetings and assist DES in the implementation of the Citizen Participation Plan, as requested by DES.

22. RECOGNITION

All facilities purchased or constructed pursuant to this Agreement shall be clearly identified as to funding source. The Municipality will include a reference to the financial support herein provided by DES in all publications and publicity. In addition, the Municipality will make a good faith effort to recognize DES's support for all activities made possible with funds made available under this Agreement.

23. AGREEMENT DOCUMENTS

The following documents are herein incorporated by reference and made a part hereof, and shall constitute and be referred to as the Agreement; and all of said documents taken as a whole constitute the Agreement between the parties hereto and are as fully a part of the Agreement as if they were set forth verbatim and at length herein:

(A) This Agreement, including its Exhibits, which the County may revise from time to time, as required, and to be provided for use by the Agency;
(B) Office of Management and Budget Circulars A-87, A-102, A-133, and 24CFR Part 85;
(C) Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, and Title II of the Americans with Disabilities Act of 1990;
(D) Executive Orders 11246, 11478, 11625, 12432, the Davis Bacon Act, and Section 3 of the Housing and Community Development Act of 1968, and the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended;
(E) Executive Orders 11063, 12259, 12892, Fair Housing Act of 1988, and Section 109 of the Housing and Community Development Act of 1974, as amended;
(F) Florida Statutes, Chapter 112;
(G) Palm Beach County Purchasing Code;
(H) Federal Community Development Block Grant Regulations (24 CFR Part 570), and Federal Consolidated Plan Regulations (24 CFR Part 91), as amended;
(I) The Municipality's personnel policies and job descriptions; and
(J) The Municipality's Certificate of Insurance.

The Municipality shall keep an original of this Agreement, including its Exhibits, and all Amendments thereto, on file at its principal office.

24. TERMINATION

In event of termination for any of the following reasons, all finished or unfinished documents, data studies, surveys, drawings, maps, models, photographs, reports prepared, and capital equipment secured by the Municipality with funds under this Agreement shall be returned to DES or the County.

In the event of termination, the Municipality shall not be relieved of liability to the County for damages sustained by the County by virtue of any breach of the Agreement by the Municipality, and the County may withhold any payment to the Municipality for set-off purposes until such time as the exact amount of damages due to the County from the Municipality is determined.

(A) TERMINATION FOR CAUSE

If through any cause either party shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if either party shall violate any of the covenants, agreements, or stipulations of this Agreement, either party shall thereupon have the right to terminate this Agreement in whole or part by giving a fifteen (15) working day written notice of such termination to the other party and specifying therein the effective date of termination.

(B) TERMINATION FOR CONVENIENCE

At any time during the term of this Agreement, either party may, at its option and for any reason, terminate this Agreement upon ten (10) working days written notice to the other party. Upon termination, the County shall pay the Municipality for services rendered pursuant to this Agreement through and including the date of termination. If Municipality elects to terminate the

Agreement after CDBG funds have been expended and the national objective will not be met, the Municipality is responsible to refund to the County funds equivalent to the CDBG dollars expended on the project. The County may withhold future CDBG allocations pending the Municipality's compliance with the national objective requirement and/or the repayment of CDBG funds.

(C) TERMINATION DUE TO CESSATION
In the event the grant to the County under Title I of the Housing and Community Development Act of 1974 (as amended) is suspended or terminated, this Agreement shall be suspended or terminated effective on the date the U.S. HUD specifies.

25. SEVERABILITY OF PROVISIONS
If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected thereby if such remainder would then continue to conform to the terms and requirements of applicable law.

26. AMENDMENTS
The County may, at its discretion, amend this Agreement to conform with changes required by Federal, State, County, or U.S. HUD guidelines, directives, and objectives. Such amendments shall be incorporated by written amendment as a part of this Agreement and shall be subject to approval of the Palm Beach County Board of County Commissioners. Except as otherwise provided herein, no amendment to this Agreement shall be binding on either party unless in writing, approved by the Board of County Commissioners and the governing body of the Municipality, and signed by both parties.

27. NOTICES
All notices required to be given under this Agreement shall be sufficient when delivered to DES at its office at 100 Australian Avenue, Suite 500, West Palm Beach, Florida 33406, and to the Municipality when delivered to its address on Page 1 of this Agreement.

28. INDEPENDENT AGENT AND EMPLOYEES
The Municipality agrees that, in all matters relating to this Agreement, it will be acting as an independent agent and that its employees are not Palm Beach County employees and are not subject to the County provisions of the law applicable to County employees relative to employment, hours of work, rates of compensation, leave, unemployment compensation and employee benefits.

29. NO FORFEITURE
The rights of the County under this Agreement shall be cumulative and failure on the part of the County to exercise promptly any rights given hereunder shall not operate to forfeit or waive any of the said rights.

30. PUBLIC ENTITY CRIMES
As provided in F.S. 287.133 by entering into this Agreement or performing any work in furtherance hereof, the Municipality certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the thirty six (36) months immediately preceding the date hereof. This notice is required by F.S. 287.133 (3)(a).

31. PALM BEACH COUNTY OFFICE OF THE INSPECTOR GENERAL
Palm Beach County has established the Office of Inspector General in Palm Beach County Code, Section 2-421 - 2-440, as may be amended. The Inspector General's authority includes, but is not limited to, the power to review past, present and proposed County contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of the Agency, its officers, agents, employees, and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud. Failure to cooperate with the Inspector General or interfering with or impeding any investigation

shall be in violation of Palm Beach County Code, Section 2-421 to 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

32. EXCLUSION OF THIRD PARTY BENEFICIARIES

No provision of this Agreement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Agreement, including but not limited to any citizen or employees of the County and/or the Municipality.

33. COUNTERPARTS OF THE AGREEMENT

This Agreement, consisting of nineteen (19) enumerated pages which include the Exhibits referenced herein, shall be executed in three (3) counterparts, each of which shall be deemed to be an original, and such counterparts will constitute one and the same instrument. A copy of this Agreement shall be filed with the Clerk of the Circuit Court in and for Palm Beach County.

34. ENTIRE UNDERSTANDING

This Agreement and its provisions merge any prior agreements, if any, between the parties hereto and constitutes the entire understanding. The parties hereby acknowledge that there have been and are no representations, warranties, covenants, or undertakings other than those expressly set forth herein.

WITNESS our Hands and Seals on this _____ day of _____, 2013.

(MUNICIPALITY SEAL BELOW)

CITY OF LAKE WORTH

By: _____
Pam Triolo, Mayor

By: _____
Pamela J. Lopez, City Clerk

By: _____
Attorney for Municipality
(Signature Optional)

(COUNTY SEAL BELOW)

PALM BEACH COUNTY, FLORIDA, a Political Subdivision of the State of Florida BOARD OF COUNTY COMMISSIONERS

By: _____
Priscilla A. Taylor, Mayor
Palm Beach County

ATTEST: Sharon R. Bock,
Clerk & Comptroller

By: _____
Deputy Clerk

Document No.: _____

Approved as to Form and
Legal Sufficiency

By: _____
Tammy K. Fields,
Chief Assistant County Attorney

Approved as to Terms and Conditions
Department of Economic Sustainability

By: _____
Sherry Howard,
Deputy Director

EXHIBIT A
WORK PROGRAM NARRATIVE

1. MUNICIPALITY OBLIGATIONS:

A. PROFESSIONAL SERVICES: The Municipality, using its own resources, shall retain an engineering consultant (a Florida Professional Engineer) to provide design services to create plans and specifications for the construction of a greenway on 9th Avenue South from South "B" Street to South "F" Street in the City of Lake Worth. Additionally, the Municipality and the consultant shall prepare, obtain and review bids, prepare contract documents, inspect work in progress, recommend payment to contractors, and provide other professional services customarily provided by similar professionals for this type of project. The consultant shall also coordinate the design and construction work with the asbestos abatement contractor, should such abatement become necessary.

Alternatively, the Municipality shall have the option of performing any portion of the consultant's services described above by its own staff provided such staff possesses the necessary competency to do so. All costs associated with the above services shall be paid for by the Municipality.

B. PROJECT SCOPE: The scope of work for the project includes, but shall not be limited to, the following greenway improvements on 9th Avenue South from South "B" Street to South "F" Street in the City of Lake Worth:

Clearing and grubbing of the project site, fine grading to provide positive surface drainage, sidewalk construction, installation of sod, landscaping, an irrigation system and certain site amenities, including fixed trash receptacles and benches.

(1) Should the Municipality use brand names in the bid package/drawings/ specifications for this project, then these documents shall:

(a) Clearly note that the specified brand name is used for descriptive purposes only,
(b) State that "equal" equipment or materials will be accepted, and
(c) Identify the minimum requirements to establish equality.

The Municipality agrees that the use of more than one brand name shall not be regarded as having met the above requirements.

(2) The Municipality shall submit its bid package/drawings/specifications, and an itemized opinion of probable construction cost prepared by its consultant, to DES and obtain a letter of approval prior to bidding the construction work. Furthermore, the Municipality shall obtain DES approval prior to issuing any addenda to its bid documents for this project.

(3) The Municipality shall prioritize the work in the project, and shall bid such work in a manner that would allow the receipt of itemized costs from bidders which would then allow the award of items that can be funded by the budget provided that the extent of work awarded will result in a functioning bikeway/greenway in the opinion of DES.

(4) The Municipality shall assure that neither the prime contractor nor any subcontractor shall be allowed to perform one hundred percent (100%) of their work on this project on nights, weekends, or County recognized holidays, and shall assure that the prime contractor and all subcontractors shall, at a minimum, perform work on this project for the duration of one regular working day. The Municipality may request DES for a waiver to the above requirement should the nature of the project so necessitate, and in such instance, DES may, at its discretion, grant the Municipality such waiver.

(5) The Municipality shall not award the construction contract for the project until sufficient funding is available to complete the established scope of work. All construction work shall be included in one contract. The Municipality shall obtain DES approval prior to awarding the construction contract to be funded through this Agreement. After awarding such contract, the Municipality shall obtain DES approval prior to executing any change orders to such contract.

(6) Should the construction contract amount for this project exceed the amount to be funded by the County for construction costs through this Agreement, then the Municipality shall fund all amounts in excess of the amount to be funded by the County. The Municipality shall first disburse 100% of their funds toward the contract amount and provide DES with satisfactory documentation in this regard. DES will then fund the contract amount contained herein and as presently available in this project's budget in the form of reimbursements to the Municipality.

The Municipality may request the County to participate with a portion of the County's funding for construction costs first prior to participating with its funds. Under such a scenario, the Municipality would disburse an amount up to 75% of the County's funding amount made available for the project through this Agreement for construction costs and request reimbursement from the County for such amount, then disburse its portion of funding for the project (without being reimbursed by the County for such amount), and finally, the Municipality would disburse an amount equivalent to the County's remaining funding amount made available for the project through this Agreement for construction costs and request reimbursement from the County for such amount.

(7) The Municipality shall not request reimbursement from DES for materials or equipment received and stored on the project site or elsewhere. The Municipality shall only request reimbursement for materials and equipment that have been installed.

(8) The Municipality shall inform DES of any environmental findings or conditions discovered during activity implementation. Applicable mitigation measures must be incorporated in order to proceed with the project. Such mitigation measures may affect the total project cost.

The Municipality further agrees that DES, in consultation with any parties it deems necessary, shall be the final arbiter on the Municipality's compliance with the above.

C. **ASBESTOS REQUIREMENTS:** The Municipality shall comply with all applicable requirements contained in Exhibit C, attached hereto, for construction work in connection with the project funded through this Agreement.

D. **DAVIS-BACON ACT:** The Municipality shall request the County to obtain a Davis-Bacon wage decision for the project prior to advertising the construction work. The Municipality shall incorporate a copy of the Davis-Bacon wage decision and disclose the requirements of the Davis-Bacon Act in its construction bid solicitation and contract.

E. **BONDING REQUIREMENTS:** The Municipality shall comply with the requirements of 24 CFR Part 85 in regard to bid guarantees, performance bonds, and payment bonds. For contracts exceeding $100,000, the Municipality shall require a bid guarantee from each bidder equivalent to five percent (5%) of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified. In addition, for contracts exceeding $100,000, the Municipality shall also require a performance bond on the part of the contractor for 100 percent (100%) of the contract price and a payment bond on the part of the contractor for 100 percent (100%) of the contract price.

A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract. All bonds shall be executed by a corporate surety company of recognized standing, authorized to do business in the State of Florida. The Municipality may follow its own requirements relating to bid guarantees, performance bonds, and payment bonds for contracts of $100,000, or less.

F. **CONSTRUCTION PAYMENT RETAINAGE:** Throughout the term of this contract, the Municipality shall withhold retainage upon each progress draw at the maximum percentage allowed by Florida law. The Municipality shall abide by Florida law regarding the payment of retainage funds and project closeout procedures. The Municipality shall ensure that its contractor and subcontractors have complied with the requirements of the Davis-Bacon Act, and that satisfactory project closeout documentation has been submitted and approved by DES before final reimbursement or payment can be processed.

G. **FORMER PROJECTS:** The Municipality shall maintain all previously completed CDBG funded projects. Failure to do so will result in forfeiture of future CDBG funds and will delay funding for ongoing activities.

H. **PERFORMANCE REQUIREMENTS:** The time frame for completion of the outlined activities shall be May 31, 2015. The Municipality shall meet these performance requirements by the timely performance, documentation, and completion of the following tasks:

Accept Bids by:	May 1, 2014
Start Construction by:	July 15, 2014
Complete Construction by:	February 1, 2015
Submit Final Reimbursement Request by:	April 1, 2015

I. **REPORTS:** The Municipality shall submit to DES a detailed Monthly Performance Report in the form provided as Exhibit B to this Agreement. Each Report must account for the total activity for which the Municipality is funded under this Agreement, and a Municipality representative must certify that all of the Municipality's Monthly Performance Requirements contained herein have been met during the reporting period. These Monthly Performance Reports shall be used by DES to assess the Municipality's progress in implementing the project.

This Agreement may be amended to decrease and/or recapture funds from the Municipality depending upon the timely completion of the monthly performance requirement deadlines and/or the rate of expenditure of funds, as determined by DES.

The Municipality may be subject to decrease and/or recapture of project funds by the County if the above Monthly Performance Requirements are not met. Failure by the Municipality to comply with these requirements may negatively impact ability to receive future grant awards.

J. **USE OF THE PROJECT FACILITY/PROPERTY:** The Municipality agrees in regard to the use of the facility/property whose acquisition or improvements are being funded in part or in whole by CDBG funds as provided by this Agreement, that for a period of five (5) years after the expiration date of this Agreement (as may be amended from time to time):

(1) The Municipality may not change the use or planned use, or discontinue use, of the facility/property (including the beneficiaries of such use) from that for which the acquisition or improvements are made, unless the Municipality provides affected citizens with reasonable notice of, and opportunity to comment on, any such proposed change and either:

a. The new use of the facility/property qualifies as meeting one of the national objectives defined in the regulations governing the CDBG program, and is not a building for the general conduct of government; or
b. The requirements of paragraph (2) of this section are met.

(2) If the Municipality determines, after consultation with affected citizens, that it is appropriate to change the use of the facility/property to a use which does not qualify under paragraph (1) (a) of this section or discontinue the use of the facility/property, it may retain or dispose of the facility for such use if the County is reimbursed in the amount of the current fair market value of the facility/property less any portion thereof attributable to expenditures of non-CDBG funds for acquisition of, or improvements to the facility/property. The final determination of the amount of any such reimbursement to the County under this paragraph shall be made by the County.

(3) Following the reimbursement of CDBG funds by the Municipality to the County pursuant to paragraph (2) above, the facility/property will then no longer be subject to any CDBG requirements.

The provisions of this clause shall survive the expiration of this Agreement.

K. **SECTION 3 REQUIREMENTS:** The Municipality agrees to comply with all Section 3 requirements applicable to contracts funded through this Agreement. Information on Section 3 is available at DES upon request. The Municipality shall include the following, referred to as the Section 3 Clause, in every solicitation and every contract for every Section 3 covered project:

Section 3 Clause

(1) The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 170 1u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3 shall, to the greatest extent feasible, be directed to low-and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

(2) The parties to this contract agree to comply with HUD's requirements in 24 CFR Part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.

(3) The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers representative of the contractor's commitment under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

(4) The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of 24 CFR Part 135.

(5) The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.

(6) Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

L. **ENVIRONMENTAL CONDITIONS:** The County has performed an Environmental Review (ER) of the project to assess existing conditions and identify all potential environmental impacts, whether beneficial or adverse, and any required conditions or mitigation measures that Municipality must consider in the design and implementation of the project. The Municipality acknowledges that it has received notification from DES containing the results of the ER. The notification letter included a description of any conditions and mitigation measures required to be undertaken by the Municipality. Where applicable, the Municipality shall submit to DES a plan of action and an implementation schedule for complying with the identified conditions requiring mitigation. The Municipality shall comply with all requirements established by the County emulating from the completion of the ER.

ER costs incurred by the County may be charged to the project identified above. In addition, the Municipality shall immediately inform DES of any environmental findings or conditions discovered during activity implementation, and agrees that applicable mitigation measures, subject to DES approval, shall be incorporated in order to proceed with the project. The Municipality acknowledges that such mitigation measures may affect the total project cost and that Municipality may be responsible for implementation of corrective actions and the costs associated therewith.

2. COUNTY OBLIGATIONS:

A. Provide funding for the above specified improvements as described above in "Project Scope", during the term of this Agreement, in the amount of $212,396. However, the County shall not provide any funding for the construction work until the Municipality provides documentation, acceptable to the County, showing that sufficient funds are committed to the project and available to complete the project.

B. Provide project administration and inspection to the Municipality to ensure compliance with U.S. HUD and the Department of Labor, and applicable State, Federal and County laws and regulations.

C. Monitor the Municipality during the term of this Agreement. Visits may be announced or unannounced, as determined by DES, and will serve to ensure compliance with U.S. Department of HUD regulations that planned activities are conducted in a timely manner, and to verify the accuracy of reporting to DES on program activities.

D. Perform Davis-Bacon Act Labor Standards monitoring and enforcement.

3. OTHER COUNTY EXPENDITURES:

Allowable costs that may be paid by the County under this Agreement in addition to those stated in 2.A above:

(1) Costs of asbestos surveys, asbestos abatement, and abatement monitoring.
(2) Costs of any other services customarily associated with projects of the nature of the project contemplated by this Agreement.

The County shall review requests by the Municipality for expenditures on the above items prior to undertaking the services associated with them, and approve any such expenditure it deems appropriate for this project.

EXHIBIT B
PALM BEACH COUNTY ECONOMIC SUSTAINABILITY

MONTHLY PERFORMANCE REPORT

Report For:	Month: _____ Year: _____
Sub-Recipient Name:	City of Lake Worth
Project Name:	9th Avenue South - Greenway Project
Report Prepared By:	_____ Name Signature Date

BUDGETING AND EXPENDITURES

Amounts Expended this Reporting Period: CDBG Funds:$_____ Other Funds:$_____

Amounts Expended to Date:

//	BUDGETED	EXPENDED	PERCENTAGE
CDBG Funds:	$ 212,396	$	%
Other Funds:_____	$	$	%
Other Funds:_____	$	$	%
TOTAL:	$	$	%

Describe any changes in budgeted amounts during this reporting period and the source of funds:
_____
_____
_____

Describe your efforts to obtain any additional funds for the project during this reporting period (if your project is underfunded): _____
_____
_____

PROJECT ACTIVITIES

Describe your accomplishments during the reporting period: _____
_____
_____

Describe any problems encountered during this reporting period: _____
_____
_____

Other comments: _____
_____
_____

I, _____, do hereby certify that the City of Lake Worth has met all of its Monthly Performance Requirements (Exhibit A, Paragraph H) referenced in the Agreement during this reporting period.

_____
Name & Title of Certifying Representative

Send Monthly Performance Report to: Bud Cheney, Manager of CREIS
Department of Economic Sustainability
100 Australian Avenue, Suite 500
West Palm Beach, FL 33406

EXHIBIT C

ASBESTOS REQUIREMENTS
SPECIAL CONDITIONS FOR DEMOLITION AND RENOVATION OF BUILDINGS

The provisions of this part apply to all demolition and renovation work contemplated in this Agreement and described in Exhibit A of this Agreement.

I. DEFINITIONS

ACM: Asbestos Containing Materials
AHERA: Asbestos Hazard Emergency Response Act
EPA: Environmental Protection Agency
FLAC: Florida Licensed Asbestos Consultant
DES: Palm Beach County Department of Housing and Community Development
NESHAP: National Emission Standards for Hazardous Air Pollutants
NRCA: National Roofing Contractors Association
NVLAP: National Voluntary Laboratory Accreditation Program
OSHA: Occupational Safety & Health Administration
PBCAC: Palm Beach County Asbestos Coordinator (in Risk Management)
PLM: Polarized Light Microscopy
RACM: Regulated Asbestos Containing Materials
TEM: Transmission Electron Microscopy

II. ASBESTOS SURVEYS

All properties scheduled for renovation and/or demolition are required to have a comprehensive asbestos survey conducted by a Florida Licensed Asbestos Consultant (FLAC). The survey shall be conducted in accordance with AHERA guidelines. Analysis must be performed by a NVLAP accredited laboratory.

For Renovation Projects (projects which will be reoccupied):

- Point counting should be conducted on all RACM indicating 1% - 10% asbestos by PLM analysis. If the asbestos content by PLM is less than 10%, the building owner/operator can elect to:
    1. Assume the material is greater than 1% and treat it as RACM, or
    2. Require verification by point counting
- Samples of resilient vinyl floor tile indicating asbestos not detected must be confirmed by transmission electron microscopy (TEM)
- Joint compound shall be analyzed as a separate layer
- Roofing material shall be sampled only if a renovation requires the roof to be disturbed. In lieu of sampling the roof, it will be presumed to contain asbestos

For Demolition Projects:

- Point counting should be conducted on all RACM indicating 1% - 10% asbestos by PLM analysis. If the asbestos content by PLM is less than 10%, the building owner/operator can elect to:
    1. Assume the material is greater than 1% and treat it as RACM, or
    2. Require verification by point counting
- Composite sample analysis is permitted for drywall systems (combining the drywall and joint compound constituents)
- All Category I and II non-friable materials, as defined in EPA/NESHAP, shall be sampled to determine asbestos content

If the Agency (or Municipality, as applicable) has a recent asbestos survey report prepared by a Florida Licensed Asbestos Consultant, a copy may be provided to DES for review by the PBCAC to determine if the survey is adequate to proceed with renovation/demolition work. If no survey is available, a survey may be initiated by the Agency (or Municipality, as applicable) or requested by DES. If the survey is through DES, a copy of the completed survey will be forwarded to the Agency (or Municipality, as applicable).

III. ASBESTOS ABATEMENT

A. RENOVATION

(a) Prior to a renovation, all asbestos containing materials that will be disturbed during the renovation, must be removed by a Florida Licensed Asbestos Contractor under the direction of a FLAC. Exceptions may be granted by DES prior to the removal. The Agency (or Municipality, as applicable) must obtain approval for all exceptions from DES. DES will request the PBCAC to review and approve all exceptions.

(b) Asbestos abatement work may be contracted by the Agency (or Municipality, as applicable) or by DES upon request.

(c) If the Agency (or Municipality, as applicable) contracts the asbestos abatement, the following documents are required to be provided to the DES.

1. An Asbestos Abatement Specification (Work Plan)
2. Post Job submittals, reviewed and signed by the FLAC

(d) If the Agency (or Municipality, as applicable) requests DES to contract the asbestos abatement, DES will initiate the request through the PBCAC who will contract the asbestos abatement. DES will provide a copy of all contractor and consultant documents to the Agency (or Municipality, as applicable).

(e) Materials containing <1% asbestos are not regulated by EPA/NESHAPS. However, OSHA compliance is mandatory. OSHA requirements include training, wet methods, prompt cleanup in leak tight containers, etc. The renovation contractor must comply with US Dept of Labor, OSHA Standard Interpretation, "Compliance requirements for renovation work involving material containing <1% asbestos", dated 11/24/2003. The renovation contractor must submit a work plan to DES prior to removal of the materials.

B. DEMOLITION

All RACM must be removed by a Florida Licensed Asbestos Contractor under the direction of an FLAC prior to demolition. Examples of RACM include: popcorn ceiling finish, drywall systems, felt or paper-backed linoleum, resilient floor tile which is not intact, asbestos cement panels/pipes/shingles ("transite").

NESHAP Category I non-friable materials, such as intact resilient floor tile & mastic and intact roofing materials, may be demolished with the structure, using adequate controls. The demolition contractor shall be made aware of the asbestos-containing materials and shall exercise adequate control techniques (wet methods, etc.). Any exceptions to these guidelines shall be requested through and approved by DES prior to the removal. Demolition work should be monitored by a FLAC to ensure proper control measures and waste disposal. This is the responsibility of the Agency (or Municipality, as applicable).

(a) Asbestos Abatement work may be contracted by the Agency (or Municipality, as applicable) or by DES upon request.

(b) If the Agency (or Municipality, as applicable) contracts the asbestos abatement, the following documents must be provided to the DES and reviewed by the PBCAC.

1. An Asbestos Abatement Specification (Work Plan).
2. Post Job submittals, reviewed and signed by the FLAC.

(c) If the Agency (or Municipality, as applicable) requests DES to contract the asbestos abatement, DES will initiate the request through the PBCAC who will contract the asbestos abatement. DES will provide a copy of all contractor and consultant documents to the Agency (or Municipality, as applicable).

(d) Recycling, salvage or compacting of any asbestos containing materials or the substrate is strictly prohibited.

(e) In all cases, compliance with OSHA "Requirements for demolition operations involving material containing <1% asbestos" is mandatory.

(f) If suspect materials are discovered that were not previously sampled and identified in the survey, stop all work that will disturb these materials and immediately notify DES.

IV. NESHAP NOTIFICATION

A. RENOVATION

A NESHAP form must be prepared by the or Municipality, or its Contractor and submitted to the Palm Beach County Health Department at least ten (10) working days prior to an asbestos activity that involves removal of regulated asbestos containing material, including linoleum, greater than 160 square feet or 260 linear feet or 35 cubic feet. For floor tile removal greater than 160 square feet, the Agency (or Municipality, as applicable) or its Contractor shall provide a courtesy NESHAP notification to the Palm Beach County Health Department at least three (3) working days prior to removal.

The Agency (or Municipality, as applicable) shall provide a copy of the asbestos survey to the renovation contractor to keep onsite during the work activity.

B. DEMOLITION

A NESHAP form must be prepared by the Municipality or its Contractor and submitted to the Palm Beach County Health Department at least ten (10) working days prior to the demolition for projects demolished by the Municipality.

C. NESHAP FORM

The NESHAP form is available online through the Florida Department of Environmental Regulations. The notification shall be sent to the address shown below. A copy shall be included in the Agency (or Municipality, as applicable) post job documentation submitted to DES. All fees shall be paid by the Agency (or Municipality, as applicable).

Palm Beach County Department of Health
Asbestos Coordinator
800 Clematis Street
Post Office Box 29
West Palm Beach, Florida 33402

V. APPLICABLE ASBESTOS REGULATIONS/GUIDELINES

The Agency (or Municipality, as applicable), through its demolition or renovation contractor, shall comply with the following asbestos regulations/guidelines. This list is *not* all inclusive:

(a) Environmental Protection Agency (EPA) NESHAP, 40 CFR Parts 61 Subpart M National Emission Standard for Asbestos, revised July 1991

(b) Occupational Safety & Health Administration (OSHA) Construction Industry Standard, 29 CFR 1926.1101

(c) EPA: A Guide to Normal Demolition Practices under the Asbestos NESHAP, September 1992

(d) Demolition practices under the Asbestos NESHAP, EPA Region IV

(e) Asbestos NESHAP Adequately Wet Guidance

(f) Florida State Licensing and Asbestos Laws
1. Title XVIII, Chapter 255, Public property and publicly owned buildings.
2. Department of Business and Professional Regulations, Chapter 469 Florida Statute, Licensure of Asbestos Consultants and Contractors

(g) Resilient Floor Covering Institute (RFCI), Updated Recommended Work Practices and Asbestos Regulatory Requirements, current version.

(h) Florida Roofing Sheet Metal and Air Conditioning Contractors Association, NRCA, June 1995, or current version.

(i) US Dept of Labor, OSHA Standard Interpretation
1. Application of the asbestos standard to demolition of buildings with ACM in Place, dated 8/26/2002.
2. Requirements for demolition operations involving material containing <1% asbestos, dated 8/13/1999.
3. Compliance requirements for renovation work involving material containing <1% asbestos, dated 11/24/2003.

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CITY OF LAKE WORTH

7 North Dixie Highway · Lake Worth, Florida 33460 · Phone: 561-586-1600· Fax: 561-586-1750

AGENDA DATE: January 7, 2014, Regular Meeting **DEPARTMENT:** Community Sustainability

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EXECUTIVE BRIEF

TITLE:
Resolution No. 03-2014 - authorize the City Manager to execute standard mural removal agreements

SUMMARY:
The Resolution authorizes the City Manager to execute standard mural removal agreements.

BACKGROUND AND JUSTIFICATION:
The City Land Development Regulations (LDRs) require that when a mural is approved to be placed on private property, the property owner must agree to remove that mural at the owners sole expense in the event that it becomes deteriorated and no longer satisfies the terms of its approval.

The standard agreement that has been approved by the City Commission many times, allows, but does not require the City to go on the property and remove the mural in the event that the property owner fails to do so, upon notification and an appropriate time

The Planning and Zoning Board or the Historic Resources Preservation Board have the sole responsibility to give final approval to paint a mural. The Mural Removal Agreement is only approved by the City Commission because the code states that the Agreement must be approved by the City. Authorizing the City Manager to sign the Agreement will create a more efficient and timely process.

In the event that a property owner requires provisions in an agreement that are different than the standard agreement that has been approved, the staff will bring that to the City Commission for approval.

MOTION:
I move to approve/not approve Resolution No. 03-2014.

ATTACHMENT(S):
Fiscal Impact Analysis – not applicable
Standard Mural Removal Agreement
Resolution

RESOLUTION NO. 03-2014 OF THE CITY OF LAKE WORTH, AUTHORIZING THE CITY MANAGER TO EXECUTE MURAL REMOVAL AGREEMENTS ON BEHALF OF THE CITY: AND, PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Lake Worth ("City") Land Development Regulations (LDRs) require that when a Mural is approved, that the property owner agree to a removal agreement; and

WHEREAS, the City provides the property owner with a standard agreement that has been approved by the City; and

WHEREAS, the standard removal agreement places no responsibility upon the City, but provides the City with the ability to remove the mural, if the owner fails to remove it, under specific circumstances; and

WHEREAS, the LDRs provide that the final approval of the mural is given by the Planning and Zoning Board or by the Historic Resources Preservation Board, as appropriate; and

WHEREAS, in order to have the standard mural removal agreement signed by the City, it has been placed on the City Commission agenda as a consent agenda item; and

WHEREAS, the City Commission has no authority to deny the mural approval nor to not approve the Mural Removal Agreement; which is a requirement of the LDRs; .and

WHEREAS, it is not efficient or necessary for the City Commission to approve the standard agreement for each and every mural.

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

Section 1. The foregoing recitals are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Resolution.

Section 2. The City Manager is hereby authorized to execute the standard Mural Removal Agreement on behalf of the City..

Section 3. This Resolution shall take effect immediately upon its passage.

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

Mayor Pam Triolo
Vice Mayor Scott Maxwell
Commissioner Christopher McVoy
Commissioner Andy Amoroso
Commissioner John Szerdi

Mayor Pam Triolo thereupon declared this Resolution duly passed and adopted on the 7th day of January, 2014.

LAKE WORTH CITY COMMISSION

By: _____
Pam Triolo, Mayor

ATTEST:

_____
Pamela J. Lopez, City Clerk

This document prepared by and return to:
_____, City Attorney
City of Lake Worth
7 North Dixie Highway
Lake Worth, Florida 33460
Property Control No. _____

MURAL REMOVAL AGREEMENT

THIS MURAL REMOVAL AGREEMENT is entered into this _____ day of _____, 20__, by and between the **CITY OF LAKE WORTH**, FLORIDA, a Florida Municipal Corporation, whose address is 7 North Dixie Highway, Lake Worth, Florida 33460 ("City") and _____ whose address is _____ ("Owners") and _____ whose address is _____ ("Tenant").

WHEREAS, Owner(s) do hereby covenant and represent that they are the fee simple owner(s) of certain real property located within the corporate boundaries of City, more particularly identified as follows (the "Property"):

LEGAL DESCRIPTION:

_____
_____

STREET ADDRESS:
_____, Lake Worth, Florida 33460; and

WHEREAS, pursuant to City Code § 23.5-1(e)13, Owner(s), Owner(s) agents or Tenant(s) have applied to City for permission ("the Mural Approval") to apply a mural to the exterior of the building located upon the Property.

NOW, THEREFORE, in consideration of issuance by City of the above-referenced Mural Approval and other good and valuable consideration, receipt of which is hereby mutually acknowledged, the Parties hereto do hereby agree as follows:

1. The recitals above are true and correct and are incorporated into this Agreement by reference.

2. Owner(s) shall at no cost to City remove the above-referenced mural, or cause it to be removed, within thirty (30) days following receipt of written notification from

City to Owner(s), or their successors in interest, that the physical appearance of the mural has deteriorated and no longer satisfies the terms of the Mural Approval and § 23.2-31(l) and § 23.5-1(e)13, Code of Ordinances of the City of Lake Worth, as it may from time to time be amended. Receipt of the written notice described herein shall be deemed to have been accomplished either: (A) upon the date that written notice is delivered to Owner(s) by the U.S. Postal Service at the address shown in the official records of the Palm Beach County Property Appraiser, as evidenced by a receipt for certified mail; or (B) upon the date written notice is actually delivered to Owner(s) by City's agents. If City is unable to deliver to Owner(s) personally, written notice may be left upon the Property in a conspicuous place.

3. Owner(s) further agree that, should they fail to remove the mural within the time period specified herein, City may, at its exclusive discretion, take such reasonable action as necessary to remove the mural from the Property, including but not limited to, entry upon the Property to have the mural removed. Owner(s) also agree that they shall indemnify and hold City harmless from any and all claims which may arise from City's entry upon the Property to accomplish the purposes identified in this Agreement.

4. Owner(s) further agree that they shall reimburse City for all reasonable costs incurred by City in enforcing this Agreement, including but not limited to, all costs associated with hiring professional painters or other qualified persons to remove the mural.

5. Owner(s) agree that any remedies available to City by this Agreement shall be in addition to and shall not qualify or limit any additional remedies City may have pursuant to City's code enforcement powers or otherwise by law.

6. The parties hereto agree that this Agreement may be recorded in the official records of Palm Beach County and shall be binding upon their heirs, personal representatives, grantees, successors in interest, or assigns.

Whereupon the parties hereto have set their hands and seals upon the day first above written.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

Witness:

_____
Name Signed

_____
Name Printed

OWNER(S):

_____
Name Signed

_____
Name Printed

STATE OF _____)

COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20__, by _____ who is personally known to me or who produced a _____ as identification. He/she did not take an oath.

(NOTARY SEAL)

_____
(Signature of Notary Public)

_____
(Name of Notary)

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

Witness:

_____
Name Signed

_____
Name Printed

TENANT(S):

_____
Name Signed

_____
Name Printed

STATE OF _____)

COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20__, by _____ who is personally known to me or who produced a _____ as identification. He/she did not take an oath.

(NOTARY SEAL)

_____
(Signature of Notary Public)

_____
(Name of Notary)

ATTEST:

_____
City Clerk

THE CITY OF LAKE WORTH, FLORIDA
a Florida Municipal Corporation

By: _____
CITY MANAGER

(City Seal)

A:\AGREEMENTS-MURAL

CITY OF LAKE WORTH

7 North Dixie Highway · Lake Worth, Florida 33460 · Phone: 561-586-1600· Fax: 561-586-1750

AGENDA DATE: January 7, 2014, Regular Meeting **DEPARTMENT:** Leisure Services

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EXECUTIVE BRIEF

TITLE:
Revise Interlocal Agreement with the County for the City's Youth Empowerment Centers

SUMMARY:
The Revised Interlocal Agreement includes insurance provisions as part of the terms and conditions for the use of grant funds and to correct a scrivener's error contained in the original document.

BACKGROUND AND JUSTIFICATION:
At is meeting of December 3, 2013, the City Commission approved Resolution No. 62-2013 approving an award of $150,000 from Palm Beach County Criminal Justice Commission (CJC) to expand the after school education, recreation and crime prevention programs for at-risk youth at the City's Youth Empowerment Centers located at the Osborne Center and Wimbley Gymnasium. The Resolution further authorized the Mayor to execute an Interlocal Agreement between the County and the City that sets forth the terms and conditions for the use of these funds.

The CJC has since notified the City that the original Interlocal Agreement failed to include the City's Insurance requirements for this award. These requirements are set forth in the revised Interlocal Agreement at "ARTICLE 30 – INSURANCE". The revised Interlocal Agreement also corrects scrivener's errors originally contained in "ARTICLE 8 – SUBCONTRACTING", as re-titled.

MOTION:
I move to approve/disapprove the revised Interlocal Agreement.

ATTACHMENT(S):
Fiscal Impact Analysis – Not Applicable
Revised Interlocal Agreement

INTERLOCAL AGREEMENT BETWEEN THE BOARD OF COUNTY COMMISSIONERS, PALM BEACH COUNTY, FLORIDA, AND THE CITY OF LAKE WORTH, FLORIDA

THIS INTERLOCAL AGREEMENT is made as of the _____day of _____, 2013, by and between Palm Beach County, a Political Subdivision of the State of Florida, by and through its Board of Commissioners, hereinafter referred to as the COUNTY, and the City of Lake Worth, a municipality located in Palm Beach County, Florida, hereinafter referred to as the CITY, each one constituting a public agency as defined in Part I of Chapter 163, Florida Statutes.

WITNESSETH:

WHEREAS, Section 163.01 of the Florida Statutes, known as the Florida Interlocal Cooperation Act of 1969, authorizes local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will harmonize geographic, economic, population and other factors influencing the needs and development of local communities; and

WHEREAS, Part I of Chapter 163 of the Florida Statutes permits public agencies as defined therein to enter into interlocal agreements with each other to exercise jointly any power, privilege, or authority which such agencies share in common and which each might exercise separately; and

WHEREAS, The Criminal Justice Commission (CJC), upon direction from the Board of County Commissioners (BCC), continues the development of a Youth Violence Prevention Project which addresses the increase in violent crimes; and

WHEREAS, the COUNTY will reimburse the CITY for the expenses outlined in the budget, Exhibit B, up to the amount of $150,000 from October 1, 2013 through September 30, 2014 for the Youth Violence Prevention Project set forth in Exhibits A; and

NOW, THEREFORE, in consideration of the mutual representations, terms and covenants hereinafter set forth, the parties hereto agree as follows:

ARTICLE 1 - SERVICES AND PROGRAMMATIC REQUIREMENTS

The CITY'S responsibility under this INTERLOCAL AGREEMENT is to provide professional services in the area of YOUTH VIOLENCE PREVENTION/YOUTH EMPOWERMENT CENTER, as more specifically set forth in the Scope of Work detailed in Exhibit A.

The CITY agrees that it shall implement one Youth Empowerment Center as part of the countywide efforts of the Youth Violence Prevention Project in partnership with the COUNTY.

The CITY agrees to specific programmatic requirements, including but not limited to, the following:

A. Maintain books, records, documents, and other evidence which sufficiently and properly reflects all costs of any nature expended in the performance of this Contract in accordance with generally accepted accounting principles.

B. Maintain records in accordance with the Public Records Law, Chapter 119, Florida Statutes.

C. No private or confidential data collected, maintained or used during the course of the contract period shall be disseminated except as authorized by statute during the contract period or thereafter.

D. Allow the COUNTY, through the Criminal Justice Commission, to monitor the CITY and ensure that the fiscal and programmatic goals as outlined in the Scope of Work (Exhibit A) are adhered to by permitting authorized representatives to have access to records upon reasonable notice for the purpose of review, analysis, inspection and audit. Services will be monitored against administrative and programmatic standards designed to measure program efficiency and effectiveness. The CITY shall maintain business and accounting records detailing the performance of the contract. Monitoring includes announced and unannounced site visits performed by the COUNTY. The CITY shall comply with site visits.

E. Reimburse funds to COUNTY that are deemed by the COUNTY in its sole discretion to be misused or misspent.

F. The COUNTY'S Executive Director of the Criminal Justice Commission may authorize adjustments in the budget of up to 10% provided there is not an increase in the total amount.

G. The COUNTY'S representative shall review in advance all capital, event, and trip expenses in excess of $500.00. All events/trips must have their own budgets. All equipment and capital items costing more than $300.00 shall be inventoried and marked. A list of all such items shall be provided to the COUNTY'S representative within twenty (20) days of receipt and prior to payment by the COUNTY. In the event of the termination of the Youth Violence Prevention Project/Youth Empowerment Center by either party under this or subsequent contracts, the items purchased hereunder shall be immediately transferred to the COUNTY.

H. All subcontracts for services herewith, shall require prior review and written authorization by the COUNTY'S representative.

I. Submit a Report of Monthly Measurable Outcomes Report for each program, within 10 days of the end of each calendar month (i.e. January 10, for the month of December) that reflects the CITY'S progress in attaining its goals as outlined in the Scope of Work, Exhibit A. Failure to provide this information in a timely fashion and in the format required will be grounds for financial reimbursements to be withheld by COUNTY staff.

ARTICLE 2 – CONTRACT REPRESENTATIVE/LIAISON

The COUNTY'S representative/liaison during the performance of this INTERLOCAL AGREEMENT shall be Brenda Oakes, telephone no. 355-1617.

The CITY'S representative/liaison during the performance of this INTERLOCAL AGREEMENT shall be Melissa Garvin, telephone number 719-5002. Subcontract providers report to the CITY's representative.

ARTICLE 3 – SCHEDULE

The CITY shall commence services on October 1, 2013 and regardless of the date COUNTY executes complete all services by September 30, 2014.

ARTICLE 4 - PAYMENTS TO CITY

A. The total amount to be paid by the COUNTY under this INTERLOCAL AGREEMENT for all services and shall not exceed a total INTERLOCAL AGREEMENT amount of one-hundred and fifty thousand, dollars ($150,000). The CITY shall notify the COUNTY's representative in writing when 90% of the "not to exceed amount" has been reached. The CITY will bill the COUNTY on a monthly basis, or as otherwise provided, at the amounts set forth in Exhibit B for services rendered toward the completion of the Scope of Work. Where incremental billings for partially completed items are permitted, the total billings shall not exceed the estimated percentage of completion as of the billing date.

B. The CITY shall submit monthly programmatic reports and monthly financial invoices to the COUNTY which will include a reference to this INTERLOCAL AGREEMENT, identify the project and identify the amount due and payable to the CITY, as well as confirmation of the CITY's expenditures for the Project. Programmatic reports received trigger payments to the CITY. Invoices and related backup shall be provided to support grant funds and CITY funds.

C. Invoices received from the CITY pursuant to this INTERLOCAL AGREEMENT will be reviewed and approved by the COUNTY's representative, to verify that services have been rendered in conformity with the INTERLOCAL AGREEMENT. Approved invoices will then be sent to the Finance Department for payment. Invoices will normally be paid within thirty (30) days following the COUNTY representative's approval.

D. Final Invoice: In order for both parties herein to close their books and records, the CITY will clearly state "final invoice" on the CITY'S final/last billing to the COUNTY. This shall constitute CITY'S certification that all services have been properly performed and all charges and costs have been invoiced to Palm Beach County. Any other charges not properly included on this final invoice are waived by the CITY.

ARTICLE 5 - TRUTH-IN-NEGOTIATION CERTIFICATE

Signature of this INTERLOCAL AGREEMENT by the CITY shall also act as the execution of a truth-in-negotiation certificate certifying that the wage rates, over-head charges, and other costs used to determine the compensation provided for in this INTERLOCAL AGREEMENT are accurate, complete and current as of the date of the INTERLOCAL AGREEMENT and no higher than those charged the CITY'S most favored customer for the same or substantially similar service.
The said rates and costs shall be adjusted to exclude any significant sums should the COUNTY determine that the rates and costs were increased due to inaccurate, incomplete or noncurrent wage

rates or due to inaccurate representations of fees paid to outside CITYs. The COUNTY shall exercise its rights under this Article within three (3) years following final payment.

ARTICLE 6 - TERMINATION

This INTERLOCAL AGREEMENT may be terminated by the CITY upon sixty (60) days' prior written notice to the COUNTY's representative in the event of substantial failure by the COUNTY to perform in accordance with the terms of this INTERLOCAL AGREEMENT through no fault of the CITY. It may also be terminated, in whole or in part, by the COUNTY, with or without cause, immediately upon written notice to the CITY. Unless the CITY is in breach of this INTERLOCAL AGREEMENT, the CITY shall be paid for services rendered to the COUNTY'S satisfaction through the date of termination. After receipt of a Termination Notice and except as otherwise directed by the COUNTY the CITY shall:

A. Stop work on the date and to the extent specified.

B. Terminate and settle all orders and subcontracts relating to the performance of the terminated work.

C. Transfer all work in process, completed work, and other materials related to the terminated work to the COUNTY, including program, capital and equipment items purchased.

D. Continue and complete all parts of the work that have not been terminated.

ARTICLE 7 – PERSONNEL

The CITY represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this INTERLOCAL AGREEMENT. Such personnel shall not be employees of or have any contractual relationship with the COUNTY.

All of the services required hereinunder shall be performed by the CITY or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services.

Any changes or substitutions in the CITY'S key personnel, as may be listed in Exhibit A, must be made known to the COUNTY'S representative and written approval must be granted by the COUNTY's representative before said change or substitution can become effective.

The CITY warrants that all services shall be performed by skilled and competent personnel to the highest professional standards in the field.

All of the CITY'S personnel (and all subcontractors), while on COUNTY premises, will comply with all COUNTY requirements governing conduct, safety and security.

ARTICLE 8 - SUBCONTRACTING

The COUNTY reserves the right to accept the use of a subcontractor or to reject the selection of a particular subcontractor and to inspect all facilities of any subcontractor in order to make a determination as to the capability of the subcontractor to perform properly under this INTERLOCAL AGREEMENT. The CITY is encouraged to seek additional small business enterprises for participation in subcontracting opportunities. If the CITY uses any subcontractors on this project the following provisions of this Article shall apply:

If a subcontractor fails to perform or make progress, as required by this INTERLOCAL AGREEMENT, and it is necessary to replace the subcontractor to complete the work in a timely fashion, the CITY shall promptly do so, subject to acceptance of the new subcontractor by the COUNTY.

The CITY agrees to maintain all relevant records and information necessary to document compliance with the Palm Beach County Code and will allow the COUNTY to inspect such records.

ARTICLE 9 - FEDERAL AND STATE TAX

The COUNTY is exempt from payment of Florida State Sales and Use Taxes. The COUNTY will sign an exemption certificate submitted by the CITY. The CITY shall not be exempted from paying sales tax to its suppliers for materials used to fulfill contractual obligations with the COUNTY, nor is the CITY authorized to use the COUNTY'S Tax Exemption Number in securing such materials.

The CITY shall be responsible for payment of its own and its share of its employees' payroll, payroll taxes, and benefits with respect to this INTERLOCAL AGREEMENT.

ARTICLE 10 - AVAILABILITY OF FUNDS

The COUNTY'S performance and obligation to pay under this INTERLOCAL AGREEMENT for subsequent fiscal years are contingent upon annual appropriations for its purpose by the Board of County Commissioners.

ARTICLE 11 – INDEMNIFICATION

To the extent allowed by law, the CITY shall protect, defend, reimburse, indemnify and hold COUNTY, its agents, employees and elected officers harmless from and against all claims, liability, expense, loss, cost, damages or causes of action of every kind or character, including attorney's fees and costs, whether at trial or appellate levels or otherwise, arising during and as a result of their performance of the terms of this INTERLOCAL AGREEMENT or due to the acts or omissions of CITY.

ARTICLE 12 - SUCCESSORS AND ASSIGNS

The COUNTY and the CITY each binds itself and its partners, successors, executors, administrators and assigns to the other party and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this INTERLOCAL AGREEMENT. Except as above, neither the COUNTY nor the CITY shall assign, sublet, convey or transfer its interest in this INTERLOCAL AGREEMENT without the prior written consent of the other.

ARTICLE 13 – REMEDIES

This INTERLOCAL AGREEMENT shall be governed by the laws of the State of Florida. Any legal action necessary to enforce the INTERLOCAL AGREEMENT will be held in Palm Beach County. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given

hereunder or now or hereafter existing at law or in equity, by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

No provision of this INTERLOCAL AGREEMENT is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this INTERLOCAL AGREEMENT, including but not limited to any citizen or employees of the COUNTY and/or CITY.

ARTICLE l4 - CONFLICT OF INTEREST

The CITY represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder, as provided for in Chapter 112, Part III, Florida Statutes, and the Palm Beach County Code of Ethics. The CITY further represents that no person having any such conflict of interest shall be employed for said performance of services.

The CITY shall promptly notify the COUNTY's representative, in writing, by certified mail, of all potential conflicts of interest of any prospective business association, interest or other circumstance which may influence or appear to influence the CITY'S judgement or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that the CITY may undertake and request an opinion of the COUNTY as to whether the association, interest or circumstance would, in the opinion of the COUNTY, constitute a conflict of interest if entered into by the CITY. The COUNTY agrees to notify the CITY of its opinion by certified mail within thirty (30) days of receipt of notification by the CITY. If, in the opinion of the COUNTY, the prospective business association, interest or circumstance would not constitute a conflict of interest by the CITY, the COUNTY shall so state in the notification and the CITY shall, at its option, enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the COUNTY by the CITY under the terms of this INTERLOCAL AGREEMENT.

ARTICLE 15 - EXCUSABLE DELAYS

The CITY shall not be considered in default by reason of any failure in performance if such failure arises out of causes reasonably beyond the control of the CITY or its subcontractors and without their fault or negligence. Such causes include, but are not limited to, acts of God, force majeure, natural or public health emergencies, labor disputes, freight embargoes, and abnormally severe and unusual weather conditions.

Upon the CITY'S request, the COUNTY shall consider the facts and extent of any failure to perform the work and, if the CITY'S failure to perform was without it or its subcontractors fault or negligence, the INTERLOCAL AGREEMENT Schedule and/or any other affected provision of this INTERLOCAL AGREEMENT shall be revised accordingly, subject to the COUNTY'S rights to change, terminate, or stop any or all of the work at any time.

ARTICLE 16 – ARREARS

The CITY shall not pledge the COUNTY'S credit or make it a guarantor of payment or surety for any INTERLOCAL AGREEMENT, debt, obligation, judgement, lien, or any form of indebtedness. The CITY further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this INTERLOCAL AGREEMENT.

ARTICLE 17 - DISCLOSURE AND OWNERSHIP OF DOCUMENTS

The CITY shall deliver to the COUNTY's representative for approval and acceptance, and before being eligible for final payment of any amounts due, all documents and materials prepared by and for the COUNTY under this INTERLOCAL AGREEMENT.

To the extent allowed by Chapter 119, Florida Statutes, all written and oral information not in the public domain or not previously known, and all information and data obtained, developed, or supplied by the COUNTY or at its expense will be kept confidential by the CITY and will not be disclosed to any other party, directly or indirectly, without the COUNTY'S prior written consent unless required by a lawful court order. All drawings, maps, sketches, programs, data base, reports and other data developed, or purchased, under this INTERLOCAL AGREEMENT for or at the COUNTY'S expense shall be and remain the COUNTY'S property and may be reproduced and reused at the discretion of the COUNTY.

All covenants, agreements, representations and warranties made herein, or otherwise made in writing by any party pursuant hereto, including but not limited to any representations made herein relating to disclosure or ownership of documents, shall survive the execution and delivery of this INTERLOCAL AGREEMENT and the consummation of the transactions contemplated hereby.
Notwithstanding any other provision in this INTERLOCAL AGREEMENT, all documents, records, reports and any other materials produced hereunder shall be subject to disclosure, inspection and audit, pursuant to the Palm Beach County Office of the Inspector General, Palm Beach County Code, Sections 2-421 - 2-440, as amended.

ARTICLE 18 - INDEPENDENT CONTRACTUAL RELATIONSHIP

The CITY is, and shall be, in the performance of all work services and activities under this INTERLOCAL AGREEMENT, an Independent Contractor, and not an employee, agent, or servant of the COUNTY. All persons engaged in any of the work or services performed pursuant to this INTERLOCAL AGREEMENT shall at all times, and in all places, be subject to the CITY'S sole direction, supervision, and control. The CITY shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the CITY'S relationship and the relationship of its employees to the COUNTY shall be that of an Independent Contractor and not as employees or agents of the COUNTY.

The CITY does not have the power or authority to bind the COUNTY in any promise, agreement or representation.

ARTICLE 19 - CONTINGENT FEES

The CITY warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CITY to solicit or secure this INTERLOCAL AGREEMENT and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other

than a bona fide employee working solely for the CITY, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this INTERLOCAL AGREEMENT.

ARTICLE 20 - ACCESS AND AUDITS

The CITY shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing the work for at least three (3) years after completion or termination of this INTERLOCAL AGREEMENT. The COUNTY shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal business hours, at the CITY'S place of business.

Palm Beach County has established the Office of the Inspector General in Palm Beach County Code, Section 2-421 - 2-440, as may be amended. The Inspector General's authority includes but is not limited to the power to review past, present and proposed County INTERLOCAL AGREEMENTS, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of the CITY, its officers, agents, employees, and lobbyists in order to ensure compliance with INTERLOCAL AGREEMENT requirements and detect corruption and fraud.

Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be in violation of Palm Beach County Code, Section 2-421 - 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

ARTICLE 21 – NONDISCRIMINATION

The CITY warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity and expression.

ARTICLE 22 - AUTHORITY TO PRACTICE

The CITY hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business, and that it will at all times conduct its business activities in a reputable manner. Proof of such licenses and approvals shall be submitted to the COUNTY's representative upon request.

ARTICLE 23 – SEVERABILITY

If any term or provision of this INTERLOCAL AGREEMENT, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this INTERLOCAL AGREEMENT, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this INTERLOCAL AGREEMENT shall be deemed valid and enforceable to the extent permitted by law.

ARTICLE 24 - PUBLIC ENTITY CRIMES

As provided in F.S. 287.132-133, by entering into this INTERLOCAL AGREEMENT or performing any work in furtherance hereof, the CITY certifies that it, its affiliates, suppliers, subcontractors and CITYs who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the 36 months immediately preceding the date hereof. This notice is required by F.S. 287.133(3)(a).

ARTICLE 25 - MODIFICATIONS OF WORK

The COUNTY reserves the right to make changes in Scope of Work, including alterations, reductions therein or additions thereto. Upon receipt by the CITY of the COUNTY'S notification of a contemplated change, the CITY shall, in writing: (1) provide a detailed estimate for the increase or decrease in cost due to the contemplated change, (2) notify the COUNTY of any estimated change in the completion date, and (3) advise the COUNTY if the contemplated change shall affect the CITY'S ability to meet the completion dates or schedules of this INTERLOCAL AGREEMENT.

If the COUNTY so instructs in writing, the CITY shall suspend work on that portion of the Scope of Work affected by a contemplated change, pending the COUNTY'S decision to proceed with the change.

If the COUNTY elects to make the change, the COUNTY shall initiate a Contract Amendment and the CITY shall not commence work on any such change until such written amendment is signed by the CITY and approved and executed on behalf of Palm Beach County.

ARTICLE 26 – NOTICE

All notices required in this INTERLOCAL AGREEMENT shall be sent by certified mail, return receipt requested, hand delivery or other delivery service requiring signed acceptance. If sent to the COUNTY, notices shall be addressed to:

Michael Rodriguez, Executive Director
Palm Beach County Criminal Justice Commission
301 North Olive Avenue – 10TH floor
West Palm Beach, FL 33401

With copy to:
Palm Beach County Attorney's Office
301 North Olive Ave. – 6th floor
West Palm Beach, Florida 33401

If sent to the CITY, notices shall be addressed to:
Mayor, Pam Triolo
7 North Dixie Highway
Lake Worth, FL 33460

ARTICLE 27 - ENTIRETY OF INTERLOCAL AGREEMENTUAL AGREEMENT

The COUNTY and the CITY agree that this INTERLOCAL AGREEMENT sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this INTERLOCAL AGREEMENT may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto in accordance with Article 25- Modifications of Work.

ARTICLE 28 - CRIMINAL HISTORY RECORDS CHECK

If CITY'S employees or subcontractors are required under this INTERLOCAL AGREEMENT to enter a "critical facility," as identified in Resolution R-2003-1274, the CITY shall comply with the provisions of Chapter 2, Article IX of the Palm Beach County Code ("Criminal History Records Check" section). The CITY acknowledges and agrees that all employees and subcontractors who are to enter a "critical facility" will be subject to a fingerprint based criminal history records check. Although COUNTY agrees to pay for all applicable FDLE/FBI fees required for criminal history record checks, the CITY shall be solely responsible for the financial, schedule, and staffing implications associated in complying with this section of the Palm Beach County Code.

The CITY shall conduct a Criminal History Records Check including fingerprinting for all CITY employees or subcontractors who are in direct contact with youth program participants as per Florida Statute, Chapter 435.

ARTICLE 29 - REGULATIONS; LICENSING REQUIREMENTS

The CITY shall comply with all laws, ordinances and regulations applicable to the services contemplated herein, to include those applicable to conflict of interest and collusion. CITY is presumed to be familiar with all federal, state and local laws, ordinances, codes and regulations that may in any way affect the services offered.

ARTICLE 30 - INSURANCE

Without waiving the right to sovereign immunity as provided by *s.768.28 f.s.*, the CITY acknowledges to be self-insured for General Liability and Automobile Liability under Florida sovereign immunity statutes with coverage limits of $200,000 Per Person and $300,000 Per Occurrence; or such monetary waiver limits that may change and be set forth by the legislature.

In the event the CITY maintains third-party Commercial General Liability and Business Auto Liability in lieu of exclusive reliance of self-insurance under *s.768.28 f.s.*, the CITY shall agree to maintain said insurance policies at limits not less than $500,000 combined single limit for bodily injury or property damage

The CITY agrees to maintain or to be self-insured for Worker's Compensation & Employer's Liability insurance in accordance with Florida Statute 440.

When requested, the CITY shall agree to provide an affidavit or Certificate of Insurance evidencing insurance, self-insurance and/or sovereign immunity status, which COUNTY agrees to recognize as acceptable for the above mentioned coverages.

Compliance with the foregoing requirements shall not relieve the CITY of its liability and obligations under this INTERLOCAL AGREEMENT.

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IN WITNESS WHEREOF, the Board of County Commissioners of Palm Beach County, Florida has made and executed this INTERLOCAL AGREEMENT on behalf of the COUNTY and CITY has hereunto set its hand the day and year above written

CITY: Lake Worth, FL

By: _____
Pam Triolo, Mayor

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By: _____
Assistant City Attorney

REVIEWED AND APPROVED
FOR EXECUTION

By: _____
Michael Bornstein, City Manager

ATTEST:

Sharon R. Bock, Clerk and Comptroller

By: _____
Deputy Clerk

PALM BEACH COUNTY
BOARD OF COUNTY
COMMISSIONERS

By: _____
Chair

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By: _____
Assistant County Attorney

APPROVED AS TO TERMS
AND CONDITIONS

By: _____
Michael L. Rodriguez
Executive Director

Exhibit A

Lake Worth Youth Empowerment Center Program:	Responsibility
Youth Empowerment Facility	**City**
Youth/Teen Advisory Council Council or Board of youth from the target area meets every other month minimally to recommend programs and policies of the Youth Empowerment Center. **Agendas and minutes are prepared and submitted as well as sign in sheets. Youth are pre and post tested on leadership skills.**	**City**
Teen Center – ONE ONLY Provide educational and recreational programming 5 days a week (minimum) with **10 interest-based programs/pro-social activities per week (excluding recreation).** Maintain a clean safe and secure environment. Work with the youth council to identify new educational recreational programs, activities and special events. Provide a monthly calendar for public release no later than the 1st day of the month. **Membership is limited to high school students only after January 31, 2014.**	**City**
Targeted Recruitment Recruitment should be targeted for at-risk youth. **Sources are not limited to but should include: juvenile probation officers, youth court participants, participants of other diversion programs, school personnel and law enforcement.**	
Courts Partner with Alternative Sanctions by participating in the Evening Reporting Center program.	**Courts/City**
After-school Activities Provide a variety of the latest recreational programs: martial arts, yoga, surfing, swimming, tennis hip hop dance, and organized athletics.	**City**
Tutoring Provide after-school tutoring, including assessment and or SAT skill building. **Collect report cards and mid-semester reports to target youth's educational deficiencies.**	**City**
Mentoring Provide mentors for youth to support and be positive role models. Staff to serve as adult mentors.	**City**
Job Training and Employment Services Partner with Workforce Alliance or other source to provide at-risk youth resources leading to graduation, additional workplace skills, and job placement.	**Workforce Alliance and Palm Beach Community College**
Case Management – Informal Provide information on existing resources for youth including school programs, job training and employment opportunities, and services available.	**City and MOU with collaborating agencies**
Assessment Each youth is assessed for risk of offending or reoffending using the Domains Assessment or the Prevention Assessment Tool. Assessments are submitted monthly.	**City**
Transportation The youth surveyed indicated that a major issue to attending programs and activities is transportation. **The city must provide transportation at multiple pick up and drop off sites and field trips.**	**City**
Collaborative Partnerships Leadership or the City's designated contact person participates in a minimum of ten (10) CJC or School District sponsored collaborative meetings throughout the year.	**City-Youth Empowerment Administrative Staff**
Life Skills Provide a variety of life skills in an environment conducive to learning and interesting to high school youth.	**City**
Admission – Terminated Youth are admitted on the first day of participation and are terminated at request or after 120 days of non participation.	**City**

Exhibit A

2013-2014 UNIFORM BUDGET

Full Name of Funder
Palm Beach County, Criminal Justice Commission

Funding Period:	
From: October 1, 2013	To: September 30, 2014

Full Legal Name of Agency	Local Address of Agency
City of Lake Worth, Florida	1121 Lucerne Avenue Lake Worth, FL 33460
Telephone Number	**Fax Number**
561-533-7363	

Prepared By	
Signature	Typed Name and Title
	Melissa Garvin - Recreation Supervisor
Date Submitted	Telephone Number
	561-533-7363

Authorized Signature	
Signature	Title
	Mayor
Typed Name	Date
Pam Triolo	

FORM A : INDIVIDUAL PROGRAM BUDGET NARRATIVE
FOR: PALM BEACH COUNTY, CRIMINAL JUSTICE COMMISSION

Agency: City of Lake Worth
Program:

Proposed Budget For Year Ending: September 30, 2014

REVENUES	PBC Requested Amount	Balance Amount
1. Funds from Government Sources		
2. Dept. of Children & Families		
3. Palm Beach County (Specify)	$150,000	
4. Children's Services Council		
5. Federal (Specify)		
6. School District		
7. Other (Specify)		
8. United Way		
8a. United Way of Palm Bch Cty		
8b. United Way/Community Chest		
8c. Other United Way		
9. Foundation (Specify)		
10. Fund Raising		
11. Contributions,Legacies & Bequests		
12. Membership Dues		
13. Program Service Fees and Sales		
14. Investment Income		
15. In-Kind		$66,477
16. Miscellaneous Revenue		
17.Total Revenues	**$150,000**	**$66,477**

All Financial Information Rounded to Nearest Dollar

FORM A : INDIVIDUAL PROGRAM BUDGET NARRATIVE

Agency: City of Lake Worth

Proposed Budget For Year Ending: September 30, 2014

EXPENDITURES	PBC Requested Amount	Balance Amount*
18. Salaries - Requesting (3) PT Recreation Center Assistants. City is providing 15% of (1) FT Recreation Supervisor, 25% (1) PT Recreation Center Assistant & 5% of (1) FT Grants Analyst	45,240	13577.20
19. Employee Benefits a. FICA b. FL Unemployment c. Worker's Compensation d. Health Plan e. Retirement/Pension		
20. Sub-Total Employee Benefits	$0	$0
21. Sub-Total Salaries & Benefits	$45,240	$13,577
22. Travel a. Travel/Transportation b. Conferences/Registration/Travel - funds requested to cover the cost of transportation, registration, accomodations and meals for youth and appropriate staff for 2 youth crime prevention/leadership conferences. Conferences will be pre-approved by FDLE.	5,000	
23. Sub-Total Travel	$5,000	$0
24. Building/Occupancy a. Rent b. Depreciation		
25. Sub-Total Building/Occupancy	$0	$0
26. Communications/Utilities a. Telephone - Anticipated phone expenses for Osborne Center and staff issued phone. b. Postage & Shipping c. Utilities (Power/Water/Gas) - Estimated operational cost for Osborne Center		$1,500 $200 $50,000
27. Sub-Total Communications/Utilities	$0	$51,700

All Financial Information Rounded to Nearest Dollar

FORM A : INDIVIDUAL PROGRAM BUDGET NARRATIVE

Agency: City of Lake Worth

Proposed Budget For Year Ending: September 30, 2014

EXPENDITURES	PBC Requested Amount	Balance Amount
28. Printing & Supplies		
a. Office Supplies	$1,500	$0
b. Program Supplies - Computer Software, and other educational materialsother program supplies for GREAT, supplies for tutoring and FCAT prep, supplies for recruitment and rentention of program participants, camera and supplies, computer equipment, related program supplies.	$7,000	$0
c. Printing & Publications - Printing of flyers and promotional material must be pre-approved before print.	$960	
29. Sub-Total Printing & Supplies	$9,460	$0
30. Food Service - healthy snacks for youth	$11,000	
31. Other		
a. Professional Fees/Contractual/Legal		
b. Insurance		
c. Building Custodial Supplies- Includes cleaning supplies, paper products for bathrooms, and alarm and fire sprinkler monthly service.	$1,200	$1,200
d. Equipment Rental & Maintenance		
e. Specific Assistance to Individuals		
f. Membership Dues		
g. Training & Development	$1,000	
h. Awards & Grants		
i. Payments to Affiliated Organizations - $75,000- variety of services will be provided such as Audio Visual , Computer Technology Skill Enhancement, and For the Children to provide crime prevention after school programming.	$75,000	
j. Payments to Non Affiliated Organizations		
k. Miscellaneous - $2,100 for Leadership and Life Skill Buillding for the Teen Advisory Council to cover costs not already addressed in this proposal. This could inlcude anti-crime prevention and anti-violence mentoring and community volunteer services.	$2,100	
32. Sub-Total Other	$79,300	$1,200

Exhibits A,B

33. Equipment Purchase (capital items) -		
34. Indirect/Administrative Costs		
35. Total Expenditures	$150,000	$66,477
36. Total administrative cost of program		

All Financial Information Rounded to Nearest Dollar

FORM A-1 PERSONNEL BUDGET NARRATIVE

FOR FUNDER: Palm Beach County, Criminal Justice Commission

____ of ____

Agency:
Program:

Budget for Fiscal Year October 1, 2013 - September 30, 2014

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
Personnel Positions/Salaries	% of Time	Agency Salary	Dates From	To	Number of Pay Periods	Salary Per Pay Period	Percentage of Total Salary	Amount	Total
PT Recreation Center Assistant	100.00	15080.00	Oct. 1, 2013	Sept. 30, 201	26.00	10.00	100.00	15080.00	15080.00
PT Recreation Center Assistant	100.00	15080.00	Oct. 1, 2013	Sept. 30, 201	26.00	10.00	100.00	15080.00	15080.00
PT Recreation Center Assistant	100.00	15080.00	Oct. 1, 2013	Sept. 30, 201	26.00	10.00	100.00	15080.00	15080.00
Sub-Total Salaries		**$45,240**						**$45,240**	**$45,240**

Exhibit B

FORM C: TOTAL AGENCY BUDGET BY PROGRAM

Agency: City of Lake Worth

Proposed Budget For Year Ending: September 30, 2014

REVENUES							
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Items PROGRAM NAME							Total Budget
1. Funds from Government Sources							
1a. Dept. of Children & Families							$0
1b. Palm Beach County (Specify)	150000.00						150000.00
1c. Children's Services Council							$0
1d. Federal (Specify)							$0
1e. School District							$0
1f. Other (Specify)							$0
2. United Way							
2a. United Way of Palm Bch Cty							$0
2b. United Way/Community Chest							$0
2c. Other United Way							$0
3. Foundation (Specify)							$0
4. Fund Raising							$0
5. Contributions,Legacies & Bequests							$0
6. Membership Dues							$0
7. Program Service Fees and Sales							$0
8. Investment Income							$0
9. In-Kind							$66,477
10. Miscellaneous Revenue							
11.Total Revenues	**$150,000**	**$0**	**$0**	**$0**	**$0**	**$0**	$216,477

Exhibit B

FORM C: TOTAL AGENCY BUDGET BY PROGRAM

Agency: City of Lake Worth

Proposed Budget For Year Ending: September 30, 2014

EXPENDITURES							
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Items PROGRAM NAME							Total Budget
12. Salaries	45,240						$45,240
13. Employee Benefits							
a. Employee Benefits							$0
b. Payroll Taxes & Unemployment							$0
14. Sub-Total Salaries and Benefits	$45,240	$0	$0	$0	$0	$0	$45,240
15. Travel							
a. Travel/Transportation	5,000						$5,000
b. Conferences/Registration/Travel							$0
16. Sub-Total Travel	$5,000	$0	$0	$0	$0	$0	$5,000
17. Building/Ownership/Occupancy							
a. Rent							$0
b. Depreciation							
Sub-Total Bldg/Ownership/Occupancy	$0	$0	$0	$0	$0	$0	$0
18. Communications/Utilities							
a. Telephone							$0
b. Postage & Shipping							$0

Exhibit B

FORM C: TOTAL AGENCY BUDGET BY PROGRAM

Agency: City of Lake Worth

Proposed Budget For Year Ending: September 30, 2014

EXPENDITURES (1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Items PROGRAM NAME							Total Budget
c. Utilities (Power/Water/Gas)							$0
19. **Sub-Total Comm/Utilities**	$0	$0	$0	$0	$0	$0	$0
20. **Printing & Supplies**							
a. Office Supplies	1500.00						$1,500
b. Program Supplies	7000.00						$7,000
c. Printing & Publications	960.00						$960
21. **Sub-Total Printing & Supplies**	$9,460	$0	$0	$0	$0	$0	$9,460
22. **Food Service**	11,000						$11,000
23. **Other**							
a. Professional Fees/Contractual/Legal							$0
b. Insurance							$0
c. Building Maintenance	1200.00						$1,200
d. Equipment Rental & Maintenance							$0

Exhibit B

FORM C: TOTAL AGENCY BUDGET BY PROGRAM

Agency: City of Lake Worth

Proposed Budget For Year Ending: September 30, 2014

EXPENDITURES							
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Items PROGRAM NAME							Total Budget
e. Specific Assistance to Individuals							$0
f. Membership Dues							$0
g. Training & Development	1000.00						$1,000
h. Awards & Grants							$0
i. Payments to Affiliated Organizations	75000.00						$75,000
j. Payments to Non Affiliated Organizations							$0
k. Miscellaneous	2100.00						$2,100
24. **Sub-Total Other**	**$78,100**	**$0**	**$0**	**$0**	**$0**	**$0**	$78,100
25. **Equipment Purchase (capital items)**							$0
26. **Indirect/Admin Costs**							$0
27. **Total Expenditures**	**$150,000**	**$0**	**$0**	**$0**	**$0**	**$0**	$150,000

FORM C-1: TOTAL AGENCY SALARIES BY POS
FOR: PALM BEACH COUNTY, CRIMINAL JUSTICE (

Agency: City of Lake Worth

	Position Title	# of Positions
1		
2	Recreation Center Assistant - $10/hr (29hrs/wk) x 26 bi-weekly pay period	3.00
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
	TOTAL	3.00

ITION
COMMISSION

For Year Ending September 30, 2014

Total Salaries
$45,240.00
$45,240.00

CITY OF LAKE WORTH

7 North Dixie Highway · Lake Worth, Florida 33460 · Phone: 561-586-1600· Fax: 561-586-1750

AGENDA DATE: January 7, 2014, Regular Meeting **DEPARTMENT:** Water Utility

---

EXECUTIVE BRIEF

TITLE:

Amendment 2 to the DW501700 State Revolving Fund Loan Agreement for the Reverse Osmosis Water Treatment Plant

SUMMARY:

The Amendment adjusts the project costs and the semiannual loan payments for the low interest loan agreement between the State of Florida and the City of Lake Worth to offset expenses incurred during the construction of the Reverse Osmosis (RO) water treatment plant. The total amount for the agreement is:

Amendment 2 to Loan Agreement DW501700, Unpaid Principal Balance $ 433,859.57

BACKGROUND AND JUSTIFICATION:

On October 12, 2009, the Florida Department of Environmental Protection awarded the City of Lake Worth a Drinking Water State Revolving Fund (SRF) Loan Agreement of $3,000,000. This agreement, DW501700, included a Principal Forgiveness grant of $2,550,000, which resulted in a principal amount to be repaid of $450,000 and $13,000 capitalized interest. On June 4, 2013, the City Commission authorized Amendment 1 to Agreement DW501700 to accept excess grant funds of $245,722, resulting in a loan amount of 3,245,722, and unpaid principal balance of $433,859.57. Amendment 2 adjusts the semiannual loan payment of $19,251.84 to reflect adjustment of capitalized interest and payment of four semiannual payments. The interest rate is 2.82 percent per annum.

MOTION:

I move to approve/disapprove Amendment 2 to State Revolving Fund Loan Agreement for the Reverse Osmosis Water Treatment Plant, Agreement Number DW501700 and authorize the City Manager to execute the amendment.

ATTACHMENT(S):

1) Fiscal Impact Analysis – Not Applicable
2) Amendment 2 to SRF Loan Agreement
3) Amortization Schedule
4) Amendment 1 to SRF Loan Agreement dated June 4, 2013

DRINKING WATER STATE REVOLVING FUND
AMENDMENT 2 TO LOAN AGREEMENT DW501700
CITY OF LAKE WORTH

This amendment is executed by the STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION (Department) and the CITY OF LAKE WORTH, FLORIDA, (Project Sponsor) existing as a local government agency under the laws of the State of Florida.

WITNESSETH:

WHEREAS, the Department and the Project Sponsor entered into a Drinking Water State Revolving Fund Loan Agreement, Number DW501700, as amended, authorizing a Loan amount of $3,245,722, excluding Capitalized Interest and including a Principal Forgiveness amount of $2,795,722; and

WHEREAS, the Project costs need adjustment to reflect actual costs; and

WHEREAS, the Semiannual Loan Payment amount needs revision to reflect adjustment of the Capitalized Interest and the four Semiannual Loan Payments received by the Department from the Project Sponsor; and

NOW, THEREFORE, the parties hereto agree as follows:

1. The total disbursed amount is $3,245,722, which includes $2,795,722 in Principal Forgiveness and a balance of $450,000, to be repaid, in Loan.

2. The total principal amount of the Loan is $469,251.84, which consists of $450,000.00 disbursed to the Project Sponsor and $19,251.84 of accrued Capitalized Interest, at an interest rate of 2.82 percent per annum.

3. The unpaid principal balance of the Loan is $433,859.57, at an interest rate of 2.82 percent per annum, which amount accounts for the Department's receipt of four Semiannual Loan Payments.

4. The Semiannual Loan Payment amount, adjusted to account for repayments received to date, is hereby revised and shall be in the amount of $15,451.01. Such payments shall be received by the Department on April 15, 2014 and semiannually thereafter on October 15 and April 15 of each year until all amounts due hereunder have been fully paid.

5. The Project Sponsor and the Department acknowledge that changes in Project costs may occur as a result of the Project Sponsor's Project audit or a Department audit pursuant to Chapter 62-552 of the Florida Administrative Code. Unless this Agreement is amended subsequent to an audit, the following Project disbursements shall be final.

CATEGORY	PROJECT COST($)
Construction and Demolition (Total Disbursed)	3,245,722.00
Less Principal Forgiveness	(2,795,722.00)
Adjusted Loan Amount	450,000.00
Capitalized Interest	19,251.84
TOTAL (Loan Principal Amount)	469,251.84

6. The Project-specific audit required under Subsection 2.03(4) of the Agreement shall be submitted within twelve months after the effective date of this amendment.

7. All other terms and provisions of the Loan Agreement shall remain in effect.

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This Amendment 2 to Loan Agreement DW501700 shall be executed in three or more counterparts, any of which shall be regarded as an original and all of which constitute but one and the same instrument.

IN WITNESS WHEREOF, the Department has caused this amendment to the Loan Agreement to be executed on its behalf by the Program Administrator, and the Project Sponsor has caused this amendment to be executed on its behalf by its Authorized Representative and by its affixed seal. The effective date of this amendment shall be as set forth below by the Program Administrator.

for
CITY OF LAKE WORTH

_____
City Manager

Attest:

_____
City Clerk

SEAL

Attest as to form and legal sufficiency:

_____
City Attorney

for
STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

_____
Program Administrator
State Revolving Fund

_____
Date

Calculation of Semiannual Payment for Remaining Years

Sponsor: Lake Worth
Funding Number: 501700
Beginning of Repayment Period: 10/15/2011
Payments Remaining: 36

Original Loan
Combined Rate: 2.82

Date	Balance Forward	Disbursement Or Serv. Fee	Comb. Int At 04/15/2014	Total Owed At 04/15/2014	Present Value* At 10/15/2013	Payment Amount
10/15/2013	433,859.57	0.00	6,117.42	439,976.99		
Totals:				439,976.99	433,859.57	15,451.01

Amendment 1
Combined Rate: 0

Date	Balance Forward	Disbursement Or Serv. Fee	Comb. Int At 04/15/2014	Total Owed At 04/15/2014	Present Value* At 10/15/2013	Payment Amount
Totals:				439,976.99	433,859.57	15,451.01

*Present value is the total owed divided by (1+(Combined interest rate)/2)
The Payment Amount is computed using the present value.

State Revolving Fund Loan
*** Amortized Repayment Schedule ***

Sponsor: Lake Worth

Funding Number: 501700

Original Loan Interest: 2.82 GAA Rate: 0

Date	Pmt. No.	Payment	Serv. Fee Paid	SF Interest	Interest	Grt. All. Assmt.	Principal Paid	Total to Pay*
10/15/2011		0.00	0.00	0.00	0.00	0.00	0.00	469,251.84
04/15/2012	1	15,224.00	0.00	0.00	6,616.45	0.00	8,607.55	460,644.29
10/15/2012	2	15,224.00	0.00	0.00	6,495.08	0.00	8,728.92	451,915.37
04/15/2013	3	15,224.00	0.00	0.00	6,372.01	0.00	8,851.99	443,063.38
10/15/2013	4	15,451.00	0.00	0.00	6,247.19	0.00	9,203.81	433,859.57
04/15/2014	5	15,451.01	0.00	0.00	6,117.42	0.00	9,333.59	424,525.98
10/15/2014	6	15,451.01	0.00	0.00	5,985.82	0.00	9,465.19	415,060.79
04/15/2015	7	15,451.01	0.00	0.00	5,852.36	0.00	9,598.65	405,462.14
10/15/2015	8	15,451.01	0.00	0.00	5,717.02	0.00	9,733.99	395,728.15
04/15/2016	9	15,451.01	0.00	0.00	5,579.77	0.00	9,871.24	385,856.91
10/15/2016	10	15,451.01	0.00	0.00	5,440.58	0.00	10,010.43	375,846.48
04/15/2017	11	15,451.01	0.00	0.00	5,299.44	0.00	10,151.57	365,694.91
10/15/2017	12	15,451.01	0.00	0.00	5,156.30	0.00	10,294.71	355,400.20
04/15/2018	13	15,451.01	0.00	0.00	5,011.14	0.00	10,439.87	344,960.33
10/15/2018	14	15,451.01	0.00	0.00	4,863.94	0.00	10,587.07	334,373.26

State Revolving Fund Loan
*** Amortized Repayment Schedule ***

Sponsor: Lake Worth

Funding Number: 501700

Original Loan Interest: 2.82 GAA Rate: 0

Date	Pmt. No.	Payment	Serv. Fee Paid	SF Interest	Interest	Grt. All. Assmt.	Principal Paid	Total to Pay*
04/15/2019	15	15,451.01	0.00	0.00	4,714.66	0.00	10,736.35	323,636.91
10/15/2019	16	15,451.01	0.00	0.00	4,563.28	0.00	10,887.73	312,749.18
04/15/2020	17	15,451.01	0.00	0.00	4,409.76	0.00	11,041.25	301,707.93
10/15/2020	18	15,451.01	0.00	0.00	4,254.08	0.00	11,196.93	290,511.00
04/15/2021	19	15,451.01	0.00	0.00	4,096.21	0.00	11,354.80	279,156.20
10/15/2021	20	15,451.01	0.00	0.00	3,936.10	0.00	11,514.91	267,641.29
04/15/2022	21	15,451.01	0.00	0.00	3,773.74	0.00	11,677.27	255,964.02
10/15/2022	22	15,451.01	0.00	0.00	3,609.09	0.00	11,841.92	244,122.10
04/15/2023	23	15,451.01	0.00	0.00	3,442.12	0.00	12,008.89	232,113.21
10/15/2023	24	15,451.01	0.00	0.00	3,272.80	0.00	12,178.21	219,935.00
04/15/2024	25	15,451.01	0.00	0.00	3,101.08	0.00	12,349.93	207,585.07
10/15/2024	26	15,451.01	0.00	0.00	2,926.95	0.00	12,524.06	195,061.01
04/15/2025	27	15,451.01	0.00	0.00	2,750.36	0.00	12,700.65	182,360.36
10/15/2025	28	15,451.01	0.00	0.00	2,571.28	0.00	12,879.73	169,480.63
04/15/2026	29	15,451.01	0.00	0.00	2,389.68	0.00	13,061.33	156,419.30

State Revolving Fund Loan
*** Amortized Repayment Schedule ***

Sponsor: Lake Worth

Funding Number: 501700

Original Loan Interest: 2.82 GAA Rate: 0

Date	Pmt. No.	Payment	Serv. Fee Paid	SF Interest	Interest	Grt. All. Assmt.	Principal Paid	Total to Pay*
10/15/2026	30	15,451.01	0.00	0.00	2,205.51	0.00	13,245.50	143,173.80
04/15/2027	31	15,451.01	0.00	0.00	2,018.75	0.00	13,432.26	129,741.54
10/15/2027	32	15,451.01	0.00	0.00	1,829.36	0.00	13,621.65	116,119.89
04/15/2028	33	15,451.01	0.00	0.00	1,637.29	0.00	13,813.72	102,306.17
10/15/2028	34	15,451.01	0.00	0.00	1,442.52	0.00	14,008.49	88,297.68
04/15/2029	35	15,451.01	0.00	0.00	1,245.00	0.00	14,206.01	74,091.67
10/15/2029	36	15,451.01	0.00	0.00	1,044.69	0.00	14,406.32	59,685.35
04/15/2030	37	15,451.01	0.00	0.00	841.56	0.00	14,609.45	45,075.90
10/15/2030	38	15,451.01	0.00	0.00	635.57	0.00	14,815.44	30,260.46
04/15/2031	39	15,451.01	0.00	0.00	426.67	0.00	15,024.34	15,236.12
10/15/2031	40	15,450.95	0.00	0.00	214.83	0.00	15,236.12	0.00
Subtotals:		617,359.30	0.00	0.00	148,107.46	0.00	469,251.84	

*Total to pay may reflect activity during repayment term

State Revolving Fund Loan
*** Amortized Repayment Schedule ***

Sponsor: Lake Worth
Funding Number: 501700

Amendment 1 Interest: 0 GAA Rate: 0

Date	Pmt. No.	Payment	Serv. Fee Paid	SF Interest	Interest	Grt. All. Assmt.	Principal Paid	Total to Pay*

*Total to pay may reflect activity during repayment term

State Revolving Fund Loan
*** Amortized Repayment Schedule ***

Sponsor: Lake Worth

Funding Number: 501700

All Increments Combined

Date	Pmt. No.	Payment	Serv. Fee Paid	SF Interest	Interest	Grt. All. Assmt.	Principal Paid	Total to Pay*
10/15/2011		0.00	0.00	0.00	0.00	0.00	0.00	469,251.84
04/15/2012	1	15,224.00	0.00	0.00	6,616.45	0.00	8,607.55	460,644.29
10/15/2012	2	15,224.00	0.00	0.00	6,495.08	0.00	8,728.92	451,915.37
04/15/2013	3	15,224.00	0.00	0.00	6,372.01	0.00	8,851.99	443,063.38
10/15/2013	4	15,451.00	0.00	0.00	6,247.19	0.00	9,203.81	433,859.57
04/15/2014	5	15,451.01	0.00	0.00	6,117.42	0.00	9,333.59	424,525.98
10/15/2014	6	15,451.01	0.00	0.00	5,985.82	0.00	9,465.19	415,060.79
04/15/2015	7	15,451.01	0.00	0.00	5,852.36	0.00	9,598.65	405,462.14
10/15/2015	8	15,451.01	0.00	0.00	5,717.02	0.00	9,733.99	395,728.15
04/15/2016	9	15,451.01	0.00	0.00	5,579.77	0.00	9,871.24	385,856.91
10/15/2016	10	15,451.01	0.00	0.00	5,440.58	0.00	10,010.43	375,846.48
04/15/2017	11	15,451.01	0.00	0.00	5,299.44	0.00	10,151.57	365,694.91
10/15/2017	12	15,451.01	0.00	0.00	5,156.30	0.00	10,294.71	355,400.20
04/15/2018	13	15,451.01	0.00	0.00	5,011.14	0.00	10,439.87	344,960.33
10/15/2018	14	15,451.01	0.00	0.00	4,863.94	0.00	10,587.07	334,373.26

Sponsor: Lake Worth

Funding Number: 501700

All Increments Combined

Date	Pmt. No.	Payment	Serv. Fee Paid	SF Interest	Interest	Grt. All. Assmt.	Principal Paid	Total to Pay*
04/15/2019	15	15,451.01	0.00	0.00	4,714.66	0.00	10,736.35	323,636.91
10/15/2019	16	15,451.01	0.00	0.00	4,563.28	0.00	10,887.73	312,749.18
04/15/2020	17	15,451.01	0.00	0.00	4,409.76	0.00	11,041.25	301,707.93
10/15/2020	18	15,451.01	0.00	0.00	4,254.08	0.00	11,196.93	290,511.00
04/15/2021	19	15,451.01	0.00	0.00	4,096.21	0.00	11,354.80	279,156.20
10/15/2021	20	15,451.01	0.00	0.00	3,936.10	0.00	11,514.91	267,641.29
04/15/2022	21	15,451.01	0.00	0.00	3,773.74	0.00	11,677.27	255,964.02
10/15/2022	22	15,451.01	0.00	0.00	3,609.09	0.00	11,841.92	244,122.10
04/15/2023	23	15,451.01	0.00	0.00	3,442.12	0.00	12,008.89	232,113.21
10/15/2023	24	15,451.01	0.00	0.00	3,272.80	0.00	12,178.21	219,935.00
04/15/2024	25	15,451.01	0.00	0.00	3,101.08	0.00	12,349.93	207,585.07
10/15/2024	26	15,451.01	0.00	0.00	2,926.95	0.00	12,524.06	195,061.01
04/15/2025	27	15,451.01	0.00	0.00	2,750.36	0.00	12,700.65	182,360.36
10/15/2025	28	15,451.01	0.00	0.00	2,571.28	0.00	12,879.73	169,480.63
04/15/2026	29	15,451.01	0.00	0.00	2,389.68	0.00	13,061.33	156,419.30

State Revolving Fund Loan
*** Amortized Repayment Schedule ***

Sponsor: Lake Worth

Funding Number: 501700

All Increments Combined

Date	Pmt. No.	Payment	Serv. Fee Paid	SF Interest	Interest	Grt. All. Assmt.	Principal Paid	Total to Pay*
10/15/2026	30	15,451.01	0.00	0.00	2,205.51	0.00	13,245.50	143,173.80
04/15/2027	31	15,451.01	0.00	0.00	2,018.75	0.00	13,432.26	129,741.54
10/15/2027	32	15,451.01	0.00	0.00	1,829.36	0.00	13,621.65	116,119.89
04/15/2028	33	15,451.01	0.00	0.00	1,637.29	0.00	13,813.72	102,306.17
10/15/2028	34	15,451.01	0.00	0.00	1,442.52	0.00	14,008.49	88,297.68
04/15/2029	35	15,451.01	0.00	0.00	1,245.00	0.00	14,206.01	74,091.67
10/15/2029	36	15,451.01	0.00	0.00	1,044.69	0.00	14,406.32	59,685.35
04/15/2030	37	15,451.01	0.00	0.00	841.56	0.00	14,609.45	45,075.90
10/15/2030	38	15,451.01	0.00	0.00	635.57	0.00	14,815.44	30,260.46
04/15/2031	39	15,451.01	0.00	0.00	426.67	0.00	15,024.34	15,236.12
10/15/2031	40	15,450.95	0.00	0.00	214.83	0.00	15,236.12	0.00
Totals:		617,359.30	0.00	0.00	148,107.46	0.00	469,251.84	

*Total to pay may reflect activity during repayment term

C- 1274-1-A
06/04/13 RM
Con-B

DRINKING WATER STATE REVOLVING FUND
AMENDMENT 1 TO LOAN AGREEMENT DW501700
CITY OF LAKE WORTH

This amendment is executed by the STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION (Department) and the CITY OF LAKE WORTH, FLORIDA, (Project Sponsor) existing as a local government agency under the laws of the State of Florida.

WITNESSETH:

WHEREAS, the Department and the Project Sponsor entered into a Drinking Water State Revolving Fund Loan Agreement, Number DW501700, authorizing a Loan amount of $3,000,000, excluding Capitalized Interest and including a Principal Forgiveness amount of $2,550,000; and

WHEREAS, the Project Sponsor is entitled to an increase consisting of Principal Forgiveness funds in the amount of $245,722, excluding Capitalized Interest; and

WHEREAS, revised provisions for audit and monitoring are needed.

NOW, THEREFORE, the parties hereto agree as follows:

1. Subsections 2.03(1), (3)(a), (3)(b), and (5) of the Agreement are hereby deleted and replaced as follows:

(1) The financial assistance authorized pursuant to this Loan Agreement consists of the following:

Federal Resources, Including State Match, Awarded to the Recipient Pursuant to this Agreement Consist of the Following:					
Federal Program Number	Federal Agency	CFDA Number	CFDA Title	Funding Amount	State Appropriation Category
2F-95423109-0	EPA	66.468	Capitalization Grants for Drinking Water State Revolving Fund	$3,245,722	140130

(3) Report Submission.

(a) Copies of reporting packages for audits conducted in accordance with OMB Circular A-133, as revised, and required by Subsection 2.03(2) of this Agreement shall be submitted, when required by Section .320 (d), OMB Circular A-133, as revised, by or on behalf of the Project Sponsor directly to each of the following:

(i) The Department at the following address:

Valerie Peacock, Audit Director
Office of the Inspector General
Florida Department of Environmental Protection
3900 Commonwealth Boulevard, MS 41
Tallahassee, Florida 32399-3123

(ii) The Federal Audit Clearinghouse designated in OMB Circular A-133, as revised (the number of copies required by Sections .320 (d)(1) and (2), OMB Circular A-133, as revised, should be submitted to the Federal Audit Clearinghouse), at the following address:

Federal Audit Clearinghouse
Bureau of the Census
1201 East 10th Street
Jeffersonville, IN 47132

Submissions of the Single Audit reporting package for fiscal periods ending on or after January 1, 2008, **must be** submitted using the Federal Clearinghouse's Internet Data Entry System which can be found at http://harvester.census.gov/fac/

(iii) Other Federal agencies and pass-through entities in accordance with Sections .320(e) and (f), OMB Circular A-133, as revised.

(b) Pursuant to Section .320(f), OMB Circular A-133, as revised, the Project Sponsor shall submit a copy of the reporting package described in Section .320(c), OMB Circular A-133, as revised, and any management letters issued by the auditor, to the Department at the address listed under Subsection 2.03(3)(a) of this Agreement.

(5) Record Retention.

The Project Sponsor shall retain sufficient records demonstrating its compliance with the terms of this Agreement for a period of five years from the date the audit report is issued, and shall allow the Department, or its designee, Chief Financial Officer, or Auditor General access to such records upon request. The Project Sponsor shall ensure that audit working papers are made available to the Department, or its designee, Chief Financial Officer, or Auditor General upon request for a period of five years from the date the audit report is issued, unless extended in writing by the Department.

The Project Sponsor is hereby advised that the Federal and/or Florida Single Audit Act Requirements may further apply to lower tier transactions that may be a result of this Agreement. For federal financial assistance, the Project Sponsor shall utilize the guidance provided under OMB Circular A-133, Subpart B, Section ___.210 for determining whether the relationship represents that of a subrecipient or vendor.

The Project Sponsor should confer with its chief financial officer, audit director or contact the Department for assistance with questions pertaining to the applicability of these requirements.

2. Section 8.02 of the Agreement is deleted and replaced as follows:

Books, records, reports, engineering documents, contract documents, and papers shall be available to the authorized representatives of the Department and the U.S. Environmental Protection Agency's Inspector General for inspection at any reasonable time after the Project Sponsor has received a disbursement and until five years after the date that the Project-specific audit report, required under Subsection 2.03(4), is issued.

3. Subsection 8.10 of the Agreement is deleted and replaced as follows:

(1) The Project Sponsor shall periodically interview 10% of the work force entitled to Davis-Bacon prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(5), all interviews must be conducted in confidence. The Project Sponsor must use Standard Form 1445 or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.

(2) The Project Sponsor shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The Project Sponsor shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with Davis-Bacon posed by contractors or subcontractors and the duration of the contract or subcontract. Project Sponsors must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with Davis-Bacon. In addition, during the examinations the Project Sponsor shall verify evidence of fringe benefit plans and payments thereunder by contractors and subcontractors who claim credit for fringe benefit contributions.

(3) The Project Sponsor shall periodically review contractors and subcontractors use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor (DOL) or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of laborers, trainees, and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in items (1) and (2) above.

(4) Project Sponsors must immediately report potential violations of the Davis-Bacon prevailing wage requirements to the EPA Davis-Bacon contact Sheryl Parsons at Parsons.Sheryl@epamail.epa.gov and to the appropriate DOL Wage and Hour District Office listed at http://www.dol.gov/esa/contacts/whd/america2.htm.

4. Additional financing in the amount of $245,722, excluding Capitalized Interest and all of which is Principal Forgiveness, is hereby awarded to the Project Sponsor.

5. The Semiannual Loan Payment amount, adjusted to account for repayments received to date, is hereby revised and shall be in the amount of $15,451. Such payments shall be received by the Department on October 15, 2013 and semiannually thereafter on April 15 and October 15 of each year until all amounts due hereunder have been fully paid.

The Semiannual Loan Payment amount is based on the total amount owed of $469,252, which consists of the Loan principal plus the Loan Service Fee with its capitalized interest.

6. The Project Sponsor and the Department acknowledge that the actual cost of the Project has not been determined. Project cost adjustments may be made as a result of construction bidding or mutually agreed upon Project changes. Capitalized Interest will be recalculated based on actual dates and amounts of Loan disbursements. If the Project Sponsor receives other governmental financial assistance for this Project, the costs funded by such other governmental assistance will not be financed by this Loan. The Department shall establish the final Project costs after its final inspection of the Project records. Changes in Project costs may also occur as a result of the Project Sponsor's Project audit or a Department audit.

Funds disbursed in accordance with Section 4.08 of this Agreement shall be disbursed in the order in which they have been obligated without respect to budgetary line item estimates. All disbursements shall be made from the original Loan amount until that amount has been disbursed; the interest rate established for the original Loan amount shall apply to such disbursements for the purpose of determining the associated Capitalized Interest and repayment amount. The interest rate established for any additional increment of Loan financing shall be used to determine the Capitalized Interest and repayment amount associated with the funds disbursed from that increment.

The estimated Project costs are revised as follows:

CATEGORY	COST($)
Construction and Demolition	3,245,722
Less Principal Forgiveness	(2,795,722)
SUBTOTAL (Disbursable Amount)	450,000
Capitalized Interest	19,252
TOTAL (Loan Principal Amount)	469,252

7. All other terms and provisions of the Loan Agreement shall remain in effect.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

This Amendment 1 to Loan Agreement DW501700 shall be executed in three or more counterparts, any of which shall be regarded as an original and all of which constitute but one and the same instrument.

IN WITNESS WHEREOF, the Department has caused this amendment to the Loan Agreement to be executed on its behalf by the Program Administrator, and the Project Sponsor has caused this amendment to be executed on its behalf by its Authorized Representative and by its affixed seal. The effective date of this amendment shall be as set forth below by the Program Administrator.

for
CITY OF LAKE WORTH

City Manager

Attest:

City Clerk
SEAL

Approved as to form and legal sufficiency:

FOR

City Attorney

for
STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

Program Administrator
State Revolving Fund

JUN 24 2013
Date

CITY OF LAKE WORTH

7 North Dixie Highway · Lake Worth, Florida 33460 · Phone: 561-586-1600· Fax: 561-586-1750

AGENDA DATE: January 7, 2014, Regular Meeting **DEPARTMENT:** Water Utility

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EXECUTIVE BRIEF

TITLE:
Amendment 1 to the DW051701 State Revolving Fund Loan Agreement for the Reverse Osmosis Water Treatment Plant

SUMMARY:
The Amendment adjusts the project costs and the semiannual loan payments for the low interest loan agreement between the State of Florida and the City of Lake Worth to offset expenses incurred during the construction of the Reverse Osmosis (RO) water treatment plant. The total amount for the agreement is:

Amendment 1 to Loan Agreement DW501701, Unpaid Principal Balance $ 6,233,321.53

BACKGROUND AND JUSTIFICATION:
On September 21, 2010, the City Commission authorized a Florida Department of Environmental Protection Drinking Water State Revolving Fund (SRF) Loan Agreement of $6,579,700. This agreement, DW501701, included $6,500,000 to be disbursed to the City and capitalized interest of $79,700. The interest rate on this loan is 2.61 percent per annum. Amendment 1 adjusts the semiannual loan payment of $218,100.21 to reflect adjustment of capitalized interest and payment of four semiannual payments.

MOTION:
I move to approve/disapprove Amendment 1 to State Revolving Fund Loan Agreement for the Reverse Osmosis Water Treatment Plant, Agreement Number DW501701 and authorize the City Manager to execute the amendment.

ATTACHMENT(S):
1) Fiscal Impact Analysis – Not Applicable
2) Amendment 1 to SRF Loan Agreement
3) Amortization Schedule
4) State Revolving Loan Agreement DW501701, approved September 21, 2010

DRINKING WATER STATE REVOLVING FUND
AMENDMENT 1 TO LOAN AGREEMENT DW501701
CITY OF LAKE WORTH

This amendment is executed by the STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION (Department) and the CITY OF LAKE WORTH, FLORIDA, (Project Sponsor) existing as a local government agency under the laws of the State of Florida.

WITNESSETH:

WHEREAS, the Department and the Project Sponsor entered into a Drinking Water State Revolving Fund Loan Agreement, Number DW501701, authorizing a Loan amount of $6,500,000, excluding Capitalized Interest; and

WHEREAS, the Project costs need adjustment to reflect actual costs; and

WHEREAS, the Semiannual Loan Payment amount needs revision to reflect adjustment of the Capitalized Interest and the four Semiannual Loan Payments received by the Department from the Project Sponsor; and

WHEREAS, revised provisions for audit and monitoring are needed.

NOW, THEREFORE, the parties hereto agree as follows:

1. The Loan Service Fee is $130,000.00, and the capitalized Loan Service Fee interest is $3,536.08.

2. The total principal amount of the Loan is $6,622,765.26, which consists of $6,500,000.00 disbursed to the Project Sponsor and $122,765.26 of accrued Capitalized Interest.

3. The unpaid principal balance of the Loan is $6,233,321.53, at an interest rate of 2.61 percent per annum, which amount accounts for the Department's receipt of four Semiannual Loan Payments.

4. The Semiannual Loan Payment amount, adjusted to account for repayments received to date, is hereby revised and shall be in the amount of $218,100.21. Such payments shall be received by the Department on April 15, 2014 and semiannually thereafter on October 15 and April 15 of each year until all amounts due hereunder have been fully paid.

5. Subsection 2.03(3)(a)(i) of the Agreement is deleted and replaced as follows:

(3) Report Submission.

(a) Copies of reporting packages for audits conducted in accordance with OMB Circular A-133, as revised, and required by Subsection 2.03(2) of this Agreement shall be submitted,

when required by Section .320 (d), OMB Circular A-133, as revised, by or on behalf of the Project Sponsor directly to each of the following:

(i) The Department at the following address:

Valerie Peacock, Audit Director
Office of the Inspector General
Florida Department of Environmental Protection
3900 Commonwealth Boulevard, MS 41
Tallahassee, Florida 32399-3123

6. The Project-specific audit required under Subsection 2.03(4) of the Agreement shall be submitted within twelve months after the effective date of this amendment.

7. The Project Sponsor and the Department acknowledge that changes in Project costs may occur as a result of the Project Sponsor's Project audit or a Department audit pursuant to Chapter 62-552 of the Florida Administrative Code. Unless this Agreement is amended subsequent to an audit, the following Project disbursements shall be final.

CATEGORY	PROJECT COST($)
Construction and Demolition	6,500,000.00
Capitalized Interest	122,765.26
TOTAL (Loan Principal Amount)	6,622,765.26

8. All other terms and provisions of the Loan Agreement shall remain in effect.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

This Amendment 1 to Loan Agreement DW501701 shall be executed in three or more counterparts, any of which shall be regarded as an original and all of which constitute but one and the same instrument.

IN WITNESS WHEREOF, the Department has caused this amendment to the Loan Agreement to be executed on its behalf by the Program Administrator, and the Project Sponsor has caused this amendment to be executed on its behalf by its Authorized Representative and by its affixed seal. The effective date of this amendment shall be as set forth below by the Program Administrator.

for
CITY OF LAKE WORTH

_____
City Manager

Attest

_____
City Clerk

SEAL

Attest as to form and legal sufficiency:

_____
City Attorney

for

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

_____
Program Administrator
State Revolving Fund

_____
Date

Calculation of Semiannual Payment for Remaining Years

Sponsor: Lake Worth
Funding Number: 501701
Beginning of Repayment Period: 10/15/2011
Payments Remaining: 36

Original Loan
Combined Rate: 2.61

Date	Balance Forward	Disbursement Or Serv. Fee	Comb. Int At 04/15/2014	Total Owed At 04/15/2014	Present Value* At 10/15/2013	Payment Amount
10/15/2013	6,233,321.53	0.00	81,344.85	6,314,666.38		
Totals:				6,314,666.38	6,233,321.53	218,100.21
Totals:				6,314,666.38	6,233,321.53	218,100.21

*Present value is the total owed divided by (1+(Combined interest rate)/2)
The Payment Amount is computed using the present value.

State Revolving Fund Loan
*** Amortized Repayment Schedule ***

Sponsor: Lake Worth

Funding Number: 501701

Original Loan Interest: 2.61 GAA Rate: 0

Date	Pmt. No.	Payment	Serv. Fee Paid	SF Interest	Interest	Grt. All. Assmt.	Principal Paid	Total to Pay*
10/15/2011		0.00	0.00	0.00	0.00	0.00	0.00	6,756,301.34
04/15/2012	1	216,383.00	128,213.28	1,742.65	86,427.07	0.00	0.00	6,628,088.06
10/15/2012	2	216,383.00	5,322.80	69.46	86,427.09	0.00	124,563.65	6,498,201.61
04/15/2013	3	216,383.00	0.00	0.00	84,801.53	0.00	131,581.47	6,366,620.14
10/15/2013	4	216,383.00	0.00	0.00	83,084.39	0.00	133,298.61	6,233,321.53
04/15/2014	5	218,100.21	0.00	0.00	81,344.85	0.00	136,755.36	6,096,566.17
10/15/2014	6	218,100.21	0.00	0.00	79,560.19	0.00	138,540.02	5,958,026.15
04/15/2015	7	218,100.21	0.00	0.00	77,752.24	0.00	140,347.97	5,817,678.18
10/15/2015	8	218,100.21	0.00	0.00	75,920.70	0.00	142,179.51	5,675,498.67
04/15/2016	9	218,100.21	0.00	0.00	74,065.26	0.00	144,034.95	5,531,463.72
10/15/2016	10	218,100.21	0.00	0.00	72,185.60	0.00	145,914.61	5,385,549.11
04/15/2017	11	218,100.21	0.00	0.00	70,281.42	0.00	147,818.79	5,237,730.32
10/15/2017	12	218,100.21	0.00	0.00	68,352.38	0.00	149,747.83	5,087,982.49
04/15/2018	13	218,100.21	0.00	0.00	66,398.17	0.00	151,702.04	4,936,280.45
10/15/2018	14	218,100.21	0.00	0.00	64,418.46	0.00	153,681.75	4,782,598.70

State Revolving Fund Loan
*** Amortized Repayment Schedule ***

Sponsor: Lake Worth

Funding Number: 501701

Original Loan Interest: 2.61 GAA Rate: 0

Date	Pmt. No.	Payment	Serv. Fee Paid	SF Interest	Interest	Grt. All. Assmt.	Principal Paid	Total to Pay*
04/15/2019	15	218,100.21	0.00	0.00	62,412.91	0.00	155,687.30	4,626,911.40
10/15/2019	16	218,100.21	0.00	0.00	60,381.19	0.00	157,719.02	4,469,192.38
04/15/2020	17	218,100.21	0.00	0.00	58,322.96	0.00	159,777.25	4,309,415.13
10/15/2020	18	218,100.21	0.00	0.00	56,237.87	0.00	161,862.34	4,147,552.79
04/15/2021	19	218,100.21	0.00	0.00	54,125.56	0.00	163,974.65	3,983,578.14
10/15/2021	20	218,100.21	0.00	0.00	51,985.69	0.00	166,114.52	3,817,463.62
04/15/2022	21	218,100.21	0.00	0.00	49,817.90	0.00	168,282.31	3,649,181.31
10/15/2022	22	218,100.21	0.00	0.00	47,621.82	0.00	170,478.39	3,478,702.92
04/15/2023	23	218,100.21	0.00	0.00	45,397.07	0.00	172,703.14	3,305,999.78
10/15/2023	24	218,100.21	0.00	0.00	43,143.30	0.00	174,956.91	3,131,042.87
04/15/2024	25	218,100.21	0.00	0.00	40,860.11	0.00	177,240.10	2,953,802.77
10/15/2024	26	218,100.21	0.00	0.00	38,547.13	0.00	179,553.08	2,774,249.69
04/15/2025	27	218,100.21	0.00	0.00	36,203.96	0.00	181,896.25	2,592,353.44
10/15/2025	28	218,100.21	0.00	0.00	33,830.21	0.00	184,270.00	2,408,083.44
04/15/2026	29	218,100.21	0.00	0.00	31,425.49	0.00	186,674.72	2,221,408.72

State Revolving Fund Loan
*** Amortized Repayment Schedule ***

Sponsor: Lake Worth

Funding Number: 501701

Original Loan Interest: 2.61 GAA Rate: 0

Date	Pmt. No.	Payment	Serv. Fee Paid	SF Interest	Interest	Grt. All. Assmt.	Principal Paid	Total to Pay*
10/15/2026	30	218,100.21	0.00	0.00	28,989.38	0.00	189,110.83	2,032,297.89
04/15/2027	31	218,100.21	0.00	0.00	26,521.49	0.00	191,578.72	1,840,719.17
10/15/2027	32	218,100.21	0.00	0.00	24,021.39	0.00	194,078.82	1,646,640.35
04/15/2028	33	218,100.21	0.00	0.00	21,488.66	0.00	196,611.55	1,450,028.80
10/15/2028	34	218,100.21	0.00	0.00	18,922.88	0.00	199,177.33	1,250,851.47
04/15/2029	35	218,100.21	0.00	0.00	16,323.61	0.00	201,776.60	1,049,074.87
10/15/2029	36	218,100.21	0.00	0.00	13,690.43	0.00	204,409.78	844,665.09
04/15/2030	37	218,100.21	0.00	0.00	11,022.88	0.00	207,077.33	637,587.76
10/15/2030	38	218,100.21	0.00	0.00	8,320.52	0.00	209,779.69	427,808.07
04/15/2031	39	218,100.21	0.00	0.00	5,582.90	0.00	212,517.31	215,290.76
10/15/2031	40	218,100.30	0.00	0.00	2,809.54	0.00	215,290.76	0.00
Subtotals:		8,717,139.65	133,536.08	1,812.11	1,959,026.20	0.00	6,622,765.26	

*Total to pay may reflect activity during repayment term

State Revolving Fund Loan
*** Amortized Repayment Schedule ***

Sponsor: Lake Worth

Funding Number: 501701

All Increments Combined

Date	Pmt. No.	Payment	Serv. Fee Paid	SF Interest	Interest	Grt. All. Assmt.	Principal Paid	Total to Pay*
10/15/2011		0.00	0.00	0.00	0.00	0.00	0.00	6,756,301.34
04/15/2012	1	216,383.00	128,213.28	1,742.65	86,427.07	0.00	0.00	6,628,088.06
10/15/2012	2	216,383.00	5,322.80	69.46	86,427.09	0.00	124,563.65	6,498,201.61
04/15/2013	3	216,383.00	0.00	0.00	84,801.53	0.00	131,581.47	6,366,620.14
10/15/2013	4	216,383.00	0.00	0.00	83,084.39	0.00	133,298.61	6,233,321.53
04/15/2014	5	218,100.21	0.00	0.00	81,344.85	0.00	136,755.36	6,096,566.17
10/15/2014	6	218,100.21	0.00	0.00	79,560.19	0.00	138,540.02	5,958,026.15
04/15/2015	7	218,100.21	0.00	0.00	77,752.24	0.00	140,347.97	5,817,678.18
10/15/2015	8	218,100.21	0.00	0.00	75,920.70	0.00	142,179.51	5,675,498.67
04/15/2016	9	218,100.21	0.00	0.00	74,065.26	0.00	144,034.95	5,531,463.72
10/15/2016	10	218,100.21	0.00	0.00	72,185.60	0.00	145,914.61	5,385,549.11
04/15/2017	11	218,100.21	0.00	0.00	70,281.42	0.00	147,818.79	5,237,730.32
10/15/2017	12	218,100.21	0.00	0.00	68,352.38	0.00	149,747.83	5,087,982.49
04/15/2018	13	218,100.21	0.00	0.00	66,398.17	0.00	151,702.04	4,936,280.45
10/15/2018	14	218,100.21	0.00	0.00	64,418.46	0.00	153,681.75	4,782,598.70

Sponsor: Lake Worth

Funding Number: 501701

All Increments Combined

Date	Pmt. No.	Payment	Serv. Fee Paid	SF Interest	Interest	Grt. All. Assmt.	Principal Paid	Total to Pay*
04/15/2019	15	218,100.21	0.00	0.00	62,412.91	0.00	155,687.30	4,626,911.40
10/15/2019	16	218,100.21	0.00	0.00	60,381.19	0.00	157,719.02	4,469,192.38
04/15/2020	17	218,100.21	0.00	0.00	58,322.96	0.00	159,777.25	4,309,415.13
10/15/2020	18	218,100.21	0.00	0.00	56,237.87	0.00	161,862.34	4,147,552.79
04/15/2021	19	218,100.21	0.00	0.00	54,125.56	0.00	163,974.65	3,983,578.14
10/15/2021	20	218,100.21	0.00	0.00	51,985.69	0.00	166,114.52	3,817,463.62
04/15/2022	21	218,100.21	0.00	0.00	49,817.90	0.00	168,282.31	3,649,181.31
10/15/2022	22	218,100.21	0.00	0.00	47,621.82	0.00	170,478.39	3,478,702.92
04/15/2023	23	218,100.21	0.00	0.00	45,397.07	0.00	172,703.14	3,305,999.78
10/15/2023	24	218,100.21	0.00	0.00	43,143.30	0.00	174,956.91	3,131,042.87
04/15/2024	25	218,100.21	0.00	0.00	40,860.11	0.00	177,240.10	2,953,802.77
10/15/2024	26	218,100.21	0.00	0.00	38,547.13	0.00	179,553.08	2,774,249.69
04/15/2025	27	218,100.21	0.00	0.00	36,203.96	0.00	181,896.25	2,592,353.44
10/15/2025	28	218,100.21	0.00	0.00	33,830.21	0.00	184,270.00	2,408,083.44
04/15/2026	29	218,100.21	0.00	0.00	31,425.49	0.00	186,674.72	2,221,408.72

State Revolving Fund Loan
*** Amortized Repayment Schedule ***

Sponsor: Lake Worth

Funding Number: 501701

All Increments Combined

Date	Pmt. No.	Payment	Serv. Fee Paid	SF Interest	Interest	Grt. All. Assmt.	Principal Paid	Total to Pay*
10/15/2026	30	218,100.21	0.00	0.00	28,989.38	0.00	189,110.83	2,032,297.89
04/15/2027	31	218,100.21	0.00	0.00	26,521.49	0.00	191,578.72	1,840,719.17
10/15/2027	32	218,100.21	0.00	0.00	24,021.39	0.00	194,078.82	1,646,640.35
04/15/2028	33	218,100.21	0.00	0.00	21,488.66	0.00	196,611.55	1,450,028.80
10/15/2028	34	218,100.21	0.00	0.00	18,922.88	0.00	199,177.33	1,250,851.47
04/15/2029	35	218,100.21	0.00	0.00	16,323.61	0.00	201,776.60	1,049,074.87
10/15/2029	36	218,100.21	0.00	0.00	13,690.43	0.00	204,409.78	844,665.09
04/15/2030	37	218,100.21	0.00	0.00	11,022.88	0.00	207,077.33	637,587.76
10/15/2030	38	218,100.21	0.00	0.00	8,320.52	0.00	209,779.69	427,808.07
04/15/2031	39	218,100.21	0.00	0.00	5,582.90	0.00	212,517.31	215,290.76
10/15/2031	40	218,100.30	0.00	0.00	2,809.54	0.00	215,290.76	0.00
Totals:		8,717,139.65	133,536.08	1,812.11	1,959,026.20	0.00	6,622,765.26	

*Total to pay may reflect activity during repayment term

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STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

AND

CITY OF LAKE WORTH, FLORIDA

DRINKING WATER STATE REVOLVING FUND

CONSTRUCTION LOAN AGREEMENT

DW501701

Florida Department of Environmental Protection
Bureau of Water Facilities Funding
Bob Martinez Center
2600 Blair Stone Road, MS 3505
Tallahassee, Florida 32399-2400

DRINKING WATER STATE REVOLVING FUND CONSTRUCTION LOAN AGREEMENT

CONTENTS PAGE

ARTICLE I - DEFINITIONS 1
1.01. WORDS AND TERMS 1
1.02. CORRELATIVE WORDS 3
ARTICLE II - WARRANTIES, REPRESENTATIONS AND COVENANTS 3
2.01. WARRANTIES, REPRESENTATIONS AND COVENANTS. 4
2.02. LEGAL AUTHORIZATION 5
2.03. AUDIT AND MONITORING REQUIREMENTS 6
ARTICLE III - LOAN REPAYMENT ACCOUNT 9
3.01. LOAN DEBT SERVICE ACCOUNT 9
3.02. INVESTMENT OF LOAN DEBT SERVICE ACCOUNT MONEYS 9
3.03. LOAN DEBT SERVICE ACCOUNT WITHDRAWALS 10
3.04. ASSETS HELD IN TRUST 10
ARTICLE IV - PROJECT INFORMATION 10
4.01. PROJECT CHANGES 10
4.02. TITLE TO PROJECT SITE 10
4.03. PERMITS AND APPROVALS 10
4.04. ENGINEERING SERVICES 10
4.05. PROHIBITION AGAINST ENCUMBRANCES 10
4.06. COMPLETION MONEYS 11
4.07. CLOSE-OUT 11
4.08. LOAN DISBURSEMENTS 11
ARTICLE V - RATES AND USE OF THE SYSTEM 12
5.01. RATE COVERAGE 12
5.02. NO FREE SERVICE 12
5.03. RESERVED 12
5.04. NO COMPETING SERVICE 12
5.05. MAINTENANCE OF THE SYSTEM 12
5.06. ADDITIONS AND MODIFICATIONS 12
5.07. COLLECTION OF REVENUES 12
ARTICLE VI - DEFAULTS AND REMEDIES 13
6.01. EVENTS OF DEFAULT 13
6.02. REMEDIES 13
6.03. DELAY AND WAIVER 14
ARTICLE VII - THE PLEDGED REVENUES 14
7.01. SUPERIORITY OF THE PLEDGE TO THE DEPARTMENT 14
7.02. ADDITIONAL DEBT OBLIGATIONS 15
ARTICLE VIII - GENERAL PROVISIONS 15
8.01. DISCHARGE OF OBLIGATIONS 15
8.02. PROJECT RECORDS AND STATEMENTS 15

DRINKING WATER STATE REVOLVING FUND CONSTRUCTION LOAN AGREEMENT

CONTENTS PAGE

8.03. ACCESS TO PROJECT SITE 16
8.04. ASSIGNMENT OF RIGHTS UNDER AGREEMENT 16
8.05. AMENDMENT OF AGREEMENT 16
8.06. ANNULMENT OF AGREEMENT 16
8.07. SEVERABILITY CLAUSE 16
8.08. RESERVED 16
8.09. RESERVED 16
8.10. COMPLIANCE VERIFICATION 16
ARTICLE IX - CONSTRUCTION CONTRACT'S AND INSURANCE 17
9.01. AUTHORIZATION TO AWARD CONSTRUCTION CONTRACTS 17
9.02. SUBMITTAL OF CONSTRUCTION CONTRACT DOCUMENTS 18
ARTICLE X - DETAILS OF FINANCING 19
10.01. PRINCIPAL AMOUNT OF LOAN 19
10.02. LOAN SERVICE FEE 19
10.03. INTEREST RATE 19
10.04. LOAN TERM 19
10.05. REPAYMENT SCHEDULE 20
10.06. PROJECT COSTS 20
10.07. SCHEDULE 21
10.08. SPECIAL CONDITION 21
ARTICLE XI - EXECUTION OF AGREEMENT 22

DRINKING WATER STATE REVOLVING FUND
CONSTRUCTION LOAN AGREEMENT
DW501701.

THIS AGREEMENT is executed by the STATE OF FLORIDA DEPARTMENT OF

ENVIRONMENTAL PROTECTION (Department) and the CITY OF LAKE WORTH, FLORIDA, (Project Sponsor) existing as a local governmental agency under the laws of the State of Florida.

WITNESSETH:

WHEREAS, pursuant to Section 403.8532, Florida Statutes, the Department is authorized to make loans to finance or refinance the construction of public water systems, the planning and design of which have been reviewed by the Department; and

WHEREAS, the Project Sponsor has made application for the financing of the Project, and the Department has determined that such Project meets all requirements for a loan.

NOW, THEREFORE, in consideration of the Department loaning money to the Project Sponsor, in the principal amount and pursuant to the covenants hereinafter set forth, it is agreed as follows:

ARTICLE I - DEFINITIONS

1.01. WORDS AND TERMS.

Words and terms used herein shall have the meanings set forth below:

(1) "Agreement" or "Loan Agreement" shall mean this construction loan agreement.

(2) "Associated Loan" shall mean the money awarded to the Project Sponsor for the Project by the Department pursuant to the Associated Loan Agreement and amendments thereto.

(3) "Associated Loan Agreement" shall mean the Drinking Water SRF Loan Agreement, Number DW501700, including amendments thereto, between the Project Sponsor and the Department.

(4) "Authorized Representative" shall mean the official of the Project Sponsor authorized by ordinance or resolution to sign documents associated with the Loan.

(5) "Capitalized Interest" shall mean the interest accruing on Loan proceeds from the time of disbursement until six months before the first Semiannual Loan Payment is due. Capitalized Interest is financed as part of the Loan principal.

(6) "Depository" shall mean a bank or trust company, having a combined capital and unimpaired surplus of not less than $50 million, authorized to transact commercial banking or savings and loan business in the State of Florida and insured by the Federal Deposit Insurance Corporation.

(7) "Gross Revenues" shall mean all income or earnings received by the Project Sponsor from the ownership or operation of its System, including investment income, all as calculated in accordance with generally accepted accounting principles. Gross Revenues shall not include proceeds from the sale or other disposition of any part of the System, condemnation awards or proceeds of insurance, except use and occupancy or business interruption insurance, received with respect to the System.

(8) "Loan" shall mean the amount of money to be loaned pursuant to this Agreement and subsequent amendments.

(9) "Loan Application" shall mean the completed form which provides all information required to support obtaining construction loan financial assistance.

(10) "Loan Debt Service Account" shall mean an account, or a separately identified component of a pooled cash or liquid account, with a Depository established by the Project Sponsor for the purpose of accumulating Monthly Loan Deposits and making Semiannual Loan Payments.

(11) "Loan Service Fee" shall mean an origination *fee* which shall be paid to the Department by the Project Sponsor.

(12) "Monthly Loan Deposit" shall mean the monthly deposit to be made by the Project Sponsor to the Loan Debt Service Account.

(13) "Operation and Maintenance Expense" shall mean the costs of operating and maintaining the System determined pursuant to generally accepted accounting principles, exclusive of interest on any debt payable from Gross Revenues, depreciation, and any other items not requiring the expenditure of cash.

(14) "Pledged Revenues" shall mean the specific revenues pledged as security for repayment of the Loan and shall be the Gross Revenues derived yearly from the operation of the System after payment of the Operation and Maintenance Expense and after the satisfaction of all deposit and payment obligations on account of the Senior Revenue Obligations and any senior obligations issued pursuant to Section 7.02 of this Agreement. In this regard, it is understood that the payment obligations of the Project Sponsor under this Agreement constitute subordinated indebtedness of the System.

(15) "Project" shall mean the works financed by this Loan and shall consist of furnishing all labor, materials, and equipment to construct the treatment project in accordance with the plans and specifications accepted by the Department for the "Water Treatment Plant Reverse Osmosis Improvements" contract.

The Project is in agreement with the January 2007 and July 2009 "City of Lake Worth Water Facilities Plan" accepted by the Department effective July 13, 2009. A

Florida Categorical Exclusion Notification was published on June 12, 2009 and no adverse comments were received. The Project is an Equivalency Project as defined in Chapter 62-552, Florida Administrative Code.

(17) "Semiannual Loan Payment" shall mean the payment due from the Project Sponsor to the Department at six-month intervals.

(18) "Senior Revenue Obligations" shall mean the following debt obligations:

(a) City of Lake Worth, Florida, Utility System Refunding Revenue Bonds, Series 2008, issued in the amount of $66,000,000, pursuant to Resolution No. 15-2008 supplementing Resolution No. 63-2004; and

(b) Any refunding bonds issued to refund the Series 2008 Bonds or any additional bonds on a parity with the Series 2008 Bonds issued in accordance with Section 7.02 of this Agreement provided such refunding bonds shall not in the aggregate cause an increase annual debt service during the repayment period of this Loan.

(18) "System" shall mean the complete electric power system for the production, supply, distribution and sale of electricity now owned, in whole or in part, by or under the control of the Project Sponsor and any leasehold or other interest in any other electric plants or facilities which the Project Sponsor acquires, together with any and all additions, extensions and improvements thereto hereafter acquired or constructed and any joint venture or ownership or other interest in any electric plant or facility or any right to use the capacity or to receive the output from any electric plant or facility and the complete water system for the treatment, storage and distribution of potable water now owned, in whole or in part, by or under the control of the Project Sponsor and any leasehold or other interest in any other water plants or facilities which the Project Sponsor acquires, together with any and all additions, extensions and improvements thereto hereafter acquired or constructed and any joint venture or ownership or other interest in any water plant or facility or any right to use the capacity or receive the output or services of any water plant or facility; and, upon compliance with the requirements of Resolution No. 63-2004 adopted by the Project Sponsor on November 1, 2004, the term "System" may include any other utility-related services or functions, including, without limitation, the acquisition, distribution and sale of natural gas, the provision of cable television services or the provision of telecommunication services or fiber optic transmission service, a sewer system, as the Project Sponsor shall determine by subsequent resolution.

1.02. CORRELATIVE WORDS.

Words of the masculine gender shall be understood to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, the singular shall

include the plural and the word "person" shall include corporations and associations, including public bodies, as well as natural persons.

ARTICLE II - WARRANTIES, REPRESENTATIONS AND COVENANTS

2.01. WARRANTIES, REPRESENTATIONS AND COVENANTS.

The Project Sponsor warrants, represents and covenants that:

(1) The Project Sponsor has full power and authority to enter into this Agreement and to comply with the provisions hereof.

(2) The Project Sponsor currently is not the subject of bankruptcy, insolvency, or reorganization proceedings and is not in default of, or otherwise subject to, any agreement or any law, administrative regulation, judgment, decree, note, resolution, charter or ordinance which would currently restrain or enjoin it from entering into, or complying with, this Agreement.

(3) There is no material action, suit, proceeding, inquiry or investigation, at law or in equity, before any court or public body, pending or, to the best of the Project Sponsor's knowledge, threatened, which seeks to restrain or enjoin the Project Sponsor from entering into or complying with this Agreement.

(4) All permits, real property interests, and approvals required as of the date of this Agreement have been obtained for construction and use of the Project, The Project Sponsor knows of no reason why any future required permits or approvals are not obtainable.

(5) The Project Sponsor shall undertake the Project on its own responsibility, to the extent permitted by law.

(6) To the extent permitted by law, the Project Sponsor shall release and hold harmless the State, its officers, members, and employees from any claim arising in connection with the Project Sponsor's actions or omissions in its planning, engineering, administrative, and construction activities financed by this Loan or its operation of the Project.

(7) All Project Sponsor representations to the Department, pursuant to the Loan Application and Agreement, were true and accurate as of the date such representations were made. The financial information delivered by the Project Sponsor to the Department was current and correct as of the date such information was delivered. The Project Sponsor shall comply with Chapter 62-552, Florida Administrative Code, and all applicable State and Federal laws, rules, and regulations which are identified in the Loan Application or Agreement. Minority and Women's Business Enterprise goals as stated in the plans and specifications apply to this Project. To the extent that any assurance, representation, or covenant requires a future action, the Project Sponsor shall take such action as is necessary for compliance.

(8) The Project Sponsor shall maintain records using generally accepted accounting principles established by the Governmental Accounting Standards Board. As part of its bookkeeping system, the Project Sponsor shall keep accounts of the System separate from all other accounts and it shall keep accurate records of all revenues, expenses, and expenditures relating to the System, and of the Pledged Revenues, Loan disbursement receipts, and Loan Debt Service Account.

(9) In the event the anticipated Pledged Revenues are shown by the Project Sponsor's annual budget to be insufficient to make the Semiannual Loan Payments for such Fiscal Year when due, the Project Sponsor shall include in such budget other legally available non-ad valorem funds which will be sufficient, together with the Pledged Revenues, to make the Semiannual Loan Payments. Such other legally available non-ad valorem funds shall be budgeted in the regular annual governmental budget and designated for the purpose provided by this Subsection, and the Project Sponsor shall collect such funds for application as provided herein. The Project Sponsor shall notify the Department immediately in writing of any such budgeting of other legally available non-ad valorem funds. Nothing in this covenant shall be construed as creating a pledge, lien, or charge upon any such other legally available non-ad valorem funds; requiring the Project Sponsor to levy or appropriate ad valorem tax revenues; or preventing the Project Sponsor from pledging to the payment of any bonds or other obligations all or any part of such other legally available non-ad valorem funds.

(10) Each year, beginning three months before the first Semiannual Loan Payment and ending with the year during which the final Loan repayment is made, the Project Sponsor's Authorized Representative or its chief financial officer shall submit, pursuant to the schedule established in Section 10.07, a certification that: (a) Pledged Revenue collections satisfy the rate coverage requirement; (b) the Loan Debt Service Account contains the funds required; and (c) insurance in effect for the facilities generating the Pledged Revenues adequately covers the customary risks to the extent that such insurance is available.

(11) Pursuant to Section 216.347 of the Florida Statutes, the Project Sponsor shall not use the Loan proceeds for the purpose of lobbying the Florida Legislature, the Judicial Branch, or a State agency.

(12) The Project Sponsor agrees to construct the Project in accordance with the Project schedule. Delays incident to strikes, riots, acts of God, and other events beyond the reasonable control of the Project Sponsor are excepted. If for any reason construction is not completed as scheduled, there shall be no resulting diminution or delay in the Semiannual Loan Payment or the Monthly Loan Deposit.

(13) The Project Sponsor covenants that this Agreement is entered into for the purpose of constructing, refunding, or refinancing the Project which will in all events serve a public purpose. The Project Sponsor covenants that it will, under all conditions, complete and operate the Project to fulfill the public need.

2.02. LEGAL AUTHORIZATION.

Upon signing this Agreement, the Project Sponsor's legal counsel hereby expresses the opinion, subject to laws affecting the rights of creditors generally, that:

(1) This Agreement has been duly authorized by the Project Sponsor and shall constitute a valid and legal obligation of the Project Sponsor enforceable in accordance with its terms upon execution by both parties; and

(2) This Agreement specifies the revenues pledged for repayment of the Loan, and the pledge is valid and enforceable.

2.03. AUDIT AND MONITORING REQUIREMENTS.

The Project Sponsor agrees to the following audit and monitoring requirements.

(1) The financial assistance authorized pursuant to this Loan Agreement consists of the following:

Federal Resources, Including State Match, Awarded to the Recipient Pursuant to this Agreement Consist of the Following:					
Federal Program Number	Federal Agency	CFDA Number	CFDA Title	Funding Amount	State Appropriation Category
F5984522-090	EPA	66.468	Capitalization Grants for Drinking Water State Revolving Fund	$6,500,000	140129

(2) Audits.

(a) In the event that the Project Sponsor expends $500,000 or more in Federal awards in its fiscal year, the Project Sponsor must have a single or program-specific audit conducted in accordance with the provisions of 0M13 Circular A433, as revised. Subsection 2.03(1) of this Agreement indicates that Federal funds are awarded through the Department by this Agreement. In determining the Federal awards expended in its fiscal year, the Project Sponsor shall consider all sources of Federal awards, including Federal resources received from the Department of Environmental Protection. The determination of amounts of Federal awards expended should be in accordance with the guidelines established by OMB Circular A-133, as revised. An audit of the Project Sponsor conducted by the Auditor General in accordance with the provisions of OMB Circular A-133, as revised, will meet the requirements of this part.

(b) In connection with the audit requirements addressed in the preceding paragraph (a), the Project Sponsor shall fulfill the requirements relative to auditee responsibilities as provided in Subpart C of OMB Circular A-133, as revised.

(c) If the Project Sponsor expends less than $500,000 in Federal awards in its fiscal year, an audit conducted in accordance with the provisions of OMB Circular A-133, as revised, is not required. The Project Sponsor shall inform the Department of findings and recommendations pertaining to the State Revolving Fund in audits conducted by the Project Sponsor in which the $500,000 threshold has not been met. In the event that the Project Sponsor expends less than $500,000 in Federal awards in its fiscal year and elects to have an audit conducted in accordance with the provisions of OMB Circular A-133, as revised, the cost of the audit must be paid from non-

Federal resources (i.e., the cost of such an audit must be paid from Project Sponsor resources obtained from other than Federal entities).

(d) The Project Sponsor may access information regarding the Catalog of Federal Domestic Assistance (CFDA) via the internet at www.cfda.gov/index?cck=18rau=&rck=.

(3) Report Submission,

(a) Copies of reporting packages for audits conducted in accordance with OMB Circular A-133, as revised, and required by Subsection 2.03(2) of this Agreement shall be submitted, when required by Section .320 (d), OMB Circular A-133, as revised, by or on behalf of the Project Sponsor directly to each of the following:

(i) The Department at the following address:

Joe Aita, Audit Director
Office of the Inspector General
Florida Department of Environmental Protection 3900
Commonwealth Boulevard, MS 41
Tallahassee, Florida 32399-3123

(ii) The Federal Audit Clearinghouse designated in OMB Circular A-133, as revised (the number of copies required by Sections .320 (d)(1) and (2), OMB Circular A-133, as revised, should be submitted to the Federal Audit Clearinghouse), at the following address:

Federal Audit Clearinghouse Bureau of the Census
1201 East 10th Street
Jeffersonville, IN 47132

Submissions of the Single Audit reporting package for fiscal periods ending on or after January 1, 2008, *must* be submitted using the Federal Clearinghouse's Internet Data Entry System which can be found at http://harvester.census.gov/fac/

(iii) Other Federal agencies and pass-through entities in accordance with Sections .320(e) and (f), OMB Circular A-133, as revised.

(b) Pursuant to Section .320(f), OMB Circular A-133, as revised, the Project Sponsor shall submit a copy of the reporting package described in Section .320(c), OMB Circular A-133, as revised, and any management letters issued by the auditor, to the Department at the address listed under Subsection 2.03(3)(a) of this Agreement.

(c) Any reports, management letters, or other information required to be submitted to the Department pursuant to this Agreement shall be submitted timely in accordance with OMB Circular A-133, Florida Statutes, or Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable.

(d) Project Sponsors, when submitting financial reporting packages to the Department for audits done in accordance with OMB Circular A-133, or Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, should indicate the date that the reporting package was delivered to the Project Sponsor in correspondence accompanying the reporting package.

(4) Project-Specific Audit.

Within 12 months after the amendment establishing final Project costs, the Project Sponsor shall submit to the Department a Project-specific audit report for the Loan related revenues and expenditures. The audit shall address Loan disbursements received, Project expenditures, and compliance with Loan Agreement covenants. The Project Sponsor shall cause the auditor to notify the Department immediately if anything comes to the auditor's attention during the examination of records that would constitute a default under the Loan

Agreement. The audit findings shall set aside or question any costs that are unallowable under Chapter 62-503, Florida Administrative Code. A final determination of whether such costs are allowed shall be made by the Department.

(5) Record Retention.

The Project Sponsor shall retain sufficient records demonstrating its compliance with the terms of this Agreement for a period of five years from the date the audit report is issued, and shall allow the Department, or its designee, Chief Financial Officer, or Auditor General access to such records upon request. The Project Sponsor shall ensure that audit working papers are made available to the Department, or its designee, Chief Financial Officer, or

Auditor General upon request for a period of five years from the date the audit report is issued, unless extended in writing by the Department.

The Project Sponsor is hereby advised that the Federal and/or Florida Single Audit Act Requirements may further apply to lower tier transactions that may be a result of this Agreement. For federal financial assistance, the Project Sponsor shall utilize the guidance provided under OMB Circular A-133, Subpart B, Section .210 for determining whether the relationship represents that of a subrecipient or vendor.

The Project Sponsor should confer with its chief financial officer, audit director or contact the Department for assistance with questions pertaining to the applicability of these requirements.

In addition, the Project Sponsor agrees to complete and submit the Certification of Applicability to Single Audit Act Reporting, Attachment A, attached hereto and made a part hereof, within four (4) months following the end of the Project Sponsor's fiscal. year. Attachment A should be submitted to the Department's Grants Development and Review Manager at 3900 Commonwealth Boulevard, Mail Station 93, Tallahassee, Florida 32399-3000. The Grants Development and Review Manager is available to answer any questions at

(850) 245-2361.

(6) Monitoring.

In addition to reviews of audits conducted in accordance with OMB Circular A-133, as revised (see audit requirements above), monitoring procedures may include, but not be limited to on-site visits by Department staff, limited scope audits as defined by OMB Circular A-133, as revised, and/or other procedures. By entering into this Agreement, the Project Sponsor agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by the Department. In the event the Department determines that a limited scope audit of the Project Sponsor is appropriate, the Project Sponsor agrees to comply with any additional instructions provided by the Department to the Project Sponsor regarding such audit. The Project Sponsor further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the Chief Financial Officer or Auditor General.

ARTICLE III - LOAN REPAYMENT ACCOUNT

3.01. LOAN DEBT SERVICE ACCOUNT.

The Project Sponsor shall establish a Loan Debt Service Account with a Depository and begin making Monthly Loan Deposits no later than the date set forth for such action in Section 10.07 of this Agreement.

Beginning six months prior to each Semiannual Loan Payment, the Project Sponsor shall make six Monthly Loan Deposits. The first five deposits each shall be at least equal to one-sixth of the Semiannual Loan Payment. The sixth Monthly Loan Deposit shall be at least equal to the amount required to make the total on deposit in the Loan Debt Service Account equal to the Semiannual Loan Payment amount, taking into consideration investment earnings credited to the account pursuant to Section 3.02.

Any month in which the Project Sponsor fails to make a required Monthly Loan Deposit, the Project Sponsor's chief financial officer shall notify the Department of such failure. In addition, the Project Sponsor agrees to budget, by amendment if necessary, payment to the Department from other legally available non-ad valorem funds all sums becoming due before the same become delinquent. This requirement shall not be construed to give superiority to the Department's claim on any revenues over prior claims of general creditors of the Project Sponsor, nor shall it be construed to give the Department the power to require the Project Sponsor to levy and collect any revenues other than Pledged Revenues.

3.02. INVESTMENT OF LOAN DEBT SERVICE ACCOUNT MONEYS.

Moneys on deposit in the Loan Debt Service Account shall be invested pursuant to the laws of the State of Florida. Such moneys may be pooled for investment purposes. The maturity or redemption date of investments shall be not later than the date upon which such moneys may be needed to make Semiannual Loan Payments.

The investment earnings shall be credited to the Loan Debt Service Account and applied toward the Monthly Loan Deposit requirements.

3.03. LOAN DEBT SERVICE ACCOUNT WITHDRAWALS.

The withdrawal of moneys from the Loan Debt Service Account shall be for the sole purpose of making the Semiannual Loan Payment or for discharging the Project Sponsor's obligations pursuant to Section 8.01.

3.04. ASSETS HELD IN TRUST.

The assets in all accounts created under this Loan Agreement shall be held in trust for the purposes provided herein and used only for the purposes and in the manner prescribed in this Agreement; and, pending such use, said assets shall be subject to a lien and charge in favor of the Department.

ARTICLE IV - PROJECT INFORMATION

4.01. PROJECT CHANGES.

Project changes prior to bid opening shall be made by addendum to plans and specifications. Changes after bid opening shall be made by change order. The Project Sponsor shall submit all addenda and all change orders to the Department for an eligibility determination. After execution of all construction, equipment and materials contracts, the Project contingency may be reduced.

4.02. TITLE TO PROJECT SITE.

The Project Sponsor shall have an interest in real property sufficient for the construction and location of the Project free and clear of liens and encumbrances which would impair the usefulness of such sites for the intended use.

4.03. PERMITS AND APPROVALS.

The Project Sponsor shall have obtained, prior to the Department's authorization to award construction contracts, all permits and approvals required for construction of the Project or portion of the Project funded under this Agreement.

4.04. ENGINEERING SERVICES.

A professional engineer, registered in the State of Florida, shall be employed by, or under contract with, the Project Sponsor to oversee construction.

4.05. PROHIBITION AGAINST ENCUMBRANCES.

The Project Sponsor is prohibited from selling, leasing, or disposing of any part of the System which would materially reduce operational integrity or Gross Revenues so long as this Agreement, including any amendments thereto, is in effect unless the written consent of the Department is first secured.

4.06. COMPLETION MONEYS.

In addition to the proceeds of this Loan, the Project Sponsor covenants that it has obtained, or will obtain, sufficient moneys from other sources to complete construction and place the Project in operation on, or prior to, the date specified in Article X. Failure of the Department to approve additional financing shall not constitute a waiver of the Project Sponsor's covenants to complete and place the Project in operation.

4.07. CLOSE-OUT.

The Department shall conduct a final inspection of the Project and Project records. Following the inspection, deadlines for submitting additional disbursement requests, if any, shall be established, along with deadlines for uncompleted Loan requirements, if any.

Deadlines shall be incorporated into the Loan Agreement by amendment. The Loan principal shall be reduced by any excess over the amount required to pay all approved costs. As a result of such adjustment, the Semiannual Loan Payment shall be reduced accordingly, as addressed in Section 10.05.

4.08. LOAN DISBURSEMENTS.

Disbursements shall be made only by the State Chief Financial Officer and only when the requests for such disbursements are accompanied by a Department certification that such withdrawals are proper expenditures. Disbursements shall be made directly to the Project Sponsor for engineering and administrative allowances, and reimbursement of the incurred construction costs and related services. Disbursement of the allowances shall be made upon the Department's receipt of a disbursement request form. Disbursements for materials, labor, or services shall be made upon receipt of the following:

(1) A completed disbursement request form signed by the Authorized Representative. Such requests must be accompanied by sufficiently itemized summaries of the materials, labor, or services to identify the nature of the work performed; the cost or charges for such work; and the person providing the service or performing the work.

(2) A certification signed by the Authorized Representative as to the current estimated costs of the Project; that the materials, labor, or services represented by the invoice have been satisfactorily purchased, performed, or received and applied to the project; that all funds received to date have been applied toward completing the Project; and that under the terms and provisions of the contracts, the Project Sponsor is required to make such payments.

(3) A certification by the engineer responsible for overseeing construction stating that equipment, materials, labor and services represented by the construction invoices have been satisfactorily purchased, or received, and applied to the Project in accordance with construction contract documents; stating that payment is in accordance with construction contract provisions; stating that construction, up to the

point of the requisition, is in compliance with the contract documents; and identifying all additions or deletions to the Project which have altered the Project's performance standards, scope, or purpose since the issue of the Department construction permit.

(4) Such other certificates or documents by engineers, attorneys, accountants, contractors, or suppliers as may reasonably be required by the Department.

ARTICLE V - RATES AND USE OF THE SYSTEM

5.01. RATE COVERAGE.

The Project Sponsor shall maintain rates and charges for the services furnished by the System which will be sufficient to provide, in each Fiscal Year, Pledged Revenues equal to or exceeding 1.15 times the sum of the Semiannual Loan Payments due in such Fiscal Year. In addition, the Project Sponsor shall satisfy the coverage requirements of all senior and parity debt obligations.

5.02. NO FREE SERVICE.

The Project Sponsor shall not permit connections to, or furnish any services afforded by, the System without making a charge therefor based on the Project Sponsor's uniform schedule of rates, fees, and charges.

5.03. RESERVED.

5.04. NO COMPETING SERVICE.

The Project Sponsor shall not allow any person to provide any services which would compete with the System so as to adversely affect Gross Revenues.

5.05. MAINTENANCE OF THE SYSTEM.

The Project Sponsor shall operate and maintain the System in a proper, sound and economical manner and shall make all necessary repairs, renewals and replacements.

5.06. ADDITIONS AND MODIFICATIONS.

The Project Sponsor may make any additions, modifications or improvements to the System which it deems desirable and which do not materially reduce the operational integrity of any part of the System. All such renewals, replacements, additions, modifications and improvements shall become part of the System.

5.07. COLLECTION OF REVENUES.

The Project Sponsor shall use its best efforts to collect all rates, fees and other charges due to it. The Project Sponsor shall establish liens on premises served by the System for the amount of all delinquent rates, fees and other charges where such action is permitted by law. The Project Sponsor shall, to the full extent permitted by law, cause to discontinue the services of the System and use its best efforts to shut off

water service furnished to persons who are delinquent beyond customary grace periods in the payment of System rates, fees and other charges.

ARTICLE VI - DEFAULTS AND REMEDIES

6.01. EVENTS OF DEFAULT.

Each of the following events is hereby declared an event of default:

(1) Failure to make any Monthly Loan Deposit or to make any installment of the Semiannual Loan Payment when it is due and such failure shall continue for a period of 30 days.

(2) Except as provided in Subsections 6.01(1) and 6.01(7), failure to comply with the provisions of this Agreement or failure in the performance or observance of any of the covenants or actions required by this Agreement and such failure shall continue for a period of 60 days after written notice thereof to the Project Sponsor by the Department.

(3) Any warranty, representation or other statement by, or on behalf of, the Project Sponsor contained in this Agreement or in any information furnished in compliance with, or in reference to, this Agreement, which is false or misleading.

(4) An order or decree entered, with the acquiescence of the Project Sponsor, appointing a receiver of any part of the System or Gross Revenues thereof; or if such order or decree, having been entered without the consent or acquiescence of the Project Sponsor, shall not be vacated or discharged or stayed on appeal within 60 days after the entry thereof.

(5) Any proceeding instituted, with the acquiescence of the Project Sponsor, for the purpose of effecting a composition between the Project Sponsor and its creditors or for the purpose of adjusting the claims of such creditors, pursuant to any federal or state statute now or hereafter enacted, if the claims of such creditors are payable from Gross Revenues of the System.

(6) Any bankruptcy, insolvency or other similar proceeding instituted by, or against, the Project Sponsor under federal or state bankruptcy or insolvency law now or hereafter in effect and, if instituted against the Project Sponsor, is not dismissed within 60 days after filing.

(7) Failure of the Project Sponsor to give immediate written notice of default to the Department and such failure shall continue for a period of 30 days.

6.02. REMEDIES.

Upon any event of default and subject to the rights of others having prior liens on the Pledged Revenues, the Department may enforce its rights by any of the following remedies:

(1) By mandamus or other proceeding at law or in equity, cause to establish rates and collect fees and charges for use of the System, and to require the Project Sponsor to fulfill this Agreement.

(2) By action or suit in equity, require the Project Sponsor to account for all moneys received from the Department or from the ownership of the System and to account for the receipt, use, application, or disposition of the Pledged Revenues.

(3) By action or suit in equity, enjoin any acts or things which may be unlawful or in violation of the rights of the Department.

(4) By applying to a court of competent jurisdiction, cause to appoint a receiver to manage the System, establish and collect fees and charges, and apply the revenues to the reduction of the obligations under this Agreement.

(5) By certifying to the Auditor General and the Chief Financial Officer delinquency an loan repayments, the Department may intercept the delinquent amount plus six percent, expressed as an annual interest rate, penalty of the amount due to the Department from any unobligated funds due to the Project Sponsor under any revenue or tax sharing fund established by the State, except as otherwise provided by the State Constitution. Penalty interest shall accrue on any amount due and payable beginning on the 30th day following the date upon which payment is due.

(6) By notifying financial market credit rating agencies and potential creditors.

(7) By suing for payment of amounts due, or becoming due, with interest on overdue payments together with all costs of collection, including attorneys' fees.

(8) By accelerating the repayment schedule or increasing the interest rate on the unpaid principal of the Loan to as much as 1.667 times the Loan interest rate for a default under Subsection 6.01(1).

6.03. DELAY AND WAIVER.

No delay or omission by the Department to exercise any right or power accruing upon event of default shall impair any such right or power or shall be construed to be a waiver of any such default or acquiescence therein, and every such right and power may be exercised as often as may be deemed expedient. No waiver or any default under this Agreement shall extend to or affect any subsequent event of default, whether of the same or different provision of this Agreement, or shall impair consequent rights or remedies.

ARTICLE VII - THE PLEDGED REVENUES

7.01. SUPERIORITY OF THE PLEDGE TO THE DEPARTMENT.

From and after the effective date of this Agreement, the Department shall have a lien on the Pledged Revenues, which along with any other Department State Revolving Fund liens on the Pledged Revenues, on equal priority, will be prior and superior to any other hen, pledge or assignment with the following exception. All

obligations of the Project Sponsor under this Agreement shall be junior, inferior, and subordinate in all respects in right of payment and security to the Senior Revenue Obligations defined in Section 1.01 of this Agreement and to any additional senior obligations issued with the Department's consent pursuant to Section 7.02.

Any of the Pledged Revenues may be released from the lien on such Pledged Revenues in favor of the Department if the Department makes a determination, based upon facts deemed sufficient by the Department, that the remaining Pledged Revenues will, in each Fiscal Year, equal or exceed 1.15 times the debt service coming due in each Fiscal Year under the terms of this Agreement.

7.02. ADDITIONAL DEBT OBLIGATIONS.

The Project Sponsor may issue additional debt obligations on a parity with, or senior to, the lien of the Department on the Pledged Revenues provided the Department's written consent is obtained. Such consent shall be granted if the Project Sponsor demonstrates at the time of such issuance that the Pledged Revenues, which may take into account reasonable projections of growth of the System and revenue increases, plus revenues to be pledged to the additional proposed debt obligations will, during the period of time Semiannual Loan Payments are to be made under this Agreement, equal or exceed 1.15 times the annual combined debt service requirements of this Agreement and the obligations proposed to be issued by the Project Sponsor and will satisfy the coverage requirements of all other debt obligations secured by the Pledged Revenues. However, no such consent is required with respect to issuance of Senior Revenue Obligations as defined in Section 1.01.

ARTICLE VIII - GENERAL PROVISIONS

8.01. DISCHARGE OF OBLIGATIONS.

All payments required to be made under this Agreement shall be cumulative and any deficiencies in any Fiscal Year shall be added to the payments due in the succeeding year and all years thereafter until fully paid. Payments shall continue to be secured by this Agreement until all of the payments required shall be fully paid to the Department. If at any time the

Project Sponsor shall have paid, or shall have made provision for the timely payment of, the entire principal amount of the Loan and interest, the pledge of, and lien on, the Pledged Revenues to the Department shall be no longer in effect. Deposit of sufficient cash, securities, or investments, authorized by law from time to time, may be made to effect defeasance of this Loan. However, the deposit shall be made in irrevocable trust with a banking institution or trust company for the sole benefit of the Department. There shall be no penalty imposed by the Department for early retirement of this Loan.

8.02. PROJECT RECORDS AND STATEMENTS.

Books, records, reports, engineering documents, contract documents, and papers shall be available to the authorized representatives of the Department and the *U.S.* Environmental Protection Agency's Inspector General for inspection at any

reasonable time after the Project Sponsor has received a disbursement and until five years after the date that the Project-specific audit report, required under Subsection 2.03(4), is issued.

8.03. ACCESS TO PROJECT SITE.

The Project Sponsor shall provide access to Project sites and administrative offices to authorized representatives of the Department at any reasonable time. The Project Sponsor shall cause its engineers and contractors to cooperate during Project inspections, including making available working copies of plans and specifications and supplementary materials.

8.04. ASSIGNMENT OF RIGHTS UNDER AGREEMENT.

The Department may assign any part of its rights under this Agreement after notification to the Project Sponsor. The Project Sponsor shall not assign rights created by this Agreement without the written consent of the Department.

8.05. AMENDMENT OF AGREEMENT.

This Agreement may be amended in writing, except that no amendment shall be permitted which is inconsistent with statutes, rules, regulations, executive orders, or written agreements between the Department and the U.S. Environmental Protection Agency. This Agreement may be amended after all construction contracts are executed to re-establish the Project cost, Loan amount, Project schedule, and Semiannual Loan Payment amount. A final amendment establishing the final Project costs shall be completed after the Department's final inspection of the Project records.

8.06. ANNULMENT OF AGREEMENT.

The Department may unilaterally annul this Agreement if the Project Sponsor has not drawn any of the Loan proceeds by the date set in Section 10.07 for establishing the Loan Debt Service Account. If the Department unilaterally annuls this Agreement, the Department will provide written notification to the Project Sponsor.

8.07. SEVERABILITY CLAUSE.

If any provision of this Agreement shall be held invalid or unenforceable, the remaining provisions shall be construed and enforced as if such invalid or unenforceable provision had not been contained herein.

8.08. RESERVED.

8.09. RESERVED.

8.10. COMPLIANCE VERIFICATION.

(1) The Local Government shall periodically interview a sufficient number of employees entitled to Davis-Bacon prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in

29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The Local Government must use Standard Form 1445 or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.

(2) The Local Government shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with Davis-Bacon posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, the Local Government must conduct interviews with a representative group of covered employees within two weeks of each contractor or subcontractor's submission of its initial weekly payroll data and two weeks prior to the estimated completion date for the contract or subcontract. Local Governments must conduct more frequent interviews if the initial interviews or other information indicates that there is a risk that the contractor or subcontractor is not complying with Davis-Bacon. Local Governments shall immediately conduct necessary interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.

(3) The Local Government shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The Local Government shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with Davis-Bacon posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, the Local Government must spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. Local Governments must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with Davis-Bacon. In addition, during the examinations the Local Government shall verify evidence of fringe benefit plans and payments thereunder by contractors and subcontractors who claim credit for fringe benefit contributions.

(4) The Local Government shall periodically review contractors and subcontractors use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor (DOL) or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in items (2) and (3) above.

(5) Local Governments must immediately report potential violations of the Davis-Bacon prevailing wage requirements to the EPA Davis-Bacon contact Sheryl Parsons at Parsons.Sheryl@epamail.epa.gov and to the appropriate DOL Wage and Hour District Office listed at http: / / www. dol. gov esa/ contacts/ whd/ america2.htm.

ARTICLE IX - CONSTRUCTION CONTRACT'S AND INSURANCE

9.01. AUTHORIZATION TO AWARD CONSTRUCTION CONTRACTS.

The following documentation is required to receive the Department's authorization to award construction contracts:

(1) Proof of advertising.

(2) Award recommendation, bid proposal, and bid tabulation (certified by the responsible engineer).

(3) Certification of compliance with the conditions of the Department's approval of competitively or non-competitively negotiated procurement, if applicable.

(4) Certification Regarding Disbarment, Suspension, Ineligibility and Voluntary Exclusion.

(5) Certification by the Authorized Representative that affirmative steps were taken to encourage Minority and Women's Business Enterprises participation in Project construction.

(6) Current certifications for Minority and Women's Business Enterprises participating in the contract. If the goals as stated in the plans and specifications are not met, documentation of actions taken shall be submitted.

(7) Assurance that the Local Government and contractors are in compliance with Section 1606 with labor standards, including prevailing wage rates established for its locality by the U.S. Department of Labor under the Davis-Bacon Act for Project construction.

9.02. SUBMITTAL OF CONSTRUCTION CONTRACT DOCUMENTS.

After the Department's authorization to award construction contracts has been received, the Project Sponsor shall submit:

(1) Contractor insurance certifications,

(2) Executed Contract(s).

(3) Notices to proceed with construction. 9.03. INSURANCE REQUIRED.

The Project Sponsor shall cause the Project, as each part thereof is certified by the engineer responsible for overseeing construction as completed, and the System (hereafter referred to as "Revenue Producing Facilities") to be insured by an insurance company or companies licensed to do business in the State of Florida against such damage and destruction risks as are customary for the operation of Revenue Producing Facilities of like size, type and location to the extent such insurance is obtainable from time to time against any one or more of such risks.

The proceeds of insurance policies received as a result of damage to, or destruction of, the Project or the other Revenue Producing Facilities, shall be used to restore or replace damaged portions of the facilities. If such proceeds are insufficient, the Project Sponsor shall provide additional funds to restore or replace the damaged

portions of the facilities. Repair, construction or replacement shall be promptly completed.

ARTICLE X - DETAILS OF FINANCING

10.01. PRINCIPAL AMOUNT OF LOAN.

The estimated principal amount of the Loan is $6,579,700, which consists of $6,500,000 to be disbursed to the Project Sponsor and $79,700 of Capitalized Interest.

Capitalized interest is not disbursed to the Project Sponsor, but is amortized via periodic loan repayments to the Department as if it were actually disbursed. Capitalized interest is computed at the interest rate, or rates, set for the Loan. It accrues and is compounded annually from the time when disbursements are made until six months before the first Semiannual Loan Payment is due. Capitalized Interest is estimated prior to establishing the schedule of actual disbursements..

This project is a Segmented Project. Additional State Revolving Fund financing for the Project is dependent upon the availability of additional funds. The current funding limitations and future funding priority entitlement for Segmented Projects are set forth in the Chapter 62-552 of the Florida Administrative Code.

10.02. LOAN SERVICE FEE.

The Loan Service Fee is $130,000 for the Loan amount authorized to date. The fee represents two percent of the Loan amount excluding Capitalized Interest; that is, two percent of $6,500,000. An additional Loan Service Fee amount will be assessed for any additional funding provided by amendment to this Agreement. The fee shall be adjusted downward if adjustment of Project costs results in a Loan decrease, provided that the decrease amendment is executed before the first Semiannual Loan Payment due date.

Interest shall accrue on the Loan Service Fee at the rate, or rates, set for the Loan until the fee is paid. Loan Service Fee interest shall be compounded annually from the effective date of the Loan until six months before the first Semiannual Loan Payment is due at which time it is capitalized. The estimated Loan Service Fee capitalized interest is $3,190.

10.03. INTEREST RATE.

The rate of interest on the unpaid principal of the Loan amount specified in Section 10.01 is 2.61 percent per annum; however, if this Agreement is not executed by the Project Sponsor and returned to the Department before October 1, 2010, the interest rate may be adjusted. A separate interest rate shall be established for any additional funds provided by amendment to this Agreement.

10.04. LOAN TERM.

The Loan shall be repaid in 40 Semiannual Loan Payments.

10.05. REPAYMENT SCHEDULE.

The Semiannual Loan Payment shall be computed based upon the principal amount of the Loan plus the Loan Service Fee and Loan Service Fee capitalized interest and the principle of level debt service. The Department will deduct the Loan Service Fee and all associated interest from the first two payments. The Semiannual Loan Payment amount may be adjusted, by amendment of this Agreement, based upon revised information. After the final disbursement of Loan proceeds, the Semiannual Loan Payment shall be based upon the actual Project costs and actual dates and amounts of disbursements, taking into consideration any previous payments. Actual Project costs shall be established after the Department's inspection of the completed Project and associated records.

Each Semiannual Loan Payment shall be in the amount of $216,383 until the payment amount is adjusted by amendment. The interest portion of each Semiannual Loan Payment shall be computed on the unpaid balance of the principal amount of the Loan, including Capitalized Interest. Interest also shall be computed on the unpaid balance of the Loan Service Fee and Loan Service Fee capitalized interest. Interest shall be computed as of the due date of each Semiannual Loan Payment.

Semiannual Loan Payments shall be received by the Department beginning on April 15, 2012 and semiannually thereafter on October 15 and April 15 of each year until all amounts due hereunder have been fully paid. Funds transfer shall be made by electronic means.

The Semiannual Loan Payment amount is based on the total amount owed of $6,709,700, which consists of the Loan principal plus the Loan Service Fee with its capitalized interest.

10.06. PROJECT COSTS.

The Project Sponsor and the Department acknowledge that the actual Project costs have not been determined as of the effective date of this Agreement. Project cost adjustments may be made as a result of construction bidding or mutually agreed upon Project changes. Capitalized Interest will be recalculated based on actual dates and amounts of Loan disbursements. If the Project Sponsor receives other governmental financial assistance for this Project, the costs funded by such other governmental assistance will not be financed by this Loan. The Department shall establish the final costs after its final inspection of the Project records. Changes in Project costs may also occur as a result of the Project Sponsor's Project audit or a Department audit. The Project Sponsor agrees to the following estimates of Project costs:

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PROJECT COSTS

LINE ITEM	TOTAL COST	DARRA Loan DW501700 Appropriate	Companion Loan DW501701 Appropriated
Administrative Allowance	123,960	0	
Engineering Allowance	1,239,600	0	1,239,600
Construction	16,709,000	2,550,000	3,465,540
Contingency	1,670,900	0	1,670,900
Technical Services	2,280,100	450,000	0
Subtotal (Disbursable Amount)	22,023,560	3,000,000	6,500,000
Estimated Principal	(2,550,000)	(2,550,000)	0
Subtotal (Loan Amount)	19,473,560	450,000	6,500,000
Estimated Capitalized Interest	92,700	13,000	79,700
Total (Loan Principal Amount)	19,566,260	463,000	6,579,700

10.07. SCHEDULE.

The Project Sponsor agrees by execution hereof:

(1) Completion of Project construction is scheduled for October 15, 2011.

(2) The Loan Debt Service Account shall be established and Monthly Loan Deposits shall begin no later than October 15, 2011.

(3) The initial annual certification required under Subsection 2.01(10) of this Agreement shall be due January 15, 2012. Thereafter the certification shall be submitted no later than September 30 of each year until the final Semiannual Loan Payment is made.

(4) The first Semiannual Loan Payment in the amount of $216,383 shall be due April 15, 2012.

10.08. SPECIAL CONDITION.

Prior to any funds being released, the Project Sponsor shall submit a certified copy of the Resolution which establishes the Pledged Revenues.

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ARTICLE XI - EXECUTION OF AGREEMENT

This Loan Agreement DW501701 shall be executed in three or more counterparts, any of which shall be regarded as an original and all of which constitute but one and the same instrument.

IN WITNESS WHEREOF, the Department has caused this Agreement to be executed on its behalf by the Deputy Director and the Project Sponsor has caused this Agreement to be executed on its behalf by its Authorized Representative and by its affixed seal. The effective date of this Agreement shall be as set forth below by the Deputy Director.

for

CITY OF LAKE WORTH

Mayor

I attest to the opinion expressed in Section 2.02, entitled Legal Authorization.

Attest

City Clerk

9/24/10

City Attorney

SEAL

for

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

Deputy Director
Division of Water Resource Management

Date

Attachment included as part of this Agreement:

Attachment A - Certification of Applicability to Single Audit Act Reporting

ATTACHMENT A
CERTIFICATION OF APPLICABILITY TO SINGLE AUDIT ACT REPORTING

Grantee's Name: _____

Grantee Fiscal Year Period: FROM: _____ TO: _____

Total State Financial Assistance Expended during Grantee's most recently completed Fiscal Year:
$ _____

Total Federal Financial Assistance Expended during Grantee's most recently completed Fiscal Year:
$ _____

CITY OF LAKE WORTH

7 North Dixie Highway · Lake Worth, Florida 33460 · Phone: 561-586-1600· Fax: 561-586-1750

AGENDA DATE: January 7, 2014, Regular Meeting **DEPARTMENT:** Water Utility

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EXECUTIVE BRIEF

TITLE:
Amended Contract and Purchase Order with Burton & Associates, Inc. for master plan financial impact analysis and Fiscal Year 2015 water and sewer revenue sufficiency analysis

SUMMARY:

The Amended Contract and Purchase Order will authorize the purchase of specialized financial analysis services to conduct a Lake Worth 2020 Master Plan Financial Impact Analysis and Fiscal Year 2015 Water and Sewer Revenue Sufficiency Analysis. The Fiscal Year 2014 Not-to-Exceed fees for these professional services are $25,893.

BACKGROUND AND JUSTIFICATION:
The City of Lake Worth approved a contract with Burton & Associates, Inc. on August 5, 2008, for financial services to perform a rate study for the water and sewer utility funds. The agreement allows for annual renewals for additional services.

The amended agreement and purchase order authorizes Burton & Associates, Inc. to perform additional financial modeling and rate studies showing the potential impact of the proposed Lake Worth 2020 Master Plan capital projects, and a Fiscal Year 2015 Water and Sewer Revenue Sufficiency Analysis. The analysis is needed annually as part of the budget process to assure that water and sewer rates are sufficient to fund budgeted expenditures.

MOTION:
I move to approve/disapprove the contract amendment and purchase order with Burton & Associates, Inc. for Master Plan Financial Impact Analysis and Fiscal Year 2015 Water and Sewer Revenue Sufficiency Analysis for a Not-to-Exceed price of $25,893 during Fiscal Year 2014.

ATTACHMENT(S):
1) Fiscal Analysis
2) Amended contract including Burton & Associates, Inc's. proposal
3) City of Lake Worth contract with Burton & Associates, Inc. dated 8/5/2008

FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact

Fiscal Years	2014	2015	2016	2017	2018
Capital Expenditures	0	0	0	0	0
Operating Expenditures	$25,893	$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	$25,893	0	0	0	0

No. of Additional Full-Time Employees	0	0	0	0	0

B. Recommended Source of Funds/Summary of Fiscal Impact

The funds have been identified in the FY2014 Operations and Maintenance Budget from account 402-7034-533.34-50.

Utilities/Water Production							
Account Number	Account Description	Project #	FY 2014 Proposed Budget	Amended Budget	Current Balance	Agenda Item Expenditures	Proposed Remaining Balance
402-7034-533.34-50	Other Contractual Services	N/A	$50,300	N/A	$63,171	-$25,893	$37,278

C. Department Fiscal Review:

Larry Johnson - Director
Christy Goddeau –Asst. City Attorney

AMENDMENT TO CONTRACT FOR PROFESSIONAL SERVICES

THIS AMENDMENT TO THE CONTRACT FOR PROFESSIONAL SERVICES ("Amendment") is made this _____day of _____, 2014, between the **City of Lake Worth, Florida**, a municipal corporation with its principle office located at 7 North Dixie Highway, Florida 33460 (the "CITY"), and **BURTON AND ASSOCIATES, INC.**, a Florida corporation, with its office located at 1000 N. Ashley Drive, Suite 513, Tampa, FL 33602 ("BURTON").

RECITALS

WHEREAS, the CITY issued Request for Proposal UT-WAT-07-08-690 for the procurement of a water and wastewater utility rate study and related financial services (the "RFP");

WHEREAS, BURTON submitted a response to the RFP and the CITY awarded a contract for professional services to BURTON on September 3, 2008 (the "Contract");

WHEREAS, the CITY desires to utilize BURTON for additional services as authorized by the Contract in order to obtain a Master Plan Financial Impact Analysis & FY 2015 Water and Sewer Revenue Sufficiency Analysis (the "Analysis");

WHEREAS, BURTON has submitted a proposal for the Analysis.

NOW THEREFORE, the CITY and BURTON, in consideration of the mutual promises herein contained and contained in the Contract, the sufficient of which is hereby acknowledged by both parties, agree to amend the Contract as follows:

1. Scope of Services: The nature and extent of the services to be rendered by BURTON under this Amendment in order to complete the Analysis are set forth in BURTON's proposal attached hereto as Exhibit "A" and incorporated herein.

2. Compensation: BURTON's compensation for all services under this Amendment is set forth in Exhibit "A". The total compensation to be paid to BURTON under this Amendment is $25,893 (Twenty-Five Thousand Eight Hundred Ninety-Three Dollars).

3. **PUBLIC RECORDS:** Effective July 1, 2013, pursuant to section 119.0701, Florida Statutes, BURTON shall comply with Florida's Public Records Act, Chapter 119, Florida Statutes, and specifically agrees to:

(a) Keep and maintain all public records that ordinarily and necessarily would be required by the CITY to keep and maintain in order to perform the services under this Agreement.

(b) Provide the public with access to said public records on the same terms and conditions that the CITY would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.

(c) Ensure that said public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.

(d) Meet all requirements for retaining said public records and transfer, at no cost, to the CITY all said public records in possession of the CONTRACTOR upon termination of the Agreement and destroy any duplicate public records that are exempt or confidential and exempt from Chapter

119, Florida Statutes, disclosure requirements. All records stored electronically must be provided to the City in a format that is compatible with the information technology systems of the City.

Notwithstanding the foregoing, BURTON shall retain all rights it has to any and all applicable exemptions to Chapter 119, Florida Statutes, including without limitation, the exemption specifically addressed in the Contract for FAMS XL©.

4. COUNTERPARTS: This Amendment to the Contract may be executed in counterparts, each of which shall be an original, but all of which shall constitute one and the same document. Each of the parties shall sign a sufficient number of counterparts, so that each party will receive a fully executed original of this Amendment.

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

IN WITNESS WHEREOF the parties hereto have made and executed this Amendment to the Contract on the day and year first above written.

CITY OF LAKE WORTH, FLORIDA

By: _____
Pam Triolo, Mayor

ATTEST

_____
Pamela J. Lopez, City Clerk

Approved as to form and legal sufficiency:

_____ for
Glen J. Torcivia, City Attorney

CONTRACTOR: **BURTON & ASSOCIATES, INC.**

By: _____

[Corporate Seal]

Print Name: Andrew J. Burnham

Title: Senior Vice President

STATE OF FLORIDA)
COUNTY OF Hillsborough)

The foregoing instrument was acknowledged before me this 10th day of Dec, 2013 by Andrew J Burnham SVP of Burton and Associates, Inc., a Florida corporation, and who is personally known to me or who has produced the following _____ as identification.

Notary Public: _____

JAN M BLANTON
Notary Public - State of Florida
My Comm. Expires Jun 28, 2017
Commission # FF 1019
Bonded Through National Notary Assn.

EXHIBIT "A"
BURTON & ASSOCIATES, INC.
PROPOSAL
(dated November 14, 2013; 3 pages)

BURTON & ASSOCIATES

November 14, 2013

Mr. Larry Johnson
Utilities Director
1900 2nd Avenue North
Lake Worth, FL 33461

Re: Master Plan Financial Impact Analysis & FY 2015 Water and Sewer Revenue Sufficiency Analysis Proposal

Dear Mr. Johnson:

As requested, this letter presents our proposal to conduct a Master Plan Financial Impact Analysis as well as a FY 2015 Water and Sewer Revenue Sufficiency Analysis (RSA). First, we will perform a financial impact analysis associated with the integration of the capital costs identified in the recently completed Master Plan using the models developed during the conduct of the FY 2014 Water & Sewer Revenue Sufficiency Analysis as well as the most current FY 2014 budget information. The output from that analysis will then be integrated into the RSA, which will include the development of an updated ten-year financial plan for the Water and Local Sewer Funds based upon the most current information and data available, including the initial budgetary information for FYE 2015. Please note that the RSA will not include the update of impact fees, the Regional Sewer Fund financial model, retail rate design, or specific service fees and charges.

I have prepared a proposed Project Work Plan and Cost Estimate Schedule (Schedule) that shows successful completion of the analysis can be accomplished for a total cost of $25,893.

We can begin work on this assignment immediately upon receipt of a notice to proceed and estimate that each work element can be completed within approximately 60 days of receipt of all required data. We appreciate the opportunity to present the City with this proposal and look forward to working with you on this assignment.

If you have any questions, please do not hesitate to call me at (813) 443-5138.

Very truly yours,

Andrew J. Burnham
Senior Vice President

Burton & Associates
1000 N. Ashley Drive, Suite 513 • Tampa, Florida 33602 • Phone (813) 443-5138 • Fax (813) 443-8289
E-mail: *aburnham@burtonandassociates.com*

City of Lake Worth

MASTER PLAN FINANCIAL IMPACT ANALYSIS & FY 2015 WATER AND SEWER REVENUE SUFFICIENCY ANALYSIS

PROJECT WORK PLAN & MAN-HOUR ESTIMATE

BURTON & ASSOCIATES

	PROJECT TASKS	ESTIMATED MAN-HOURS					
		Project Principal	Project Manager	Project Consultant	Clerical	Total Project	City of Lake Worth Responsibility
	Rates —>	$190	$160	$130	$40		
WORK ELEMENT I - MASTER PLAN FINANCIAL IMPACT ANALYSIS							
Task 1	***Project Initiation - Initiate the Project***						
1.1	Conduct kickoff meeting via conference call.	1	0	1	0	2	Conf. Call
1.2	Identify, obtain, and review Master Plan information, including project descriptions, costs, and timing.	1	0	1	0	2	Provide docs
Task 2	***Evaluate the Master Plan data using the FY 2014 Revenue Sufficiency Analysis Models for the Water & Local Sewer Funds***						
2.1	Update the capital program in the models developed during the Revenue Sufficiency Analysis conducted for FY 2014 with the information from the Master Plan as well as the most current FY 2014 budget information.	1	0	4	0	5	NA
2.2	Review results with consulting team, reconcile to the FY 2014 RSA, and make required adjustments.	1	0	2	0	3	NA
2.3	Meet with City staff in an interactive work session to review preliminary results.	2	0	2	0	4	Meeting
2.4	Make adjustments as required based upon input from City staff in Task 2.3 and prepare detailed assumptions and results workbooks for each fund.	1	0	4	0	5	Review
2.5	Conference call/Internet meeting with City staff to review adjusted results and determine multi-year capital improvement plan and funding sources.	2	0	2	0	4	Meeting
TOTAL ESTIMATED MAN-HOURS - WORK ELEMENT I		9	0	16	0	25	
TOTAL ESTIMATED FEE - WORK ELEMENT I		$1,710	$0	$2,080	$0	$3,790	
TOTAL ESTIMATED EXPENSES - WORK ELEMENT I	5 %					$190	
TOTAL ESTIMATED COST - WORK ELEMENT I						**$3,980**	
WORK ELEMENT II - FY 2015 REVENUE SUFFICIENCY ANALYSIS							
Task 1	***Project Initiation - Initiate the Project***						
1.1	Conduct kickoff meeting via conference call.	1	1	1	0	3	Conf. Call
1.2	Identify, obtain, and review financial and operating data.	0	1	2	0	3	Provide docs
Task 2	***Revenue Sufficiency Analysis - Develop a Multi-year Financial Forecast and Financial Plan for the Water & Local Sewer Funds:***						
2.1	Prepare water and sewer customer and demand analysis for each fund (based upon historical billing data) to determine changes in projected growth, trends in usage patterns and total projected water and wastewater system customers, ERCs and usage.	1	2	6	0	9	NA
2.2	Obtain, verify and input financial and billing data into Burton & Associates proprietary **FAMS XL ©** model, run the model and produce preliminary output, including a ten year financial management program that will include the following separately for the water and wastewater systems:	1	6	24	0	31	NA
	o Capital Improvements Program - Project listing by year - Alternative financing options for capital projects - Optimum funding source by project by year						
	o Borrowing Program - Borrowing required (by source) to fund CIP projects not funded by other sources to include but not necessarily be limited to revenue bonds and State or other programs. - Timing of bond issue(s)/loan(s) to provide required borrowed funds - Annual debt service of bond issue(s)/loan(s)						
	o Revenue Sufficiency Analysis - Annual revenue projections - Annual operations and maintenance expense projections - All other annual revenue requirements such as R&R, minor capital, transfers to other funds, current debt service/loan payments, replenishment of reserves, etc. - Alternative plans of annual percentage rate adjustments to the water and wastewater rates to provide sufficient revenues for each service.						
	o Sources and Uses of Funds Analysis						
	o Funds Analysis - Spend down limits (minimum reserve requirements) by fund - Beginning and ending funds balances by fund by year						
2.3	Link models as appropriate for cost apportionment/projections, calculation of customer impacts, etc.	0	1	1	0	2	NA

City of Lake Worth

MASTER PLAN FINANCIAL IMPACT ANALYSIS & FY 2015 WATER AND SEWER REVENUE SUFFICIENCY ANALYSIS

PROJECT WORK PLAN & MAN-HOUR ESTIMATE

BURTON & ASSOCIATES

	PROJECT TASKS	ESTIMATED MAN-HOURS					
		Project Principal	Project Manager	Project Consultant	Clerical	Total Project	City of Lake Worth Responsibility
	Rates —>	$190	$160	$130	$40		
2.4	Adjust model(s) to reflect any changes to the Regional Sewer Fund rate structure and/or other changes as appropriate.	0	1	3	0	4	NA
2.5	Review results with consulting team, make required adjustments and create alternatives scenarios.	3	3	6	0	12	NA
2.6	Meet with City staff in an interactive work session to review preliminary results.	3	3	3	0	9	Meeting
2.7	Make adjustments as required based upon input from City staff in Task 2.6 and prepare detailed assumptions and results workbooks for each fund.	1	2	6	0	9	Review
2.8	Conference call/Internet meeting with City staff to review adjusted results and determine final plan of annual rate revenue adjustments for recommendation to the Commission.	3	3	3	0	9	Meeting
2.9	Conduct and Compile a Comparative Rate Survey	0	0	1	4	5	Review
Task 3	***Prepare Presentation & Executive Summary for Delivery to Management and Commission***						
3.1	Prepare presentation and executive summary of analysis	1	2	3	0	6	NA
3.2	Make adjustments based upon input from City staff.	0	1	2	0	3	Review
3.3	Attend meeting with City Management and present the preliminary results.	3	3	0	0	6	Attend
3.4	Make adjustments based upon input from City Management.	0	1	2	0	3	Review
3.5	Present preliminary results to City Commission at workshop.	3	3	0	0	6	Attend
Task 4	***Final Report - Prepare a Report of the Results of the Study***						
4.1	Prepare a Draft Report of the Results of the Study.	1	3	6	0	10	NA
4.2	Prepare Final Report to include adjustments based upon input from City staff and Management.	1	2	3	1	7	Attend
Task 5	***Provide Assistance in Development of Updated Resolutions***						
5.1	Prepare Drafts of Rate Resolutions, including schedules of new rates.	1	2	0	0	3	NA
5.2	Review comments on resolutions developed by City Staff/Attorney and adjust as appropriate.	0	1	0	0	1	Review
5.3	Attend One (1) Rate Hearing for Adoption.	2	0	0	0	2	Attend
TOTAL ESTIMATED MAN-HOURS - WORK ELEMENT II		25	41	72	5	143	
TOTAL ESTIMATED FEE - WORK ELEMENT II		$4,750	$6,560	$9,360	$200	$20,870	
TOTAL ESTIMATED EXPENSES - WORK ELEMENT II	5 %					$1,044	
TOTAL ESTIMATED COST - WORK ELEMENT II						**$21,914**	
TOTAL ESTIMATED MAN-HOURS - TOTAL PROJECT		34	41	88	5	168	
TOTAL ESTIMATED FEE - TOTAL PROJECT		$6,460	$6,560	$11,440	$200	$24,660	
TOTAL ESTIMATED EXPENSES - TOTAL PROJECT	5 %					$1,233	

C-1187
8/5/08 RM
Con-J

BURTON & ASSOCIATES, INC.

CONTRACT FOR PROFESSIONAL SERVICES

Project No. (To Be Assigned) Title: FY 2008 Water/Wastewater Rate Sufficiency Analysis

This Agreement, made and entered into on the date last executed below, by and between BURTON & ASSOCIATES, INC. and THE CITY OF LAKE WORTH, FLORIDA, hereinafter called "CLIENT", is for the services described under item 2 of this Agreement.

BURTON & ASSOCIATES, INC.	Contact:	Mr. Michael E. Burton, President
	Address:	200 Business Park Circle, Suite 101 St. Augustine, Florida 32095
	Phone No.	(904) 247-0787
CLIENT	Contact:	Mr. Walt Smyser, Project Director
	Address:	The City of Lake Worth 1900 2nd Avenue North Lake Worth, FL 33461
	Phone No.	(561) 586-1671

1. **PROJECT:** General Nature of Project – Perform a water and wastewater utility rate study and related financial services.

2. **SCOPE OF SERVICES:** Description of services to be performed by BURTON & ASSOCIATES, INC. (if additional pages are necessary, they are identified as Attachment B): The scope of services are as described in Section VI – Approach to the Project (all tasks) and Section VII – Price Proposal and Schedule (all tasks) in BURTON & ASSOCIATES, INC.'s proposal to CLIENT dated June 11, 2008 in response to CLIENT's RFP # UT-WAT-07-08-690. Attachment B also presents BURTON & ASSOCIATES, INC.'s work plan that will be executed to accomplish said scope of services.

3. **TIME OF COMPLETION:** Services called for herein shall be completed no later than 90 days from receipt of a notice to proceed unless otherwise extended by the agreement of both parties.

4. **COMPENSATION:** The compensation to be paid BURTON & ASSOCIATES, INC. for providing the services called for herein shall be (if additional pages are necessary, they are identified as Attachment B):

   _____A. A Lump-Sum charge of $_____.

   __x__B. Unit Cost/Time Charges in Attachment B plus reimbursable expenses, not to exceed $46,976.

5. **DURATION:** This Agreement shall remain in effect until completion of the project and any additional services authorized in accordance with Section 10, unless terminated as provided herein, or extended by mutual agreement in writing.

IN WITNESS WHEREOF, this Agreement is accepted on the date last written below, subject to the terms and conditions above stated and the provisions set forth on the following pages.

For CLIENT:	*For BURTON & ASSOCIATES, INC.:*
SIGNED:	SIGNED:
TYPED NAME: Jeff Clem	TYPED NAME: Michael E. Burton
TITLE: Mayor	TITLE: President
DATE: 9/3/08	DATE: August 20, 2008

CITY OF LAKE WORTH INCORPORATED 1913 PALM BEACH COUNTY STATE OF FLORIDA

6. **UNIT COST TIME CHARGES AND REIMBURSABLE EXPENSES:** Unit cost time charges are defined as hourly rates specified in Attachment A. Reimbursable costs include out-of-pocket expenses, the cost of which shall be charged at actual cost, up to any limit imposed by the CLIENT.

7. **INVOICE PROCEDURE:** BURTON & ASSOCIATES, INC. shall submit monthly invoices to CLIENT requesting payment for work accomplished during each calendar month. Payment of invoices will be made by CLIENT within 30 days of receipt of invoice. Invoices for lump sum contracts will represent percentage work completed during each calendar month.

8. **INSURANCE:** BURTON & ASSOCIATES, INC. shall procure and maintain throughout the term of this Agreement the following insurance with the limits set forth herein, and shall, upon executing this Agreement, provide to CLIENT a certificate(s) of insurance evidencing same, and showing CLIENT as an additional insured:

   A. Worker's Compensation Insurance as required by law.

   B. Unless otherwise provided for herein, Comprehensive General Liability Insurance including contractual liability and liability arising out of the use of automobiles with the following limits:
      (1) Bodily Injury Liability Insurance with limits of $100,000 per person and $300,000 per occurrence;
      (2) Property Damage Liability Insurance with a limit of $50,000 per occurrence.

   C. Unless otherwise provided for herein, Errors and Omissions Liability Insurance with a limit of $1,000,000 per claim and aggregate.

9. **TERMINATION:** This Agreement may be terminated by either party by seven (7) days written notice in the event of substantial failure to perform in accordance with the terms herein by the other party through no fault of the terminating party. If this Agreement is so terminated, CLIENT shall pay BURTON & ASSOCIATES, INC. compensation for work satisfactorily completed up to date of termination.

   CLIENT may terminate this agreement for convenience, or suspend the work called for herein for any business reason. In the event of such termination or suspension, CLIENT shall pay BURTON & ASSOCIATES, INC. for the work accomplished up to the date of termination or suspension.

10. **ADDITIONAL SERVICES:** Additional services may be performed under this Agreement if agreed to by both parties in writing.

11. **PUBLIC RECORDS LAW EXEMPTION:** CLIENT and BURTON & ASSOCIATES, INC. shall comply with the provisions of Chapter 119, Florida Statutes (Public Records Law) except as provided for in the following paragraphs.

    BURTON & ASSOCIATES, INC. may use its proprietary Financial Analysis and Management System (FAMS XL©) in the accomplishment of work under this contract. This contract recognizes that FAMS XL© is a proprietary product of BURTON & ASSOCIATES, INC., includes trade secrets and, as such, the FAMS XL© model and its source code is exempt from public records laws in accordance with FS 815.045, a copy of which is included below:

    815.045 Trade secret information.--The Legislature finds that it is a public necessity that trade secret information as defined in s. 812.081, and as provided for in s. 815.04(3), be expressly made confidential and exempt from the public records law because it is a felony to disclose such records. Due to the legal uncertainty as to whether a public employee would be protected from a felony conviction if otherwise complying with chapter 119, and with s. 24(a), Art. I of the State Constitution, it is imperative that a public records exemption be created. The Legislature in making disclosure of trade secrets a crime has clearly established the importance attached to trade secret protection. Disclosing trade secrets in an agency's possession would negatively impact the business interests of those providing an agency such trade secrets by damaging them in the marketplace, and those entities and individuals disclosing such trade secrets would hesitate to cooperate with that agency, which would impair the effective and efficient administration of governmental functions. Thus, the public and private harm in disclosing trade secrets significantly outweighs any public benefit derived from disclosure, and the public's ability to scrutinize and monitor agency action is not diminished by nondisclosure of trade secrets.

    Therefore, if BURTON & ASSOCIATES, INC. uses FAMS XL© in the accomplishment of work under this contract, BURTON & ASSOCIATES, INC. may not be compelled to disclose FAMS XL©, or its source code, to CLIENT or any other parties for any purpose or reason; however, BURTON & ASSOCIATES, INC. will conduct interactive work

sessions with CLIENT staff to review the input and results of analyses conducted using FAMS XL© and will disclose and deliver to CLIENT output schedules from the FAMS XL© model for the purpose of accomplishing the CLIENT's business. Output schedules of FAMS XL© that are delivered to CLIENT in deliverable products such as reports, presentations, etc. are excluded from this trade secret exemption.

12. **ENTIRETY OF AGREEMENT:** This writing embodies the entire agreement and understanding between the parties hereto, and there are no other agreements and understanding, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby. No alteration, change or modification of the terms of the Agreement shall be valid unless made in writing, signed by both parties hereto.

ADDENDA (if required)
ATTACHMENT A - Hourly Billing Rates (if required)
ATTACHMENT B – Scope of Services (if required)

ATTACHMENT A - HOURLY BILLING RATES

This contract is for a lump sum amount; however, the hourly billing rates authorized under this contract for additional services authorized in accordance with Article 10 are as are follows:

Principal-in-Charge	$195	per hour
Project Director	$175	per hour
Consultant	$ 95	per hour
Clerical	$ 40	per hour

ATTACHMENT B - SCOPE OF SERVICES

The work plan that BURTON & ASSOCIATES, INC. will executed to accomplish the scope of service is presented on the following pages.

City of Lake Worth

WATER/WASTEWATER RATE SUFFICIENCY ANALYSIS

PROJECT WORK PLAN & MAN-HOUR ESTIMATE

BURTON & ASSOCIATES

	PROJECT TASKS	ESTIMATED MAN-HOURS					
		Project Principal	Project Director	Project Consultant	Clerical	Total Project	City of Lake Worth Responsibility
	Rates --->	$195	$175	$95	$40		
Task 1	***Project Initiation - Initiate the Project***						
1.1	Conduct kickoff Meeting	1	1	1	0	3	Meeting
1.2	Review of Background Information	1	1	2	0	4	Provide docs
TOTAL ESTIMATED MAN-HOURS		2	2	3	0	7	
TOTAL ESTIMATED FEE		$390	$350	$285	$0	$1,025	
TOTAL ESTIMATED EXPENSES	5.00%					$51	
TOTAL ESTIMATED PROJECT COST						**$1,076**	
Task 2	***Revenue Sufficiency Analysis - Develop a Multi-year Financial Forecast and Financial Plan:***						
2.1	Prepare water and wastewater customer and demand analysis to determine projected growth, trends in usage patterns and total projected water and wastewater system customers, ERCs and usage.	0	2	4	0	6	Provide data
2.2	Obtain, verify and input financial and billing data into Burton & Associates proprietary **FAMS XL** © model, run the model and produce preliminary output, including a ten year financial management program that will include the following separately for the water and wastewater systems:	2	8	40	0	50	Provide data
	o Capital Improvements Program - Project listing by year - Alternative financing options for capital projects - Optimum funding source by project by year						
	o Borrowing Program - Borrowing required (by source) to fund CIP projects not funded by other sources to include but not necessarily be limited to revenue bonds and State or other programs. - Timing of bond issue(s)/loan(s) to provide required borrowed funds - Annual debt service of bond issue(s)/loan(s)						
	o Revenue Sufficiency Analysis - Annual revenue projections - Annual operations and maintenance expense projections - All other annual revenue requirements such as R&R, minor capital, transfers to other funds, current debt service/loan payments, replenishment of reserves, etc. - Alternative plans of annual percentage rate adjustments to the water and wastewater rates to provide sufficient revenues for each service.						
	o Sources and Uses of Funds Analysis						
	o Funds Analysis - Spend down limits (minimum reserve requirements) by fund - Beginning and ending funds balances by fund by year						
2.3	Make adjustments to **FAMS-XL**© as required to model the utility's specific financial dynamics.	0.5	1	2	0	3.5	NA
2.4	Review results with consulting team, make required adjustments and create alternatives scenarios.	1	1	2	0	4	NA
2.5	Meet with City staff in an interactive work session to review preliminary results.	3	3	3	0	9	Meeting
2.6	Make adjustments as required based upon input from City staff in Task 2.4.	0.5	2	4	0	6.5	NA

City of Lake Worth

WATER/WASTEWATER RATE SUFFICIENCY ANALYSIS

PROJECT WORK PLAN & MAN-HOUR ESTIMATE

BURTON & ASSOCIATES

PROJECT TASKS	ESTIMATED MAN-HOURS					
	Project Principal	Project Director	Project Consultant	Clerical	Total Project	City of Lake Worth Responsibility
Rates —>	$195	$175	$95	$40		
2.7 Meet with City staff in a second interactive work session to review adjusted results and determine final plan of annual rate revenue adjustments and the revenue requirements for the test year for rate making.	2	2	2	0	6	Meeting
TOTAL ESTIMATED MAN-HOURS	9	19	57	0	85	
TOTAL ESTIMATED FEE	$1,755	$3,325	$5,415	$0	$10,495	
TOTAL ESTIMATED EXPENSES 5.00%					$525	
TOTAL ESTIMATED PROJECT COST					**$11,020**	
Task 3 ***Cost Allocation - Perform a Detailed Cost-of-Service Analysis:***						
3.1 Identify all test year costs/revenue requirements associated with the provision of water, wastewater and reclaimed water service from the preferred financial forecast alternative identified in Task 2.	0	1	1	0	2	Review
3.2 Allocate costs/revenue requirements to service and to functional cost components, fixed a variable cost components, customer classes and to retail/wholesale service, as applicable, based upon appropriate allocation criteria.	2	8	12	0	22	NA
3.3 Review allocation worksheet with City staff.	0	2	2	0	4	Conf Call
3.4 Prepare final allocation worksheet based upon input from City staff.	0	2	3	0	5	Review
TOTAL ESTIMATED MAN-HOURS	2	13	18	0	33	
TOTAL ESTIMATED FEE	$390	$2,275	$1,710	$0	$4,375	
TOTAL ESTIMATED EXPENSES 5.00%					$219	
TOTAL ESTIMATED PROJECT COST					**$4,594**	
Task 4 ***Rate Design - Develop Water and Wastewater Rates, Fees and Charges:***						
4.1 Develop user fees:						
a. Perform a diagnostic evaluation of the current rate design and identify adjustments to be considered in the development of rates.	2	2	1	0	5	NA
b. Load billing history data into our**FAMS-XL©** rate model and create a bill frequency analysis.	0	3	6	0	9	NA
c. Conduct a revenue test to ensure accuracy of billing data.	0	2	4	0	6	NA
d. Set up the rate model in conformance with the cost allocation results of Task 3 and the rate design evaluation in 4,1.a.	0	2	8	0	10	NA
e. Run the model and prepare retail and wholesale rate structure scenarios.	0	3	6	0	9	NA
f. Review results with consulting team and adjust as required.	1	1	3	0	5	NA
g. Meet with City staff in an interactive work session to review preliminary results.	3	3	3	0	9	Meeting
h. Make adjustments as required based upon input from City staff in Task 4.1.g.	0	2	3	0	5	NA
i. Meet with City staff in a second interactive work session to review adjusted results and determine final alternative rate schedules.	2	2	2	0	6	Meeting
TOTAL ESTIMATED MAN-HOURS	8	20	36	0	64	
TOTAL ESTIMATED FEE	$1,560	$3,500	$3,420	$0	$8,480	
TOTAL ESTIMATED EXPENSES 5.00%					$424	
TOTAL ESTIMATED PROJECT COST					**$8,904**	

City of Lake Worth

WATER/WASTEWATER RATE SUFFICIENCY ANALYSIS

PROJECT WORK PLAN & MAN-HOUR ESTIMATE

BURTON & ASSOCIATES

PROJECT TASKS	ESTIMATED MAN-HOURS					
	Project Principal	Project Director	Project Consultant	Clerical	Total Project	City of Lake Worth Responsibility
Rates ---->	$195	$175	$95	$40		
4.2 Develop Impact/System Capacity Fees:						
a. Obtain and review fixed asset records for all major system components	0	1	2	0	3	Provide data
b. Prepare reproduction cost schedule of fixed assets by major system component.	0	2	4	0	6	NA
c. Review CIP with City staff to determine portion of projects for expanded capacity and portions associated with renewal and rehabilitation.	0	2	2	0	4	Meeting
d. Load appropriate data into our**FAMS-XL©** impact fee module, adjust and calibrate and produce preliminary results.	0	3	6	0	9	NA
e. Review results with consulting team and adjust as required.	1	2	4	0	7	NA
f. Link impact module of FAMS-XL© with the financial forecast module set-up in Task 2 to evaluate the integrated effects of changes in the impact fees in the capital projects funding plan and the effects upon user fee rate revenue requirements and the overall financial plan.	1	2	4	0	7	
g. Meet with City staff in an interactive work session to review preliminary results.	3	3	3	0	9	Meeting
h. Make adjustments as required based upon input from City staff in Task 4.2.g.	0	2	4	0	6	NA
i. Meet with City staff in a second interactive work session to review adjusted results and determine final Impact Fee schedule.	2	2	2	0	6	Meeting
TOTAL ESTIMATED MAN-HOURS	7	19	31	0	57	
TOTAL ESTIMATED FEE	$1,365	$3,325	$2,945	$0	$7,635	
TOTAL ESTIMATED EXPENSES 5.00%					$382	
TOTAL ESTIMATED PROJECT COST					**$8,017**	
4.3 Develop Specific Service and Miscellaneous Charges/Fees, Including New Service Installation Fees:						
a. Review utility operations to determine if additional service charges/revenue enhancements are appropriate.	0	2	2	0	4	Provide data
b. Prepare cost computation template for each specific service fee to be evaluated (assume 12 fees).	0	2	12	0	14	Provide data
c. Review cost computation templates with City staff and adjust as required.	0	1	4	0	5	Meeting
d. Prepare schedule of current and proposed specific service fees.	1	1	2	0	4	NA
TOTAL ESTIMATED MAN-HOURS	1	6	20	0	27	
TOTAL ESTIMATED FEE	$195	$1,050	$1,900	$0	$3,145	
TOTAL ESTIMATED EXPENSES 5.00%					$157	
TOTAL ESTIMATED PROJECT COST					**$3,302**	
4.4 Conduct and Compile a Comparative Rate Survey	0	1	4	4	9	Review
TOTAL ESTIMATED MAN-HOURS	0	1	4	4	9	
TOTAL ESTIMATED FEE	$0	$175	$380	$160	$715	
TOTAL ESTIMATED EXPENSES 5.00%					$36	
TOTAL ESTIMATED PROJECT COST					**$751**	

City of Lake Worth

WATER/WASTEWATER RATE SUFFICIENCY ANALYSIS

PROJECT WORK PLAN & MAN-HOUR ESTIMATE

BURTON & ASSOCIATES

PROJECT TASKS	ESTIMATED MAN-HOURS					
	Project Principal	Project Director	Project Consultant	Clerical	Total Project	City of Lake Worth Responsibility
Rates ---->	$195	$175	$95	$40		
Task 5 ***Presentation to Management - Conduct Presentation to City Management.***						
5.1 Prepare presentation	0.5	1	0	0	1.5	NA
5.2 Make adjustments based upon input from City staff.	0	1	0	0	1	Review
5.3 Attend meeting with City Management and present the preliminary results.	2	2	2	0	6	Attend
TOTAL ESTIMATED MAN-HOURS	2.5	4	2	0	8.5	
TOTAL ESTIMATED FEE	$488	$700	$190	$0	$1,378	
TOTAL ESTIMATED EXPENSES 5.00%					$69	
TOTAL ESTIMATED PROJECT COST					**$1,447**	
Task 6 ***Final Report - Prepare a Report of the Results of the Study***						
6.1 Prepare a Draft Report of the Results of the Study	2	6	12	3	23	NA
6.2 Review Draft Report with City Staff and Management	1	1	1	0	3	Review
6.3 Present the results of the Study to City Commission.						
a. Meet with the City Commission to present the results of the Rate Study.	2	2	0	0	4	Attend
b. Make adjustments to the analyses as required based upon City Commission direction.	0	2	4	0	6	Review
6.4 Prepare Final Report of the Results of the Rate Study	1	1	2	2	6	NA
TOTAL ESTIMATED MAN-HOURS	6	12	19	5	42	
TOTAL ESTIMATED FEE	$1,170	$2,100	$1,805	$200	$5,275	
TOTAL ESTIMATED EXPENSES 5.00%					$264	
TOTAL ESTIMATED PROJECT COST					**$5,539**	
Task 7 ***Ordinances/Resolutions and Agreements - Provide Assistance in Development of Ordinances, Resolution, Bulk Service Agreements, Development Agreements, and Interlocal Agreements***						
7.1 Prepare Rate Schedules for Inclusion in a Rate Ordinance/Resolution	0	1	2	0	3	NA
7.2 Review Ordinance Developed by City Attorney.	1	1	0	0	2	Review
7.3 Participate in Conference Call with City Attorney to discuss Ordinance/Resolution.	1	1	0	0	2	NA
7.4 Attend Two (2) Rate Hearings for Adoption.	3	3	0	0	6	NA
7.5 Assist in Development of Bulk Service Agreements, Development Agreements and Interlocal Agreements as Required.	--- At Standard Hourly Rates ---					
TOTAL ESTIMATED MAN-HOURS	5	6	2	0	13	
TOTAL ESTIMATED FEE	$975	$1,050	$190	$0	$2,215	
TOTAL ESTIMATED EXPENSES 5.00%					$111	
TOTAL ESTIMATED PROJECT COST					**$2,326**	

City of Lake Worth

WATER/WASTEWATER RATE SUFFICIENCY ANALYSIS

PROJECT WORK PLAN & MAN-HOUR ESTIMATE

BURTON & ASSOCIATES

PROJECT TASKS	ESTIMATED MAN-HOURS				Total Project	City of Lake Worth Responsibility
	Project Principal	Project Director	Project Consultant	Clerical		
Rates ---->	$195	$175	$95	$40		
Total Full Scope of Services						
TOTAL ESTIMATED MAN-HOURS	42.5	102	192	9	345.5	
TOTAL ESTIMATED FEE	$8,288	$17,850	$18,240	$360	$44,738	
TOTAL ESTIMATED EXPENSES 5.00%					$2,238	
TOTAL ESTIMATED PROJECT COST					**$46,976**	

SOURCE: BURTON & ASSOCIATES

CITY OF LAKE WORTH

7 North Dixie Highway · Lake Worth, Florida 33460 · Phone: 561-586-1600· Fax: 561-586-1750

AGENDA DATE: January 7, 2014, Regular Meeting **DEPARTMENT:** City Attorney

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EXECUTIVE BRIEF

TITLE:
Purchase real property located at 1702 Lake Worth Road from Trojan House, Inc., for $30,500 Plus up to $10,000 for demolition, document recording and lot improvement.

SUMMARY:
The Purchase and Sale Contract, will result in the City acquiring the property at 1702 Lake Worth Road and Trojan House, Inc., receiving approximately $30,000 to be used to establish a construction lab for Lake Worth students. Additionally, up to $10,000 for demolition, document recording and lot improvement.

BACKGROUND AND JUSTIFICATION:
On October 5, 2004, the City donated the property and the structure at 1702 Lake Worth Road to Trojan House, Inc. in exchange for four residential properties. The properties were subsequently quit claimed to the Community Development Corporation (CDC) who then sold them to the City CRA. The intent of the donation to Trojan House, Inc. was to provide a construction project to teach students at Lake Worth High School construction skills. Due to the type construction used in the structure located on the property, its usefulness as a lab to teach relevant and marketable construction skills was limited. Additionally, the founder of the Trojan House, Inc., passed away. At this time, the Trojan House, Inc. a Florida non-profit corporation, believes it would best be served by selling the property back to the City for $30,000 and that the proceeds from the sale be used in conjunction with other community partners to establish a construction lab for Lake Worth students. The lab will allow the School to teach modern construction techniques and skills sets to our local students.

On November 13, 2013, Callaway & Price, Inc., prepared an appraisal report of the property. According to the report, the property is worth $35,000 (as a vacant parcel). At this time, the structure remains on the property but is in a significant state of deterioration. The pecky cypress paneling on the interior as well as the exterior siding has been removed from the walls. Years of exposure to the elements has severely damaged the structure rendering it unsafe. It is the City's intent that upon closing, the City will commence demolition.

There is also a pending code enforcement case on the property (which commenced this year). As part of the contract, the City will assume any and all fines that have or will accrue related to the pending code case and ultimately resolve any lien that may be recorded against the property. The code case cannot be closed until compliance is achieved. Compliance will be achieved with the demolition of the structure.

Pursuant to the attached purchase and sale contract, the City will also have to pay for the owner's title policy and some minor expenses related to the closing. Thus, the City will need approximately $30,500 for this purchase. The City and Trojan House anticipate having the closing on the property in January. Accordingly, authorization is also sought for the Mayor to sign any and all documents necessary to effectuate the purchase on behalf of the City. No realtor fees will be charged as the services are being donated

MOTION:
I move to approve/not approve a Purchase and Sale Contract with Trojan House, Inc., for 1702 Lake Worth Road, for $30,500, authorize the Mayor to sign any and all necessary documents to effectuate the purchase on behalf of the City and authorize expenditure of up to $10,000 for demolition, document recording and lot improvement.

ATTACHMENT(S):
Fiscal Impact Analysis
Appraisal
Purchase and Sale contract

FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2014	2015	2016	2017	2018
External Revenues	0	0	0	0	0
Program Income	0	0	0	0	0
In-kind Match	0	0	0	0	0
Personal Services	0	0	0	0	0
Operating Expenditures	0	0	0	0	0
Capital Expenditures	$40,500	0	0	0	0
Net Fiscal Impact	$40,500	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: General Capital Projects, general ledger account # 301-8019-519.65-62 (currently contains $140,543).

City Attorney	Trojan House Inc. re: Property at 1702 Lake Worth Road.				
Account Number (s)	**Account Description (s)**	**FY 2014 Budget**	**Current Balance**	**Agenda Expenses**	**Remaining Balance**
301-8019-519-65-62	General Capital Projects	140,543	140,543	(40,500)	100,043

C. Finance Fiscal Review: SC

AN APPRAISAL OF

THE VACANT SITE LOCATED AT 1702 LAKE WORTH ROAD IN THE CITY OF LAKE WORTH, PALM BEACH COUNTY, FLORIDA

FILE # 13-70136

PREPARED FOR

CITY OF LAKE WORTH

AS OF

NOVEMBER 19, 2013

BY

STEPHEN D. SHAW, MAI
CALLAWAY & PRICE, INC.

Callaway & Price, Inc.

Real Estate Appraisers And Consultants
www.callawayandprice.com
Licensed Real Estate Brokers

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BOCA RATON
Phone (561)998-8088
Fax (561)686-3705

Stephen D. Shaw, MAI
Cert Gen RZ1192

Please respond to West Palm Beach office
E-Mail: sds@cpwpb.com

November 25, 2013

Michael Bornstein, City Manager
City of Lake Worth
7 North Dixie Highway
Lake Worth, FL 33460

Dear Mr. Bornstein:

We have made an investigation and analysis of the vacant site located at 1702 Lake Worth Road in the City of Lake Worth, Palm Beach County, Florida. The Subject Property will be further described both narratively and legally within the following Summary Appraisal Report. The purpose of this investigation and analysis was to provide our opinion of the Market Value of the Fee Simple Estate of the Subject Property as of November 19, 2013.

This report has been prepared for our client and intended user, City of Lake Worth. The intended use was to assist the client in internal decision making. The scope of work performed is specific to the needs of the intended user and the intended use. No other use is intended, and the scope of work may not be appropriate for other uses.

The scope of work performed included a complete analysis of the Subject Property. A detailed scope of work description can be found in the body of this report.

Based upon the scope of the assignment, our investigation and analysis of the information contained within this report, as well as our general knowledge of real estate valuation procedures and market conditions, it is our opinion that:

The Market Value of the Fee Simple Estate of the Subject Property as of November 19, 2013 was: **$35,000**

A description of the property appraised, together with an explanation of the valuation procedures utilized, is contained in the body of the attached report. For your convenience, an Executive Summary follows this letter. Your attention is directed to the Limiting Conditions and underlying assumptions upon which the value conclusions are contingent.

Respectfully submitted,

CALLAWAY & PRICE, INC.

Stephen D. Shaw, MAI
Cert Gen RZ1192

Joe M. Merritt, Associate Appraiser
Cert Gen RZ672

SDS/JMM/13-70136
Attachments

PROPERTY TYPE	:	Vacant land.
LOCATION	:	The Subject Property is located on the northwest corner of Lake Worth Road and N "A" Street, in the City of Lake Worth, Palm Beach County, Florida. The Subject's street address is 1702 Lake Worth Road, Lake Worth, FL 33460.
DATE OF VALUATION	:	November 19, 2013.
PROPERTY DESCRIPTION:		
LAND	:	The Subject site is nearly rectangular in shape and contains a total of 13,123 square feet, or 0.30 acres.
BUILDING	:	The wood frame building located on the site is in poor condition and is ready for demolition and removal. At our client's request, we have assumed that the Subject Property was vacant as of the appraisal date.
ZONING	:	MF-20, Low-Density Multi-Family Residential, 20 dwelling units per acre, by the City of Lake Worth.
LAND USE PLAN	:	MU-E, Mixed Use - East, by the City of Lake Worth.
HIGHEST AND BEST USE	:	Future multifamily or mixed use development.
MARKET VALUE OF THE FEE SIMPLE ESTATE OF THE SUBJECT PROPERTY, AS OF NOVEMBER 19, 2013	:	$35,000

Table of Contents

Page No.

CERTIFICATION 1
LIMITING CONDITIONS 3
DEFINITION OF THE APPRAISAL PROBLEM 8
Purpose, Date of Value, and Interest Appraised 8
Intended Use and User of Appraisal 8
Market Value 8
Fee Simple Estate 9
Hypothetical Conditions 9
Extraordinary Assumptions 9
Marketing Time 10
Exposure Time 10
Legal Description 11
SCOPE OF WORK 12
NEIGHBORHOOD DATA 13
PROPERTY DATA 15
Location 15
Zoning 15
Land Use Plan 15
Site Size, Shape and Access 16
Easements and Deed Restrictions 16
Utilities 16
Topography 16
Concurrency 17
Census Tract 17
Flood Hazard Zone 17
Assessed Value and Taxes 18
Property History 18
HIGHEST AND BEST USE 19
Conclusion 19
LAND VALUE ANALYSIS 21
Sales Comparison Approach 21
Discussion of Vacant Land Sales 22
Conclusion – Land-Value Analysis 32

ADDENDA

Letter of Engagement
Qualifications and State Certifications:
Stephen D. Shaw, MAI
Joe M. Merritt, Associate Appraiser

CERTIFICATION

We certify that, to the best of our knowledge and belief:

1. The statements of fact contained in this report are true and correct.

2. The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are our personal, impartial, and unbiased professional analyses, opinions, and conclusions.

3. We have no present or prospective interest in the property that is the subject of this report, and we have no personal interest or bias with respect to the parties involved.

4. We have not performed services, as an appraiser or in any other capacity, regarding the property that is the subject of this report within the three-year period immediately preceding acceptance of this assignment.

5. We have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.

6. Our engagement in this assignment was not contingent upon developing or reporting predetermined results.

7. Our compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.

8. The analyses, opinions, and conclusion were developed, and this report was prepared, in conformity with the Uniform Standards of Professional Appraisal Practice (USPAP) and The Interagency Appraisal and Evaluation Guidelines, December 10, 2010.

9. Stephen D. Shaw, MAI and Joe M. Merritt have made a personal inspection of the property that is the subject of this report.

10. No one provided significant real property appraisal assistance to the persons signing this certification.

11. The use of this report is subject to the requirements of the State of Florida relating to review by the Florida Real Estate Appraisal Board.

LIMITING CONDITIONS

1. Unless otherwise stated, the value appearing in this appraisal represents the opinion of the Market Value or the Value Defined AS OF THE DATE SPECIFIED. Market Value of real estate is affected by national and local economic conditions and consequently will vary with future changes in such conditions.

2. The value estimated in this appraisal report is gross, without consideration given to any encumbrance, restriction or question of title, unless specifically defined.

3. This appraisal report covers only the property described and any values or rates utilized are not to be construed as applicable to any other property, however similar the properties might be.

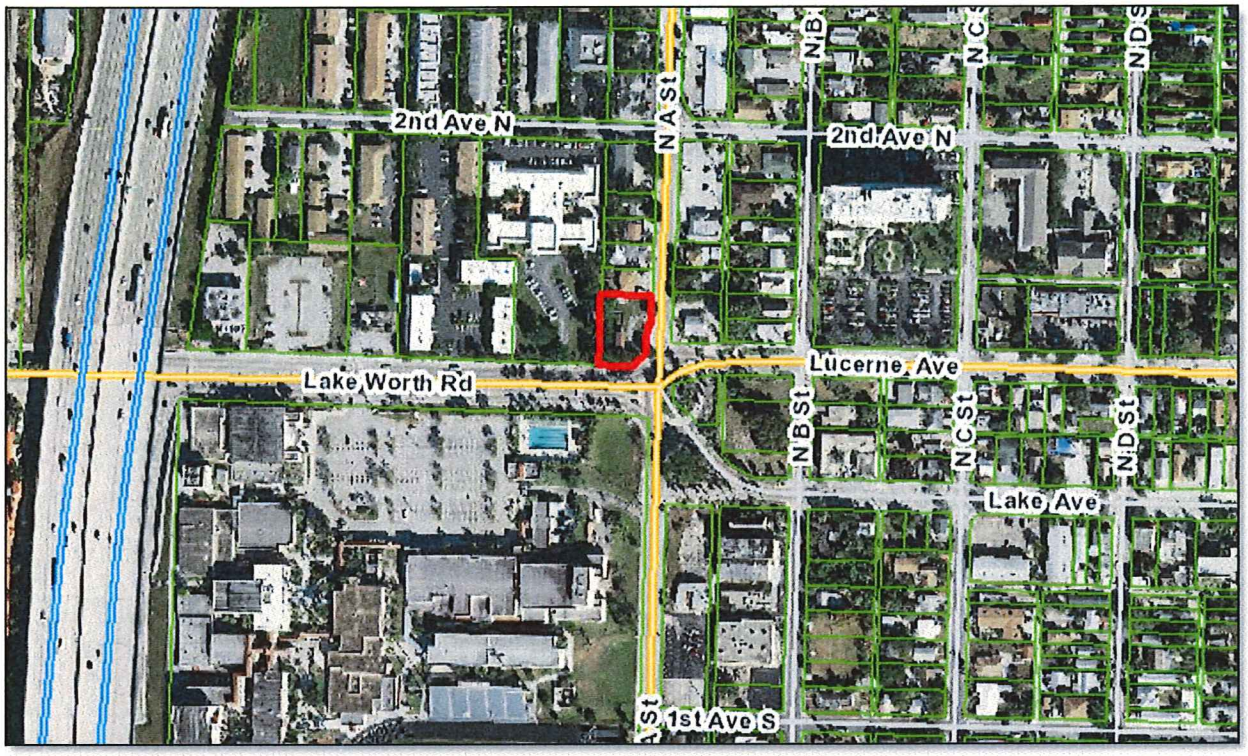
4. It is assumed that the title to the premises is good; that the legal description is correct; that the improvements are entirely and correctly located on the property described and that there are no encroachments on this property, but no investigation or survey has been made.

5. This appraisal expresses our opinion, and employment to make this appraisal was in no way contingent upon the reporting of predetermined value or conclusion.

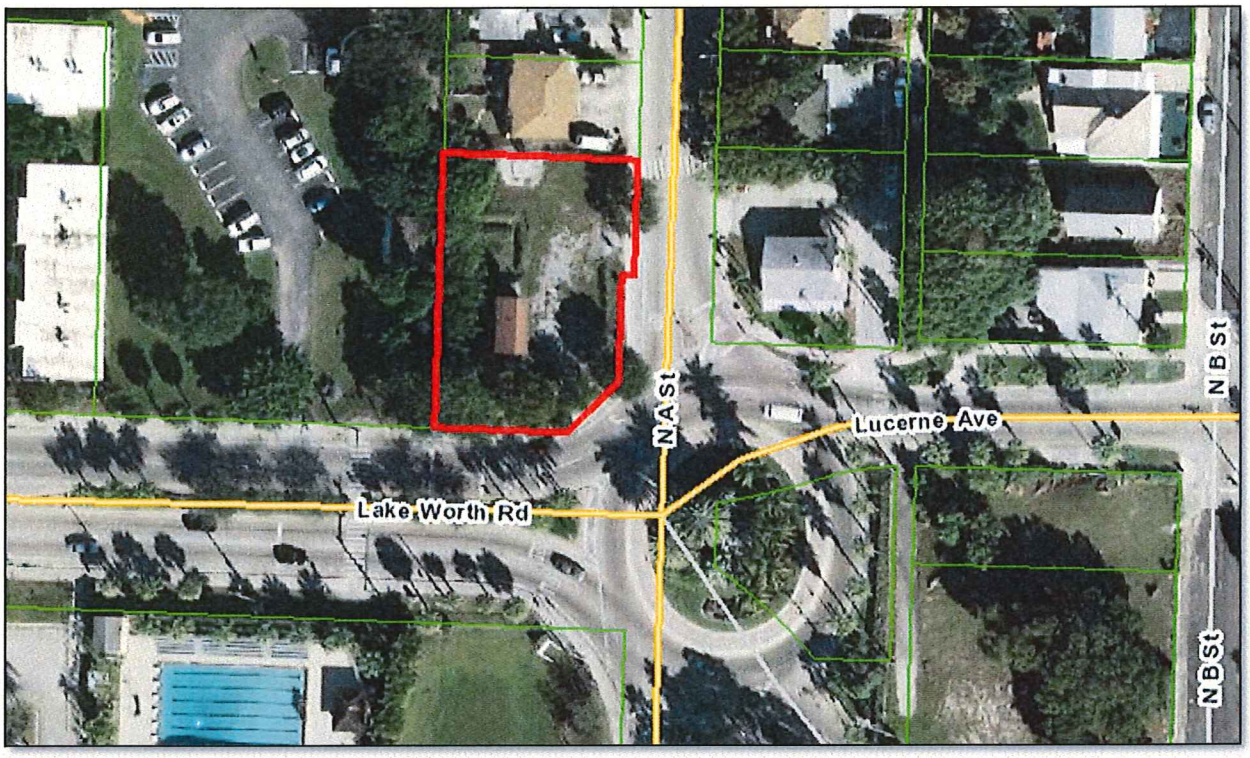
6. No responsibility is assumed for matters legal in nature, nor is any opinion of title rendered. In the performance of our investigation and analysis leading to the conclusions reached herein, the statements of others were relied on. No liability is assumed for the correctness of these statements.

7. Neither all nor any part of the contents of this report (especially any conclusions, the identity of the appraiser or the firm with which he is connected, or any reference to the Appraisal Institute or any of its designations) shall be disseminated to the public through advertising media, public relations media, news media, sales media or any other public means of communication without our prior written consent and approval.

8. It is assumed that there are no hidden or unapparent conditions of the property, subsoil, or structures which would render it more or less valuable. The appraiser assumes no responsibility for such conditions or the engineering which might be required to discover these factors.



AERIAL VIEWS OF SUBJECT PROPERTY



VIEW LOOKING SOUTHWEST AT THE SUBJECT PROPERTY FROM N. "A" STREET

VIEW OF EXISTING BUILDING

Fee Simple Estate

The Dictionary of Real Estate Appraisal, Fifth Edition 2010, by the Appraisal Institute, defines Fee Simple Estate on page 78 as follows:

> "Absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power, and escheat."

Hypothetical Conditions

The Dictionary of Real Estate Appraisal, Fifth Edition 2010, by the Appraisal Institute, defines Hypothetical Conditions on page 97 as follows:

> "That which is contrary to what exists but is supposed for the purpose of analysis. Hypothetical conditions assume conditions contrary to known facts about physical, legal, or economic characteristics of the subject property; or about conditions external to the property, such as market conditions or trends; or about the integrity of data used in an analysis."

There were no Hypothetical Conditions in the valuation of the Subject Property.

Extraordinary Assumptions

Extraordinary assumptions are defined by The Dictionary of Real Estate Appraisal, Fifth Edition 2010, by the Appraisal Institute, on page 73 as follows:

> "An assumption, directly related to a specific assignment, which, if found to be false, could alter the appraiser's opinions or conclusions. Extraordinary assumptions presume as fact otherwise uncertain information about physical, legal, or economic characteristics of the subject property; or about conditions external to the property such as market conditions or trends; or about the integrity of data used in an analysis."

No Extraordinary Assumptions were made for the valuation of the Subject Property.

Legal Description

All that portion of the South 187 feet of Lot One (1), Block Thirty - Five (35), of Sawyer's Subdivision of the West One-Half (1/2) of Section 21, Township 44 South, Range 43 East, as recorded in Plat Book 5, Page 12, of official records of Palm Beach County, Florida, EXCEPT for that portion lying within 67 feet of the South line of Section 21.

Source: Current owner's Quit Claim Deed (OR Book 19704/1930). The Subject Property is identified as Palm Beach County Parcel Control Number 38-43-44-21-02-035-0011.

NEIGHBORHOOD DATA

The relationship of the Subject Property with surrounding properties forms the basis of neighborhood analysis. The Appraisal of Real Estate, 13th Edition 2008, states: Social, economic, governmental, and environmental forces influence property values in the vicinity of a subject property. As a result, they affect the value of that property. Although physical boundaries may be drawn, the most important boundaries are those that identify factors influencing property values. The area of influence, commonly called a neighborhood, can be defined as a group of complementary land uses.

The Subject neighborhood is situated in the central portion of Palm Beach County and consists of properties located in the City of Lake Worth. The Subject Property is located on Lake Avenue in the downtown area of the City of Lake Worth. The Subject neighborhood is considered to be the area bounded on the north by 10th Avenue North, on the west by I-95, on the south by 6th Avenue South, and on the east by the Intracoastal Waterway.

Neighborhood Map

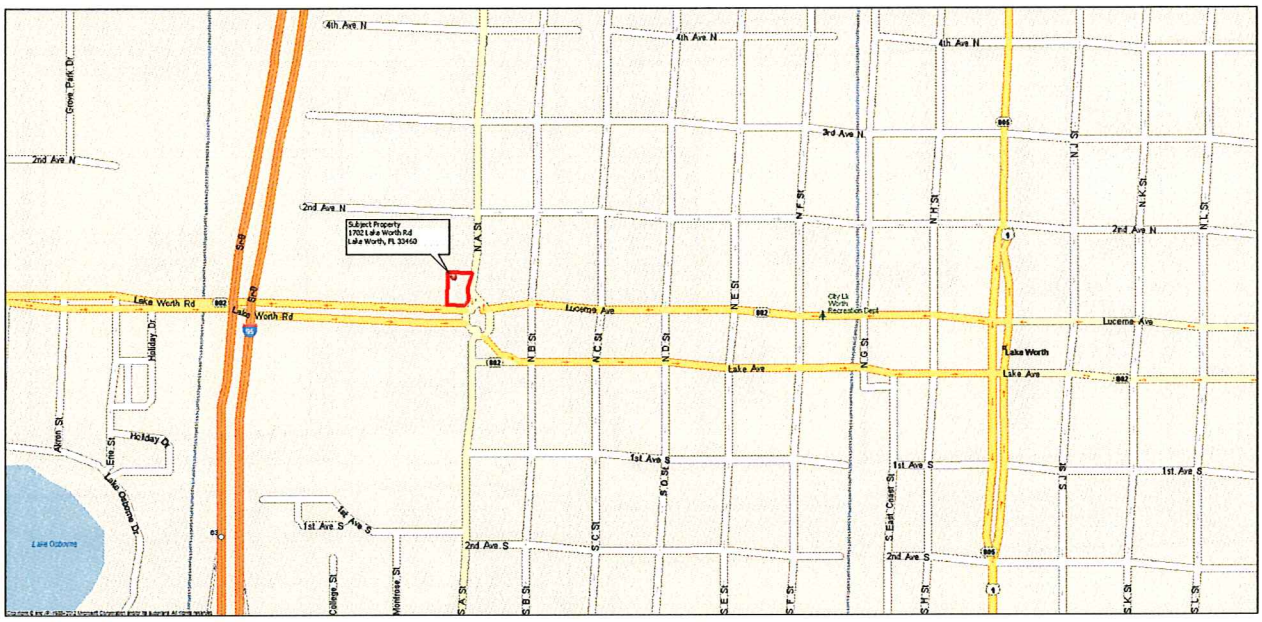
Access to and through the neighborhood is considered good. The major east/west thoroughfares through the Subject neighborhood are 10th Avenue North, Lake Worth Road, and 6th Avenue South. Lake Worth Road provides access to Florida's Turnpike and extends from Ocean Avenue to beyond State Road 7 (U.S. Highway 441). Both 10th Avenue North and 6th Avenue South have an interchange with I-95 and extend from U.S. Highway 1 past State Road 7 (U.S. Highway 441).

PROPERTY DATA

Location

The Subject Property is located on the northwest corner of Lake Worth Road and N "A" Street, in the City of Lake Worth, Palm Beach County, Florida. The Subject's street address is 1702 Lake Worth Road, Lake Worth, FL 33460.

Location Map



Zoning

The Subject Property is zoned MF-20, Low-Density Multi-Family Residential, by the City of Lake Worth. This zoning district is intended to permit development of multiple-family structures. It is also intended to permit development of one-family and two-family structures. Provision is made for a variety of dwelling unit types in multiple-family structures on lots which meet minimum lot size requirements for multiple-family structures of 9,750 square feet. It should be noted that the Subject Property at 13,123 square feet exceeds the minimum size requirement for this type of development. Permitted dwelling unit types include efficiency, one-bedroom, two-bedroom and larger types. Provision is also made for a limited number of nonresidential used for the convenience of residents. These nonresidential uses are compatible by reason of their nature and limited frequency of occurrence with an overall residential character.

Land Use Plan

The Subject is located in an area designated as MU-E, Mixed Use - East, by the Future Land Use Plan of the City of Lake Worth, which encourages a mixture of uses.

Concurrency

In 1985, the Florida Legislature enacted the Local Government Comprehensive Planning and Land Development Regional Act (Chapter 163, Part II, Florida Statutes), commonly referred to as "The Growth Management Act".

In 2011 the state legislature rescinded this law, and now each county can address almost all of these factors as they wish. Sanitary sewer, solid waste, drainage, and potable water are the only public facilities and services subject to the concurrency requirement on a statewide basis. If concurrency is applied to other public facilities, the local government comprehensive plan must provide the principles, guidelines, standards, and strategies, including adopted levels of service, to guide its application. In order for a local government to rescind any optional concurrency provisions, a comprehensive plan amendment is required. An amendment rescinding optional concurrency issues is not subject to state review.

To the best of our knowledge, we are not aware of any concurrency issues with the Subject Property.

Census Tract

The Subject Property lies within Census Tract 44.02.

Address: 1702 LAKE WORTH RD, LK WORTH, FL 33460

MSA Code: 48424	**State Code: 12**	**County Code: 099**	**Tract Code: 0044.02**

Summary Census Demographic Information

Tract Income Level	Low	**Tract Population**	4628
Underserved or Distressed Tract	No	**Tract Minority %**	77.72
2013 FFIEC Estimated MSA/MD/non-MSA/MD Median Family Income	$64,600	**Minority Population**	3597
2013 Est. Tract Median Family Income	$27,080	**Owner-Occupied Units**	489
2010 Tract Median Family Income	$27,019	**1- to 4-Family Units**	978
Tract Median Family Income %	41.92		

Flood Hazard Zone

The Subject Property lies within Flood Zone "C" according to the Flood Insurance Rate Map (Panel Number 120213-0002C) prepared for the National Flood Insurance

HIGHEST AND BEST USE

The Dictionary of Real Estate Appraisal, Fifth Edition 2010, by the Appraisal Institute defines Highest and Best Use on page 93 as follows:

> "The reasonably probable and legal use of vacant land or an improved property, that is physically possible, appropriately supported, financially feasible, and that results in the highest value. The four criteria the highest and best use must meet are legal permissibility, physical possibility, financial feasibility, and maximum productivity."

To estimate the Highest and Best Use of the Subject, we have considered those uses which are legally permissible, physically possible, financially feasible, and maximally productive. Consideration was given to individual features of the land such as size, shape, location, access to roadways, and the availability of utilities. Consideration was also given to the surrounding land uses and the demand for property in the current real estate market.

In cases where properties are improved, the Highest and Best Use of the site "as though vacant" and the Highest and Best Use of the property "as improved" may be different. This is due to the principle of "contribution" which holds that if an improvement adds value to the site over and above land value, the Highest and Best Use of the property is as improved until such time as the improvements add no contributory value to the property.

Conclusion

It is our opinion that the Highest and Best Use of the Subject Property is for future mixed use development. The reasons for this conclusion are as follows:

1. The Subject Property is zoned MF-20, Low-Density Multi-Family Residential, by the City of Lake Worth. This zoning district is intended to permit development of one-family, two-family and multiple-family structures. Permitted dwelling unit types include efficiency, one-bedroom, two-bedroom and larger types. Provision is also made for a limited number of nonresidential used for the convenience of residents. These nonresidential uses are compatible by reason of their nature and limited frequency of occurrence with an overall residential character.

2. The Subject Property is physically suitable for a variety of uses. It has direct frontage on Lake Worth Road and adequate access via N "A" Street. At 13,123 square feet, it exceeds the minimum site size required for development of 9,750 square feet. The site has been cleared of previous building improvements. It is all upland with no physical features that would restrict or prohibit development.

LAND VALUE ANALYSIS

According to the 13th Edition of The Appraisal of Real Estate the valuation of land begins by identifying the real estate and property rights valued, any encumbrances, use restrictions, and the land's physical characteristics. An appraiser can use several techniques to obtain an indication of land value:

- Sales Comparison
- Market Extraction
- Allocation
- Land Residual Techniques
- Ground Rent Capitalization
- Subdivision Development Analysis

Usually the most reliable way to estimate land value is by sales comparison. When few sales are available, however, or when the value indications produced through sales comparison need additional support, alternative techniques like extraction or allocation may be applied. In the case of the Subject Property, the only approach used was the Sales Comparison Approach.

Sales Comparison Approach

In order to estimate the value of the Subject Property, a search was made for recent sales of vacant land within the Subject's market area. Our search was concentrated on land designated for multi-family residential and/or mixed use development. We analyzed the Subject Property and the comparables on a price per square foot basis, which is the most common unit of comparison used by participants in the market for this property type. All of the comparables were considered with regard to property rights appraised, financing, conditions of sale, time or market conditions, location, size, site quality and zoning.

Vacant Land Sales Map

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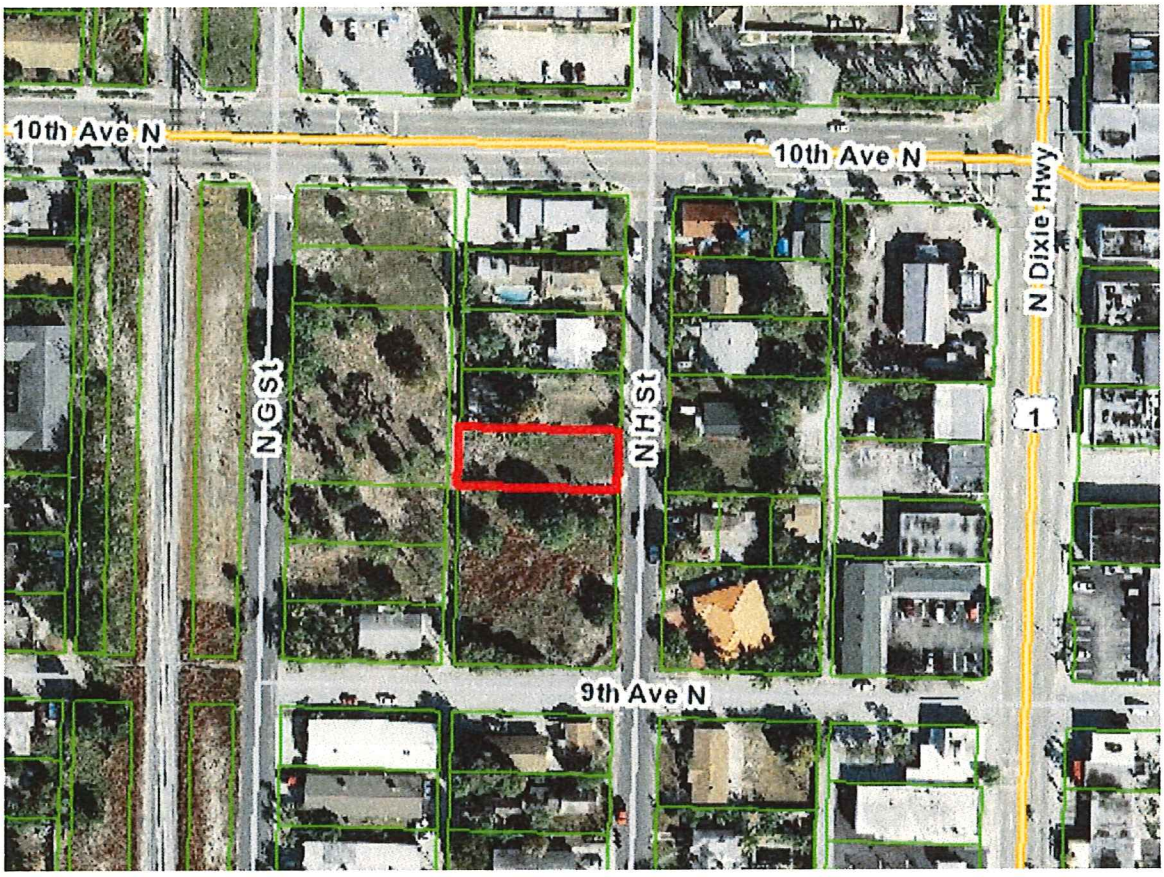
Land Sale No. 1



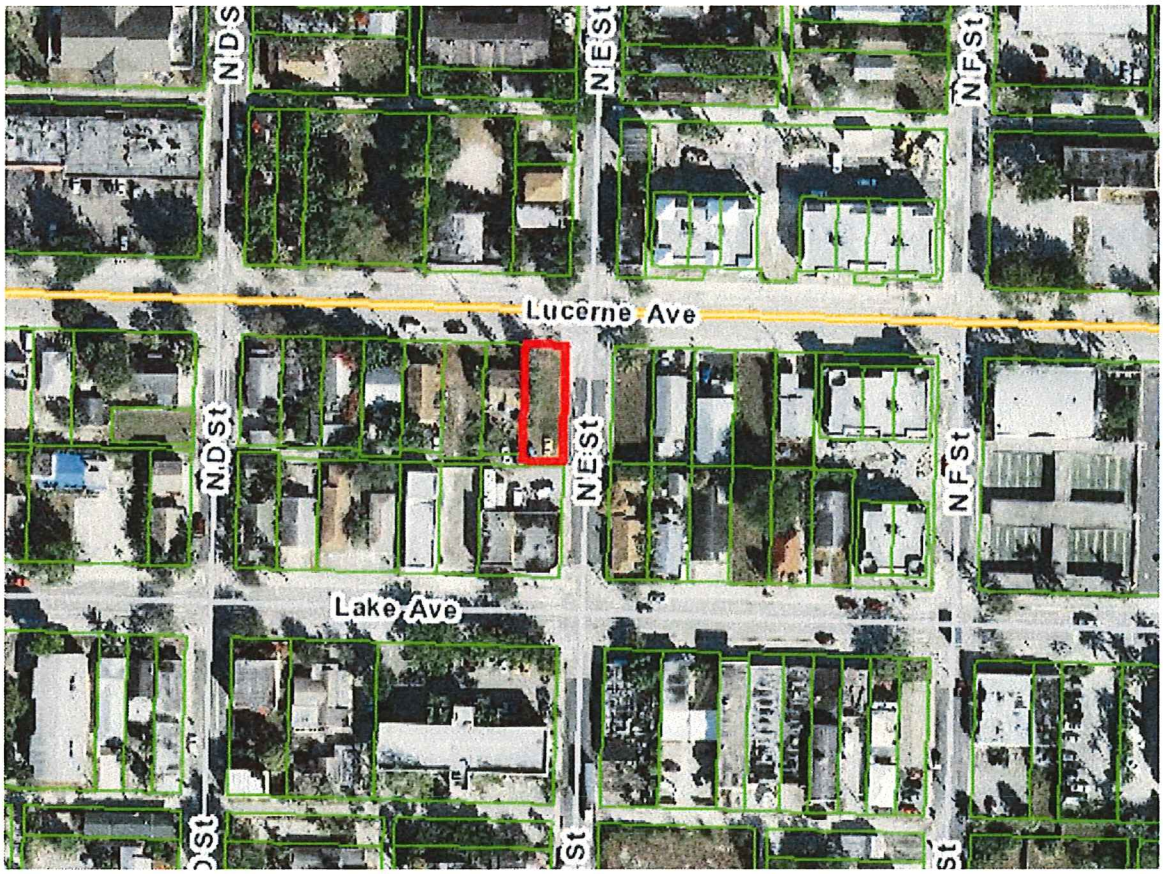
Property Identification

Record ID	8360
Property Type	Mixed use, Vacant Land
Address	915 N "H" Street, Lake Worth, Palm Beach County, Florida 33460
Location	West side of N "H" Street, between 9th and 10th Avenues North
Tax ID	38-43-44-21-15-274-0130
Legal Description	Lot 13, Block 274, The Palm Beach Farms Plat 2

Sale Data

Grantor	Linda F. Allen
Grantee	Florida Native Properties
Sale Date	October 16, 2013
Deed Book/Page	26396/39

Land Sale No. 2



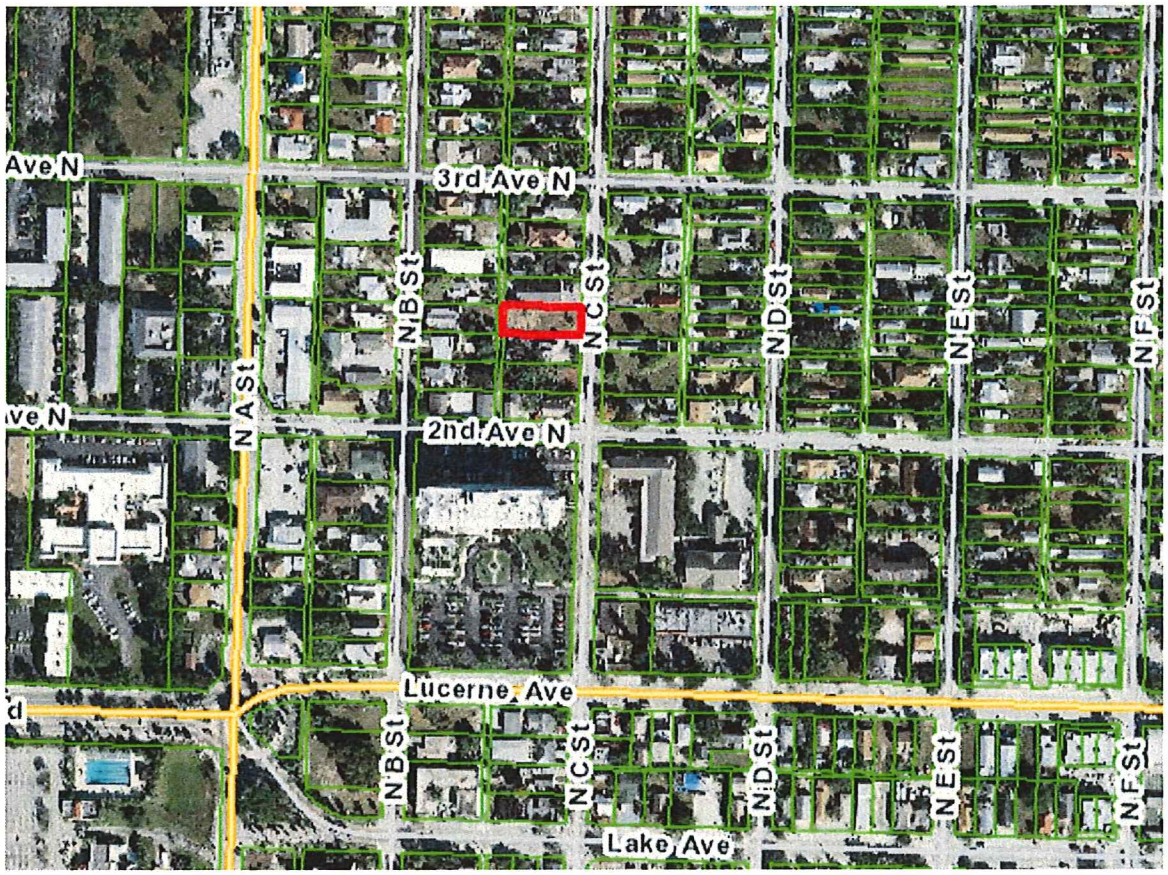
Property Identification

Record ID	8361
Property Type	Mixed use, Vacant Land
Address	Lucerne Avenue, Lake Worth, Palm Beach County, Florida 33460
Location	Northeast corner of Lucerne Avenue and N "E" Street
Tax ID	38-43-44-21-15-504-0080
Legal Description	Lot 8, Block D, Townsite of Lucerne

Sale Data

Grantor	William A. Wood, Trustee
Grantee	Parrot Property, Inc.
Sale Date	January 16, 2013
Deed Book/Page	25737/1609

Land Sale No. 3



Property Identification

Record ID	8362
Property Type	Residential, Vacant Land
Address	215 N "C" Street, Lake Worth, Palm Beach County, Florida 33460
Location	West side of N "C" Street, between 2nd & 3rd Avenues North
Tax ID	38-43-44-21-15-066-0130
Legal Description	Lot 117, Tropical Terrace and Lot 13, Block 66, Town of Lake Worth

Sale Data

Grantor	Southwind Limited Partnership No. 2
Grantee	Klausmeyer Holdings, LLC
Sale Date	December 19, 2012

Property Rights Conveyed

All the sales in this analysis were transferred on a Fee Simple Estate basis, with the buyers receiving full property rights ownership. We are also unaware of any adverse deed restrictions or any other property rights limitations which would have affected the sales. Therefore, no adjustments were considered necessary for property rights conveyed.

Terms of Financing (Cash Equivalency)

The transaction price of one property may differ from that of a similar property due to atypical financing arrangements. In a case where favorable financing is established, a cash equivalency adjustment is often necessary. However, all of the sales analyzed herein involved either market terms or cash to Grantor. Therefore, no adjustments were made, nor any cash equivalency performed.

Conditions of Sale

Adjustments for conditions of sale usually reflect the motivations of the buyer and seller at the time of conveyance. Within the confirmation process, detailed attention was made to ensure the conditions of each sale. None of the sales required adjustments for this factor.

Time or Changes in Market Conditions

Market conditions generally change over time and may be caused by inflation, deflation, fluctuations in supply and demand, or other factors. The sales occurred from December 2012 to October 2013. The available market data indicates that vacant land values in the Subject's market area remained stable during the time period of the sales. Therefore, all of the comparables were considered to be representative of the current market.

Location

The Subject Property is considered to have a good location for future residential or mixed use development. Sales 1 and 2 were considered to be similar to the Subject as to location. Sale 3, which has more of a more remote location, received an upward adjustment for this factor.

Size

The Subject Property contains 13,123 square feet. It is typical in real estate for a small site to sell at a higher price per square foot than a large site, when all other characteristics are equal. All of the comparables are smaller than the Subject and downward adjustments to varying degrees were applied based on this reasoning.

ADDENDA

ENGAGEMENT LETTER

Callaway & Price, Inc.

Real Estate Appraisers And Consultants
www.callawayandprice.com
Licensed Real Estate Brokers

Please respond to West Palm Beach office
E-Mail: sds@cpwpb.com

WEST PALM BEACH
1639 Forum Place
Suite 5
West Palm Beach, FL 33401
Phone (561)686-0333
Fax (561)686-3705

Michael R. Slade, MAI, SRA, CRE
Cert Gen RZ116

Stephen D. Shaw, MAI
Cert Gen RZ1192

FORT PIERCE/STUART
1803 South 25th Street
Suite 1
Fort Pierce, FL 34947
Phone (772)464-8607
Fax (772)461-0809

Stuart
Phone (772)287-3330
Fax (772)461-0809

Harry D. Gray, MAI, SRA
Cert Gen RZ662

Stephen G. Neill, Jr., MAI
Cert Gen RZ2480

MELBOURNE/INDIALANTIC
114 6th Avenue,
Suite 3
Indialantic, FL 32903
Phone (321)726-0970
Fax (321)726-0384

Curtis L. Phillips, MAI
Cert Gen RZ2085

BOCA RATON
Phone (561)998-8088
Fax (561)686-3705

Stephen D. Shaw, MAI
Cert Gen RZ1192

November 11, 2013

Michael Bornstein
City Manager
City of Lake Worth
7 North Dixie Highway
Lake Worth, FL 33460

E-Mail: mbornstein@lakeworth.org

Dear Mr. Bornstein:

We would be pleased to prepare a Summary Appraisal Report on the property located at 1702 Lake Worth Road in Lake Worth, Florida. It is our understanding that the purpose of the appraisal is to estimate the Market Value of the Fee Simple Estate.

This report will be prepared for our client and intended user, City of Lake Worth. The intended use is to assist the client in internal purposes. The scope of work performed is specific to the needs of the intended user and the intended use. No other use is intended, and the scope of work may not be appropriate for other uses.

The fee would be $1,000. The fee is due and payable upon delivery of the report. We will provide 2 originals of the final report, and a PDF if requested.

We will have the report completed in approximately 2 weeks.

If the above is agreeable to you, please sign below as our authorization and return it so that we may begin work immediately. This agreement is subject to the Agreements and Conditions listed on the attached pages, a copy of which should also be signed and returned to us. Our work will be done in accordance with the Appraisal Institute Code of Ethics and Standards of Professional Practice. Thank you for the opportunity to be of service.

Respectfully submitted,

CALLAWAY & PRICE, INC.

Stephen D. Shaw, MAI
Cert.Gen. RZ1192

SDS/js
Attachments

Client: City of Lake Worth

Accepted By\Date: _____
Signature

Date

Name and Title (Printed or Typed): _____

Client Fed ID# or SS#: _____

CONDITIONS OF AGREEMENT

1. Premise: The completed report shall comply with the professional and ethical standards of the Appraisal Institute. The report will be addressed to the Client, or, as directed by the Client.

2. Compensation: The fee is due and payable as designated in the contract letter; the retainer is to be sent to the Appraiser along with the signed contract letter, which constitutes authorization to commence the assignment. The Appraiser's/Consultant's compensation is in no event contingent upon a predetermined value or conclusion.

3. Completion Date: Every effort will be made to deliver the report as per the specified date in the contract letter. If delays occur for reasons beyond the control of the Appraiser/Consultant, such as not receiving necessary data requested from the Client in a timely manner, changes in the scope of services of the assignment, acts of God, et cetera, the due date shall be extended.

4. Changes: The Appraiser/Consultant shall, to the best of his ability, complete the assignment in compliance with professional and ethical standards of the appraisal industry. Changes which are not in keeping with these standards will necessitate a new contract letter and renegotiation of the original fee; or billed on a time basis plus the original fee.

5. Cancellation: This agreement may be cancelled by the Client by written notice, or telephone followed by written notice. Appraiser/Consultant shall submit a statement based on professional time and expenses accrued, if applicable, for all services expended to the date of cancellation.

6. Additional Report Copies: Additional copies will be furnished upon request, and prepayment of $1 per page per report.

7. Collection: All fees and expenses are due upon delivery of the final report. A late charge of 1.5% per month shall be imposed on balances unpaid 30 days after the statement date. If collection efforts become necessary, all costs for same, including court costs and attorney's fees will be added to the balance due. We are currently operating under an agreement with a collection agency which charges us 53.8%. IF THEIR COLLECTION SERVICES ARE REQUIRED, CLIENT'S TOTAL BALANCE DUE WILL BE INCREASED BY 53.8%.

8. Limiting Conditions: This agreement and the completed report shall be subject to the attached Limiting Conditions (also included in said report).

9. Confidential Data: Data assembled for the assignment will remain the property of the Appraiser/Consultant. Data provided by the Client will be held in file, unless otherwise instructed by the Client, and considered confidential. Appraiser/Consultant is authorized by the Client to disclose the report to appropriate representative of the Appraisal Institute to comply with the Bylaws and regulations of this professional organization.

I hereby agree to the Conditions of Agreement outlined above.

Client's Name

Date of Acceptance

LIMITING CONDITIONS

1. Unless otherwise stated, the value appearing in this appraisal represents the opinion of the Market Value or the Value Defined AS OF THE DATE SPECIFIED. Market Value of real estate is affected by national and local economic conditions and consequently will vary with future changes in such conditions.

2. The value estimated in this appraisal report is gross, without consideration given to any encumbrance, restriction or question of title, unless specifically defined.

3. This appraisal report covers only the property described and any values or rates utilized are not to be construed as applicable to any other property, however similar the properties might be.

4. It is assumed that the title to the premises is good; that the legal description is correct; that the improvements are entirely and correctly located on the property described and that there are no encroachments on this property, but no investigation or survey has been made.

5. This appraisal expresses our opinion, and employment to make this appraisal was in no way contingent upon the reporting of predetermined value or conclusion.

6. No responsibility is assumed for matters legal in nature, nor is any opinion of title rendered. In the performance of our investigation and analysis leading to the conclusions reached herein, the statements of others were relied on. No liability is assumed for the correctness of these statements; and, in any event, the appraiser's total liability for this report is limited to the actual fee charged.

7. Neither all nor any part of the contents of this report (especially any conclusions, the identity of the appraiser or the firm with which he is connected, or any reference to the Appraisal Institute or any of its designations) shall be disseminated to the public through advertising media, public relations media, news media, sales media or any other public means of communication without our prior written consent and approval.

8. It is assumed that there are no hidden or unapparent conditions of the property, subsoil, or structures which would render it more or less valuable. The appraiser assumes no responsibility for such conditions or the engineering which might be required to discover these factors.

9. Unless otherwise stated in this report, the existence of hazardous substances, including without limitation stachybotrys chartarum (mold), asbestos, polychlorinated biphenyls, petroleum leakage, or agricultural chemicals, which may or may not be present on the property, or other environmental conditions, were not called to the attention of, nor did the appraiser become aware of such during the appraiser's inspection. The appraiser has no knowledge of the existence of such materials on or in the property unless otherwise stated. The appraiser, however, is not qualified to test for such substances or conditions. If the presence of such substances, such as asbestos, urea formaldehyde foam insulation, or other hazardous substances or environmental conditions, may affect the value of the property, the value estimated is predicated on the assumption that there is no such proximity thereto that would cause a loss in value. We are unaware of very wet conditions that may have existed for days or weeks which are required to grow mold. No responsibility is assumed for any such conditions, nor for any expertise or engineering knowledge required to discover them.

10. The Americans with Disabilities Act ("ADA") became effective January 26, 1992. The appraiser has not made a specific compliance survey and analysis of this property to determine whether or not it is in conformity with the various detailed requirements of the ADA. It is possible that a compliance survey of the property, together with a detailed analysis of the requirements of the ADA, could reveal that the property is not in compliance with one or more of the requirements of the Act. If so, this fact could have a negative effect upon the value of the property. Since the appraiser has no direct evidence relating to this issue, possible noncompliance with the requirements of ADA in estimating the value of the property has not been considered.

QUALIFICATIONS

Professional Designations\Licenses\Certifications

Member, Appraisal Institute, MAI Designation #10461
Florida State-Certified General Appraiser RZ1192
Florida State Licensed Real Estate Salesman 0495422

Professional Experience

Principal, Callaway & Price, Inc., since January 1999
Senior Appraisal Consultant, Callaway & Price, Inc., since July 1997 – December 1998
Appraisal Consultant, Callaway & Price, Inc., since April 1994
Associate Appraiser, Pinel & Carpenter, Inc., Orlando, April 1992 - March 1994
Appraiser/Researcher, Callaway & Price, Inc., September 1987 - March 1992
Special Magistrate Palm Beach County since 1996
Special Magistrate, Martin County, 2009

Qualified as an Expert Witness

Palm Beach County, Florida
Martin County, Florida
Broward County, Florida
Sarasota County, Florida

Education

Bachelor of Science Degree, Business Administration, Major in Real Estate and Finance, University of Florida
Appraisal Institute:
- Course 101 - An Introduction to Appraising Real Property, 1992
- Course 201 - Principles of Income Producing Properties, 1991
- Course 2-1 - Case Studies in Real Estate Valuation, 1992
- Course 540 - Report Writing and Valuation Analysis, 1993
- Course 2-3 - Standards of Professional Practice Parts A & B, 1991

Numerous seminars sponsored by the Appraisal Institute

Appraising\Consulting Expertise

- Acreage
- ACLFs
- Apartment Complexes
- Automotive Service Facilities
- Bowling Alleys
- Commercial Buildings
- Condominium Projects
- Eminent Domain
- Golf Courses
- Hotels
- Marinas
- Mini-Warehouses
- Office Buildings
- Office/Warehouses
- Retail Buildings
- Restaurants
- Special Purpose Properties
- Shopping Centers
- Vacant Commercial Land
- Vacant Industrial Land
- Vacant Multifamily Pods
- Vacant Residential Land
- Vacant Single-Family Subdivisions
- Warehouses

Organizations and Affiliations

Appraisal Institute:

- Experience Review Committee
- Ethics & Counseling Committee
- South Florida Chapter Board of Directors
- Business Development Board Palm Beach County, Member

STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

FLORIDA REAL ESTATE APPRAISAL BD 850-487-1395
1940 N. MONROE ST.
TALLAHASSEE FL 32399-0783

SHAW, STEPHEN DAY
733 SE MICHAELS COURT
STUART FL 34996

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STATE OF FLORIDA AC# 6476411
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

RZ1192 10/22/12 128127937

CERTIFIED GENERAL APPRAISER
SHAW, STEPHEN DAY

IS CERTIFIED under the provisions of Ch.475 FS
Expiration date: NOV 30, 2014 L12102202187

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AC# 6476411

STATE OF FLORIDA

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
FLORIDA REAL ESTATE APPRAISAL BD

SEQ# L12102202187

DATE	BATCH NUMBER	LICENSE NBR
10/22/2012	128127937	RZ1192

The CERTIFIED GENERAL APPRAISER
Named below IS CERTIFIED
Under the provisions of Chapter 475 FS.
Expiration date: NOV 30, 2014

SHAW, STEPHEN DAY
1639 FORUM PLACE
SUITE 5
WEST PALM BEACH FL 33401

RICK SCOTT
GOVERNOR

KEN LAWSON
SECRETARY

DISPLAY AS REQUIRED BY LAW

Professional Designations & Certifications

Florida State-Certified General Appraiser RZ672

Professional Experience

Appraisal Consultant, Callaway & Price, Inc., since 1982
Staff Appraiser, First Federal Savings & Loan Assoc., Delray Beach, 1977-1982

Qualified As An Expert Witness

Circuit Court of Palm Beach County

Education

Florida Board of Real Estate, Course I – 1977
American Institute of Real Estate Appraisers Courses:
- Course 1A-1/8-1 - Real Estate Appraisal Principles, 1987
- Course 1A-2 - Basic Valuation Procedures, 1987
- Standards of Professional Practice, 1992
- USPAP Update Core Law for Appraisers, 1994
- Appraisal Review - Residential Property

Society of Real Estate Appraisers Courses:
- Course 101 - An Introduction to Appraising Real Property, 1978
- Course 201 - Principles of Income Property Appraising, 1978
- Narrative Report Writing Seminar, 1979 R-2 Examination, 1979

Gold Coast Professional Schools:
- U.S.P.A.P. Florida Law Update, 1996
- Real Estate Finance, 1996

McKissock Data Systems:
- Uniform Standards of Professional Practice, 1998
- Regression Analysis; The Appraisal Approach to the Future, 1998
- Appraising 2-4 Family Residential Properties, 1998
- Introduction to Environmental Considerations for the Appraiser, 1998
- Factory-Built Housing, 2000
- Automated Valuation Models, 2000
- Uniform Standards of Professional Practice, 2000

Bert Rodgers Schools:
- Uniform Standards of Professional Practice, 2002
- Florida Real Estate Appraisal License Law and Appraisal Board Regulations, 2002 Appraisal Research and Analysis, 2002
- Sales Comparison Approach, 2002
- Residential Subdivision Analysis, 2002
- Neighborhood Analysis, 2002
- Communicating the Appraisal, 2002

Bert Rodgers Schools:
- Federal National Mortgage Association, 2004
- Real Estate Mortgages and the Law, 2004
- Florida Appraisal Practice Law, 2004
- Sales Comparison Approach General Applications, 2004
- Communicating the Appraisal, 2004
- Residential Subdivision Analysis, 2004

McKissock Appraisal School:
- FL Appraising the Oddball, 2006
- Florida Appraisal Laws and Regulations, 2006
- FL Appraising FHA Today, 2006
- FL National USPAP Update Equivalent, 2006
- FL Income Capitalization, 2006

McKissock Appraisal School:
- FL Supervisor/Trainee Roles and Relationships, 2008
- Florida Appraisal Laws and Regulations, 2008
- Disclosures & Disclaimers, 2008
- FL National USPAP Update Equivalent, 2008

South Florida Water Management District Appraisal Seminar, 2008

Appraising\Consulting Expertise

Agricultural Acreage
Adult Congregate Living Facilities
Apartment Buildings
Automobile Agencies
Automobile Rental Facilities
Citrus Groves
Commercial Buildings
Condominiums (Individual Units & Discounted Sellouts of Total Projects)
Country Clubs\Golf Courses
Dairy Farms
Duplexes
Easements
Eminent Domain Vacant Properties (All Types)
Office Warehouses
Environmentally Sensitive Lands
Financial Institutions
High Tech Buildings
Industrial Subdivisions
Marinas
Nursing Homes
Office Buildings
Residences
Residential Subdivisions
Restaurants
Service Stations
Shopping Centers
Special Purpose Properties
Warehouses

STATE OF FLORIDA

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

FLORIDA REAL ESTATE APPRAISAL BD 850-487-1395
1940 N. MONROE ST.
TALLAHASSEE FL 32399-0783

MERRITT, JOE M
509 CHAPEL HILL BOULEVARD
BOYNTON BEACH FL 33435

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Our mission at the Department is: License Efficiently, Regulate Fairly. We constantly strive to serve you better so that you can serve your customers. Thank you for doing business in Florida, and congratulations on your new license!

STATE OF FLORIDA AC# 6459034
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

RZ672 10/13/12 128120858

CERTIFIED GENERAL APPRAISER
MERRITT, JOE M

IS CERTIFIED under the provisions of Ch.475 FS
Expiration date: NOV 30, 2014 L12101300763

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AC# 6459034

STATE OF FLORIDA

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
FLORIDA REAL ESTATE APPRAISAL BD

SEQ# L12101300763

DATE	BATCH NUMBER	LICENSE NBR
10/13/2012	128120858	RZ672

The CERTIFIED GENERAL APPRAISER
Named below IS CERTIFIED
Under the provisions of Chapter 475 FS.
Expiration date: NOV 30, 2014

MERRITT, JOE M
509 CHAPEL HILL BLVD
BOYNTON BEACH FL 33435

RICK SCOTT
GOVERNOR

KEN LAWSON
SECRETARY

DISPLAY AS REQUIRED BY LAW

ILLUSTRATED PROPERTIES

"AS IS" Residential Contract For Sale And Purchase

THIS FORM HAS BEEN APPROVED BY THE FLORIDA REALTORS AND THE FLORIDA BAR

PARTIES: Trojan House Inc. ("Seller"), and The City of Lake Worth ("Buyer"), agree that Seller shall sell and Buyer shall buy the following described Real Property and Personal Property (collectively "Property") pursuant to the terms and conditions of this AS IS Residential Contract For Sale And Purchase and any riders and addenda ("Contract"):

1. PROPERTY DESCRIPTION:

(a) Street address, city, zip: 1702 Lake Worth Road, Lake Worth, FL 33460

(b) Property is located in: Palm Beach County, Florida. Real Property Tax ID No.: 38434421020350011

(c) Real Property: The legal description is S/D of 21-44-43, W 1/2 N 140 FT of S 187 FT of LT 1 (Less ELY 6.56FT & TRGLR PAR North A ST R/W) BLK 35

together with all existing improvements and fixtures, including built-in appliances, built-in furnishings and attached wall-to-wall carpeting and flooring ("Real Property") unless specifically excluded in Paragraph 1(e) or by other terms of this Contract.

(d) Personal Property: Unless excluded in Paragraph 1(e) or by other terms of this Contract, the following items which are owned by Seller and existing on the Property as of the date of the initial offer are included in the purchase: range(s)/oven(s), refrigerator(s), dishwasher(s), disposal, ceiling fan(s), intercom, light fixture(s), drapery rods and draperies, blinds, window treatments, smoke detector(s), garage door opener(s), security gate and other access devices, and storm shutters/panels ("Personal Property").

Other Personal Property items included in this purchase are: _____

Personal Property is included in the Purchase Price, has no contributory value, and shall be left for the Buyer.

(e) The following items are excluded from the purchase: _____

PURCHASE PRICE AND CLOSING

2. PURCHASE PRICE (U.S. currency): ..... $ 30,500.00

(a) Initial deposit to be held in escrow in the amount of **(checks subject to COLLECTION)** ..... $ 5,000.00

The initial deposit made payable and delivered to "Escrow Agent" named below

(CHECK ONE): (i) ☐ accompanies offer or (ii) ☐ is to be made within 3 (if left blank, then 3) days after Effective Date. IF NEITHER BOX IS CHECKED, THEN OPTION (ii) SHALL BE DEEMED SELECTED.

Escrow Agent Information: Name: Universal Land Title

Address: 1926 10th Avenue North Suite 204, Lake Worth, FL 33461

Phone: 561-586-2800 E-mail: cking@universallandtitle.com Fax: _____

(b) Additional deposit to be delivered to Escrow Agent within _____ (if left blank, then 10) days after Effective Date ..... $ _____

(All deposits paid or agreed to be paid, are collectively referred to as the "Deposit")

(c) Financing: Express as a dollar amount or percentage ("Loan Amount") see Paragraph 8 ..... _____

(d) Other: _____ ..... $ _____

(e) Balance to close (not including Buyer's closing costs, prepaids and prorations) by wire transfer or other **COLLECTED** funds ..... $ 25,500.00

NOTE: For the definition of "COLLECTION" or "COLLECTED" see STANDARD S.

3. TIME FOR ACCEPTANCE OF OFFER AND COUNTER-OFFERS; EFFECTIVE DATE:

(a) If not signed by Buyer and Seller, and an executed copy delivered to all parties on or before January 17, 2014, this offer shall be deemed withdrawn and the Deposit, if any, shall be returned to Buyer. Unless otherwise stated, time for acceptance of any counter-offers shall be within 2 days after the day the counter-offer is delivered.

(b) The effective date of this Contract shall be the date when the last one of the Buyer and Seller has signed or initialed and delivered this offer or final counter-offer ("Effective Date").

4. CLOSING DATE: Unless modified by other provisions of this Contract, the closing of this transaction shall occur and the closing documents required to be furnished by each party pursuant to this Contract shall be delivered ("Closing") on on or before 2/17/14 ("Closing Date"), at the time established by the Closing Agent.

5. EXTENSION OF CLOSING DATE:

(a) If Closing funds from Buyer's lender(s) are not available at time of Closing due to Truth In Lending Act (TILA) notice requirements, Closing shall be extended for such period necessary to satisfy TILA notice requirements, not to exceed 7 days.

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(b) If extreme weather or other condition or event constituting "Force Majeure" (see STANDARD G) causes: (i) disruption of utilities or other services essential for Closing or (ii) Hazard, Wind, Flood or Homeowners' insurance, to become unavailable prior to Closing, Closing shall be extended a reasonable time up to 3 days after restoration of utilities and other services essential to Closing and availability of applicable Hazard, Wind, Flood or Homeowners' insurance. If restoration of such utilities or services and availability of insurance has not occurred within _____ (if left blank, then 14) days after Closing Date, then either party may terminate this Contract by delivering written notice to the other party, and Buyer shall be refunded the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.

6. OCCUPANCY AND POSSESSION:

(a) Unless the box in Paragraph 6(b) is checked, Seller shall, at Closing, deliver occupancy and possession of the Property to Buyer free of tenants, occupants and future tenancies. Also, at Closing, Seller shall have removed all personal items and trash from the Property and shall deliver all keys, garage door openers, access devices and codes, as applicable, to Buyer. If occupancy is to be delivered before Closing, Buyer assumes all risks of loss to the Property from date of occupancy, shall be responsible and liable for maintenance from that date, and shall be deemed to have accepted the Property in its existing condition as of time of taking occupancy.

(b) ☐ **CHECK IF PROPERTY IS SUBJECT TO LEASE(S) OR OCCUPANCY AFTER CLOSING.** If Property is subject to a lease(s) after Closing or is intended to be rented or occupied by third parties beyond Closing, the facts and terms thereof shall be disclosed in writing by Seller to Buyer and copies of the written lease(s) shall be delivered to Buyer, all within 5 days after Effective Date. If Buyer determines, in Buyer's sole discretion, that the lease(s) or terms of occupancy are not acceptable to Buyer, Buyer may terminate this Contract by delivery of written notice of such election to Seller within 5 days after receipt of the above items from Seller, and Buyer shall be refunded the Deposit thereby releasing Buyer and Seller from all further obligations under this Contract. Estoppel Letter(s) and Seller's affidavit shall be provided pursuant to STANDARD D. If Property is intended to be occupied by Seller after Closing, see Rider U. POST-CLOSING OCCUPANCY BY SELLER.

7. ASSIGNABILITY: (CHECK ONE): Buyer ☐ may assign and thereby be released from any further liability under this Contract; ☐ may assign but not be released from liability under this Contract; or ☒ may not assign this Contract.

FINANCING

8. FINANCING:

☒ (a) Buyer will pay cash or may obtain a loan for the purchase of the Property. There is no financing contingency to Buyer's obligation to close .

☐ (b) This Contract is contingent upon Buyer obtaining a written loan commitment for a ☐ conventional ☐ FHA ☐ VA or ☐ other _____ (describe) loan on the following terms within _____ (if left blank, then 30) days after Effective Date ("Loan Commitment Date") for **(CHECK ONE):** ☐ fixed, ☐ adjustable, ☐ fixed or adjustable rate loan in the Loan Amount (See Paragraph 2(c)), at an initial interest rate not to exceed _____ % (if left blank, then prevailing rate based upon Buyer's creditworthiness), and for a term of _____(if left blank, then 30) years ("Financing").

Buyer shall make mortgage loan application for the Financing within _____ (if left blank, then 5) days after Effective Date and use good faith and diligent effort to obtain a written loan commitment for the Financing ("Loan Commitment") and thereafter to close this Contract. Buyer shall keep Seller and Broker fully informed about the status of mortgage loan application and Loan Commitment and authorizes Buyer's mortgage broker and Buyer's lender to disclose such status and progress to Seller and Broker.

Upon Buyer's receipt of Loan Commitment, Buyer shall provide written notice of same to Seller. If Buyer does not receive Loan Commitment by Loan Commitment Date, then thereafter either party may cancel this Contract **up to the earlier of:**

(i.) Buyer's delivery of written notice to Seller that Buyer has either received Loan Commitment or elected to waive the financing contingency of this Contract; or

(ii.) 7 days prior to Closing Date.

If either party timely cancels this Contract pursuant to this Paragraph 8 and Buyer is not in default under the terms of this Contract, Buyer shall be refunded the Deposit thereby releasing Buyer and Seller from all further obligations under this Contract. If neither party has timely canceled this Contract pursuant to this Paragraph 8, then this financing contingency shall be deemed waived by Buyer.

If Buyer delivers written notice of receipt of Loan Commitment to Seller and this Contract does not thereafter close, the Deposit shall be paid to Seller unless failure to close is due to: (1) Seller's default; (2) Property related conditions of the Loan Commitment have not been met (except when such conditions are waived by other provisions of this Contract); (3) appraisal of the Property obtained by Buyer's lender is insufficient to meet terms of the Loan Commitment; or (4) the loan is not funded due to financial failure of Buyer's lender, in which event(s) the Deposit shall be returned to Buyer, thereby releasing Buyer and Seller from all further obligations under this Contract.

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☐ (c) Assumption of existing mortgage (see rider for terms).
☐ (d) Purchase money note and mortgage to Seller (see riders; addenda; or special clauses for terms).

CLOSING COSTS, FEES AND CHARGES

9. CLOSING COSTS; TITLE INSURANCE; SURVEY; HOME WARRANTY; SPECIAL ASSESSMENTS:

(a) **COSTS TO BE PAID BY SELLER:**

- Documentary stamp taxes and surtax on deed, if any
- Owner's Policy and Charges (if Paragraph 9(c) (i) is checked)
- Title search charges (if Paragraph 9(c) (iii) is checked)
- HOA/Condominium Association estoppel fees
- Recording and other fees needed to cure title
- Seller's attorneys' fees
- Other:_____

If, prior to Closing, Seller is unable to meet the AS IS Maintenance Requirement as required by Paragraph 11 a sum equal to 125% of estimated costs to meet the AS IS Maintenance Requirement shall be escrowed at Closing. If actual costs to meet the AS IS Maintenance Requirement exceed escrowed amount, Seller shall pay such actual costs. Any unused portion of escrowed amount(s) shall be returned to Seller.

(b) **COSTS TO BE PAID BY BUYER:**

- Taxes and recording fees on notes and mortgages
- Recording fees for deed and financing statements
- Owner's Policy and Charges (if Paragraph 9(c)(ii) is checked)
- Survey (and elevation certification, if required)
- Lender's title policy and endorsements
- HOA/Condominium Association application/transfer fees
- Loan expenses
- Appraisal fees
- Buyer's Inspections
- Buyer's attorneys' fees
- All property related insurance
- Owner's Policy Premium (if Paragraph 9 (c) (iii) is checked.)
- Other:_____

(c) **TITLE EVIDENCE AND INSURANCE:** At least _____ (if left blank, then 5) days prior to Closing Date, a title insurance commitment issued by a Florida licensed title insurer, with legible copies of instruments listed as exceptions attached thereto ("Title Commitment") and, after Closing, an owner's policy of title insurance (see STANDARD A for terms) shall be obtained and delivered to Buyer. If Seller has an owner's policy of title insurance covering the Real Property, a copy shall be furnished to Buyer and Closing Agent within 5 days after Effective Date. The owner's title policy premium, title search, municipal lien search and closing services (collectively, "Owner's Policy and Charges") shall be paid, as set forth below **(CHECK ONE):**

☒ (i) Seller shall designate Closing Agent and pay for Owner's Policy and Charges (but not including charges for closing services related to Buyer's lender's policy and endorsements and loan closing, which amounts shall be paid by Buyer to Closing Agent or such other provider(s) as Buyer may select); or

☐ (ii) Buyer shall designate Closing Agent and pay for Owner's Policy and Charges and charges for closing services related to Buyer's lender's policy, endorsements, and loan closing; or

☐ (iii) **[MIAMI-DADE/BROWARD REGIONAL PROVISION]:** Seller shall furnish a copy of a prior owner's policy of title insurance or other evidence of title and pay fees for: (A) a continuation or update of such title evidence, which is acceptable to Buyer's title insurance underwriter for reissue of coverage; (B) tax search; and (C) municipal lien search. Buyer shall obtain and pay for post-Closing continuation and premium for Buyer's owner's policy, and if applicable, Buyer's lender's policy. Seller shall not be obligated to pay more than $ _____ (if left blank, then $200.00) for abstract continuation or title search ordered or performed by Closing Agent.

(d) **SURVEY:** At least 5 days prior to Closing, Buyer may, at Buyer's expense, have the Real Property surveyed and certified by a registered Florida surveyor ("Survey"). If Seller has a survey covering the Real Property, a copy shall be furnished to Buyer and Closing Agent within 5 days after Effective Date.

(e) **HOME WARRANTY:** At Closing, ☐ Buyer ☐ Seller ☒ N/A shall pay for a home warranty plan issued by _____ at a cost not to exceed $_____. A home warranty plan provides for repair or replacement of many of a home's mechanical systems and major built-in appliances in the event of breakdown due to normal wear and tear during the agreement's warranty period.

(f) **SPECIAL ASSESSMENTS:** At Closing, Seller shall pay: (i) the full amount of liens imposed by a public body ("public body" does not include a Condominium or Homeowner's Association) that are certified, confirmed and ratified before Closing; and (ii) the amount of the public body's most recent estimate or assessment for an improvement which is substantially complete as of Effective Date, but that has not resulted in a lien being imposed on the Property before Closing. Buyer shall pay all other assessments. If special assessments may be paid in installments **(CHECK ONE):**

☐ (a) Seller shall pay installments due prior to Closing and Buyer shall pay installments due after Closing. Installments prepaid or due for the year of Closing shall be prorated.

☐ (b) Seller shall pay the assessment(s) in full prior to or at the time of Closing.

IF NEITHER BOX IS CHECKED, THEN OPTION (a) SHALL BE DEEMED SELECTED.

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This Paragraph 9(f) shall not apply to a special benefit tax lien imposed by a community development district (CDD) pursuant to Chapter 190, F.S., which lien shall be prorated pursuant to STANDARD K.

DISCLOSURES

10. DISCLOSURES:

(a) **RADON GAS:** Radon is a naturally occurring radioactive gas that, when it is accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department.

(b) **PERMITS DISCLOSURE:** Except as may have been disclosed by Seller to Buyer in a written disclosure, Seller does not know of any improvements made to the Property which were made without required permits or made pursuant to permits which have not been properly closed.

(c) **MOLD:** Mold is naturally occurring and may cause health risks or damage to property. If Buyer is concerned or desires additional information regarding mold, Buyer should contact an appropriate professional.

(d) **FLOOD ZONE; ELEVATION CERTIFICATION:** Buyer is advised to verify by elevation certificate which flood zone the Property is in, whether flood insurance is required by Buyer's lender, and what restrictions apply to improving the Property and rebuilding in the event of casualty. If Property is in a "Special Flood Hazard Area" or "Coastal Barrier Resources Act" designated area or otherwise protected area identified by the U.S. Fish and Wildlife Service under the Coastal Barrier Resources Act and the lowest floor elevation for the building(s) and /or flood insurance rating purposes is below minimum flood elevation or is ineligible for flood insurance through the National Flood Insurance Program, Buyer may terminate this Contract by delivering written notice to Seller within _____ (if left blank, then 20) days after Effective Date, and Buyer shall be refunded the Deposit thereby releasing Buyer and Seller from all further obligations under this Contract, failing which Buyer accepts existing elevation of buildings and flood zone designation of Property. The National Flood Insurance Reform Act of 2012 (referred to as Biggert-Waters 2012) may phase in actuarial rating of pre-Flood Insurance Rate Map (pre-FIRM) non-primary structures (residential structures in which the insured or spouse does not reside for at least 80% of the year) and an elevation certificate may be required for actuarial rating.

(e) **ENERGY BROCHURE:** Buyer acknowledges receipt of Florida Energy-Efficiency Rating Information Brochure required by Section 553.996, F.S.

(f) **LEAD-BASED PAINT:** If Property includes pre-1978 residential housing, a lead-based paint disclosure is mandatory.

(g) **HOMEOWNERS' ASSOCIATION/COMMUNITY DISCLOSURE: BUYER SHOULD NOT EXECUTE THIS CONTRACT UNTIL BUYER HAS RECEIVED AND READ THE HOMEOWNERS' ASSOCIATION/COMMUNITY DISCLOSURE, IF APPLICABLE.**

(h) **PROPERTY TAX DISCLOSURE SUMMARY:** BUYER SHOULD NOT RELY ON THE SELLER'S CURRENT PROPERTY TAXES AS THE AMOUNT OF PROPERTY TAXES THAT THE BUYER MAY BE OBLIGATED TO PAY IN THE YEAR SUBSEQUENT TO PURCHASE. A CHANGE OF OWNERSHIP OR PROPERTY IMPROVEMENTS TRIGGERS REASSESSMENTS OF THE PROPERTY THAT COULD RESULT IN HIGHER PROPERTY TAXES. IF YOU HAVE ANY QUESTIONS CONCERNING VALUATION, CONTACT THE COUNTY PROPERTY APPRAISER'S OFFICE FOR INFORMATION.

(i) **FIRPTA TAX WITHHOLDING:** Seller shall inform Buyer in writing if Seller is a "foreign person" as defined by the Foreign Investment in Real Property Tax Act ("FIRPTA"). Buyer and Seller shall comply with FIRPTA, which may require Seller to provide additional cash at Closing. If Seller is not a "foreign person", Seller can provide Buyer, at or prior to Closing, a certification of non-foreign status, under penalties of perjury, to inform Buyer and Closing Agent that no withholding is required. See STANDARD V for further information pertaining to FIRPTA. Buyer and Seller are advised to seek legal counsel and tax advice regarding their respective rights, obligations, reporting and withholding requirements pursuant to FIRPTA.

(j) **SELLER DISCLOSURE:** Seller knows of no facts materially affecting the value of the Real Property which are not readily observable and which have not been disclosed to Buyer. Except as provided for in the preceding sentence, Seller extends and intends no warranty and makes no representation of any type, either express or implied, as to the physical condition or history of the Property. Except as otherwise disclosed in writing Seller has received no written or verbal notice from any governmental entity or agency as to a currently uncorrected building, environmental or safety code violation.

PROPERTY MAINTENANCE, CONDITION, INSPECTIONS AND EXAMINATIONS

11. PROPERTY MAINTENANCE: Except for ordinary wear and tear and Casualty Loss, Seller shall maintain the Property, including, but not limited to, lawn, shrubbery, and pool, in the condition existing as of Effective Date ("AS IS Maintenance Requirement").

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12. PROPERTY INSPECTION; RIGHT TO CANCEL:

(a) ***PROPERTY INSPECTIONS AND RIGHT TO CANCEL: Buyer shall have _____ (if left blank, then 15) days after Effective Date ("Inspection Period") within which to have such inspections of the Property performed as Buyer shall desire during the Inspection Period. If Buyer determines, in Buyer's sole discretion, that the Property is not acceptable to Buyer, Buyer may terminate this Contract by delivering written notice of such election to Seller prior to expiration of Inspection Period. If Buyer timely terminates this Contract, the Deposit paid shall be returned to Buyer, thereupon, Buyer and Seller shall be released of all further obligations under this Contract; however, Buyer shall be responsible for prompt payment for such inspections, for repair of damage to, and restoration of, the Property resulting from such inspections, and shall provide Seller with paid receipts for all work done on the Property (the preceding provision shall survive termination of this Contract). Unless Buyer exercises the right to terminate granted herein, Buyer accepts the physical condition of the Property and any violation of governmental, building, environmental, and safety codes, restrictions, or requirements, but subject to Seller's continuing AS IS Maintenance Requirement, and Buyer shall be responsible for any and all repairs and improvements required by Buyer's lender.***

(b) **WALK-THROUGH INSPECTION/RE-INSPECTION:** On the day prior to Closing Date, or on Closing Date prior to time of Closing, as specified by Buyer, Buyer or Buyer's representative may perform a walk-through (and follow-up walk-through, if necessary) inspection of the Property solely to confirm that all items of Personal Property are on the Property and to verify that Seller has maintained the Property as required by the AS IS Maintenance Requirement and has met all other contractual obligations.

(c) ~~**SELLER ASSISTANCE AND COOPERATION IN CLOSE-OUT OF BUILDING PERMITS:** If Buyer's inspection of the Property identifies open or needed building permits, then Seller shall promptly deliver to Buyer all plans, written documentation or other information in Seller's possession, knowledge, or control relating to improvements to the Property which are the subject of such open or needed Permits, and shall promptly cooperate in good faith with Buyer's efforts to obtain estimates of repairs or other work necessary to resolve such Permit issues. Seller's obligation to cooperate shall include Seller's execution of necessary authorizations, consents, or other documents necessary for Buyer to conduct inspections and have estimates of such repairs or work prepared, but in fulfilling such obligation, Seller shall not be required to expend, or become obligated to expend, any money.~~

(d) **ASSIGNMENT OF REPAIR AND TREATMENT CONTRACTS AND WARRANTIES:** At Buyer's option and cost, Seller will, at Closing, assign all assignable repair, treatment and maintenance contracts and warranties to Buyer.

ESCROW AGENT AND BROKER

13. ESCROW AGENT: Any Closing Agent or Escrow Agent (collectively "Agent") receiving the Deposit, other funds and other items is authorized, and agrees by acceptance of them, to deposit them promptly, hold same in escrow within the State of Florida and, subject to **COLLECTION**, disburse them in accordance with terms and conditions of this Contract. Failure of funds to become **COLLECTED** shall not excuse Buyer's performance. When conflicting demands for the Deposit are received, or Agent has a good faith doubt as to entitlement to the Deposit, Agent may take such actions permitted by this Paragraph 13, as Agent deems advisable. If in doubt as to Agent's duties or liabilities under this Contract, Agent may, at Agent's option, continue to hold the subject matter of the escrow until the parties agree to its disbursement or until a final judgment of a court of competent jurisdiction shall determine the rights of the parties, or Agent may deposit same with the clerk of the circuit court having jurisdiction of the dispute. An attorney who represents a party and also acts as Agent may represent such party in such action. Upon notifying all parties concerned of such action, all liability on the part of Agent shall fully terminate, except to the extent of accounting for any items previously delivered out of escrow. If a licensed real estate broker, Agent will comply with provisions of Chapter 475, F.S., as amended and FREC rules to timely resolve escrow disputes through mediation, arbitration, interpleader or an escrow disbursement order.

Any proceeding between Buyer and Seller wherein Agent is made a party because of acting as Agent hereunder, or in any proceeding where Agent interpleads the subject matter of the escrow, Agent shall recover reasonable attorney's fees and costs incurred, to be paid pursuant to court order out of the escrowed funds or equivalent. Agent shall not be liable to any party or person for mis-delivery of any escrowed items, unless such mis-delivery is due to Agent's willful breach of this Contract or Agent's gross negligence. This Paragraph 13 shall survive Closing or termination of this Contract.

14. PROFESSIONAL ADVICE; BROKER LIABILITY: Broker advises Buyer and Seller to verify Property condition, square footage, and all other facts and representations made pursuant to this Contract and to consult appropriate professionals for legal, tax, environmental, and other specialized advice concerning matters affecting the Property and the transaction contemplated by this Contract. Broker represents to Buyer that Broker does not reside on the Property and that all representations (oral, written or otherwise) by Broker are based on Seller representations or public records. **BUYER AGREES TO RELY SOLELY ON SELLER, PROFESSIONAL INSPECTORS AND GOVERNMENTAL AGENCIES FOR VERIFICATION OF PROPERTY CONDITION, SQUARE FOOTAGE AND FACTS THAT MATERIALLY AFFECT PROPERTY VALUE AND NOT ON THE REPRESENTATIONS (ORAL, WRITTEN OR OTHERWISE) OF BROKER.**

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Buyer and Seller (individually, the "Indemnifying Party") each individually indemnifies, holds harmless, and releases Broker and Broker's officers, directors, agents and employees from all liability for loss or damage, including all costs and expenses, and reasonable attorney's fees at all levels, suffered or incurred by Broker and Broker's officers, directors, agents and employees in connection with or arising from claims, demands or causes of action instituted by Buyer or Seller based on: (i) inaccuracy of information provided by the Indemnifying Party or from public records; (ii) Indemnifying Party's misstatement(s) or failure to perform contractual obligations; (iii) Broker's performance, at Indemnifying Party's request, of any task beyond the scope of services regulated by Chapter 475, F.S., as amended, including Broker's referral, recommendation or retention of any vendor for, or on behalf of Indemnifying Party; (iv) products or services provided by any such vendor for, or on behalf of, Indemnifying Party; and (v) expenses incurred by any such vendor. Buyer and Seller each assumes full responsibility for selecting and compensating their respective vendors and paying their other costs under this Contract whether or not this transaction closes. This Paragraph 14 will not relieve Broker of statutory obligations under Chapter 475, F.S., as amended. For purposes of this Paragraph 14, Broker will be treated as a party to this Contract. This Paragraph 14 shall survive Closing or termination of this Contract.

DEFAULT AND DISPUTE RESOLUTION

15. DEFAULT:

(a) **BUYER DEFAULT:** If Buyer fails, neglects or refuses to perform Buyer's obligations under this Contract, including payment of the Deposit, within the time(s) specified, Seller may elect to recover and retain the Deposit for the account of Seller as agreed upon liquidated damages, consideration for execution of this Contract, and in full settlement of any claims, whereupon Buyer and Seller shall be relieved from all further obligations under this Contract, or Seller, at Seller's option, may, pursuant to Paragraph 16, proceed in equity to enforce Seller's rights under this Contract. The portion of the Deposit, if any, paid to Listing Broker upon default by Buyer, shall be split equally between Listing Broker and Cooperating Broker; provided however, Cooperating Broker's share shall not be greater than the commission amount Listing Broker had agreed to pay to Cooperating Broker.

(b) **SELLER DEFAULT:** If for any reason other than failure of Seller to make Seller's title marketable after reasonable diligent effort, Seller fails, neglects or refuses to perform Seller's obligations under this Contract, Buyer may elect to receive return of Buyer's Deposit without thereby waiving any action for damages resulting from Seller's breach, and, pursuant to Paragraph 16, may seek to recover such damages or seek specific performance.

This Paragraph 15 shall survive Closing or termination of this Contract.

16. DISPUTE RESOLUTION: Unresolved controversies, claims and other matters in question between Buyer and Seller arising out of, or relating to, this Contract or its breach, enforcement or interpretation ("Dispute") will be settled as follows:

(a) Buyer and Seller will have 10 days after the date conflicting demands for the Deposit are made to attempt to resolve such Dispute, failing which, Buyer and Seller shall submit such Dispute to mediation under Paragraph 16(b).

(b) Buyer and Seller shall attempt to settle Disputes in an amicable manner through mediation pursuant to Florida Rules for Certified and Court-Appointed Mediators and Chapter 44, F.S., as amended (the "Mediation Rules"). The mediator must be certified or must have experience in the real estate industry. Injunctive relief may be sought without first complying with this Paragraph 16(b). Disputes not settled pursuant to this Paragraph 16 may be resolved by instituting action in the appropriate court having jurisdiction of the matter. This Paragraph 16 shall survive Closing or termination of this Contract.

17. ATTORNEY'S FEES; COSTS: The parties will split equally any mediation fee incurred in any mediation permitted by this Contract, and each party will pay their own costs, expenses and fees, including attorney's fees, incurred in conducting the mediation. In any litigation permitted by this Contract, the prevailing party shall be entitled to recover from the non-prevailing party costs and fees, including reasonable attorney's fees, incurred in conducting the litigation. This Paragraph 17 shall survive Closing or termination of this Contract.

STANDARDS FOR REAL ESTATE TRANSACTIONS ("STANDARDS")

18. STANDARDS:

A. TITLE:

(i) **TITLE EVIDENCE; RESTRICTIONS; EASEMENTS; LIMITATIONS:** Within the time period provided in Paragraph 9(c), the Title Commitment, with legible copies of instruments listed as exceptions attached thereto, shall be issued and delivered to Buyer. The Title Commitment shall set forth those matters to be discharged by Seller at or before Closing and shall provide that, upon recording of the deed to Buyer, an owner's policy of title insurance in the amount of the Purchase Price, shall be issued to Buyer insuring Buyer's marketable title to the Real Property, subject only to the following matters: (a) comprehensive land use plans, zoning, and other land use restrictions, prohibitions and requirements imposed by governmental authority; (b) restrictions and matters appearing on the Plat or otherwise common to the subdivision; (c) outstanding oil, gas and mineral rights of record without right of entry; (d) unplatted public utility easements of record (located contiguous to real property lines and not more than 10 feet in width as to rear or front lines and 7 1/2 feet in width as to side lines); (e) taxes for year of Closing and subsequent years; and (f)

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assumed mortgages and purchase money mortgages, if any (if additional items, attach addendum); provided, that, none prevent use of Property for **RESIDENTIAL PURPOSES**. If there exists at Closing any violation of items identified in (b) – (f) above, then the same shall be deemed a title defect. Marketable title shall be determined according to applicable Title Standards adopted by authority of The Florida Bar and in accordance with law.

(ii) **TITLE EXAMINATION:** Buyer shall have 5 days after receipt of Title Commitment to examine it and notify Seller in writing specifying defect(s), if any, that render title unmarketable. If Seller provides Title Commitment and it is delivered to Buyer less than 5 days prior to Closing Date, Buyer may extend Closing for up to 5 days after date of receipt to examine same in accordance with this STANDARD A. Seller shall have 30 days ("Cure Period") after receipt of Buyer's notice to take reasonable diligent efforts to remove defects. If Buyer fails to so notify Seller, Buyer shall be deemed to have accepted title as it then is. If Seller cures defects within Cure Period, Seller will deliver written notice to Buyer (with proof of cure acceptable to Buyer and Buyer's attorney) and the parties will close this Contract on Closing Date (or if Closing Date has passed, within 10 days after Buyer's receipt of Seller's notice). If Seller is unable to cure defects within Cure Period, then Buyer may, within 5 days after expiration of Cure Period, deliver written notice to Seller: (a) extending Cure Period for a specified period not to exceed 120 days within which Seller shall continue to use reasonable diligent effort to remove or cure the defects ("Extended Cure Period"); or (b) electing to accept title with existing defects and close this Contract on Closing Date (or if Closing Date has passed, within the earlier of 10 days after end of Extended Cure Period or Buyer's receipt of Seller's notice), or (c) electing to terminate this Contract and receive a refund of the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract. If after reasonable diligent effort, Seller is unable to timely cure defects, and Buyer does not waive the defects, this Contract shall terminate, and Buyer shall receive a refund of the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.

B. SURVEY: If Survey discloses encroachments on the Real Property or that improvements located thereon encroach on setback lines, easements, or lands of others, or violate any restrictions, covenants, or applicable governmental regulations described in STANDARD A (i)(a), (b) or (d) above, Buyer shall deliver written notice of such matters, together with a copy of Survey, to Seller within 5 days after Buyer's receipt of Survey, but no later than Closing. If Buyer timely delivers such notice and Survey to Seller, such matters identified in the notice and Survey shall constitute a title defect, subject to cure obligations of STANDARD A above. If Seller has delivered a prior survey, Seller shall, at Buyer's request, execute an affidavit of "no change" to the Real Property since the preparation of such prior survey, to the extent the affirmations therein are true and correct.

C. INGRESS AND EGRESS: Seller represents that there is ingress and egress to the Real Property and title to the Real Property is insurable in accordance with STANDARD A without exception for lack of legal right of access.

D. LEASE INFORMATION: Seller shall, at least 10 days prior to Closing, furnish to Buyer estoppel letters from tenant(s)/occupant(s) specifying nature and duration of occupancy, rental rates, advanced rent and security deposits paid by tenant(s) or occupant(s)("Estoppel Letter(s)"). If Seller is unable to obtain such Estoppel Letter(s) the same information shall be furnished by Seller to Buyer within that time period in the form of a Seller's affidavit and Buyer may thereafter contact tenant(s) or occupant(s) to confirm such information. If Estoppel Letter(s) or Seller's affidavit, if any, differ materially from Seller's representations and lease(s) provided pursuant to Paragraph 6, or if tenant(s)/occupant(s) fail or refuse to confirm Seller's affidavit, Buyer may deliver written notice to Seller within 5 days after receipt of such information, but no later than 5 days prior to Closing Date, terminating this Contract and receive a refund of the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract. Seller shall, at Closing, deliver and assign all leases to Buyer who shall assume Seller's obligations thereunder.

E. LIENS: Seller shall furnish to Buyer at Closing an affidavit attesting (i) to the absence of any financing statement, claims of lien or potential lienors known to Seller and (ii) that there have been no improvements or repairs to the Real Property for 90 days immediately preceding Closing Date. If the Real Property has been improved or repaired within that time, Seller shall deliver releases or waivers of construction liens executed by all general contractors, subcontractors, suppliers and materialmen in addition to Seller's lien affidavit setting forth names of all such general contractors, subcontractors, suppliers and materialmen, further affirming that all charges for improvements or repairs which could serve as a basis for a construction lien or a claim for damages have been paid or will be paid at Closing.

F. TIME: Calendar days shall be used in computing time periods. **Time is of the essence in this Contract.** Other than time for acceptance and Effective Date as set forth in Paragraph 3, any time periods provided for or dates specified in this Contract, whether preprinted, handwritten, typewritten or inserted herein, which shall end or occur on a Saturday, Sunday, or a national legal holiday (see 5 U.S.C. 6103) shall extend to 5:00 p.m. (where the Property is located) of the next business day.

G. FORCE MAJEURE: Buyer or Seller shall not be required to perform any obligation under this Contract or be liable to each other for damages so long as performance or non-performance of the obligation is delayed, caused or prevented by Force Majeure. "Force Majeure" means: hurricanes, earthquakes, floods, fire, acts of God, unusual transportation delays, wars, insurrections, acts of terrorism, and any other cause not reasonably within control of Buyer or Seller, and which, by: exercise of reasonable diligent effort, the non-performing party is unable in whole or in part to prevent or overcome. All time periods, including Closing Date, will be extended for the period that the Force Majeure prevents performance under this Contract, provided, however, if such Force Majeure continues to prevent performance

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under this Contract more than 14 days beyond Closing Date, then either party may terminate this Contract by delivering written notice to the other and the Deposit shall be refunded to Buyer, thereby releasing Buyer and Seller from all further obligations under this Contract.

H. CONVEYANCE: Seller shall convey marketable title to the Real Property by statutory warranty, trustee's, personal representative's, or guardian's deed, as appropriate to the status of Seller, subject only to matters described in STANDARD A and those accepted by Buyer. Personal Property shall, at request of Buyer, be transferred by absolute bill of sale with warranty of title, subject only to such matters as may be provided for in this Contract.

I. CLOSING LOCATION; DOCUMENTS; AND PROCEDURE:

(i) **LOCATION:** Closing will take place in the county where the Real Property is located at the office of the attorney or other closing agent ("Closing Agent") designated by the party paying for the owner's policy of title insurance, or, if no title insurance, designated by Seller. Closing may be conducted by mail or electronic means.

(ii) **CLOSING DOCUMENTS:** Seller shall at or prior to Closing, execute and deliver, as applicable, deed, bill of sale, certificate(s) of title or other documents necessary to transfer title to the Property, construction lien affidavit(s), owner's possession and no lien affidavit(s), and assignment(s) of leases. Seller shall provide Buyer with paid receipts for all work done on the Property pursuant to this Contract. Buyer shall furnish and pay for, as applicable the survey, flood elevation certification, and documents required by Buyer's lender.

(iii) **PROCEDURE:** The deed shall be recorded upon **COLLECTION** of all closing funds. If the Title Commitment provides insurance against adverse matters pursuant to Section 627.7841, F.S., as amended, the escrow closing procedure required by STANDARD J shall be waived, and Closing Agent shall, **subject to COLLECTION of all closing funds**, disburse at Closing the brokerage fees to Broker and the net sale proceeds to Seller.

J. ESCROW CLOSING PROCEDURE: If Title Commitment issued pursuant to Paragraph 9(c) does not provide for insurance against adverse matters as permitted under Section 627.7841, F.S., as amended, the following escrow and closing procedures shall apply: (1) all Closing proceeds shall be held in escrow by the Closing Agent for a period of not more than 10 days after Closing; (2) if Seller's title is rendered unmarketable, through no fault of Buyer, Buyer shall, within the 10 day period, notify Seller in writing of the defect and Seller shall have 30 days from date of receipt of such notification to cure the defect; (3) if Seller fails to timely cure the defect, the Deposit and all Closing funds paid by Buyer shall, within 5 days after written demand by Buyer, be refunded to Buyer and, simultaneously with such repayment, Buyer shall return the Personal Property, vacate the Real Property and re-convey the Property to Seller by special warranty deed and bill of sale; and (4) if Buyer fails to make timely demand for refund of the Deposit, Buyer shall take title as is, waiving all rights against Seller as to any intervening defect except as may be available to Buyer by virtue of warranties contained in the deed or bill of sale.

K. PRORATIONS; CREDITS: The following recurring items will be made current (if applicable) and prorated as of the day prior to Closing Date, or date of occupancy if occupancy occurs before Closing Date: real estate taxes (including special benefit tax assessments imposed by a CDD), interest, bonds, association fees, insurance, rents and other expenses of Property. Buyer shall have option of taking over existing policies of insurance, if assumable, in which event premiums shall be prorated. Cash at Closing shall be increased or decreased as may be required by prorations to be made through day prior to Closing. Advance rent and security deposits, if any, will be credited to Buyer. Escrow deposits held by Seller's mortgagee will be paid to Seller. Taxes shall be prorated based on current year's tax with due allowance made for maximum allowable discount, homestead and other exemptions. If Closing occurs on a date when current year's millage is not fixed but current year's assessment is available, taxes will be prorated based upon such assessment and prior year's millage. If current year's assessment is not available, then taxes will be prorated on prior year's tax. If there are completed improvements on the Real Property by January 1st of year of Closing, which improvements were not in existence on January 1st of prior year, then taxes shall be prorated based upon prior year's millage and at an equitable assessment to be agreed upon between the parties, failing which, request shall be made to the County Property Appraiser for an informal assessment taking into account available exemptions. A tax proration based on an estimate shall, at either party's request, be readjusted upon receipt of current year's tax bill. This STANDARD K shall survive Closing.

L. ACCESS TO PROPERTY TO CONDUCT APPRAISALS, INSPECTIONS, AND WALK-THROUGH: Seller shall, upon reasonable notice, provide utilities service and access to Property for appraisals and inspections, including a walk-through (or follow-up walk-through if necessary) prior to Closing.

M. RISK OF LOSS: If, after Effective Date, but before Closing, Property is damaged by fire or other casualty ("Casualty Loss") and cost of restoration (which shall include cost of pruning or removing damaged trees) does not exceed 1.5% of Purchase Price, cost of restoration shall be an obligation of Seller and Closing shall proceed pursuant to terms of this Contract. If restoration is not completed as of Closing, a sum equal to 125% of estimated cost to complete restoration (not to exceed 1.5% of Purchase Price), will be escrowed at Closing. If actual cost of restoration exceeds escrowed amount, Seller shall pay such actual costs (but, not in excess of 1.5% of Purchase Price). Any unused portion of escrowed amount shall be returned to Seller. If cost of restoration exceeds 1.5% of Purchase Price, Buyer shall elect to either take Property "as is" together with the 1.5%, or receive a refund of the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract. Seller's sole obligation with respect to tree damage by casualty or other natural occurrence shall be cost of pruning or removal.

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N. 1031 EXCHANGE: If either Seller or Buyer wish to enter into a like-kind exchange (either simultaneously with Closing or deferred) under Section 1031 of the Internal Revenue Code ("Exchange"), the other party shall cooperate in all reasonable respects to effectuate the Exchange, including execution of documents; provided, however, cooperating party shall incur no liability or expense related to the Exchange, and Closing shall not be contingent upon, nor extended or delayed by, such Exchange.

O. CONTRACT NOT RECORDABLE; PERSONS BOUND; NOTICE; DELIVERY; COPIES; CONTRACT EXECUTION: Neither this Contract nor any notice of it shall be recorded in any public records. This Contract shall be binding on, and inure to the benefit of, the parties and their respective heirs or successors in interest. Whenever the context permits, singular shall include plural and one gender shall include all. Notice and delivery given by or to the attorney or broker (including such broker's real estate licensee) representing any party shall be as effective as if given by or to that party. All notices must be in writing and may be made by mail, personal delivery or electronic (including "pdf") media. A facsimile or electronic (including "pdf") copy of this Contract and any signatures hereon shall be considered for all purposes as an original. This Contract may be executed by use of electronic signatures, as determined by Florida's Electronic Signature Act and other applicable laws.

P. INTEGRATION; MODIFICATION: This Contract contains the full and complete understanding and agreement of Buyer and Seller with respect to the transaction contemplated by this Contract and no prior agreements or representations shall be binding upon Buyer or Seller unless included in this Contract. No modification to or change in this Contract shall be valid or binding upon Buyer or Seller unless in writing and executed by the parties intended to be bound by it.

Q. WAIVER: Failure of Buyer or Seller to insist on compliance with, or strict performance of, any provision of this Contract, or to take advantage of any right under this Contract, shall not constitute a waiver of other provisions or rights.

R. RIDERS; ADDENDA; TYPEWRITTEN OR HANDWRITTEN PROVISIONS: Riders, addenda, and typewritten or handwritten provisions shall control all printed provisions of this Contract in conflict with them.

S. COLLECTION or COLLECTED: "COLLECTION" or "COLLECTED" means any checks tendered or received, including Deposits, have become actually and finally collected and deposited in the account of Escrow Agent or Closing Agent. Closing and disbursement of funds and delivery of closing documents may be delayed by Closing Agent until such amounts have been COLLECTED in Closing Agent's accounts.

T. LOAN COMMITMENT: "Loan Commitment" means a statement by the lender setting forth the terms and conditions upon which the lender is willing to make a particular mortgage loan to a particular borrower. Neither a pre-approval letter nor a prequalification letter shall be deemed a Loan Commitment for purposes of this Contract .

U. APPLICABLE LAW AND VENUE: This Contract shall be construed in accordance with the laws of the State of Florida and venue for resolution of all disputes, whether by mediation, arbitration or litigation, shall lie in the county where the Real Property is located.

V. FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT ("FIRPTA"): If a seller of U.S. real property is a "foreign person" as defined by FIRPTA, Section 1445 of the Internal Revenue Code requires the buyer of the real property to withhold 10% of the amount realized by the seller on the transfer and remit the withheld amount to the Internal Revenue Service (IRS) unless an exemption to the required withholding applies or the seller has obtained a Withholding Certificate from the IRS authorizing a reduced amount of withholding. Due to the complexity and potential risks of FIRPTA, Buyer and Seller should seek legal and tax advice regarding compliance, particularly if an "exemption" is claimed on the sale of residential property for $300,000 or less.

(i) No withholding is required under Section 1445 if the Seller is not a "foreign person," provided Buyer accepts proof of same from Seller, which may include Buyer's receipt of certification of non-foreign status from Seller, signed under penalties of perjury, stating that Seller is not a foreign person and containing Seller's name, U.S. taxpayer identification number and home address (or office address, in the case of an entity), as provided for in 26 CFR 1.1445-2(b). Otherwise, Buyer shall withhold 10% of the amount realized by Seller on the transfer and timely remit said funds to the IRS.

(ii) If Seller has received a Withholding Certificate from the IRS which provides for reduced or eliminated withholding in this transaction and provides same to Buyer by Closing, then Buyer shall withhold the reduced sum, if any required, and timely remit said funds to the IRS.

(iii) If prior to Closing Seller has submitted a completed application to the IRS for a Withholding Certificate and has provided to Buyer the notice required by 26 CFR 1.1445-1(c) (2)(i)(B) but no Withholding Certificate has been received as of Closing, Buyer shall, at Closing, withhold 10% of the amount realized by Seller on the transfer and, at Buyer's option, either (a) timely remit the withheld funds to the IRS or (b) place the funds in escrow, at Seller's expense, with an escrow agent selected by Buyer and pursuant to terms negotiated by the parties, to be subsequently disbursed in accordance with the Withholding Certificate issued by the IRS or remitted directly to the IRS if the Seller's application is rejected or upon terms set forth in the escrow agreement.

(iv) In the event the net proceeds due Seller are not sufficient to meet the withholding requirement(s) in this transaction, Seller shall deliver to Buyer, at Closing, the additional COLLECTED funds necessary to satisfy the applicable requirement and thereafter Buyer shall timely remit said funds to the IRS or escrow the funds for disbursement in accordance with the final determination of the IRS, as applicable.

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(v) Upon remitting funds to the IRS pursuant to this STANDARD, Buyer shall provide Seller copies of IRS Forms 8288 and 8288-A, as filed.

W. RESERVED

X. BUYER WAIVER OF CLAIMS: ***To the extent permitted by law, Buyer waives any claims against Seller and against any real estate licensee involved in the negotiation of this Contract for any damage or defects pertaining to the physical condition of the Property that may exist at Closing of this Contract and be subsequently discovered by the Buyer or anyone claiming*** **by, through, under or against the Buyer.** ***This provision does not relieve Seller's obligation to comply with Paragraph 10(j). This Standard X shall survive Closing.***

ADDENDA AND ADDITIONAL TERMS

19. ADDENDA: The following additional terms are included in the attached addenda or riders and incorporated into this Contract (**Check if applicable**):

- ☐ A. Condominium Rider
- ☐ B. Homeowners' Assn.
- ☐ C. Seller Financing
- ☐ D. Mortgage Assumption
- ☐ E. FHA/VA Financing
- ☐ F. Appraisal Contingency
- ☐ G. Short Sale
- ☐ H. Homeowners'/Flood Ins.
- ☐ I. RESERVED
- ☐ J. Interest-Bearing Acct.
- ☐ K. RESERVED
- ☐ L. RESERVED
- ☐ M. Defective Drywall
- ☐ N. Coastal Construction Control Line
- ☐ O. Insulation Disclosure
- ☒ P. Lead Based Paint Disclosure (Pre-1978 Housing)
- ☐ Q. Housing for Older Persons
- ☐ R. Rezoning
- ☐ S. Lease Purchase/ Lease Option
- ☐ T. Pre-Closing Occupancy by Buyer
- ☐ U. Post-Closing Occupancy by Seller
- ☐ V. Sale of Buyer's Property
- ☐ W. Back-up Contract
- ☐ X. Kick-out Clause
- ☐ Y. Seller's Attorney Approval
- ☐ Z. Buyer's Attorney Approval
- ☐ AA. Licensee-Personal Interest in Property
- ☐ BB. Binding Arbitration
- ☐ Other_____

20. ADDITIONAL TERMS:

The Buyer shall be responsible for any and all fines, administrative charges and lien assessed or filed against the property as a result of the City of Lake Worth???s code enforcement action against the property (code enforcement case number 13-00001299). If a code enforcement lien is recorded against the property prior to or after the Closing, the Buyer will take all action necessary to obtain a release of the Seller from such lien.

The Buyer and Seller intend for the proceeds from the sale of the property to be used in conjunction with other community partners to establish a construction lab for students within the City of Lake Worth.

COUNTER-OFFER/REJECTION

☐ Seller counters Buyer's offer (to accept the counter-offer, Buyer must sign or initial the counter-offered terms and deliver a copy of the acceptance to Seller).

☐ Seller rejects Buyer's offer.

THIS IS INTENDED TO BE A LEGALLY BINDING CONTRACT. IF NOT FULLY UNDERSTOOD, SEEK THE ADVICE OF AN ATTORNEY PRIOR TO SIGNING.

THIS FORM HAS BEEN APPROVED BY THE FLORIDA REALTORS AND THE FLORIDA BAR.

Approval of this form by the Florida Realtors and The Florida Bar does not constitute an opinion that any of the terms and conditions in this Contract should be accepted by the parties in a particular transaction. Terms and conditions should be negotiated based upon the respective interests, objectives and bargaining positions of all interested persons.

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AN ASTERISK (*) FOLLOWING A LINE NUMBER IN THE MARGIN INDICATES THE LINE CONTAINS A BLANK TO BE COMPLETED.

Buyer: X _____ Date: _____

Buyer: _____ Date: _____

Seller: X _____ Date: _____

Seller: _____ Date: _____

Buyer's address for purposes of notice

_____

_____

_____

Seller's address for purposes of notice
3199 Lake Worth Road #B3
Palm Springs, FL 33461

BROKER: Listing and Cooperating Brokers, if any, named below (collectively, "Broker"), are the only Brokers entitled to compensation in connection with this Contract. Instruction to Closing Agent: Seller and Buyer direct Closing Agent to disburse at Closing the full amount of the brokerage fees as specified in separate brokerage agreements with the parties and cooperative agreements between the Brokers, except to the extent Broker has retained such fees from the escrowed funds. This Contract shall not modify any MLS or other offer of compensation made by Seller or Listing Broker to Cooperating Brokers.

N/A
Cooperating Sales Associate, if any

Bo Allen
Listing Sales Associate

_____
Cooperating Broker, if any

Illustrated Properties
Listing Broker

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Comprehensive Rider to the Residential Contract For Sale And Purchase

THIS FORM HAS BEEN APPROVED BY THE FLORIDA REALTORS AND THE FLORIDA BAR

ILLUSTRATED PROPERTIES

If initialed by all parties, the clauses below will be incorporated into the Florida Realtors® /Florida Bar Residential Contract For Sale And Purchase between Trojan House Inc. (SELLER)
and The City of Lake Worth (BUYER)
concerning the Property described as 1702 Lake Worth Road, Lake Worth, FL 33460

Buyer's Initials X _____ _____ *Seller's Initials* _____ _____

P. LEAD-BASED PAINT DISCLOSURE
(Pre-1978 Housing)

Lead-Based Paint Warning Statement

"Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspection in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase."

Seller's Disclosure (INITIAL)

_____ **(a)** Presence of lead-based paint or lead-based paint hazards (**CHECK ONE BELOW**):
- ☐ Known lead-based paint or lead-based paint hazards are present in the housing.
- ☒ Seller has no knowledge of lead-based paint or lead-based paint hazards in the housing.

_____ **(b)** Records and reports available to the Seller (**CHECK ONE BELOW**):
- ☐ Seller has provided the Buyer with all available records and reports pertaining to lead-based paint or lead-based paint hazards in the housing. List documents: _____
- ☒ Seller has no reports or records pertaining to lead-based paint or lead-based paint hazards in the housing.

Buyer's Acknowledgement (INITIAL)

_____ **(c)** Buyer has received copies of all information listed above.

_____ **(d)** Buyer has received the pamphlet *Protect Your Family* from *Lead in Your Home*.

X _____ **(e)** Buyer has (**CHECK ONE BELOW**):
- ☐ Received a 10-day opportunity (or other mutually agreed upon period) to conduct a risk assessment or inspection for the presence of lead-based paint or lead-based paint hazards; or
- ☒ Waived the opportunity to conduct a risk assessment or inspection for the presence of lead-based paint or lead-based paint hazards.

Licensee's Acknowledgement (INITIAL)

_____ **(f)** Licensee has informed the Seller of the Seller's obligations under 42 U.S.C.4852(d) and is aware of Licensee's responsibility to ensure compliance.

Certification of Accuracy

The following parties have reviewed the information above and certify, to the best of their knowledge, that the information they have provided is true and accurate.

SELLER	Date	X BUYER	Date
SELLER	Date	BUYER	Date
Listing Licensee	12/9/13 Date	Selling Licensee	12/9/13 Date

Any person or persons who knowingly violate the provisions of the Residential Lead-Based Paint Hazard Reduction Act of 1992 may be subject to civil and criminal penalties and potential triple damages in a private civil lawsuit.

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CITY OF LAKE WORTH

7 North Dixie Highway · Lake Worth, Florida 33460 · Phone: 561-586-1600· Fax: 561-586-1750

AGENDA DATE: January 7, 2014, Regular Meeting **DEPARTMENT:** Community Sustainability

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EXECUTIVE BRIEF

TITLE:
Ordinance No. 2014-01 - Second Reading and Public Hearing - amend alcoholic beverage regulations regarding proximity waivers

SUMMARY:

The Ordinance amends three sections of Chapter 5 *Alcoholic Beverages* to allow the Planning and Zoning and Historic Preservation Boards to approve proximity waivers for consumption on premises and for the City Commission to have final approval for package alcohol sales.

BACKGROUND AND JUSTIFICATION:
On October 2, 2012 the City of Lake Worth amended Chapter 5 – Alcoholic Beverage Regulations of the Code of Ordinances. The Code of Ordinances includes three (3) sections governing the issuance of proximity waivers within the city. They include Section 5-5 *Zoning Regulations and limitations; exceptions*, Section 5-6 *Minimum Distances and other required mitigation*, and Section 5-7 *Special Exception*. Cumulatively these sections allow a proximity waiver to be issued with a separation of four hundred (400) feet, does not allow an exception for licensed restaurants which derive at least fifty one (51) percent of their gross revenue from the sale of food and non alcoholic beverages, nor an exception for premises licensed on or before July 1, 1999. Florida Statute 562.45 requires a minimum separation requirement of five hundred (500) feet, an exception for licensed restaurants, and an exception for premises licensed on or before July 1, 1999. This Ordinance will amend Chapter 5 to be in compliance with Florida Statutes. Additionally, Section 5-7 *Special Exception* is being deleted as there is no special exception process, just a waiver process.

The City Commission will have final review authority of licenses being requested for all package sales while either the Planning & Zoning Board or the Historic Resources Preservation Board will have final review authority for consumption on premises license requests.

MOTION:
I move to approve/disapprove Ordinance No. 2014-01 on second reading

ATTACHMENT(S):
Fiscal Impact Analysis – not applicable
Ordinance No. 2014-01

ORDINANCE NO. 2014-01 OF THE CITY COMMISSION OF LAKE WORTH, FLORIDA, AMENDING CHAPTER 5, SECTION 5-5, ZONING REGULATIONS AND LIMITATIONS; SECTION 5-6 MINIMUM DISTANCES; AND 5-7 SPECIAL EXCEPTION, OF THE CODE OF ORDINANCES; REGARDING ALCOHOLIC BEVERAGES; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICT; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

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

WHEREAS, the City of Lake Worth, Florida adopted Chapter 5 of the code of ordinances regulating the sale of alcohol; and

WHEREAS, Some provisions of Chapter 5 are inconsistent with Florida Statute 562.42(2)(a); and

WHEREAS, the ordinance as written would require changes each time a new type of liquor license is established by the state; and

WHEREAS, amending this Chapter 5 provides clarity and certainty to the applicants and the public; and

WHEREAS, THE City Commission has reviewed the amendments and has determined that they are in the best interest of the public health, safety, and welfare of the City and its residents.

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

Section 1. The foregoing recitals are hereby affirmed and incorporated herein.

Section 2. Chapter 5, Section 5-5, Zoning regulations and limitations; exceptions is amended as follows:

SECTION 5-5 ZONING REGULAIONS AND LIMITATIONS; EXCEPTIONS

(a) *Prohibitions.* No alcoholic beverage shall be sold:

(1) Where the place of business is adjacent to or the entrance thereof or advertising sign used in connection therewith is within thirty (30) feet of the nearest building line of the lots on the south side of Lake Avenue or the north side of Lucerne Avenue; or

(2) Where such place of business is within ~~four hundred (400)~~ five hundred (500) feet of a church, public or private school, park, library (protected land use) or other place of business of a

person holding a beverage license. Please refer to section 5-6 for a table of distance requirements.

(b) *Waivers.* ~~The city commission,~~A ~~a~~fter review ~~and recommendation of the waiver request by the planning and zoning board,~~ and consideration of the Standards for Review set forth in this chapter, the appropriate board or the commission, may grant a waiver from the prohibitions set forth in this ~~sub~~section. (~~a) after taking into account the nature of the business and the neighborhood.~~

(c) *Exceptions.* The prohibitions set forth in subsection (a) shall not apply to the following:

~~(1) To sale of beer or wine for consumption off the premises only;~~

~~(2)~~ (1) premises licensed on or before July 1, 1999;

~~(3)~~ (2) licensed restaurants, which derive at least fifty-one (51) percent of their gross revenues from the sale of food and nonalcoholic beverages.

~~(4)~~ (3) hotels with fifty (50) or more guest rooms and have been granted a 2COP license and to hotels which have a dining room and have been granted a 4COP SRX license in connection therewith serving meals to guests, provided, however, no hotel shall exhibit any outside sign denoting that alcoholic beverages are obtainable therein or shall have exterior bar service;

~~(5)~~ (4) any place of business of any licensee which alcohol license was in effect prior to the establishment of the distance ~~aforesaid~~ provided in this section; provided further, that should any such alcohol license be revoked or not be renewed, or which business tax receipt and use and occupancy certificate not be renewed annually, such place of business or location shall thereafter be restricted according to the distances aforesaid;

~~(6)~~ (5) Restaurants within the Downtown (DT) ~~central area commercial (CAC)~~ district and fronting either Lake Avenue or Lucerne Avenue and which are located east of the FEC Railway, serving alcoholic beverages for consumption on premises; or

~~(7)~~ (6)Within the beach and casino (BAC) zoning district, any tenant having a current, duly-exercised city lease or any city approved event within a city occupied space or area; provided that, said tenant or city approved event also has the appropriate Florida state license(s) and appropriate city business tax receipt authorizing the sale of alcohol for consumption on premises.

(d) Standards for review. A decision on a request for a ~~special exception~~ waiver shall be guided by the ~~standards for special exceptions including~~ following factors:

(1) Whether approval of the ~~variance~~ waiver will result in two (2) or more alcoholic beverage establishments having a ~~2COP or 4COP~~

license within ~~four~~ five hundred ~~(400)~~ (500) feet of a protected land use or each other, or within ~~four~~ five hundred ~~(400)~~ (500) feet of a property zoned for residential uses; and

(2) Whether the license is being added to or is a license upgrade of an existing use or to an establishment which is relocating to the subject location;

(3) ~~Whether the proposed use is a restaurant~~; and

~~(4)~~ (3) If the property contains a structure which is on the National Register of Historic Places or otherwise has been designated by the city as having historic architectural significance, whether the structure will be preserved or developed so as to retain its architectural and historic character; and

~~(5)~~ (4) Whether the waiver promotes the health, safety and welfare of the neighborhood and the public.

Section 3. Chapter 5, Section 5-6, Minimum distances and other required mitigation is amended as follows:

~~(a)~~ The following table lists use separation, buffer wall, and other mitigation requirements for various types of alcoholic beverage uses:

License Type	General Types Of Uses Applicable For The License	~~400~~ 500Foot Distance Requirement To Protected Land Uses Applicable?	Buffer Wall Required?	Zoning Of Block Face To Be Entirely Commercial?	Zoning Of Block Face Across Street From The Front Of The Establishment To Be Entirely Commercial?
~~1 COP~~ ~~2 COP~~	Establishment serving ~~primarily~~ beer ,~~and~~ wine ~~but not~~ or liquor and may serve food	Yes	Yes, unless in a multi-tenant center and the location of the space does not have exterior walls with openings	Yes	Yes
~~4 COP SRX~~ ~~4 COP X~~ ~~4 COP SR~~ ~~4 COPS~~	Restaurant derving at least 51% of its gross revenues from the sales of food and	~~Yes~~No		No	No

~~2 COP REST~~	nonalcoholic beverages.		facing a residential zone		
~~1 APS~~ ~~2 APS~~ ~~3 APS~~ ~~3 PS~~	Establishment ~~serving~~ selling ~~primarily~~ beer, wine ~~and~~ or liquor ~~and may serve food~~ for off premises consumption.	Yes			
All other licenses, and the above licenses, when used as an accessory use to a principal permitted or special exception use	Bowling alleys, fraternal and benevolent clubs, colleges and universities, congregate living facilities with common dining facilities, hotels, bed and breakfasts, tennis and/or racquetball clubs, golf courses, live performance theaters (excluding adult uses), airports, civic centers, race tracks, symphony orchestras, cruise ships and marine excursion charters where alcoholic beverage sales are incidental	No	No	No	No
	Bottle Clubs	Yes	Yes	Yes	Yes

~~(b) Amended by adding the words and figures shown in underline type and deleting the cross through. Except as provided in this paragraph, certain~~A ~~alcoholic beverage uses and sales,(those~~

~~having a 1-COP, 2-COP or 4-COP license, or an APS license) shall not be located within four five hundred (400) (500) feet of a previously legally established protected land use. Protected land uses shall not locate within four five hundred (400) (500) feet of alcoholic beverage uses (those having a 1-COP, 2-COP or 4-COP license, or an APS license) which have been previously legally established~~.

~~(c)~~ (b) ~~This~~ D~~d~~istance shall be measured in a straight line from the nearest portion of the licensed premises of the alcoholic beverage use to the nearest property line of the protected land use. For the purposes of such measurement, the nearest exterior wall of the licensed premises, or the nearest wall of the unit containing the alcoholic beverage use in a multi-tenant structure, or the nearest point on an outside area which is a part of the licensed premised (if any), shall be used. This minimum distance requirement shall not apply when the alcoholic beverage use and the protected land use are located in the same multi-tenant center.

~~(d)~~ (c) Required buffer walls or buffer landscaping shall be erected between the alcoholic beverage use and any adjoining residential district or protected land use in such a manner as to screen the adjoining property or properties from the alcoholic beverage use, but shall not prohibit access from an alley. A buffer wall shall consist of an opaque fence or an opaque finished or painted masonry wall. Buffer landscaping requirements are described in chapter 23, article ~~XXI~~ 6 of this Code as amended by Ordinance No. 2010-25. A buffer wall or buffer landscaping shall not be less than five (5) feet in height.

~~(e)~~ (d) The entrance for customers into any establishment serving alcoholic beverages for consumption on premises shall be visible from a public street.

~~(f)~~ (e) Nothing contained in this section shall be construed to allow any establishment, including any establishments holding a license prior to adoption of this chapter to change the type of license to include the sale of liquor or to change from a restaurant license to a non-restaurant license without meeting all ordinance requirements in effect at the time of the application for the change of license. However, changing the license to remove liquor sales or service shall be allowed at any time.

Section 4. Chapter 5, Section 5-7, Special exception is amended by deleting in its entirety.

~~**SECTION 5-7 SPECIAL EXCEPTION**~~

~~(a) Uses which are within the 400 500-foot distance requirement may request a special~~

~~exception (distance waiver) to locate with the district requirement.~~

~~(b) Procedures. For procedures, see applications and procedures section. See chapter 23,~~
~~Zoning, article XXII 2, Administration.~~
~~redev(c) Standards for review. A decision on a request for a special exception shall be guided~~
~~by the standards for special exceptions including following factors:~~
~~(1) Whether approval of the variance will result in two (2) or more alcoholic~~
~~beverage establishments having a 2COP or 4COP license within four five hundred (400) (500) feet of a protected land use or within four five hundred (400) (500) feet of a property zoned for residential uses;~~
~~(2) Whether the license is being added to or is a license upgrade of an existing use~~
~~or to an establishment which is relocating to the subject location;~~
~~(3) Whether the proposed use is a restaurant; and~~
~~(4) If the property contains a structure which is on the National Register of~~
~~Historic Places or otherwise has been designated by the city as having historic~~
~~architectural significance, whether the structure will be preserved or~~
~~eloped so as to retain its architectural and historic character.~~

Section 5. Severability; If any provision of this Ordinance or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or applications, and to this end the provisions of this Ordinance are declared severable.

Section 6. Conflict; All Ordinances or parts of Ordinances in conflict herein are hereby repealed.

Section 7. Codification; This Ordinance shall be codified, and to that end may be renumbered as needed.

Section 8. Effective Date; This Ordinance shall become effective ten (10) days after passage.

The passage of this Ordinance on first reading was moved by Commissioner Szerdi, seconded by Commissioner Amoroso, and upon being put to a vote, the vote was as follows:

Mayor Pam Triolo	AYE
Vice Mayor Scott Maxwell	AYE
Commissioner Christopher McVoy	AYE
Commissioner Andy Amoroso	AYE
Commissioner John Szerdi	AYE

The Mayor, thereupon declared this Ordinance duly passed on first reading on the 3rd day of December, 2013.

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

Mayor Pam Triolo
Vice Mayor Scott Maxwell
Commissioner Christopher McVoy
Commissioner Andy Amoroso
Commissioner John Szerdi

The Mayor thereupon declared this Ordinance duly passed and enacted on the 7th day of January, 2014.

LAKE WORTH CITY COMMISSION

By:_____
Pam Triolo, Mayor

ATTEST:

_____
Pamela J. Lopez, City Clerk

CITY OF LAKE WORTH

7 North Dixie Highway · Lake Worth, Florida 33460 · Phone: 561-586-1600· Fax: 561-586-1750

AGENDA DATE: January 7, 2014, Regular Meeting **DEPARTMENT:** Community Sustainability

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EXECUTIVE BRIEF

TITLE:
Ordinance No. 2014-02 - Second Reading and Second Public Hearing - amend various sections and tables in the Land Development Regulations

SUMMARY:
The Ordinance amends Chapter 23 – Land Development Regulations including five (5) articles of the Code of Ordinances General Provisions, Administration, Zoning Districts, Development Standards, and Supplemental Regulations as well as revises the permitted use table, public noticing table and review authority table.

BACKGROUND AND JUSTIFICATION:
On August 6, 2013 the City of Lake Worth adopted Chapter 23 – Land Development Regulations of the Code of Ordinances. The LDRs include six (6) articles governing all development within the city. As implementation of the new code progresses, several definitions, review authority table, notice requirements, permitted uses and the sign code needed to be clarified and edited to provide consistency and improve clarity.

On November 6, 2013 the Planning & Zoning Board at its regularly scheduled meeting discussed the amendments to the LDRs and voted 4-0 to recommend approval to the City Commission.

The Historic Resources Preservation Board at its regularly scheduled meeting of November 13, 2013 reviewed the amendments to the LDRs and also voted 4-0 to recommend approval to the City Commission.

MOTION:
I move to approve/disapprove Ordinance No. 2014-02 on second reading

ATTACHMENT(S):
Fiscal Impact Analysis – not applicable
P&Z and HRPB Boards Staff Report and Minutes
Ordinance No. 2014-02

City of Lake Worth
Department for Community Sustainability
Planning, Zoning and Historic Preservation Division
1900 Second Avenue North· Lake Worth, Florida 33460 · Phone: 561-586-1687

MEMORANDUM DATE: October 31, 2013

AGENDA DATE: November 13, 2013

TO: Chair and Members of the Planning and Zoning Board

RE: **Land Development Regulations (LDRs)**

FROM: William Waters, Director
Department for Community Sustainability

TITLE: PZB/HRPB Project Number 13-02900002 Consideration of recommendation to the City Commission concerning proposed amendments to Chapter 23 (Land Development Regulations) of the Lake Worth Code of Ordinances

BACKGROUND AND JUSTIFICATION:
On August 6, 2013 the City of Lake Worth adopted Chapter 23 – Land Development Regulations of the Code of Ordinances. The LDRs include six (6) articles governing all development within the city. They are Article I – General Provisions, Article II – Administration, Article III – Zoning Districts, Article IV – Development Standards, Article V – Supplemental Regulations, and Article VI – Environmental Regulations. Article II contains an approval authority table as well as a noticing table. Article III provides a permitted use table. Article V includes a revamped Historic Preservation Ordinance and Article VI contains the Landscape Code.

As implementation of the new code progresses, several definitions, review authority table, notice requirements, permitted uses and the sign code needed to be clarified and edited to provide consistency and improve clarity. Attachment 1 of this report includes the proposed ordinance and a highlight/strike-thru version of those sections of the code which are proposed to be amended.

The Planning and Zoning Board (PZB) reviewed these proposed amendments at their regularly scheduled meeting on November 6, 2013. The first hearing of the ordinance before the City Commission currently is scheduled for the regularly scheduled meeting on December 3, 2013.

POTENTIAL MOTION:
I MOVE TO RECOMMEND/NOT RECOMMEND DENY PZB/HRPB 13-02900002: Proposed amendments to Chapter 23 (Land Development Regulations) of the Lake Worth Code of Ordinances.

ATTACHMENTS:
Proposed Ordinance No. 2014-XX Amendments to Chapter 23 (Land Development Regulations) – Inclusive of Attachments A through H

b. PZB/HRPB Project Number 13-02900002 Consideration of recommendation to the City Commission concerning proposed amendments to Chapter 23 (Land Development Regulations) of the Lake Worth Code of Ordinances

a. Staff Comments: Mr. Waters

- Stated that he recognized the efforts of two staff members, Ms. DuBose, and Ms. Kaplan, who assisted with the proposed revisions to the Land Development regulations. He also introduced Mr. Maxime Ducoste as the new Planning & Preservation Manager
- He provided a brief overview of proposed changes to the City's LDRs which included overview of changes to specific sections of text and permitted use tables; and provided a brief explanation of the standard base ordinance as recommended by Ms. Alterman, Assistant City Attorney, and which included all proposed changes/revisions 00:23:00
- His review of specific sections included restrictions to mechanical equipment as allowed in setbacks; mobile food vending and use of public right of way for mobile food vending in a street or right of way; clarification to definitions included definition of pervious surfaces. Proposed use changes included special interest auto dealership; stand-alone retail; stand-by generator; vehicle broker.
- He reviewed changes to Article 2 which included changes to board member attendance requirements; summary review table; and noticing requirements.
- He explained that changes to the language for administrative variances included justification for allowance of an administrative variance; and clarification of instances in which Staff could justify issuing an administrative variance such as parking variance. Provision was added for a one time ten (10)% increase of what would be allowed under the code which would allow property owners to address a property's deficiencies or to facilitate a property's rehabilitation
- He reviewed proposed changes to the Permitted Use Table which included addition of residential accessory use for mechanical equipment; and reviewed proposed Conditional Land Uses which included vehicle broker, and specialty auto dealership in the Mixed Use Dixie Hwy; Artisinal Industrial; and Industrial Park of Commerce zoning districts 00:32:00
- He reviewed a private club as a proposed use which would require a Conditional Land Use approval, and requested Board direction for zoning district locations for private clubs
- Board Discussion: Request for clarification of how description of private club would be defined, and parking requirements for private club; discussion of governance over non-profits and churches and what would be allowed in parks; discussion of regulations for extended stay facilities; and discussion of regulation of adult arcade gaming
  - Mr. Waters: Responded to Board questions regarding private club use by providing examples of existing clubs in areas of the county; stated that additional parking for special events would require board review; stated that Staff did not recommend private clubs on Lake and Lucerne Avenue and suggested areas where a private club use would be more appropriate. He stated that churches could be allowed in any area where assembly was allowed, and would require Conditional Land Use approval; and that the chronic nuisance section of the code would govern church activities in parks. 00:41:00

- Mr. Waters continued his review of the proposed changes with a discussion of a definition for hotel/motel extended stay which would allow up to a sixty (60 day stay; he proposed the use to be included in the Downtown; Mixed Use Dixie Hwy; Mixed Use West; and Artisinal Industrial districts. He stated that an extended stay classification would require registrations with state, and payment of bed tax; and would include registration of such uses as sober houses. 00:47:00
  - Ms. Alterman: Advised the Board that extended stay would be regulated under hotel/motel regulations; that they would be required to pay bed tax; and that regulations depended upon how extended stay uses would operate. She stated that the (Florida) Building Code had space requirements and that certain communities were protected under the American's with Disabilities Act
  - Mr. Ducoste: Stated that community residential homes which provided services would also be regulated by the Agency of Health Care Administration in addition to DPR (Department of Professional Regulation)
- Mr. Waters: Continued his discussion by providing an explanation of additional proposed changes which included the following:
  - Gaming: Stated that the City was developing an additional process as requested by PBSO which would include Business licensure requirements for gaming machines; and would included a legislative process for inspection or revocation of licensure
  - Garages: Additional language to clarify as an accessory use; and provision for no accessory use without a principal use
  - Mechanical Equipment: Changes to Development Standards (Art IV) to include mechanical equipment placement
  - Signage: Reviewed changes to language regulating political signage
    - Ms. Alterman: Advised the Board that the proposed changes to sign code included clarification of language to allow for proper regulation without infringement upon freedom of speech rights; that the City could not require permits for political signage; and that the legislature had banned gaming arcades
  - Impermeable/Pervious Surfaces: Responded to Board comments relative to definition of pervious surfaces by suggesting that a performance standard for a pervious surface be that the surface have percolation rate of 50% for the material to be counted toward pervious surface ratio 1:01:00

b. **Action**: Motion made by Mr. Parrilla with a second by Mr. Rice to recommend to City Commission inclusive of districts where private clubs would be permitted; and with changes to include code as outlined by Staff report dated Nov 6 2013

c. **Vote**: Ayes: Mr. Rinaldi; Mr. Rice; Mr. Sherwin; Mr. Parrilla; Mr. Zacks; and Mr. Humm.

   Nays: None

   Motion carried six (6) to zero (0)

2. PZB/HRPB Project Number 13-02900002 Consideration of recommendation to the City Commission concerning proposed amendments to Chapter 23 (Land Development Regulations) of the Lake Worth Code of Ordinances

- Staff Comments: Mr. Waters made the following comments:
- Provided an overview of the proposal as necessary changes that had been recognized as a result of implementation of the new land development regulations; and which included clarification of conflicting language. Change to Article 1 including definitions; Article 2 included absences of Board; article 3 changes included addition of uses; changes to Article 4; and changes to Article 5 Political Sign regulations
- Stated that the Planning &Zoning Board had moved unanimously to move the item forward; and that it had been scheduled for a Dec 6 2013 City Commission meeting
- Introduced the ordinance as a draft of proposed changes
- Definitions: Gaming; impermeable and impervious to include specification of percolation rate to allow for permeability; addition of definition and inclusion of mechanical equipment; definition of mobile food vendor versus mobile food truck and allowed for special events; permeable surfaces; LDRs regulate what happens on property; addressed regulations of auto broker; definition of stand-alone retail; stand-by generator; and vehicle broker;
- Reviewed correction to Planning & Zoning attendance in Article 2; and reviewed changes to Development Review Authority Table including proximity waivers and alcohol sales
- Introduced Lisa Kaplan as instrumental for getting language of nine ordinances drafted for consideration at the December 3, 2013 Commission meeting addressed; notice requirement table adjustments; reviewed administrative variance and explained adjustments to language to clarify where administrative adjustments could be allowed including setbacks; additional language to address deficiencies included language to address minimum housing standards; compliance with Florida Building Code requirements; one-time 10% deviation in order to improve deficiencies as opposed to requirement to apply for full variance 1:36:00
- Permitted Use Table changes included: Accessory structures; accessory mechanical equipment and where allowed; special interest auto dealership and districts where allowed; private club location as a conditional land use in the Mixed Use East Federal Highway; Mixed Use Dixie Highway; and Mixed Use Lake And Lucerne; private clubs would be conditional land uses to ensure that they would not become a nuisance to adjacent neighbors; private clubs had been a permitted use and removed, but requests prompted staff to add back into code could be allowed in mixed use east Federal Hwy
- Stated that extended stay Hotel/Motel use had been part of Lake Worth's history in the 1950's; and that the use would be considered conditional use application which would require business plan and other constraints would not allow the inclusion of a full kitchen
- Reviewed proposed changes to language of garage structures
- Reviewed changes to political sign code which revamped existing code without infringing upon freedom of speech 1:18:00
- Board Comments/Questions: Request for clarification of how the City would address future issues and removal of political signage that was in violation of the code; clarification of definitions sections; discussion of nomenclature that mechanical equipment placement could take place on a property versus its placement on structures; request for clarification of whether hvac (heating ventilation and air conditioning) systems installation on roofs would require screening; and a discussion of language for business tax regulations for gaming machines

- Mr. Waters: Stated that the Board that the process to correct a violation would include existing compliance process; notice of violation remediation time period could be as short as 10 working days to allow for due process; explained that additions definitions section was used as a means to avoid updating multiple sections of the code; gaming language would address existing gaming units in stand-alone retail locations
- Ms. Alterman: Advised that the City had the right to remove signage after notice; once notice was given, the property owner was allowed 48 hours to remove; if not removed at that time, the initial notice was followed by notice of violation; and advised the Board of gaming licensing language changes

- Public comments: None
- **Action**: Motion made by Mr. Robinson with a second by Mr. Contin that, with respect to PZB/HRPB Project Number 13-02900002, the Board vote to forward to the City Commission a recommendation of approval for the proposed changes 1:27:00
- **Vote**: Ayes: Mr. Blackman; Mr. Robinson; Mr. Contin; and Mr. Zoellner.
  Nays: None

  Motion carried four (4) to zero (0)

ORDINANCE NO. 2014-02 OF THE CITY COMMISSION OF LAKE WORTH, FLORIDA, AMENDING CHAPTER 23 LAND DEVELOPMENT REGULATIONS OF THE CODE OF ORDINANCES TO ADDRESS MINOR REVISIONS NEEDED TO THE NEWLY ADOPTED LAND DEVELOPMENT REGULATIONS BY AMENDING ARTICLE 1 GENERAL PROVISIONS, DIVISION 2, SECTION 23.1-12 DEFINITIONS; ARTICLE 2, DIVISION 1, SECTION 23.2-8 PLANNING AND ZONING BOARD; ARTICLE 2, DIVISION 1, SECTION 23.2-9, TABLE 2-1; ARTICLE 2, DIVISION 2, SECTION 23.2-15, TABLE 2-2; ARTICLE 2, DIVISION 3, SECTION 23.2-28 ADMINISTRATIVE ADJUSTMENTS/ADMINISTRATIVE USE PERMITS; ARTICLE 3, DIVISION 1, SECTION 23.3-6 USE TABLE; ARTICLE 4, SECTION 23.4-5 GARAGES; ARTICLE 4, SECTION 23.4-16 MECHANICAL EQUIPMENT; ARTICLE 4, SECTION 23.4-17 STANDBY GENERATOR/PERMANENT; ARTICLE 5 SUPPLEMENTAL REGULATIONS, SECTION 23.5-1, H), 3 SIGNS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICT, CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

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

WHEREAS, the City has adopted a new Chapter 23 Land Development Regulations of the code of ordinances on August 6, 2013; and

WHEREAS, as implementation of those new codes progresses, changes need to be made to create consistency and improve clarity; and

WHEREAS, on November 6, 2013 the Planning and Zoning Board recommended approval of these changes; and

WHEREAS, on November 13, 2013 the Historic Resources Preservation Board recommended approval of these changes; and

WHEREAS, the City Commission has reviewed the recommended amendments, the recommendation of the Planning and Zoning Board, the recommendation of the Historic Resources Preservation Board, and has determined that the amendments set forth herein are in the best interest of the public health, safety, and welfare of the City and its residents and serve a valid public purpose.

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

Section 1. The foregoing recitals are hereby affirmed and incorporated herein.

Section 2. Chapter 23, Article 1, Division 2, Section 23.1-12 Definitions are amended by adding the words and figures shown in underline type as indicated in exhibit A.

Section 3. Chapter 23, Article 2, Division 1, Section 23.2-8 Planning and Zoning Board is amended by adding the words and figures shown in underlined type and deleting the words and figures shown as struck-through as shown in exhibit B.

Section 4. Chapter 23, Article 2, Division 1, Section 23.2-9, Table 2-1 is amended by adding the words and figures shown in underlined type as shown in exhibit C.

Section 5. Chapter 23, Article 2, Division 2, Section 23.2-15, Table 2-2 is amended by adding the words and figures shown in underlined type and deleting the words and figures shown as struck-through as shown in exhibit D.

Section 6. Chapter 23, Article 2, Division 3, Section 23.2-28, is amended by adding the words and figures shown in underlined type and deleting the words and figures shown as struck-through as shown in exhibit E.

Section 7. Chapter 23, Article 3, Division 1, Section 23.3-6 Use Tables are amended by adding the words and figures shown in highlighted type as indicated in exhibit F.

Section 8. Chapter 23, Article 4, Section 23.4-5 Garages are amended by adding the words and figures shown in underlined type as indicated in exhibit G.

Section 9. Chapter 23, Article 4, Section 23.4-16 Mechanical System/Equipment is amended by adding the words and figures shown in underlined type as indicated in exhibit H.

Section 10. Chapter 23, Article 4, Section 23.4-17 Standby Generator/Permanent is amended by adding the words and figures shown in underlined type as indicated in exhibit I.

Section 11. Chapter 23, Article 5, Section 23.5-1, h), 3 is amended by adding the words and figures shown in underlined type and deleting the words and figures shown as struck-through as shown in exhibit J.

Section 12. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared severable.

Section 13. All Ordinances or parts of Ordinances in conflict herein are hereby repealed.

Section 14. All Exhibits of this Ordinance shall be codified.

Section 15. This Ordinance shall become effective ten (10) days after passage.

The passage of this Ordinance on first reading was moved by Commissioner Amoroso, seconded by Commissioner Szerdi, and upon being put to a vote, the vote was as follows:

Mayor Pam Triolo	AYE
Vice Mayor Scott Maxwell	AYE
Commissioner Christopher McVoy	AYE
Commissioner Andy Amoroso	AYE
Commissioner John Szerdi	AYE

The Mayor, thereupon declared this Ordinance duly passed on first reading on the 3rd day of December, 2013.

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

Mayor Pam Triolo
Vice Mayor Scott Maxwell
Commissioner Christopher McVoy
Commissioner Andy Amoroso
Commissioner John Szerdi

The Mayor thereupon declared this Ordinance duly passed and enacted on the 7th day of January, 2014.

LAKE WORTH CITY COMMISSION

By:_____
Pam Triolo, Mayor

ATTEST:

_____
Pamela J. Lopez, City Clerk

Exhibit A

Chapter 23

ZONING

****

ARTICLE I GENERAL PROVISIONS, DIVISION 2, SECTION 23.1-12
DEFINITIONS

Amended by adding the words and figures shown in underline type and deleting the cross through.

~~*Game arcade:* A use which has more than five (5) electronic games operated for profit and which derives more than fifty (50) percent of its income from the operation of such games.~~
*Gaming Arcade**:*** a business or establishment that offers games which operate by means of the insertion of a coin, and which by application of skill may entitle the person playing or operating the game or machine to receive points or coupons, the cost value of which does not exceed 75 cents on any game played, which may be exchanged for merchandise. The term does not include casino-style games in which the outcome is determined by factors unpredictable by the player or games in which the player may not control the outcome of the game through skill. A Gaming arcade must have at least 50 coin-operated amusement games or machines on premises which are operated for the entertainment of the general public as a bona fide amusement facility.

*Impermeable**/**Impervious Surface*: All surfaces on a lot incapable of being penetrated by water under normal circumstances, wherein moisture runs off the surface instead of penetrating the material to be absorbed in the underlying soil. Impermeable materials include, but are not limited to, asphalt, concrete, pavers and compacted shell rock and roofs.

Mechanical Systems/Equipment: Heating, ventilating, air conditioning, satellite dish antennae, electrical, air conditioner compressor, pool pump and plumbing systems and similar facilities which are visible from a public right-of-way on the exterior of any facade or on the roof or the grounds of a site, building or structure.

Mobile Food Vendor: Any person, group of persons, firm or corporation who individually or by or through an agent or employer, offers for sale, sells, attempts to sell, exposes for sale or gives away any food intended for human consumption from any vehicle or by a person afoot. Mobile Food Vendor does not include home delivered meal service.

Pervious Surface: any surface that is capable of being penetrated by water. For semi pervious surface materials, two square feet of semi pervious surface shall be equivalent to one square foot of impervious surface for the purpose of calculating development regulation requirements for permitted, administrative or conditional uses. Percolation (perc) rate of the semi pervious material must be fifty percent (50%) relative to the ground perc rate. Semi pervious material may include but is not limited to pervious pavers, pervious concrete, grasscrete and substantially similar materials.

Special Interest Automobiles Dealership: an establishment for the display and sale of antique, classic and collectible vehicles. Antique vehicles are manufactured more than twenty five (25) years prior to the current year and Classic vehicles are manufactured more than fifteen (15) years prior to the current year. Collectible vehicles are limited production vehicles, and do not include vehicles that have been altered in appearance or from manufacturers' specifications.

Stand Alone Retail: see "Single-destination retail uses".

Standby Generator/Permanent: is a back-up electrical system that operates automatically. Within seconds of a utility outage an automatic transfer switch senses the power loss, commands the generator to start and then transfers the electrical load to the generator. The standby generator begins supplying power. After utility power returns, the automatic transfer switch transfers the electrical load back to the utility and signals the standby generator to shut off. It then returns to standby mode where it awaits the next outage.

Vehicle Broker: Office use primarily engaged in brokering the retailing, leasing, or wholesaling of new or used automobiles, motorcycles, boats, recreational vehicles and light trucks; such as passenger and cargo vans and sport utility vehicles. Broker activities include but are not limited to the following: researching and locating a desired vehicle or buyer; price negotiations; processing the transaction, including securing the necessary financing; and arranging vehicle delivery. This use does not include on-site vehicle inventories. If vehicles are temporarily stored on-site during the transaction, all vehicles must be stored indoors.

Exhibit B

Chapter 23

ZONING

****

ARTICLE II ADMINISTRATION, DIVISION 1, SECTION 23.2-8 PLANNING AND ZONING BOARD

Amended by adding the words and figures shown in underline type and deleting the cross through.

a) *Members; terms; vacancies.* The Planning and Zoning Board shall consist of seven (7) members. All members of the Board shall be residents of or property owners in the City. Members of the Planning and Zoning Board shall serve without compensation. The seven (7) members shall be appointed by the City Commission. All members of the Board shall be appointed for a term of three (3) years. If any member of the Board shall fail to be present at three (3) consecutive regularly scheduled meetings or at ~~twenty~~ twenty-five percent (25%) of the public meetings of the Board held within any 12-month period, the City clerk shall declare the member's office vacant and the City Commission shall promptly fill such vacancy. Vacancies in the Board membership by resignation, illness or other causes shall be filled by the City Commission for the unexpired term of the member involved. Members of the Planning and Zoning Board may be removed from office by the City Commission at its discretion. The Board shall select its own chairman and vice-chairman annually at the first meeting in January. The City's Community Planner shall serve as secretary and advisor to the board.

Exhibit C

Chapter 23

ZONING

***

ARTICLE II ADMINISTRATION, DIVISION 1, SECTION 23.2-9, TABLE 2-1

Amended by adding the words and figures shown in underline type and deleting the cross through.

Types of Review, Applications, and Roles of Review Authorities							
Roles of Review Authorities							
Type of Permit Application	**Staff**	**DRO**	**SPRC**	**PZB**	**HRPB**	**CC**	**CCA**
Zoning Interpretation	Decision			Appeal			
Annexation – Voluntary and Involuntary			Recommend	Hearing/ Recommend		Hearing/ Decision	
Administrative Use Permit		Decision		Appeal	Appeal		
Conditional Use Permit	Recommend			Hearing/ Decision	Hearing/ Decision	Appeal	
Variance (Not available for use or density)	Recommend			Hearing/ Decision	Hearing/ Decision		Appeal
Proximity Waiver (Alcohol sales Consumption)	Recommend			Hearing/ ~~Recommend~~ Decision	Hearing/ ~~Recommend~~ Decision	~~Decision~~	
Proximity Waiver (Alcohol Package sales)	Recommend			Hearing/ Recommend	Hearing/ Recommend	Decision	
Planned Development	Recommend		Recommend	Hearing/ Recommend	Hearing/ Recommend	Decision	
Site plan approval-minor		Decision					
Site plan approval-major	Recommend		Recommend	Hearing/ Decision	Hearing/ Decision	Appeal	
Site design approval (as applicable)	Recommend			Hearing/ Decision	Hearing/ Decision	Hearing/ Decision	Hearing/ Decision
Sustainable Bonus Incentives	Recommend			Hearing/ Decision	Hearing/ Decision	Appeal	
Zoning Map Amendment (rezone)	Recommend			Hearing/ Recommend	Hearing/ Recommend	Decision	

Exhibit D

Chapter 23

ZONING

***

ARTICLE II ADMINISTRATION, DIVISION 2, SECTION 23.2-15, TABLE 2-2 NOTICE REQUIREMENTS

Amended by adding the words and figures shown in underline type and deleting the cross through.

Type of Permit Application	Newspaper Publication	Mailing	Site Posting	None required
Historic Landmark Designation- district or individual property	14 days	14 days	10 days	
Certificate of Appropriateness (COA) - Administrative			Within ~~3~~ <u>10</u> days of application	
Certificate of Appropriateness (COA)- Board • Demolition • New construction	10 days	10 days	Within 3 days of application	
Ad Valorem Tax Abatement		10 days	Within 3 days of application	
Annexation – Voluntary and Involuntary	First hearing: 7 days Second hearing: 5 days			
Administrative Use Permit				X
Conditional Use Permit	10 days	10 days 400' R	10 days	
Variance	10 days	10 days 400' R	10 days	
Proximity Waiver			X	
Planned Development (PD) Mixed Use or Residential	10 days prior to adoption hearing	10 days	10 days	
Site Plan - minor				X
Site Plan - major	10 days	10 days 400' R	10 days	
Zoning Map Amendment, (rezone initiated by	10 days			

Exhibit E
Chapter 23
ZONING
****

ARTICLE II ADMINISTRATION, DIVISION 3, SECTION 23.2-28
ADMINISTRATIVE ADJUSTMENTS/ADMINISTRATIVE USE PERMITS

Amended by adding the words and figures shown in underline type

a) *Administrative Adjustments.* The Development Review Official may administratively adjust code provisions and regulations for setbacks, landscape placement, ~~and~~ driveway access, lot area, lot coverage for buildings, floor area ratio, and impermeable surface ratio by no more than five (5) percent, and parking by no more than ten (10) percent, where the Development Review Official determines that a literal enforcement will result in unnecessary hardship and where additional amenities will be provided that will offset any deficiency. A deficiency includes, but is not limited to, addressing accessibility, meeting minimum housing standards, providing additional essential living space due to changes in familial status or affording substantially similar improvements to comply with Florida Building Code requirements. All existing structures that exceed the development regulations for building lot coverage, impermeable lot coverage, or floor area ratio (F.A.R.) may be expanded by right no more than ten (10) percent of the existing overall square footage. The ten (10) percent expansion by right shall only be granted only once. Expansions beyond the initial ten (10) percent shall have to meet the established standards for the granting of a formal variance and be reviewed by the appropriate decision making authority.

Exhibit F

Chapter 23

ZONING

***

ARTICLE III ZONING DISTRICTS

Amended by adding the highlighted uses.

TYPE/USE	SF-R	SF-TF 14	MH-7	MF-20	MF-30	MF-40	MU-E Lake & Lucerne	MU-E 1st & 2nd Edges	MU-E Federal Hwy	MU-E 10th & 6th	DT	MU-FH	MU-DH	MU-W Lake & 10th	TOD-E	TOD-W	NC	BAC	AI	I-POC	PD	P	PROS	CON	FEC	HOTEL
RESIDENTIAL																										
Dwelling, Single Family	P	P		P	P	P			P			P									P					
Dwelling, Mobile Home			P																							
Dwelling, Two-Family		P		P	P	P			P			P									P					
Dwelling, Multifamily				P	P	P	P	P	P	P	P	P	P	P	P	P			C		P					
Mobile Home Park			P																							
Townhouses		C		C	C	C	C	C	C	C	C	C	C	C	C	C			C		P					
Accessory Dwelling Unit		P		P	P	P	P	P	P	P		P														
Accessory Mechanical Equipment	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P			
Accessory Structure(s)	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P			P		P					
Assisted Living Centers/Facilities			C	C	C	C						C		C												
Boarding House				C	C	C	C	C	C	C									C							
Nursing Homes/Facilities			C	C	C	C						C		C												
Retirement Homes/Facilities			C	C	C	C						C		C												
Community Residences, Type I (6 or less residents) - Former Group Home	P	P		P	P	P	P	P	P	P		P														
Community Residences, Type II (7-14) - Former Group Home				C	C	C	C	C	C	C			C	C												
Community Residences, Type III										C		C	C	C								C				
Community Residences, Type IV													C	C								C				

TYPE/USE	MU-E Lake & Lucerne	MU-E 1st & 2nd Edges	MU-E Federal Hwy	MU-E 10th & 6th	DT	MU-FH	MU-DH	MU-W Lake & 10th	TOD-E	TOD-W	NC	BAC	AI	I-POC	PD	P	PROS	CON	FEC	HOTEL
AUTOMOTIVE/VEHICULAR																				
High Intensity Vehicular Uses - Greater than 7,500 sq. ft.																				
Airport Transportation Services														C						
Ambulance Services														C						
Automobile Auctions								C						C						
Automobile Body Shops													C	C						
Automobile Charging Station														C						
Automobile Filling Stations							C	C						C						
Automotive Towing Services and Storage Yards														C						
Automobile Washing Establishments, Attended							C	C						C						
Automobile Washing Establishments, Unattended							C	C						C						
Automobile Service and Repair-Major							C	C						C						
Bus Lines														C						
Bus Charter Services														C						
Limited Dockage																C	C	C		
Limousine Rental w/Drivers							C							C						
Marinas																C	C	C		
Motorcyle/Motorscooter Rental							C													
Motorcyle/Motorscooter Sales																				
Motorcyle Service and Repair							C	C						C						
New Automobile Sales and Rentals							?	C						C						
New Boat Sales and Rentals							?	C						C						
Parking Lots Public or Private	C	C	C	C			C	C					C	C		C			C	
Parking Facilities	C	C	C	C	C		C	C	C	C			C	C		C	C			
Recreational Vehicle Sales/Service								C						C						
Special Interest Automobile Dealership							C						C	C						
Tire/Rim Sales and Service							C	C						C						
Transit Terminal Facilities														C						
Used Automobile Sales and Rentals							C	C						C						
Used Boat Sales and Rentals							C	C						C						
Vehicle Broker							C						C	C						
TYPE/USE	MU-E Lake & Lucerne	MU-E 1st & 2nd Edges	MU-E Federal Hwy	MU-E 10th & 6th	DT	MU-FH	MU-DH	MU-W Lake & 10th	TOD-E	TOD-W	NC	BAC	AI	I-POC	PD	P	PROS	CON	FEC	HOTEL
Medium Intensity Vehicular Uses - Less than 7,500 sq. ft.																				
Automobile Charging Facility							C	C						C						
Automobile Filling Stations							C	C						C						
Automobile Lubrication Establishmetns							C	C						C						
Automobile Rustproofing and Undercoating Establishments							C	C						C						
Automobile Tune-Up Establishments							C	C						C						
Automobile Upholstery Establishments							C	C					C	C						
Automobile Washing Establishments, Attended							C	C						C						
Automobile Washing Establishments, Unattended							C	C												
Automobile Waxching and Polishing Establishments							C	C						C						
Automobile Window Tinting Establishments							C	C						C						
Automotive Parts Sales							C	C												
Boat Docks and Boat Lifts																C	C	C		
Bus Charter Services														C						
Limited Dockage							C	C						C		C				
Limousine Rental w/Drivers														C						
Motorcyle/Motorscooter Rental							C		C	C										
Parking Facilities	C	C	C	C	C	C	C	C	C	C			C	C		C	C			
Parking Lots Public or Private	C	C	C	C			C	C					C	C		C		C	A	
Recreational Vehicle Sales/Service								C												
Sightseeting Buses														C						
Special Interest Automobile Dealership							A						A	A						

Tempoary Parking Facilities for Public Entities	C	C	C	C		C										C				
Tire/Rim Sales and Service							C	C												
Tourism-related trades							C	C						C						
Transitional Parking Facility	C	C	C	C			C	C					C	C		C			A	
Vehicle Broker							A						A	A						
Walking tours Downtown/Historic guided-on-site parking			C		C															
TYPE/USE	MU-E Lake & Lucerne	MU-E 1st & 2nd Edges	MU-E Federal Hwy	MU-E 10th & 6th	DT	MU-FH	MU-DH	MU-W Lake & 10th	TOD-E	TOD-W	NC	BAC	AI	I-POC	PD	P	PROS	CON	FEC	HOTEL
Low Intensity Vehicular Uses - Less than 5,000 sq. ft.																				
Automobile Charging Station (accessory to primary use)							P	P					P	P						
Automotive Parts Sales							P	P					P	P						
Motorcyle/Motorscooter Rentals							P	P												
Special Interest Automobile Dealership							P						P	P						
Tourism-related trades-No Storage yard							P	P	P	P						P	P	P		
Vehicle Broker							P						P	P						

TYPE/USE	SF-R	SF-TF 14	MH-7	MF-20	MF-30	MF-40	MU-E Lake & Lucerne	MU-E 1st & 2nd Edges	MU-E Federal Hwy	MU-E 10th & 6th	DT	MU-FH	MU-DH	MU-W Lake & 10th	TOD-E	TOD-W	NC	BAC	AI	I-POC	PD	P	PROS	CON	FEC	HOTEL
SPECIALITY																										
High Intensity Specialty Uses - Greater than 7,500 sq. ft.																										
Adult Establishments																				C						
Flea Market																			C			C			C	
Outdoor Farmer's Market																			C			C			C	
Mobile food vending courts																			C			C			C	
Passenger Railroads/Transit															C	C						C				
Private Club									C				C	C												
Power Plants																				C		C				
Public Safety Facilities																						C				
Radio and Television Broadcasting Studios w/ Communication Towers														C						C		C				
Shooting Ranges																				C						
Special Interest Automobile Dealership													C						C	C						
Sports Arenas, (Public/Private)(Indoor/Outdoor)														C						C						
Taxieab Companies																				C						
Taxidermist																				C						
Water Towers																						C				
Wireless Communication Facilities							C	C	C	C	C	C	C	C	C	C			C	C		C				

TYPE/USE	SF-R	SF-TF 14	MH-7	MF-20	MF-30	MF-40	MU-E Lake & Lucerne	MU-E 1st & 2nd Edges	MU-E Federal Hwy	MU-E 10th & 6th	DT	MU-FH	MU-DH	MU-W Lake & 10th	TOD-E	TOD-W	NC	BAC	AI	I-POC	PD	P	PROS	CON	FEC	HOTEL
Medium Intensity Specialty Uses - Less than 7,500 sq. ft.																										
Cemetery/Mauseleum(Public/Private)	C	C		C	C	C						C										C	C			
Private Club									A				A	A												
Radio and Television Broadcasting Studios w/o Communication Towers							P			P	P		P	P	P	P			P			C				
Special Interest Automobile Dealership													A						A	A						
Temporary Help Marshalling and Dispatch Services																						C				
Non-motorized recreational equipment rental (canoes, kayaks, paddle boards, etc)																						C	C	C		
Outdoor Farmer's Market																			C			C			C	
Flea Market																			C			C			C	
Mobile food vending courts																			C			C			C	

TYPE/USE	SF-R	SF-TF 14	MH-7	MF-20	MF-30	MF-40	MU-E Lake & Lucerne	MU-E 1st & 2nd Edges	MU-E Federal Hwy	MU-E 10th & 6th	DT	MU-FH	MU-DH	MU-W Lake & 10th	TOD-E	TOD-W	NC	BAC	AI	I-POC	PD	P	PROS	CON	FEC	HOTEL
Low Intensity Specialty Uses - Less than 5, 000 sq. ft.																										
Essential Services	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P		
Open Space Conservation Areas	P	P	P	P																		P	P	P		
Private Club									P				P	P												
Special Interest Automobile Dealership													p						P	P						
Water Conservation Areas	P	P	P	P																		P	P	P		

TYPE/USE	SF-R	SF-TF 14	MH-7	MF-20	MF-30	MF-40	MU-E Lake & Lacuna	MU-E 1st & 2nd Edges	MU-E Federal Hwy	MU-E 10th & 6th	DT	MU-FH	MU-DH	MU-W Lake & 10th	TOD-E	TOD-W	NC	BAC	AI	I-POC	PD	P	PROS	CON	FEC	HOTEL
COMMERCIAL																										
High Intensity Commercial Uses - Greater than 7,500 sq. ft.																										
Bars/clubs with live entertainment? Night Clubs?											C		C	C					C							
Bars without live entertainment											C		C	C	C	C			C							
Cold Storage																			C	C						
Contractor (Office with outdoor storage yard)																				C						
Contractor (Office)*							C						C	C					C	C						
Dead Storage Facilities														C					C	C						
Drive Through Facilities									C	C			C	C												
Eating and Drinking Establishments, w/ Drive Through									C	C			C	C												
Financial Institution w/ Drive Through									C	C			C	C												
High Intensity Financial Institution							C			C	C	C	C	C	C	C										
Hotels							C		C		C	C	C	C	C	C										C
Indoor Commercial Recreation (Reference Ordinance Chapter 14)													C	C					C	C						
Laundry Facilities - Public							C						C	C	C	C										
Linen service/uniform service																				C						
Printing Services							C			C	C		C	C	C	C			C	C						
Mini-Warehouses													C	C					C	C					A	
Motels							C	C	C	C	C	C	C	C					C							
Motel or Hotel, extended stay											C		C	C					C							
Outdoor Commercial Recreation (See Indoor Commercial Recreation)														C					C	C						
Printing Services													C	C					C	C						
Restaurants Accessory to Hotel or Motel							C		C	C	C	C	C	C	C	C										
Restaurants w/Drive Throughs							C		C		C		C	C					C							
Restaurants - High Turn Over							C		C	C	C		C	C	C	C		P	C							
Stand Alone Commercial										C	C		C	C	C	C			C							
Truck/Van Rentals														C						C						
Warehouse Facilities														C					C	C						
Wholesale and Distribution Facilities														C					C	C						
Veterinary Offices, w/ Kennels?													C	C					C	C						

TYPE/USE	SF-R	SF-TF 14	MH-7	MF-20	MF-30	MF-40	MU-E Lake & Lacuna	MU-E 1st & 2nd Edges	MU-E Federal Hwy	MU-E 10th & 6th	DT	MU-FH	MU-DH	MU-W Lake & 10th	TOD-E	TOD-W	NC	BAC	AI	I-POC	PD	P	PROS	CON	FEC	HOTEL
Medium Intensity Commercial Uses - Less than 7,500 sq. ft.																										
Bars without live entertainment											A		A	A	A	A			A							
Bed and Breakfast Inns	C	C		C	C	C	C	C	C	C	C	C	C						C							
Catering/Caterer							A						A	A	A	A			A							
Contractor (Office only, no outdoor storage yard)							A	A	A	A	A	A		A	A	A			A	A						
Contractor (Office with outdoor storage yard)																			C	C						
Dry cleaners													A	A					A							
Eating and Drinking Establishments, w/o drive through							A		A	A	A		A	A	A	A		P	A		P					
Financial Institution w/o Drive Through							A		A	A	A		A	A	A	A										
Financial Management Services							A	A	A	A	A		A	A	A	A										
Hotels							A		A		A		A	A	A	A										
Indoor Commercial Recreation (Reference Ordinance Chapter 14)							A			A		A	A	A					A	A						
Laundromat self service							A		A	A		A		A							P					
Laundry Establishments - Private							A			A		A		A							P					
Linen service/uniform service													A						A	A						
Motels							A		A		A	A	A	A												
Motel or Hotel, extended stay											C		C	C					C							
Printing Services							A		A		A		A	A	A	A			A	A						
Restaurants - Medium Turn Over							A			A			A	A	A	A		P	A		P					
Sandwich Shops and Snack Bars							A			A			A	A	A	A		P	A		P					
Stand Alone Commercial							A			A			A	A	A	A			A							
Social Service Centers							A			A			A	A	A	A										

TYPE/USE	SF-R	SF-TF 14	MH-7	MF-20	MF-30	MF-40	MU-E Lake & Lacuna	MU-E 1st & 2nd Edges	MU-E Federal Hwy	MU-E 10th & 6th	DT	MU-FH	MU-DH	MU-W Lake & 10th	TOD-E	TOD-W	NC	BAC	AI	I-POC	PD	P	PROS	CON	FEC	HOTEL
Storage Lockers													A	A	A	A										
Take Out Restaurants							A		A	A	A		A	A	A	A			A		P					
Veterinary Offices, w/o Kennels										A			A	A	P	P			A	A						
Low Intensity Commercial Uses - Less than 5,000 sq. ft.																										
Coffee Shop							P	P	P	P	P		P	P	P	P	P	P	P		P					
Dry Cleaning drop-off services off-site							P	P	P	P	P	P	P	P	P	P					P					
Financial Management Services							P	P	P	P	P		P	P	P	P			P							
Laundry Service drop-off services-off site							P	P	P	P	P	P	P	P	P	P					P					
Printing Services							P		P	P	P		P	P	P	P			P							
Restaurants - Low Turn Over							P	P	P	P	P		P	P	P	P	P	P	P		P					
Single Destination Commercial							P	P	P	P	P		P	P	P	P	P		P							

Exhibit G

Chapter 23

ZONING

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ARTICLE IV DEVELOPMENT STANDARDS
SECTION 23.4-5 GARAGES

Amended by adding the words and figures shown in underline type and deleting the cross through.

a) *General provisions.* Except in the areas where garages must be an integral part of the residence, a private one-story garage building with sufficient space for parking, minor storage, and basic utility services shall be permitted as an accessory use to the principal use. Garages attached to principal residential structures shall not exceed forty percent (40%) of the overall square footage of the principal structure. Plumbing fixtures for laundry facilities and a utility sink(s) are allowed, however, no toilet or bathing facilities may be permitted within an attached or detached garage. No detached garage shall be placed, erected or permitted to be built prior to the construction of the ~~residence~~ primary structure, and then only in accordance with the restrictions as set forth in these LDRs. All garage buildings shall be set back at least three (3) feet from the front of the residence unless the garage is an integral part of the residence. The walls of the garage shall not be higher than ten (10) feet. On all garages erected with a flat roof, a stairway to such a roof and suitable guard railings surrounding such roof shall be permitted. In no event shall any auxiliary roof of any kind, permanent or temporary, be erected or permitted over the roof of the garage, except suitable canvas awnings.

Exhibit H

Chapter 23

ZONING

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ARTICLE IV DEVELOPMENT STANDARDS
SECTION 23.4-16 MECHANICAL SYSTEMS/EQUIPMENT FOR EXISTING RESIDENTIAL STRUCTURES

a) For Existing residential structures, placement of mechanical equipment shall be allowed in the rear or side setback and/or between the main structure and a public street if there is insufficient space to locate the equipment outside of the setbacks. Equipment located in the setback must meet requirements of the landscape code and the equipment must be screened from view of the right-of-way. In addition, product information or an engineering report must be submitted indicating the noise level will not be in excess of sixty five (65) decibels as measured at the property line.

Exhibit I

Chapter 23

ZONING

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ARTICLE IV DEVELOPMENT STANDARDS
SECTION 23.4-17 STANDBY GENERATOR/PERMANENT

a) Permanent Standby by Generators are permitted in all districts and for all uses and may be used only during periods of electrical power outages in the utility system. Maintenance running may occur once a week Monday thru Friday between 10:00 a.m. and 2:00 p.m. for a period not to exceed 10 minutes. Only one (1) generator shall be allowed per residential unit. Noise levels shall not be in excess of sixty five (65) decibels measured from the property line. Property owners will be allowed to have generators as an accessory use subject to the following requirements:

1. May be located in side setbacks with a maximum height of thirty (30) inches including the concrete pad. If located in a side yard, a landscape plan must be submitted indicating the landscape or screening used to prevent visibility from the right-of-way.
2. May be located in the rear setback if the property is not located on an alley.
3. A standby generator located in a side or rear setback requires a minimum three foot (3') separation from the property line.
4. A site plan must be submitted indicating the proposed location of the generator and the distance to the property line and the distance to any adjacent residential openings such as doors, windows, vents, etc.
5. Product information or an engineering report must be submitted indicating the noise level will not be in excess of sixty five (65) decibels as measured at the property line.
6. Standby generators with an integral/integrated fuel system storage are prohibited in the Mixed Use East (MU-E) and Downtown (DT) districts.

Exhibit J

Chapter 23

ZONING

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ARTICLE V SUPPLEMENTAL REGULATIONS
SECTION 23.5-1 SIGNS

Amended by adding the words and figures shown in underline type and deleting the cross through.

h) *Exemption from section regulations*. The following signs shall be considered allowable signs when such signs meet the specific regulations set forth below (signs listed without specific regulations are also allowable signs under this section), and such signs shall be exempt from all other regulations of this section except the maintenance provisions of subsection e), above.

1. All directional signs listed in the "Uniform Manual of Traffic-Control Devices."
2. All signs directing traffic flow on private property. Such signs shall neither exceed four (4) square feet in background area nor extend to a greater height than four (4) feet above the ground. Only one (1) such sign shall be allowed at each point of ingress or egress, provided such signs do not create a traffic or pedestrian hazard.
3. <u>Temporary political signs pertaining to specific elections. Which include: any message urging the election or defeat of any candidate seeking any political office or urging the passage or defeat of any ballot measure.</u>

Temporary Political signs may be placed on private property subject to the following restrictions.

(A) <u>Location: only on lots where the property owner has given permission.</u>

(B) The placing of <u>temporary</u> political signs anywhere on public property is prohibited. Signs located on public property shall be deemed to be public property and shall be summarily removed by the City.

~~(B) The maximum allowable sign area for a political sign shall be six (6) square feet. The total aggregate sign area for all political signs on a parcel of private property shall be twenty (20) square feet. If more than one political sign is posted on a parcel of private property, each sign shall be affixed to its own stake, pole, or other supporting structure and shall be placed no closer than twenty four (24) inches from any other political sign on the same property. As used herein, "parcel of private property" means real~~

~~property consisting of one or more adjoining lots under common ownership and not owned by a governmental agency.~~

(C) Maximum area: the total aggregate sign area for all such signs on a lot shall be 32 square feet. The maximum freestanding sign area shall be proportioned to its distance to the nearest public right-of-way or other public property as follows:

Maximum Sign Area	Distance to the Nearest Public Right-Of-Way or Other Public Property
6 square feet	10 feet
12 square feet	20 feet
20 square feet	30 feet

(D)Maximum number:

1. Freestanding signs: one sign per lot.
2. Wall-mounted signs: For nonresidential use only, no limit, but subject to the maximum area of 16 square feet per sign face.

(E)Minimum setbacks:

1. From lot line of another property: five feet.
2. From public right-of-way line: five feet.
3. From intersections of streets with other streets and with access drives: as required by subsection 23.5-1 (d) (10).

(F)Maximum height:

1. Freestanding: six feet.
2. Wall mounted: no higher than the building wall on which it is mounted.

(G) Signs shall be removed within forty eight (48) hours following the day of the election to which they apply.

(H) Illegally placed temporary signs. The owner of the parcel of private property on which a political sign is located shall be deemed responsible for compliance with the provisions of this subsection. Any sign or signs in violation shall be removed by the City after notice to the property owner. The notice shall be posted on or near the non-complying sign, shall advise as to the requirements for correction and shall allow forty-eight (48) hours to take corrective action. ~~In addition, notice shall be given to the owner telephonically or in writing.~~

(I) Permit requirements: no sign permit required.

~~(E) The City may place a lien to recover its administrative costs so incurred against the parcel of private property on which the~~

~~sign was located by passage of a resolution of the City Commission after ten (10) days notice by mail to the record owner of the property to be assessed. After its passage, the City clerk shall cause a copy of the resolution to be recorded in the public records of Palm Beach County, Florida. Recorded liens shall be deemed special assessments and may be foreclosed by the City pursuant to the provisions of Chapter 173, Florida Statutes, or in the manner established for the foreclosure of mortgages.~~

CITY OF LAKE WORTH

7 North Dixie Highway · Lake Worth, Florida 33460 · Phone: 561-586-1600· Fax: 561-586-1750

AGENDA DATE: January 7, 2014, Regular Meeting **DEPARTMENT:** Community Sustainability

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EXECUTIVE BRIEF

TITLE:

Ordinance No. 2014-03 - Second Reading and Public Hearing - designate the FEC Railway Freight Depot at 1105 Second Avenue South as a local Lake Worth Historic Landmark

SUMMARY:

The Ordinance will designate the FEC Railway Freight Depot, located at 1105 Second Avenue South, as a local historic landmark.

BACKGROUND AND JUSTIFICATION:

1105 2nd Avenue South, a.k.a the Florida East Coast (FEC) Railway Freight Depot, is located west of the FEC railway corridor in west Lake Worth. The property is bounded to the east by the FEC railway, to the north by 2st Avenue South, to the west by the alley east of South F Street, and to the south by 3nd Avenue South. The area is characterized by a mix of industrial uses along the railway corridor that directly abuts a multi-family residential area to the west, with little transition between these two land uses. The property is currently zoned Artisanal Industrial (AI), with a Future Land Use of Artisanal Mixed Use (AMU.)

The FEC Freight Depot was constructed in 1926 in the Mission Revival Style. The building has been nominated as a local historic landmark for its association with the Florida Boom Period and the economic growth of Lake Worth during the 1920s, as well as for its architecture, which is a representative example of early 20th century railroad construction. The building has a high degree of integrity, having been altered little since its construction.

In July 2013, the City of Lake Worth published a request for proposal (RFP#12-13-208) to convert the property from an industrial warehouse into a multi-use arts center. The City has incorporated language in the lease of the building to ensure the lessee respects the historic nature of the property. If the property were a historic landmark, then all future work on the exterior of the property will be reviewed pursuant to the Certificate of Appropriateness (COA) process, which evaluates alterations to the building to ensure they are appropriate and respect the historic integrity of the property.

Approval of the designation will authorize the Development Review Official to amend the City's Official Zoning Map to provide for an historic overlay for the property.

On November 13, 2013 the Historic Resources Preservation Board voted 4-0 to recommend designation of the FEC Railway Freight Depot as a local historic landmark.

As part of the designation process, a deed restriction is required to be placed on the property. The restriction is provided here and requires a separate motion from the Commission to authorize its being placed on the property.

MOTION:

I move to approve/disapprove Ordinance No. 2014-03 on second reading

and

I move to approve/disapprove Notice of Designation and Historic Preservation Restriction

ATTACHMENT(S):

Fiscal Impact Analysis – not applicable
Ordinance No. 2014-03
HRPB Project Number 13-00100228 Staff Report
Excerpt of Meeting Minutes from HRPB Meeting of November 13, 2013
Notice of Designation and Historic Preservation Restriction

ORDINANCE NO. 2014-03 OF THE CITY COMMISSION OF LAKE WORTH, FLORIDA, DESIGNATING PROPERTY LOCATED AT 1105 2ND AVENUE SOUTH, A LOCAL HISTORIC LANDMARK; AMENDING ZONING MAP OF THE CITY OF LAKE WORTH; PROVIDING THAT A NOTICE SHALL BE RECORDED IN THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA; PROVIDING FOR SEVERABILITY, CONFLICT, AND AN EFFECTIVE DATE.

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

WHEREAS, this property was identified in the "Historic Property Survey of the City of Lake Worth Phase II" (Historic Property Associates, INC. 1996) as a property of significance related to Lake Worth history; and

WHEREAS, the property is associated with early development of the City of Lake Worth, specifically its transportation and railway shipping history, which peaked in the Late 1920s; and

WHEREAS, the property is unique in the City of Lake Worth as it is the only known application of the Mission Revival Style to an industrial building that is still in existence today, and it retains a high degree of historic integrity; and

WHEREAS, designating the property a historic landmark would guarantee all future work on the exterior of the property will be reviewed pursuant to the Certificate of Appropriateness process, which evaluates alterations to the building to ensure they are appropriate and respect the historic integrity of the property; and

WHEREAS, the Historic Preservation Board, at its meeting of November 13, 2013, recommended that the property located at 1105 2nd Avenue South, Lake Worth, Florida, be designated as a Local Historic Landmark.

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

<u>Section 1</u>. The foregoing recitals are hereby affirmed and incorporated herein.

<u>Section 2</u>. The following described property in the City of Lake Worth, Florida:

> Lot 17, Block 79, The Palm Beach Farms Co. Plat No. 2, The Township of Lucerne (now known as the City of Lake Worth), according to the plat thereof, as recorded in Plat Book 2, Pages 29 through 40, of the Public records of Palm Beach County, containing .6538 acres more or less.

Also known as 1105 2nd Avenue South, Lake Worth, Florida, is hereby designated as a Local Historic Landmark.

Section 3. The Development Review Official of the City of Lake Worth, Florida, shall upon effective date of this Ordinance, amend the Zoning Map of the City of Lake Worth, Florida, to show, in an overlay manner the above designation.

Section 4. A notice of designation and restriction shall be recorded in the public records of Palm Beach County, Florida.

Section 5. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared severable.

Section 6. All Ordinances or parts of Ordinances in conflict herein are hereby repealed.

Section 7. This Ordinance shall become effective ten (10) days after passage.

The passage of this Ordinance on first reading was moved by Commissioner McVoy, seconded by Commissioner Szerdi, and upon being put to a vote, the vote was as follows:

Mayor Pam Triolo	AYE
Vice Mayor Scott Maxwell	AYE
Commissioner Christopher McVoy	AYE
Commissioner Andy Amoroso	AYE
Commissioner John Szerdi	AYE

The Mayor, thereupon declared this Ordinance duly passed on first reading on the 3rd day of December, 2013.

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

Mayor Pam Triolo
Vice Mayor Scott Maxwell
Commissioner Christopher McVoy
Commissioner Andy Amoroso
Commissioner John Szerdi

The Mayor thereupon declared this Ordinance duly passed and enacted on the 7th day of January, 2014.

LAKE WORTH CITY COMMISSION

By:_____
Pam Triolo, Mayor

ATTEST:

_____
Pamela J. Lopez, City Clerk

City Of Lake Worth

Community Development Department

Planning, Zoning and Historic Preservation Division

1900 Second Avenue North· Lake Worth, Florida 33460 · Phone: 561-586-1687

MEMORANDUM DATE: November 1, 2013

AGENDA DATE: November 13, 2013

TO: Chair and Members of the Historic Resources Preservation Board

RE: **1105 2nd Avenue South (a.k.a. FEC Railway Freight Depot)**

FROM: Kelly M. Christensen, Preservation Planner
Department for Community Sustainability

TITLE: **HRPB Project Number 13-00100228**: Consideration of a request for local historic landmark designation for the subject property located at 1105 2nd Avenue South; PCN# 38-43-44-21-15-079-0170.

APPLICANT/OWNER: City of Lake Worth
7 North Dixie Highway
Lake Worth, FL 33460

BACKGROUND:

1105 2nd Avenue South, a.k.a the Florida East Coast (FEC) Railway Freight Depot, is located west of the FEC railway corridor in west Lake Worth. The property is bounded to the east by the FEC railway, to the north by 1st Avenue South, to the west by the alley east of South F Street, and to the south by 2nd Avenue South. The area is characterized by a mix of industrial uses along the railway corridor that directly abut a multi-family residential area to the west, with little transition between these two land uses. The property is currently zoned Artisinal Industrial (AI), with a Future Land Use of Artisinal Mixed Use (AMU.)

Between 1924-1925, the Florida East Coast Railway expanded its existing railway operation by adding a second mainline as well as new locomotives and cars to serve South Florida. At the time, Lake Worth had a combination passenger/freight depot just south of the downtown corridor along Lake and Lucerne Avenues. The combination passenger/freight depot experienced any overwhelming amount of freight and, consequently, the FEC built a freight depot at 1105 2nd Avenue South (now the **FEC Railway Depot**) in 1926. The building never achieved its potential as a freight depot due to a freight embargo that occurred shortly after construction was completed.

The FEC Depot is a Mission Revival style freight depot building consisting of a rectangular plan and flat roof adorned by parapets with barrel tile cresting. Pilasters create ten bays along the east and west façade with nine bays containing vehicle and delivery doors. Over the bays, a metal canopy extends and the wall is embellished with stylized rectangular panels. The office is located at the north end of the building. The exterior walls have been covered over with stucco and the windows above the delivery doors and along the office have been enclosed. To the south of the building there is a surface

parking area surrounding by a chain link fence. The building encompasses approximately 10,000 square feet of enclosed space.

In 2011 William Thies and Sons, Inc., owners of 1105 2nd Avenue South, granted the property to the City of Lake Worth. Since the City acquired the property it has remained secured and vacant.

In July 2013, the City of Lake Worth published a request for proposal (RFP#12-13-208) to convert the property from an industrial warehouse into a multi-use arts center. The arts center may include a number of 2D and 3D artist studios, such as ceramics, glass, metal, and painting. The center may also host art classes, have an in-house gallery, and host art-related events. The RFP also encouraged applicants to consider the historic appearance of the building, and focus their proposals on adaptive rehabilitation of the building.

While the City is currently incorporating language in the lease of the building to ensure the lessee respects the historic nature of the property, there has also been interest expressed in formally designated the property as a local historic landmark. If the property were a historic landmark, then all future work on the exterior of the property will be reviewed pursuant to the Certificate of Appropriateness (COA) process, which evaluates alterations to the building to ensure they are appropriate and respect the historic integrity of the property.

REQUEST:

The Planning, Zoning and Historic Preservation Division, on behalf of the City of Lake Worth, is requesting that the Board recommend the FEC Freight Depot to the City Commission for local historic landmark designation. Staff has prepared a designation application containing all information required in Section 5-4e(3) of this historic preservation regulations. The application provides an architectural description of the building, a narrative history of the property, and a statement of significance explaining how the property contributes to the historic character and story of Lake Worth.

COMPREHENSIVE PLAN CONSISTENCY:

The project, as proposed, is consistent with the following Comprehensive Plan goals and objectives concerning future land use and historic preservation:

Goal 1.4: Encourage preservation and rehabilitation of historic and natural resources and where appropriate restrict development that would damage or destroy these resources.

> Objective 1.4.2: To provide for the protection, preservation or sensitive reuse of historic resources.

Goal 1.7: To support and provide incentives for the continued redevelopment of the historic downtown commercial core of the City.

> Objective 1.7.3: To support redevelopment plans which recognize and respect the historic urban character of Downtown Lake Worth and the surrounding neighborhoods.

CONSEQUENT ACTION:

Recommend the application; recommend the application with conditions; continue the hearing to a date certain to request additional information; or deny the application.

ANALYSIS AND RECOMMENDATION:

Staff has reviewed the documentation and materials provided in this application and applied the applicable guidelines and standards found in the City's Historic Preservation Ordinance, detailed in Attachment 1 – Decision Criteria.

It is the opinion of Staff that the FEC Railway Freight Depot meets the threshold of significance as set forth in Section 5-4 of the Lake Worth Code of Ordinances to allow it to be designated as a local historic landmark. In summary, the historic regulations require that a property meet one of the four criteria for designation used to nominate properties to the National Register of Historic Places. In this case, Staff has nominated the property under the following criteria:

- Criterion A: Association with events that have made a significant contribution to the broad patterns of our history (For association with the early development of Lake Worth associated with the FEC railway and the subsequent economic devastation caused by the hurricane on 1928); and

- Criterion C: Embody the distinctive characteristics of a type, period or method of construction, or represent the work of a master, or possess high artistic values, or represent a significant or distinguishable entity whose components may lack individual distinction (for its Mission style architecture, of which there are no other industrial examples within the City, and its form as a railway depot, of which there are no contemporaneous examples left associated with the Flagler era in Lake Worth)

While changes have taken place to the building over time, the property retains a high degree of historic integrity of location, setting, design, materials, craftsmanship, feeling and association. Loss of the property through demolition or inappropriate alterations would constitute the loss of a unique historic property in Lake Worth, of which there are no other contemporary examples. Further research may also substantiate that the property is one of the last examples of its type within Palm Beach County as a whole. Because the property will soon have a new tenant who will be using the property for a new use, Staff feels that it is important that the property have protection from the historic preservation regulations to ensure that the property will be reused in a sympathetic manner that will respect the history and architecture of the site.

Pursuant to the above analysis, staff recommends that the Board recommend the FEC Freight Depot be designated a local historic landmark and listed to the Local Register of Historic Places.

POTENTIAL MOTION:

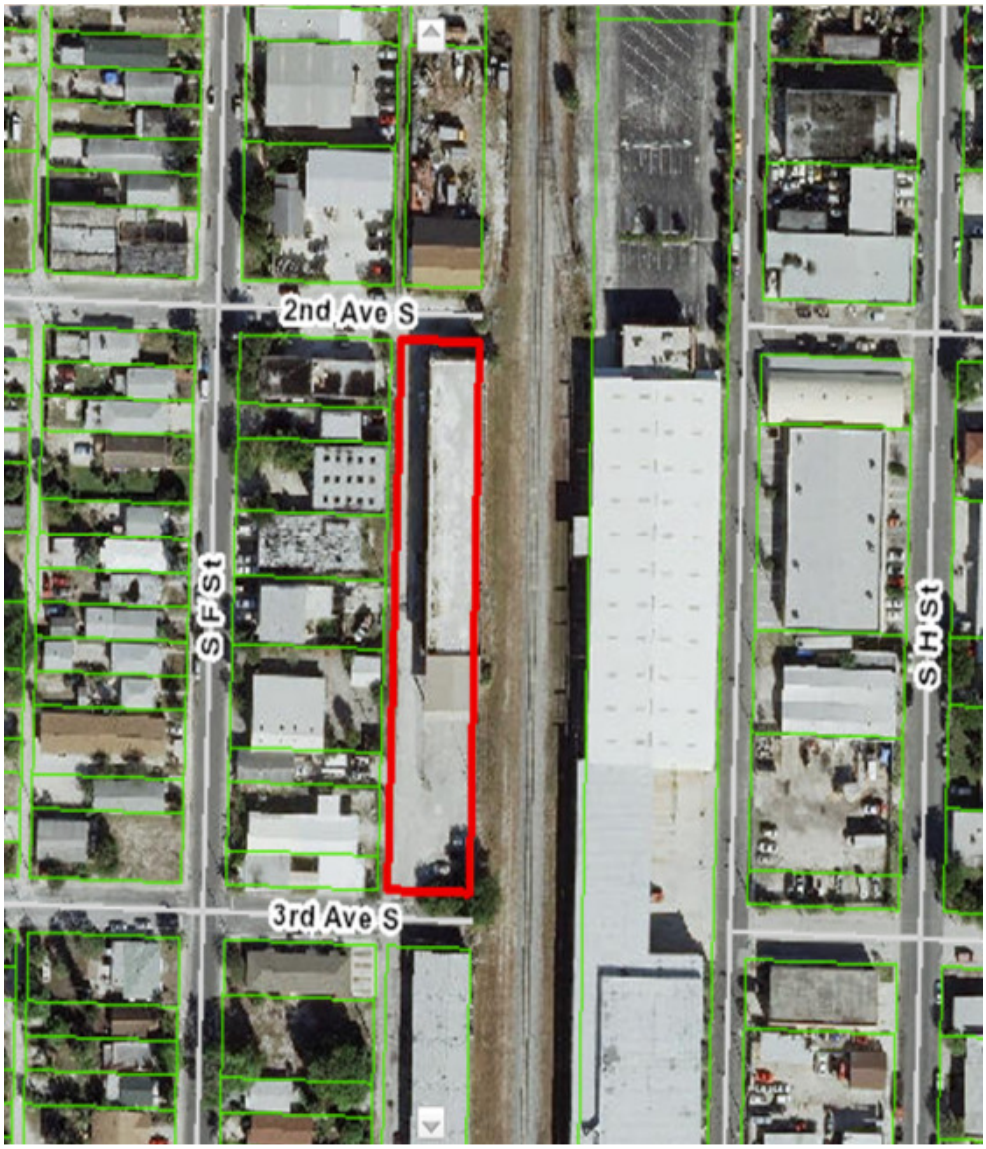
I MOVE TO RECOMMEND/NOT RECOMMEND HRPB 13-00100228: request for local historic landmark designation for the subject property located at 1105 2nd Avenue South; PCN# 38-43-44-21-15-079-0170, based on the criteria set forth in Section 5-4 of the Lake Worth Code of Ordinances.

ATTACHMENTS:

1. Administrative Decision Criteria
2. Designation Application

3. Sign Posted 11/4/2013

LOCATION MAP



MEMORANDUM

DATE: November 1, 2013

TO: Chair and Members of the Historic Resources Preservation Board

FROM: Kelly M. Christensen, Preservation Planner
Department of Community Sustainability

SUBJECT: **HRPB Project Number 13-00100228**: Consideration of a request for local historic landmark designation for the subject property located at 1105 2nd Avenue South; PCN# 38-43-44-21-15-079-0170.

HRPB Meeting Date: November 13, 2013

Pursuant to Section 5-4e(7) of the Lake Worth Code of Ordinances, the Board shall use the following criteria in making a determination:

Criteria for designation of property. The HRPB shall recommend the designation of property as a landmark or historic district after a public hearing based upon the following criteria. The HRPB's recommendation, as well as the City Commission's final decision, may be based either on National Register designation criteria or on local designation criteria or on any combination of the criteria.

A. *Survey required.* The HRPB and the City Commission shall review the proposed designation of a landmark or a historic district in the context of the survey, which shall serve as the basis for consideration of the designation. Properties which have not been surveyed are not eligible for designation.
Response: 1105 2nd Avenue South was identified in the "Historic Property Survey of the City of Lake Worth Phase II" (Historic Property Associates, Inc. 1996) as a property of significance related to Lake Worth history, and was recommended as potentially eligible for individual listing on the National Register of Historic Places. This survey was specifically commissioned by the City of Lake Worth, and is one of the many survey documents that comprise the City Historic Survey.

B. *National Register designation criteria.* The HRPB and the City Commission may evaluate nominated properties based on the criteria established for inclusion on the National Register of Historic Places, 36 C.F.R. 60.4, as it may be amended from time to time. In order to designate a landmark or historic district for inclusion on the national register, the HRPB and the City Commission shall make the following findings of fact:

(1) The designee is of the highest importance (e.g., is the only, the best or the last example of such resource within the City), and therefore its loss to the City would be irreparable;
Response: Loss of the property through demolition or inappropriate alterations would constitute the loss of a unique historic property in Lake Worth, of which there are no other contemporary examples. Further research may also substantiate that the property is one of the last examples of its type within Palm Beach County as a whole.

(2) The designee satisfies the criteria established to evaluate properties for inclusion on the National Register of Historic Places, 36 C.F.R. 60.4, as it may be amended from time to time,

which currently reads substantially as follows. To be designated as a national register landmark or historic district, the designated property shall:

(a) Be associated with events that have made a significant contribution to the broad patterns of our history;
Response: The property is associated with early development of Lake Worth, specifically its transportation and railway shipping history, which peaked in the late 1920s. Between 1924 and 1925, the Florida East Coast Railway expanded its existing railway operation by adding a second mainline as well as new locomotives and cars to serve South Florida. The building was built by the Florida East Coast (FEC) Railway c.1926 to handle overflow cargo from the existing platform in the city. However, shortly after the completion of the building a freight embargo halted transportation on the line, and there is no evidence to show the building ever fully went into service. Subsequent events, including the hurricane of 1928, stock market crash of 1929 and the bankruptcy of the Florida East Coast Railway in 1931 also limited rail traffic in the area. The property was eventually sold to The FEC Railway continues to operate today, primarily as a freight shipping corridor.

(b) Be associated with the lives of persons significant in our past;
Response: The property is associated with Henry Flagler, founder of Standard Oil and a key figure in the development of eastern Florida in the late 19th and early 20th century. He consolidated what became the Florida East Coast Railway (FEC) and constructed resort hotels and railway stations and depots along the coast between Jacksonville and Miami. He died in 1913.

(c) Embody the distinctive characteristics of a type, period or method of construction, or represent the work of a master, or possess high artistic values, or represent a significant or distinguishable entity whose components may lack individual distinction; or
Response: The building was construction in the Mission Revival Style, one of a number of Spanish Mediterranean Revival styles popular in the United States during the early 20th century. The property is unique in Lake Worth as it is the only known application of this style to an industrial building that is still extant today, and it retains a high degree of historic integrity in all seven aspects of integrity as defined by the *National Register*. It may also be one of the only remaining examples of its type, style and era left in Palm Beach County as a whole.

(d) Yield, or may be likely to yield, information important in prehistory or history.
Response: Not applicable to this property.

(3) Properties must possess an integrity of location, design, setting, workmanship, materials or association that represents a significant place in national, state or local history, architecture, engineering or culture.

(4) Properties not generally considered eligible for designation on the national register include cemeteries, properties owned by religious institutions or used for religious purposes, birthplaces or graves of historic figures, structures that have been moved from their original location, buildings or sites primarily commemorative in nature, reconstructed historic buildings and properties that have achieved significance within the past fifty (50) years.

However, such properties will qualify if they are integral parts of districts that do meet the criteria previously described or if they fall into one or more of the following categories:
Response: The property does not qualify under any of these criteria considerations.

(a) A religious property deriving its primary significance from architectural or artistic distinction or historical importance;

(b) A building or structure removed from its original location but which is primarily significant for its architectural value, or which is the surviving structure most importantly associated with a historic event or person;

(c) A birthplace or grave of a historic figure of outstanding importance if there is no other appropriate site of building directly associated with his or her productive life;

(d) A cemetery which derives its primary importance from graves of persons of transcendent importance, from age, distinctive design features, or from association with historic events;

(e) A reconstructed building when accurately executed in a suitable environment and presented in a dignified manner as part of a restoration master plan, and when no other building or structure with the same association has survived;

(f) A property primarily commemorative in nature if design, age, tradition or symbolic value have invested it with its own exceptional historic significance; or

(g) A property or district having achieved significance within the past fifty (50) years if it is of exceptional historic or architectural importance.

C. *Local designation criteria.* In addition to or instead of National Register designation criteria, the HRPB and the City Commission may designate a landmark or a historic district if it satisfies criterion C.(1) and any one (1) of the additional criteria C.(2) through C.(13), following:

(1) In the case of a site, the structure shall be at least fifty (50) years old; in the case of a district, at least forty (40) percent of the structures shall be at least fifty (50) years old; and
Response: The property is over 50 years of age.

(2) Its location is a site of a significant local, state or national event
Response: Not applicable to this property.

(3) It is identified with a person or persons who significantly contributed to the development of the City, state or nation;
Response: The property is associated with Henry Flagler and the Florida East Coast Railway. See B(b) for complete details.

(4) It is identified as the work of a master builder, designer, or architect whose individual work has influenced the development of the City, state or nation;
Response: Not applicable to this property.

(5) Its value as a building is recognized for the quality of its architecture, and it retains sufficient elements showing its architectural significance;
Response: The building retains a high degree of historic integrity of materials, design and craftsmanship. While changes have been made over time, the building still retains all of its character-defining features, including its rectangular floor plan, parapet with barrel tile cresting, pilasters and stylized rectangular panels on the exterior walls.

(6) It has distinguishing characteristics of an architectural style valuable for the study of a period, method of construction, or use of indigenous materials;
Response: The building is a representative and rare example of how the Mission Revival style was applied to industrial buildings during the early 20th century, specifically by the FEC Railway company.

(7) It embodies distinguishing characteristics of architectural style or elements of design, detailing, materials or craftsmanship that render it architecturally significant or valuable for the study of a period, type, method of construction or use of indigenous materials;
Response: The building is a representative and rare example of how the Mission Revival style was applied to industrial buildings during the early 20th century, specifically by the FEC Railway company.

(8) Its character is a geographically definable area possessing a significant concentration or continuity of sites, buildings, objects or structures united in past events or aesthetically by plan or physical development;
Response: Not applicable to this property.

(9) Its character is an established and geographically definable neighborhood, united in culture, architectural style or physical plan and development;
Response: Not applicable to this property.

(10) It is associated with a singular location that is unique or possesses singular physical characteristics that make it an established or familiar visual feature;
Response: Not applicable to this property.

(11) It demonstrates a likelihood of yielding significant information in terms of archaeology, history or prehistory;
Response: Not applicable to this property.

(12) It is listed in the National Register of Historic Places; or
Response: The property is currently not listed on the *National Register*, but it is the opinion of Staff that the building is potentially eligible.

(13) It is consistent with the historic preservation goals of the comprehensive plan of the City.
Response: The project, as proposed, is consistent with the following Comprehensive Plan goals and objectives concerning future land use and historic preservation:

> *Goal 1.4:* Encourage preservation and rehabilitation of historic and natural resources and where appropriate restrict development that would damage or destroy these resources.
>
> > *Objective 1.4.2:* To provide for the protection, preservation or sensitive reuse of historic resources.

Goal 1.7: To support and provide incentives for the continued redevelopment of the historic downtown commercial core of the City.

Objective 1.7.3: To support redevelopment plans which recognize and respect the historic urban character of Downtown Lake Worth and the surrounding neighborhoods.

(14) No more than fifty (50) percent of the owners of a landmark property object to the designation.

Response: The City is the sole owner of the property, and at this time no officials of the City have voiced any objection to the proposed nomination.

D. *Interpretation.* For purposes of this subsection, terms such as "exceptional importance", "exceptional significance", "significant", "significance", “compatible”, "irreparable", "importance", and other subjective terms shall have their plain meaning, as established by the current edition of Webster's Dictionary, or applicable Florida or federal case law, to the extent that such exists.

DEPARTMENT for COMMUNITY SUSTAINABILITY
PLANNING, ZONING, AND HISTORIC PRESERVATION
1900 2nd Ave North · Lake Worth, Florida 33461 · Phone: 561-586-1687

LOCAL HISTORIC LANDMARK DESIGNATION APPLICATION

DATE: 10/17/2013

APPLICANT: City of Lake Worth
7 North Dixie Highway
Lake Worth, FL 33460

ADDRESS: 1105 2nd Avenue South (a.k.a. FEC Railway Freight Depot)

PCN#: 38-43-44-21-15-079-0170

LEGAL DESCRIPTION: Lot 17, Block 79, The Palm Beach Farms Co., Plat No.2, The Township of Lucerne, as recorded in Plat Book 2, Pages 29 through 40, of the Public Records of Palm Beach County, Florida, containing 0.6538 acres more or less.

DATE OF CONSTRUCTION: 1926

ARCHITECTURAL DESCRIPTION AND DEVELOPMENT HISTORY:

Summary

The Lake Worth FEC Freight Depot, located at 1105 2nd Avenue South in Lake Worth, Florida is a representative example of Mission Revival style Florida East Coast Railway freight depots from the mid to late 1920s. The hollow tile and brick building is situated to the west of the Florida East Coast Railroad Company's train tracks in an industrial zoned strip abutting a residential neighborhood. The long rectangular building is approximately 214 feet along the rail line and 50 feet deep. The site is bounded by the railroad track to the east and a road that services the depot to the west. The entirety of the structure is one story with very high ceilings. The roof is flat and is adorned with parapets. A metal canopy also exists along the east and west facades.

Exterior

The massing of the building is long and linear in both plan and elevation. The orthogonal building remains the same width and length for the entirety of the structure. The east and west elevations are designed in a similar fashion to one another to facilitate loading. The northern and southern elevations are fairly similar in design, only varying in fenestration. A later covered extension was also added to the building at the southern elevation. Each façade is equally detailed with no one side providing a dominant façade. However, based on the site location to a connecting street, the northern façade more prominent in public exposure to the surrounding neighborhood and was used for pedestrian entrance into the building. The masonry structure has a stucco finish *(maybe "rizsto-crete")* over and painted white.

The western façade of the depot is equally divided into ten bays. Each bay is identically articulated through slight differences in the brick elevation to create the appearance of decorated panels. Between the panels that take up the majority of each bay, the vertical brick that has not been recessed gives the impression of brick pilasters. The pilasters that begin about four to three feet up the building extended vertically and become small parapet walls above the barrel tile roof. Within eight of the bays, large delivery doors occupy each bay. Above each bay with a delivery

door, is a clerestory window that has been enclosed from the exterior. Between the clerestory window and the delivery door, a five foot metal awning extends over all the delivery doors and measures 172 feet long.

The last two northern most bays on the western façade have different fenestration from the other eight bays that house the delivery doors. Both of these bays continue the massing of the clerestory window with a recessed brick pattern. It is solely decorative. Below the brick detail mimicking the clerestory windows on the second to last bay has two rectangular bricks in the opening for windows. There is a slight brick protrusion at the bottom of these openings and acts as a sill. These openings have been since enclosed. The last bay is fenestrated with three equal-sized windows below the brick detailing that mimicking the massing of the clerestory window.

Along the southern most area of the western façade is a loading dock that ramps up to one of the delivery doors in a bay. This may have been added in 2003 when several renovations were done to the building by the subsequent owners of the property, William Thies and Sons, Inc.

At the southern edge of the façade, a pavilion is visible. The pavilion is engaged with the original building but is not as tall. Three columns support the low pitched roof of the pavilion on the western façade. The pavilion was added in 2003 and was built to provide an additional 14,820 square feet of dock space.

The eastern façade closely mirrors the western façade. Nine of the bays are occupied by loading docks towards the rail line providing an additional bay than is present on the western façade. However, the almost identical metal awning extends further on this façade to cover the shipping door. The metal awning extends to 195 feet on the eastern façade. The second to last shipping door opening was enclosed at some point, probably in 2003 when 17,000 square feet of additional office space was positioned in the northern end in the interior of the structure. The last bay of the eastern façade has three equal-sized windows below the detailing that mimics the massing of the clerestory window.

At the southern end o the building the added pavilion is visible. The pavilion is engaged with the original building but is not as tall. Three columns support the low pitched gable roof of the pavilion on the eastern façade.

The southern façade is occupied by three bays divided equally and articulated in the same manner as the western façade. Currently, a smaller shipping door is placed in the middle bay and a metal door provides an entrance through the western most bay. The door is positioned at the bottom left of the bay detail. The clerestory windows are now enclosed. The large covered pavilion is attached to the south elevation. The pavilion is covered by a low pitched gable roof that hides three clerestory windows. This pavilion is supported by six large columns, three on the east and west sides respectively. The pavilion now hides the clerestory windows.

The southern façade is occupied by three bays divided equally and articulated in the same manner as the western façade. The middle bay and the western bay are identical. They each have brick detailing to mimic the massing of the clerestory windows on the eastern and western facades and have two equal sized windows that have been filled in that match the size of the set of three windows on the western façade. The final bay has the above brick detailing to mimic the clerestory windows but below it resides two rectangular openings that may have been small windows at one point. Below the small openings are two openings for doors. The left door has

been enclosed and the right door remains operational. A concrete stair and landing rise from left to right to provide access to the doors four feet above the ground.

Interior

The interior of the building is predominately a large, open space with no partitions and high ceilings. The space is defined by large steel trusses going on the short east-west axis that visually separates each set of large 16' x 9' metal rolling doors into bays. The trusses are supported by steel columns which also help visually separate the spaces.

The exterior brick structural system is exposed on the interior around the metal rolling doors. A window is located approximately two feet above the door. These windows are the width of the door, around eighteen feet, and four feet tall. On the west side, the windows still exist, while the windows of the east side of the building look like they were filled in. If they were originally open, the cross ventilation would have allowed a refreshing breeze to cool the building. The location where the windows were originally placed on the east side are still marked by a metal grate with an inset into the wall. We do not know when these windows were filled in.

The most southern end of this main room is screened with a chain link fence about halfway to the ceiling. The southern wall has one metal rolling door, smaller than the others at around twelve feet by ten feet. The door leads out to the addition, which is an outdoor loading dock for the commercial space inside. The interior large open space features eight large metal rolling door sets, with one on either side of the building.

In the northern end of 1105 2nd Ave South, offices have been located for over fifty years. Information in the Lake Worth Building Files shows that by 1966, an apartment area was located above the offices in the north part of the building, which means that the offices had to already be there as well. Currently, this apartment area is not accessible since the last owner must have taken out the stairs leading up there. The last owner used those offices on the first floor, keeping the low panel ceilings. There are no windows or metal rolling doors in this part of the building. The rest of the room is separated by thin partition walls. Presently, the last two bays of the building are blocked off from the large open warehouse part. The most northern bay was probably always blocked off as seen by the hollow clay tile wall that separates this bay from the rest of the warehouse. These would have been the original offices for the building. On the western wall of the bay just south of the original offices are bathrooms which are probably also originally cut off from the rest of the main open space. The rest of the building was one large open space.

The building records show that there were seventeen metal rolling doors installed, which means that one side would have to be longer than the other by one bay. This supports the idea of the original bathrooms being on the west side, which would leave eight doors for that side and nine doors for the east side that faces the railroad tracks.

NARRATIVE/HISTORIC CONTEXT: Between 1920 and 1926 Lake Worth experienced significant growth and development as a result of the "Florida Land Boom." The "land boom" was made possible by increased transportation access to western and southern Florida as well as drainage of the wetlands that created more arable and developable land. Increased interest in development led to land speculation and unprecedented amounts of new construction in South Florida, fed by the raging bull market on Wall Street.[1] Lake Worth did not escape the effects of the boom, and as

[1] Bulls, Bears, Boom, and Bust, 260.

the rush for land increased, so did the population of the city. In 1920, the town (Lake Worth would not be reincorporated as a city until 1925) had approximately 1,106 residents. By 1930, the population has increased six times to nearly 6,000 residents.[2]

In the 1920s Lake Worth's industrial businesses were primarily located in "west" Lake Worth, south of Lake Avenue and generally centered around South H Street.[3] This provided businesses easy access to town and to the ever growing Florida East Coast Railway (FEC Railway) corridor. Most businesses were associated with the building and constructions trades, such as lumber yards, electric shops, machine shops and more. Many of the businesses were owned by "pioneer" residents, and their descendants continue to live in Lake Worth today.

Between 1924 and 1925, to improve the efficiency of their railway operation, the FEC added a second mainline, double-tracking its roadbed between Jacksonville and Miami. The company also added rolling stock, including twenty new locomotives, 200 box, 250 rock, and 100 ballast cars, and twenty cabooses. It improved its grounds around the Lake Worth depot in 1923 (demolished), and extended the freight and passenger platforms.[4] However, the expansion of the facilities was not enough to keep up with demand. In October 1925, fourteen rail cars of building materials arrived at the Lake Worth depot, and although the supplies were swiftly unloaded and distributed to warehouses, the railroad complained that the combination passenger/freight depot one block south of Lake Avenue was overwhelmed with unclaimed freight, a problem that persisted. Lake Worth's situation was symptomatic of larger issues within the FEC system as a whole. In 1925 the FEC was forced to put a freight embargo in place to deal with overwhelming amount of freight and passengers flooding the railway platforms throughout Florida, and especially in South Florida, where Miami was leading the economic boom. The company implemented a permit system to control the flow of freight, so that only important or urgent cargo could be moved.[5]

As part of its expansion and improvement program, in April 1926 the FEC announced the construction of a large freight depot south of the existing depot to be located at 1105 2nd Avenue South. Measuring 200' x 40', the building cost $100,000 to construct and could support fifteen cars along an adjacent siding, where bays extended the length of the facility. The FEC moved its section houses in Lake Worth from their original site near 2nd Avenue South to 4th Avenue South, dwellings that were later demolished.[6] An undated photograph from the Lake Worth Historic Museum, published in the book *On Lake Worth*, shows the Lake Worth mixed passenger/freight depot east of the tracks near 1st Avenue South in the foreground, with the new dedicated freight depot at 1105 2nd Avenue South in the background in the lower left corner.[7]

The completion of the freight depot building did not come at a fortuitous time for the FEC or Lake Worth. Major hurricanes in 1926 and 1928 devastated both entities, causing severe infrastructural damage throughout the region. The 1928 hurricane effectively ended the "boom" period in Lake Worth, and it would take the city years to recover from the disaster. The FEC was also facing financial collapse. The company was experiencing increased pressure from the Seaboard Air Line Railway, who were also building their own extensions into South Florida and

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[2] Historic Property Survey of the City of Lake Worth Phase II, 5
[3] City of Lake Worth Phase II, 9
[4] City of Lake Worth Phase II, 9-10
[5] Speedway to Sunshine, 102.
[6] *Lake Worth Herald,* August 29,1923, March 5,1924, February 18,October 21, 1925, January 13, April 7, May 5, 1926; Sanborn Map Company, *Fire Insurance Map of Lake Worth,* 1924,1928.
[7] On Lake Worth, 53.

directly competing with the FEC for business with the "Orange Blossom Special" service.[8] This, combined with the collapse of the speculative banking market in Florida and the national stock market collapse in 1929 led the company to file bankruptcy, and the FEC was in receivership by 1931.

The sum total of all these events means that it is possible that the Freight Depot may never have been brought into service for the purpose that is was originally built, at least not for very long. Nevertheless, deed and building permit records indicate that the FEC retained ownership of the building for several decades, and appears to have utilized the building (or leased the building the others) for storage, even as the railway infrastructure in Lake Worth shrank over time. Tenants added rolling doors and made other modifications to serve this purpose.[9] In 1982, the FEC sold the property for a sum of $210,000 to B.R.D. Properties, Inc., a local Lake Worth business, which may or may not have been a subsidiary or otherwise affiliated with William Thies & Sons, one of the FEC's tenants in the building. This company then sold the property to William Thies & Sons, Inc. in 1994 for $815,000. Thies & Sons used the space primarily for warehouse storage. This owner also made modifications to the property, including an addition of the rear end of the building in 2003.

In 2001, William Thies & Sons deeded the Freight Depot to the City of Lake Worth, who has retained ownership of the building since. At this time the building is vacant, but negotiations are currently underway to lease the property to a new tenant to establish a local not-for-profit arts center.

STATEMENT OF SIGNIFICANCE: This property qualifies for local landmark status under the following criteria:

- Criterion A: Association with events that have made a significant contribution to the broad patterns of our history.
  Explanation: The property is being nominated for its association with the Florida Land Boom era of Lake Worth history, including the rise and fall of the railway industry as a driving force of the Lake Worth economy. The 1920s was a significant period of growth for Lake Worth, and the Florida East Coast Railway was a major contributor not only to the Lake Worth economy but the state economy as a whole, tying in Lake Worth to events that are part of the broad patterns of early 20th century Florida History. Please see the "Narrative/Historic Context" for more information.

- Criterion C: Embody the distinctive characteristics of a type, period or method of construction, or represent the work of a master, or possess high artistic values, or represent a significant or distinguishable entity whose components may lack individual distinction.
  Explanation: The property is being nominated for its Mission style architecture. There are no other contemporaneous industrial examples within the City, making it a unique example of its type within Lake Worth. It has also been suggested that the building may also be one of few remaining freight depot buildings from the 1920s in Palm Beach County. Further information is needed to substantiate this claim, but if true that would also make the style and form of the building that much more significant at the regional level.

[8] Speedway to Sunshine, 105.
[9] See "Architectural Description" for details.

Character-defining features of the building include:

- rectangular floor plan
- hollow clay tile and brick construction
- flat concrete slab and truss roof system
- parapets with molding detail and barrel tile crests
- vertical pilasters extending from foundation to roofline
- metal canopies on east and west elevations
- stylized rectangular panels
- organization of structural system into equally sized bays

HISTORIC INTEGRITY: Overall the building retains a high degree of historic integrity in the aspects of historic integrity as follows:

- **Location:** The building is still in the same physical location, and has not been shifted or relocated.
- **Setting:** The setting of the property has changed over time as the composition of the neighborhood has changed. Since the time the building was constructed, the FEC Railway right of way has substantially decreased as freight traffic shifted from rail delivery to truck delivery, and the industrial district moved from primarily along the railway out west into the Park of Commerce area. There is still a narrow corridor of dense industrial uses, predominantly automotive, directly along the tracks and down South H Street. However, the area directly adjacent to the west of the building is now dense single and multi-family residential.
- **Design:** The building still retains its Mission Revival style design, with many of its character-defining features intact. One significant addition was made to the outside of the building in 2003 in the form of the open gable roof loading bay at the south end of the building. However, this addition is in line with the height and width of the original depot building. If removed the original form of the building would still be intact.
- **Materials:** The building retains many of its original building materials, including hollow clay tile, brick, the cement roof, pivoting windows and metal awnings. These materials are characteristic of construction during the early 20th century. The building could not be recreated today as some of the materials it is made of, including hollow clay tile, are no longer available for new construction and do not qualify as an acceptable building material under the building code in some applications.
- **Craftsmanship:** Original construction techniques are still discernible in the fabric of the building, and it is clear which portions of the building date to the 1920s and which aspects of the building are later additions or alterations.
- **Feeling:** Overall the building is an acute expression of the historic styles, materials, forms and trends that defined the Florida Boom period in South Florida. Though the surrounding neighborhood has changed over time, the building still has a historic sense of place as an industrial railroad building constructed at a time when the rail economy dominated Lake Worth and South Florida as a whole.
- **Association:** The FEC Freight Depot still retains its direct association with the FEC railway corridor. Despite some alterations over time to convert the building

to a warehouse/storage versus freight depot use, the form of the building still clearly conveys that it was associated with railroad activity in the past.

AREAS OF SIGNIFICANCE: Architecture, Transportation, Community Planning

PERIOD OF SIGNIFICANCE: 1926 (date of construction)

CITY HISTORIC SURVEY: 1105 2nd Avenue South was identified in the "Historic Property Survey of the City of Lake Worth Phase II" (Historic Property Associates, Inc. 1996) as a property of significance related to Lake Worth history, and was recommended as potentially eligible for individual listing on the National Register of Historic Places. This survey was specifically commissioned by the City of Lake Worth, and is one of the many survey documents that comprise the City Historic Survey. Excerpts from this report which mention 1105 2nd Avenue South are included as an attachment to this report.

ACKNOWLEDGEMENTS: In 2011 and 2012 interns from the Palm Beach Preservation Foundation Anthony K. Baker Internship program, overseen by the city staff, completed photo documentation of the building as well as research on the development history of the building in the city's building files. A substantial amount of the information in this application is the result of their hard work, and Staff is grateful for their efforts on behalf of the City of Lake Worth Historic Preservation Program.

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Sanborn Map Company, *Fire Insurance Map of Lake Worth,* 1924, 1928.

ATTACHMENTS:

1) Location Map
2) Excerpts from "Historic Property Survey of the City of Lake Worth Phase II" (City Survey)
3) Excerpts from 1928-1949 Sanborn Maps, Pages 6 and 8
4) Excerpt from *On Lake Worth,* Historic Photograph of FEC Passenger Depot, with Freight Depot in background.
5) Photographs, taken 11/5/2013
6) Architectural Drawings prepared by 2011 Baker Interns

ATTACHMENT 1 – LOCATION MAP

PREPARED BY

MICHAEL BLEVINS
THE CITY OF LAKE WORTH'S
COMMUNITY SUSTAINABILITY
GIS PLANNER

1900 2ND AVE N
LAKE WORTH, FL 33461
561.586.1645
Updated 11.06.2013

0 12.5 25 50 75 100 Feet

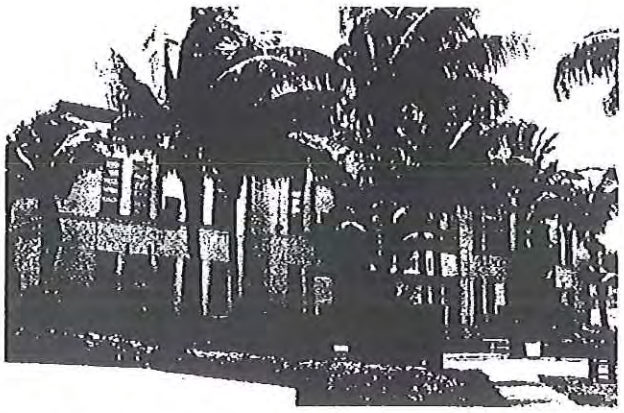
Notes:
1. The parcel outline information shown was obtained from the Palm Beach County Property Appraiser's GIS Department January 2013.
2. The City of Lake Worth Municipal Boundary shown was updated on May 14, 2012.
3. This map is for informational purposes and may not have been prepared for or be suitable for legal, engineering or surveying purposes. They do not represent an on-the-ground survey and represent only the approximate relative location of property boundaries. These products have been produced by the City of Lake Worth for the sole purpose of geographic reference. No warranty is made by the City of Lake Worth regarding specific accuracy or completeness.

1105 2nd Ave S Property

Working Together

City of Lake Worth
Where the Tropics Begin
www.lakeworth.org

ATTACHMENT 2 – EXCERPTS FROM “HISOTIRC PROPERTY SURVEY OF THE CITY OF LAKE WORTH PHASE II” (CITY SURVEY)



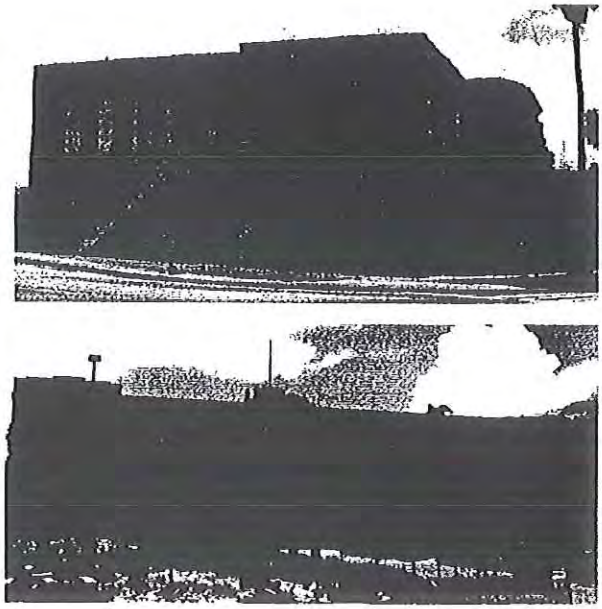


Figure 9a-c. These three buildings comprise the historic Lake Worth education campus developed west of the downtown area between 1922 and 1928. Clockwise from the left are the 1922 High School, the 1925 West Grade School, and the 1928 Junior High School.

Ryler Building in Orlando (1923), Ft. Pierce Elementary School (1924), Ketterlinus Junior High School in St. Augustine (1925), and DeLand City Hall (1926).[35]

Three elementary schools were built in Lake Worth during the period. The first of those, the West Grade School, was constructed in 1925 just east of the high school, at the intersection of Lake Worth Road and A Street. It was built in several phases in 1925. The first story designed by G. Sherman Childs and constructed by A. Forshay. The second story was designed by Harry Bennett of West Palm Beach and built by E. Pearson & Son. Bennett moved to West Palm Beach about 1920 and practiced architecture in Florida until 1934 when he relocated to Washington, D.C.[36]

Bennett also designed the Mission style North Ward and South Ward grade schools and Lake Worth Junior High. The North Ward and South Ward schools, located at 800 North K Street and 700 South K Street, respectively, were constructed in 1926. The junior high school was built in 1928. The contractors for the schools were the C.G. Warner Construction Company for the North Ward school, and Arnold Construction Company for the South Ward. Both companies maintained offices in West Palm Beach. Chalker & Lund Construction Company supervised construction of the junior high school. George Chalker and Philip Lund also operated their construction company in the Harvey Building in West Palm Beach. Among the company's significant projects in West Palm were St. Ann's Roman Catholic Parochial School (1925) and the Southridge Housing Project.[37]

Lake Worth's industrial area emerged south of Lake Avenue along H Street. In 1924 Thomas Jones financed the construction of a small furniture warehouse and showroom at 101 South H Street. The following year, he expanded the business, adding a $7,000 addition, representing an investment of some $8,500 for the Jones Furniture Company Building. About 1925 the Gulf Stream Electric Shop opened in a new building at 302 South H Street. Several building material warehouses and sales offices were also developed, including the W.A. Boutwell Building at 223 South H Street. In 1926 the H.M. Varney Company constructed a building material warehouse at 131 South H Street.[38]

The land boom fostered the expansion of Florida's railroads and by 1926 Florida claimed more railroad mileage than any other southern state. Some 650,000 people arrived in the state by trains during 1925, and the FEC regularly operated about forty trains between Jacksonville and Miami in a twenty-four hour period. To handle the massive demand for building materials in South Florida, the FEC added a second track to its mainline between Jacksonville and Miami in the mid 1920s. Lake Worth's combination passenger and freight depot, located south of Lake Avenue, was improved by

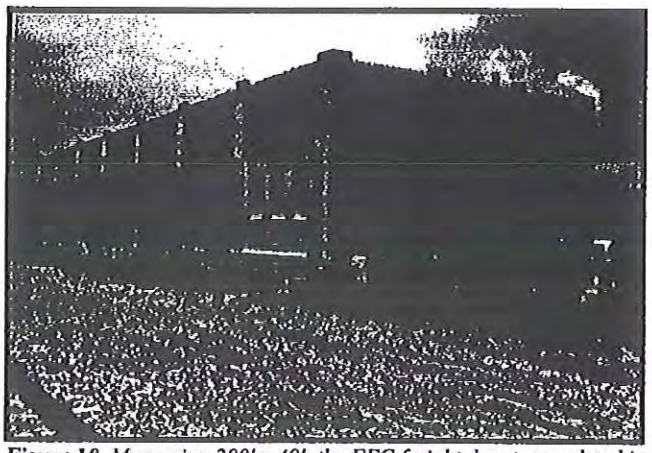
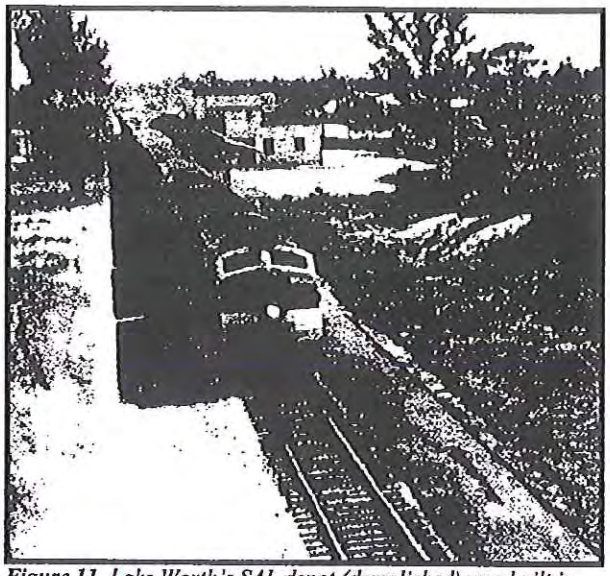


Figure 10. Measuring 200' x 40', the FEC freight depot, completed in 1926, cost nearly $100,000 to construct and could support fifteen cars along an adjacent siding, where the loading bays were located.

extending its loading platforms in 1923. Even so, the facility was not equipped to handle the massive freight traffic during the land boom. In October 1925 fourteen rail cars of building materials arrived at the Lake Worth depot. Despite attempts to redistribute the materials, the railroad complained that the depot was overwhelmed with unclaimed freight. In April 1926, the FEC announced the construction of a new freight facility south of the existing depot at 1105 2nd Avenue South.[39]

A second rail system, the Seaboard Air Line Railroad (SAL), made inroads along Florida's southeast coast during the 1920s. Operating some 4,000 miles of track throughout the southeast, the SAL opened its Florida Western & Northern division in 1926, with rails extending some 200 miles from its mainline at Coleman in central Florida, through Sebring, across the north shore of Lake Okeechobee, to Hialeah. In Lake Worth, the SAL tracks paralleled the FEC eight blocks to the west. By 1926 the SAL operated 1,713 miles of track in Florida, the only railroad to service both coasts of the state. It opened freight service into Lake Worth in November 1926, and passenger service began in early 1927.[40]



courtesy Robert Mann

Figure 11. Lake Worth's SAL depot (demolished) was built in 1926. Located west of A Street at end of 3rd Avenue North, it was designed by the prominent West Palm Beach architectural firm Harvey & Clarke, which prepared the plans for SAL depots along the railroad's Coleman-West Palm Beach route. Harvey & Clarke also designed SAL depots at Boynton Beach, Deerfield Beach, Delray Beach (NR 1986), Naples (NR 1974), and West Palm Beach (NR 1973). The depot is depicted here in 1951.

Florida's speculative land bubble began to deflate in 1925. Florida bank deposits had risen from $180 million to $875 million between 1922 and 1925, but began to decline in late 1925. In August the FEC announced an embargo on freight shipments to south Florida, where ports and rail terminals were clogged with unused building supplies. Bankers and businessmen throughout the nation complained about transfers of money to Florida. In 1926 forty Florida banks collapsed and investors began to lose faith in the state's economic future. Newspapers suggested fraud in land sales. Real estate assessments declined by $182 million between 1926 and 1928. Although Lake Worth ranked tenth in building permit values in Florida cities in late 1926, only $54,250 in new construction starts were recorded for January 1927. Two hurricanes devastated southeast Florida in 1926 and 1928, the latter of which entered the peninsula at Palm Beach with a portion of the eye passing over Lake Worth. Few buildings in Lake Worth escaped unharmed. The St. Andrews Episcopal Church and the Sacred Heart Catholic Church were among many buildings that sustained severe damage. Wind blew out windows, walls, and lifted roofing material from its place. Much of Lake Worth flooded and numerous buildings were swept from their foundations. The storm killed thousands of people in the Lake Okeechobee area and constituted a dramatic ending point for the boom era in Lake Worth.[41]

which designates a historic area within defined and contiguous boundaries; and the multiple property group, which combines scattered resources that have common links to history, pre-history, or architecture.

The listing of districts and individual properties in the National Register of Historic Places can play an important role in the social and economic development of the city. Recognition of the city's historic resources will strengthen the perception of Lake Worth's historical significance, promote tax incentives for owners of income-producing historic properties who rehabilitate their buildings, and give residents increased pride in their city.

Factors that influence the development of a National Register historic district include the ratio of historic buildings to non-historic buildings; the concentration of buildings in the district; the architectural integrity of the buildings; and the overall significance of the district to the development of the city. Although the National Register has not established a minimum ratio requirement for districts, the rule of thumb is that contributing resources should constitute at least 60 percent of the total number of elements. Buildings identified as contributing must have been erected during the period of historic significance for the district and maintain their original physical appearance to a high degree.

For districts containing fewer than fifty property owners, each owner will be notified by the Division of Historical Resources in Tallahassee that a nomination proposal includes their property. If more than 50 percent of the property owners object to the process, the proposal will not be forwarded to the Florida National Register Review Board for review.

Specific requirements apply to individual buildings proposed for listing that do not apply to districts. Those criteria include property owner consent, the preparation of site and floor plans, and obtaining interior photographs of the property. A property considered individually eligible for listing must possess an especially high degree of historic and/or architectural significance.

The City of Lake Worth should pursue the listing of worthy properties in the National Register of Historic Places. Several areas appear to possess sufficient integrity for listing as historic districts. The largest lies in the historic downtown commercial center and surrounding neighborhoods, which were surveyed during Phase I. The blocks around city hall, and east of Dixie Highway between 5th Avenue South and 6th Avenue South surveyed during this project, should be also be included in the district.

Two smaller districts can be formed in the College Park neighborhood. One lies along Federal Highway and the other between Dartmouth and Princeton Drives, east of Dixie Highway and west of Pennsylvania Drive. In the North Lake Worth neighborhood three small districts may be formed from resources located along the 600 and 700 blocks of 18th Avenue North, North Lakeside Drive, and North Palm Way.

It does not appear, however, that the neighborhood west of Dixie Highway surveyed during the present project is eligible for listing in the National Register. Resources there are either too severely modified for inclusion, or are too sparsely concentrated with substantial numbers of non-contributing buildings interrupting the historic pattern of development for the creation of a National Register district. Nevertheless, a small number of buildings, included in the list provided below, appear eligible for individual listing.

The following inventory enumerates by address buildings that appear to be eligible for individual listing in the National Register. It includes all areas surveyed in phase 2. Before initiating any National Register activity, city staff and property owners should consult with staff members of the National Register section of the Division of Historical Resources.

1105 2nd Avenue South

607 18th Avenue North
811 18th Avenue North

1 South B Street
110 South B Street
121 South B Street
125 South B Street

309 Cornell Drive

7 North Dixie Highway

2203 North Federal Highway
2301 North Federal Highway
2315 North Federal Highway
2407 North Federal Highway
2509 North Federal Highway
2417 North Federal Highway

210 Fordham Drive

913 Lake Avenue

1528 North Lakeside Drive
1602 North Lakeside Drive

1121 Lucerne Avenue

523 South M Street

534 South Palm Way

226 Princeton Drive
230 Princeton Drive

Additionally, Lake Worth High School, former Junior High School, and North and South Ward Grade Schools appear to be eligible for individual listing in the National Register. The Palm Beach County School Board should be encouraged to pursue National Register activity for its properties, and take advantage of grant monies for rehabilitation available through the Division of Historical Resources in Tallahassee.

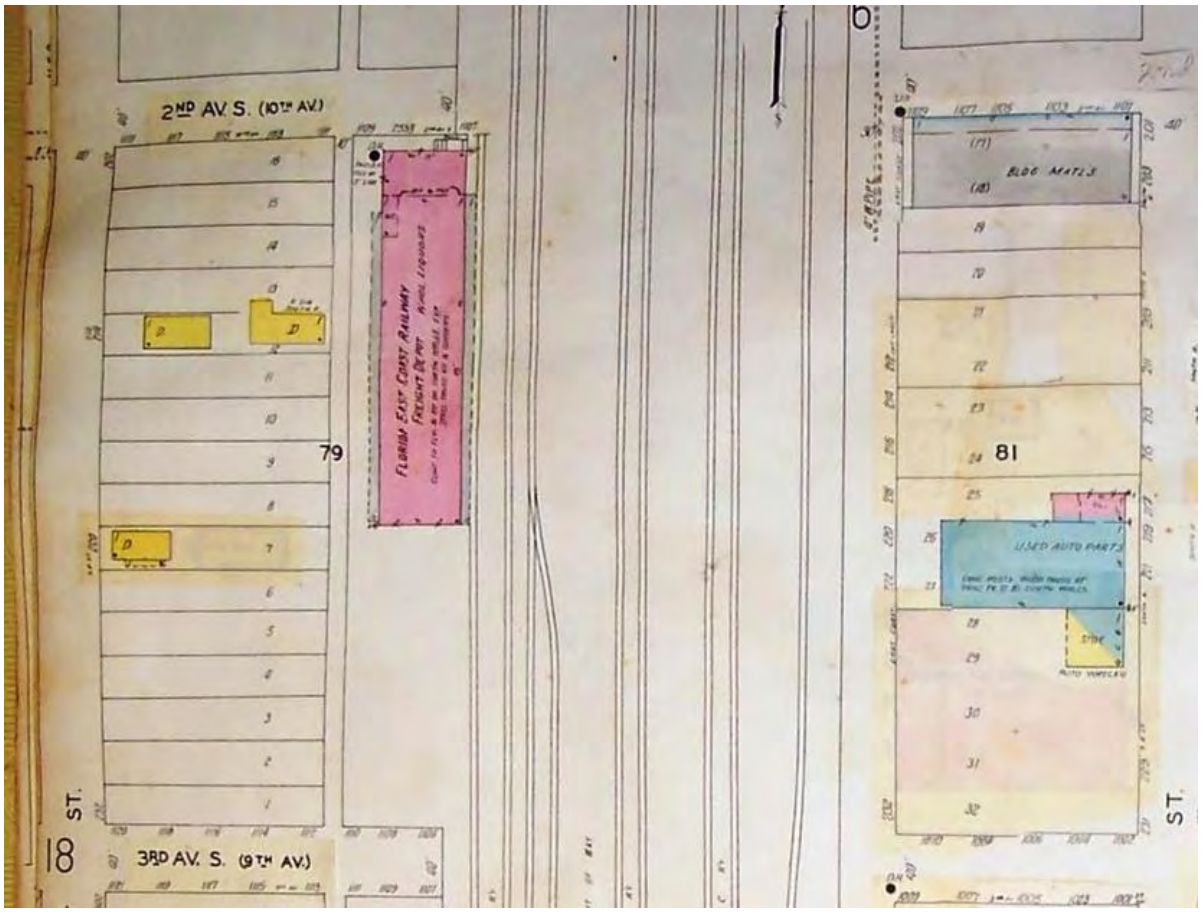
Local Recognition and Historic Preservation Ordinances

The City of Lake Worth has adopted a local preservation ordinance in Chapter 23, Article 27 of the City's Code of Ordinances. It is currently updating the ordinance to address citizen concerns, and is encouraged to provide protective measures for the historic areas and individual buildings enumerated above in the discussion regarding National Register listing.

Authorities must inform and persuade the public about its ultimate purpose and value. The historic preservation ordinance is not an arbitrary and capricious exercise of municipal authority, but a necessary

ATTACHMENT 3 – EXCERPTS FROM 1928-1949 SANBORN MAPS OF LAKE WORTH, PAGES 6 AND 8

PAGE 6, SHOWING THE COMBINED FEC PASSNEGER/FREIGHT DEPOT



PAGE 9, SHOWING THE “FLORIDA EAST COAST RAILWAY FREIGHT DEPOT” AT 1105 2ND AVENUE SOUTH

ATTACHMENT 4 – EXCERPT FROM *ON LAKE* WORTH, HISTORIC PHOTOGRAPH OF FEC PASSENGER DEPOT WITH FREIGHT DEPOT IN BACKGROUND

The second railroad depot was built to accommodate the increasing amount of passe
freight. An extensive expansion program was instituted to meet the demands of the
included laying a second track between Jacksonville and Miami, rebuilding many bridg
and office buildings, as well as improving freight and terminal facilities. When th
dropped out of the real estate market, the railway was forced into receivership.

ATTACHMENT 5 – PHOTOGRAPHS TAKEN 11/5/2013

North and East Elevations facing Southwest

North and East Elevations facing Southwest

East Elevation facing Southwest

East Elevation, detail of second bay on elevation looking north to south

North Elevation facing Southeast

West Elevation facing Southeast

South and West Elevations facing Northeast

Detail of West Elevation, Interface between original building and 2003 addition

West Elevation facing Northeast

South Elevation facing North

South and East Elevations facing Northwest

East Elevation facing Northwest

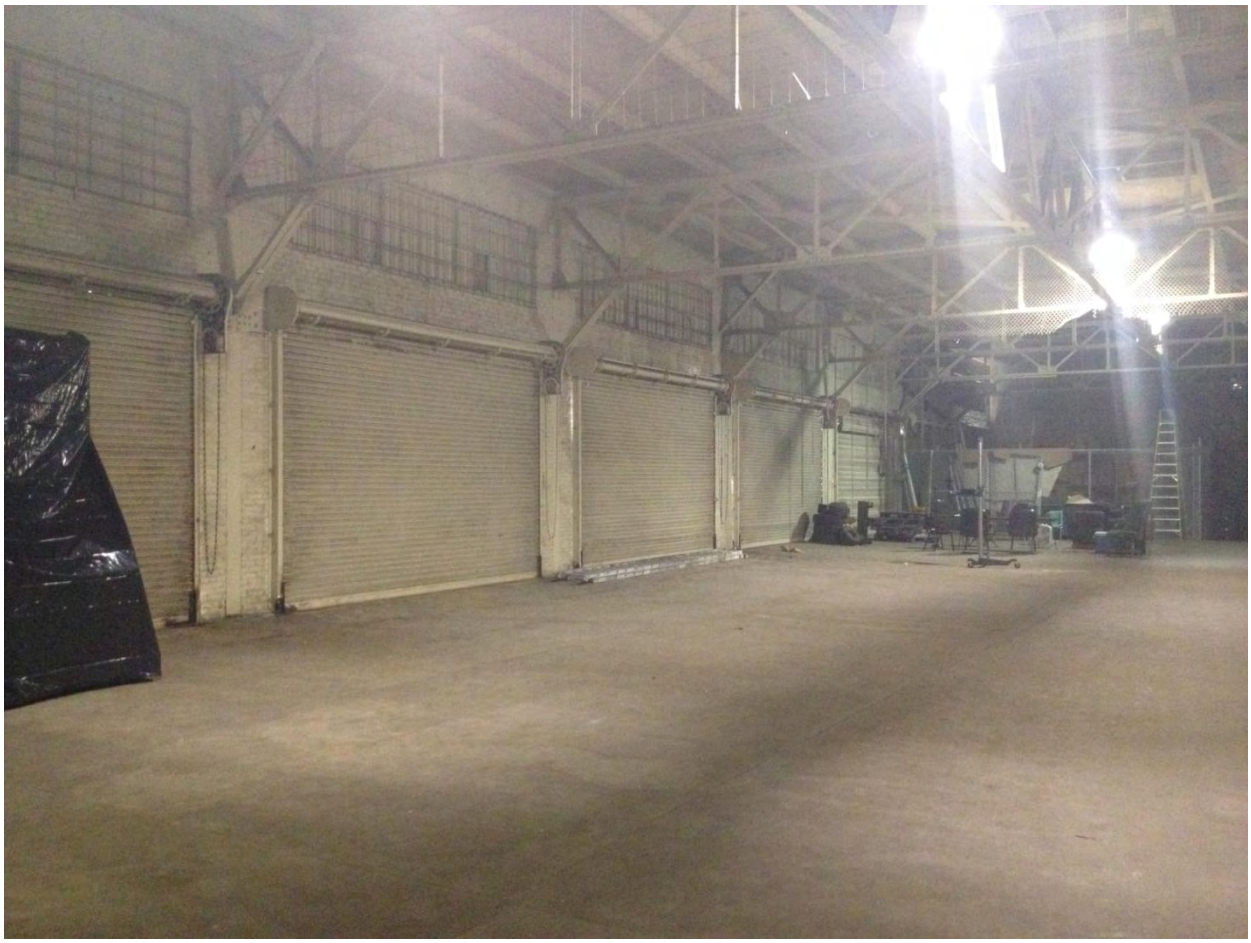
Interior Office from North Entrance facing South

Interior Office facing West

Interior Office facing West

Open Storage Area facing South

Open Storage Area, Detail of third bay on East Elevation facing East



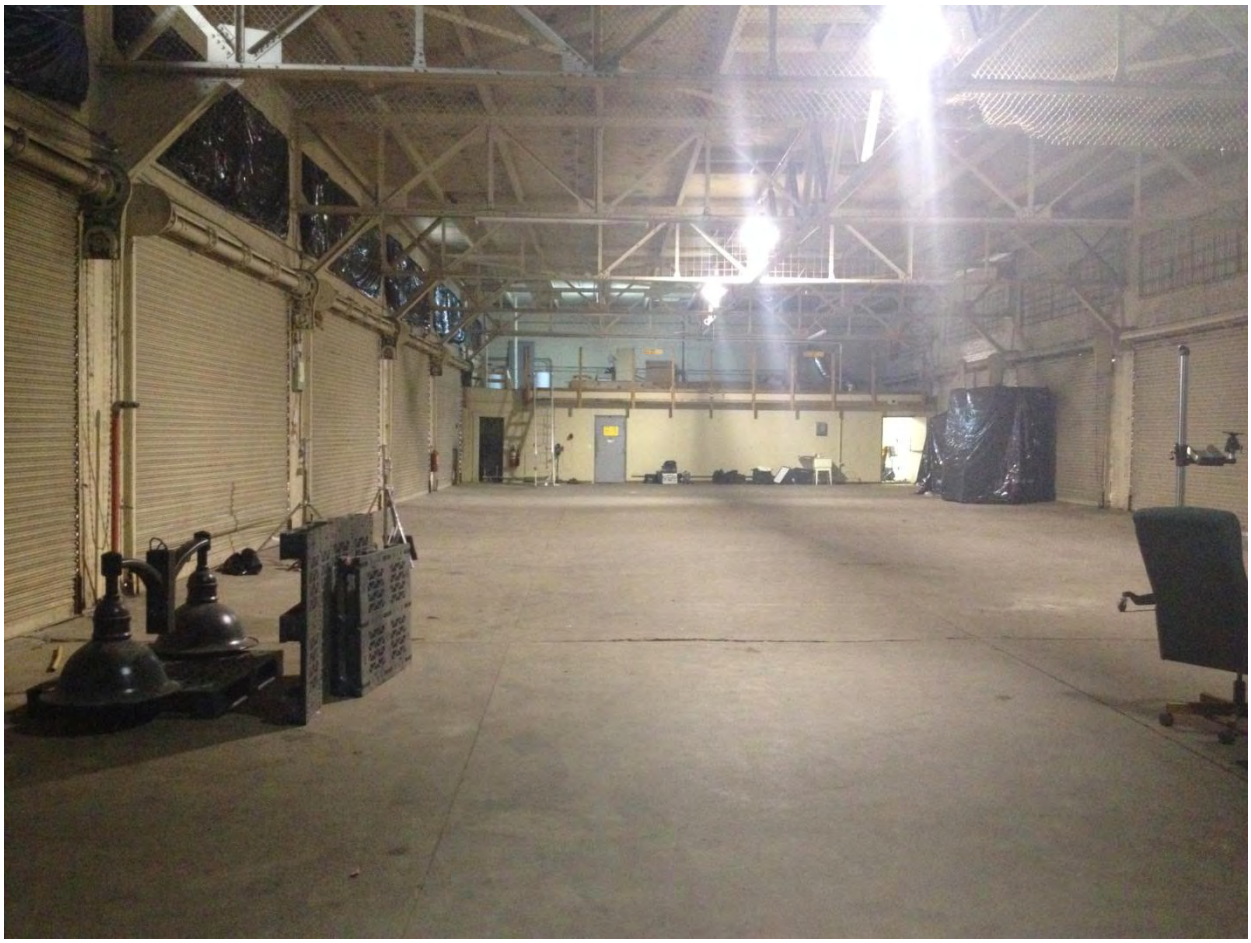
Interior East Elevation facing Southeast

Interior West Elevation facing Southwest

Open Storage Area, South End facing South

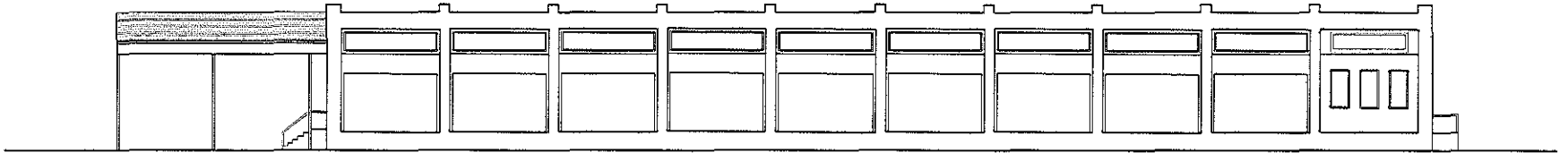
Detail, Roof Truss System facing South

Detail, Interior West Elevation facing Southwest



Open Storage Area, North End facing North showing loft area

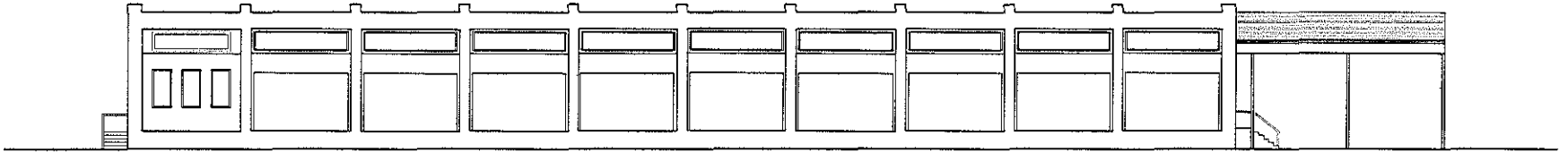
ATTACHMENT 6 – ARCHITECTURAL DRAWINGS PREPARED BY 2011 BAKER INTERNS



1105 2ND AVENUE SOUTH

EAST ELEVATION

SCALE: 1/16"=1'-0"



1105 2ND AVENUE SOUTH

WEST ELEVATION

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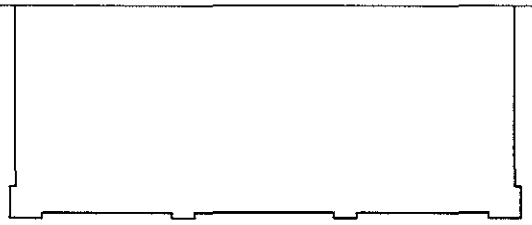

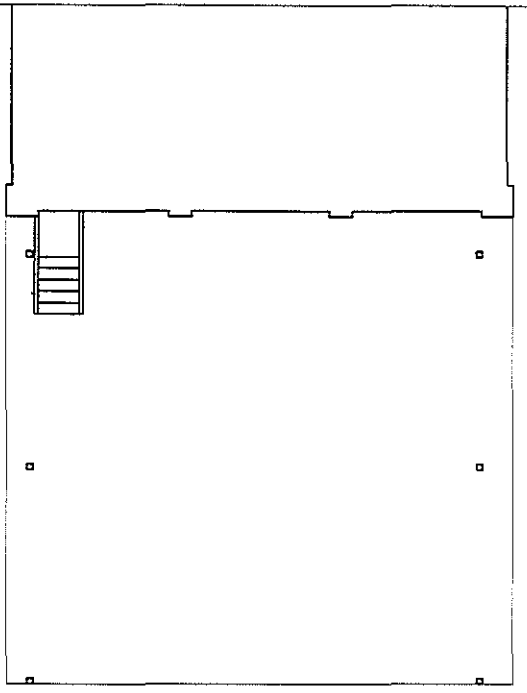

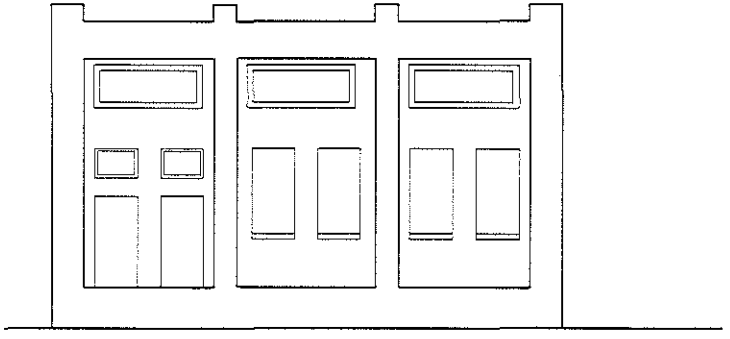

NORTH ELEVATION

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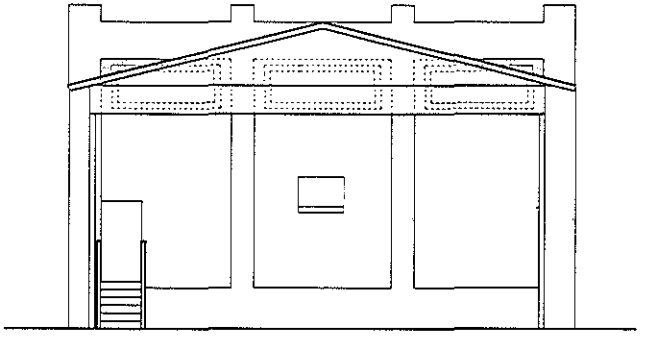

SOUTH ELEVATION

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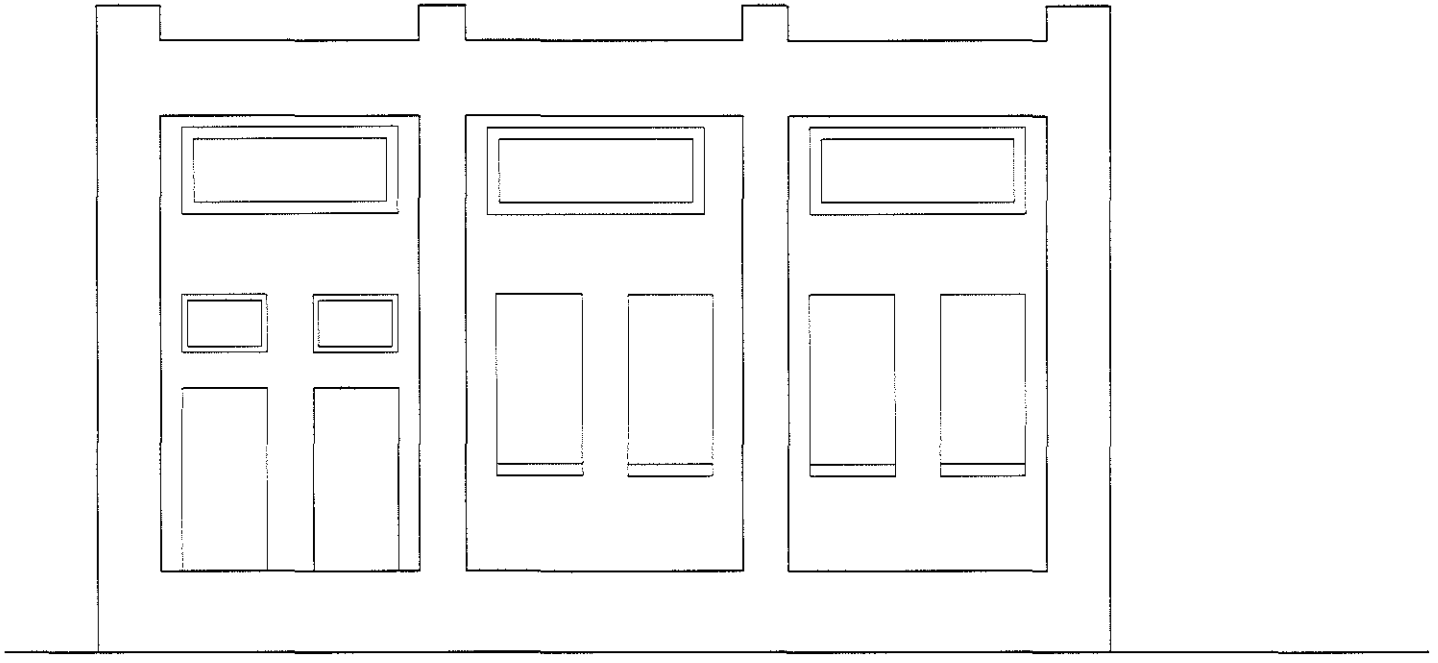

NORTH ELEVATION

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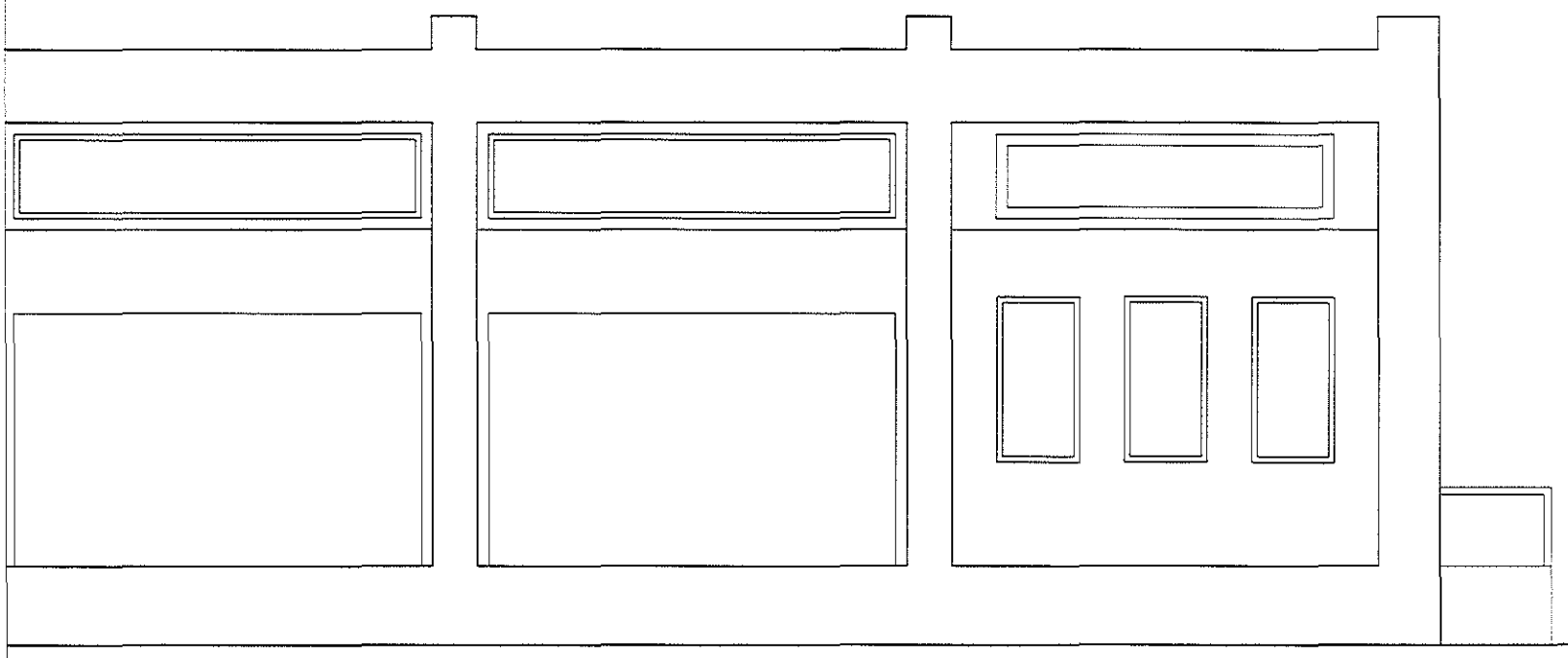

EAST ELEVATION

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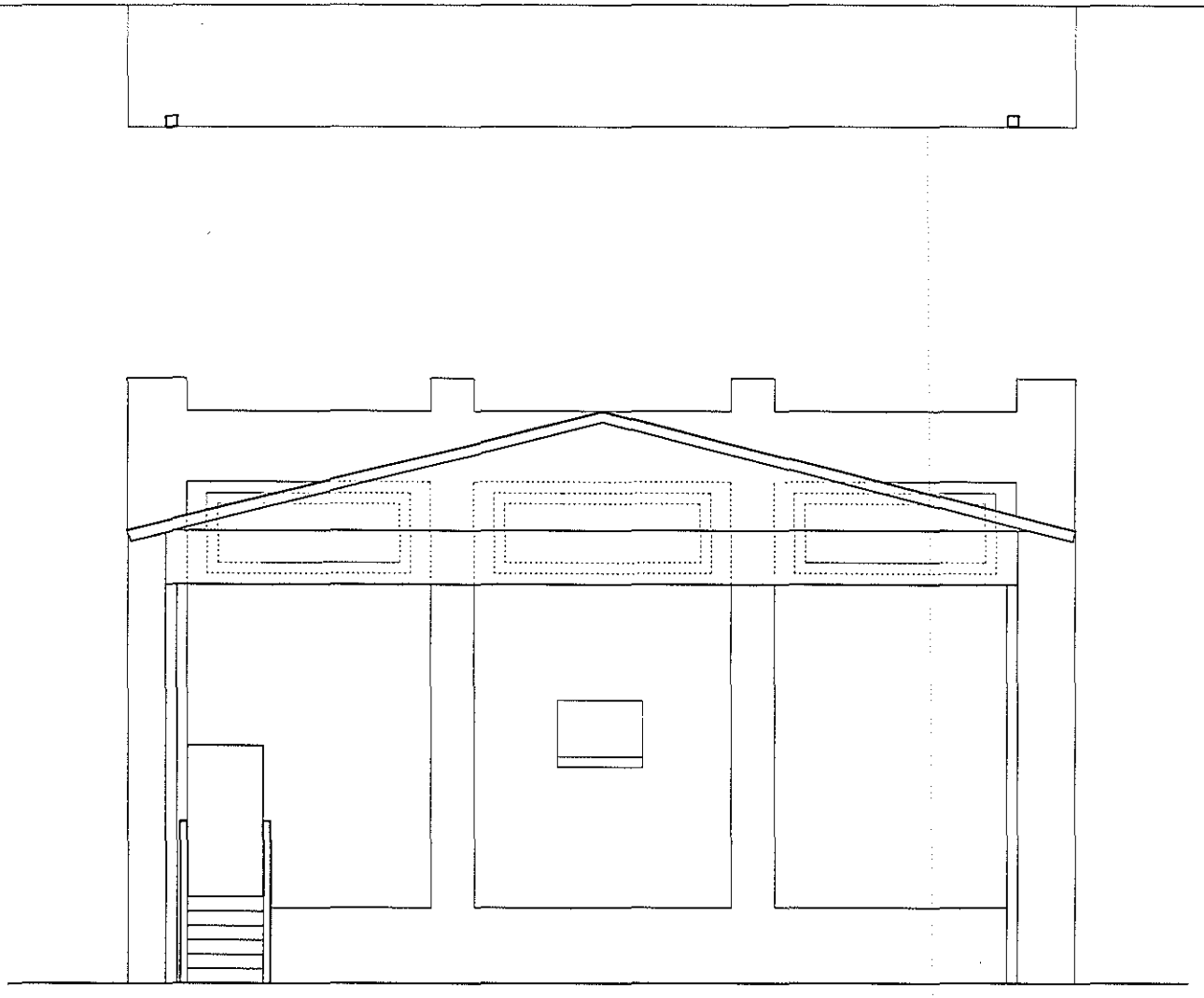

SOUTH ELEVATION

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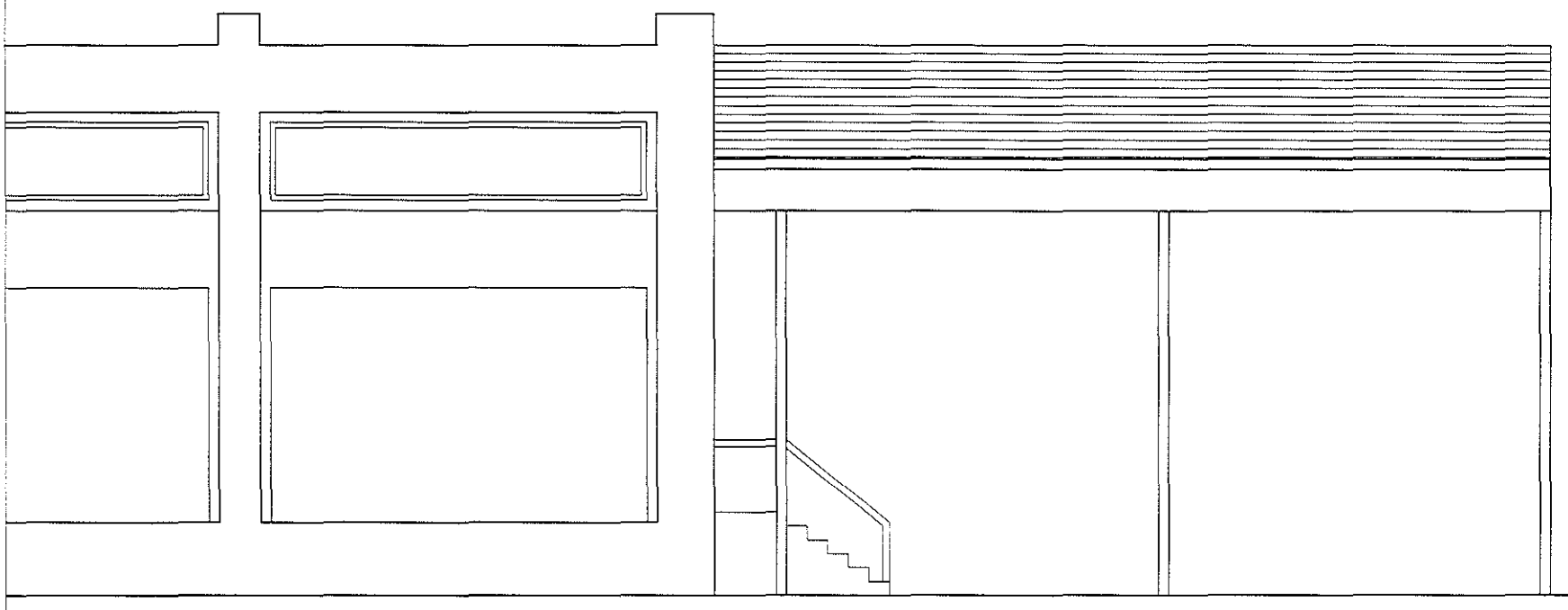

WEST ELEVATION

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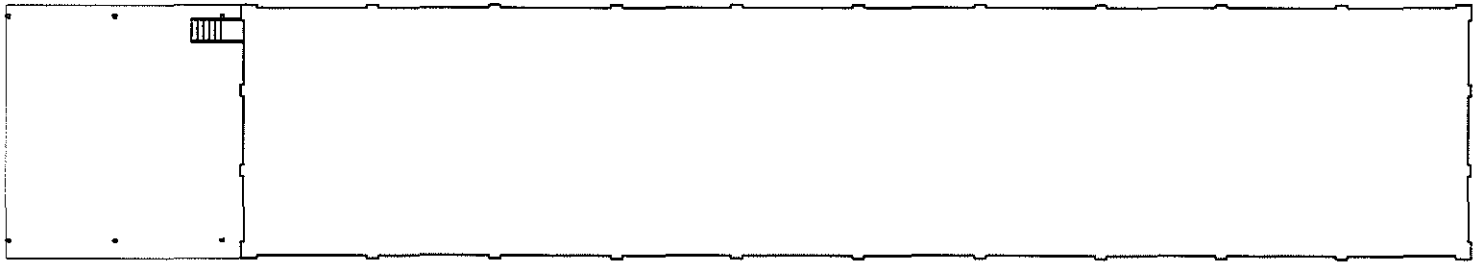

1105 2ND AVENUE SOUTH

FLOOR PLAN

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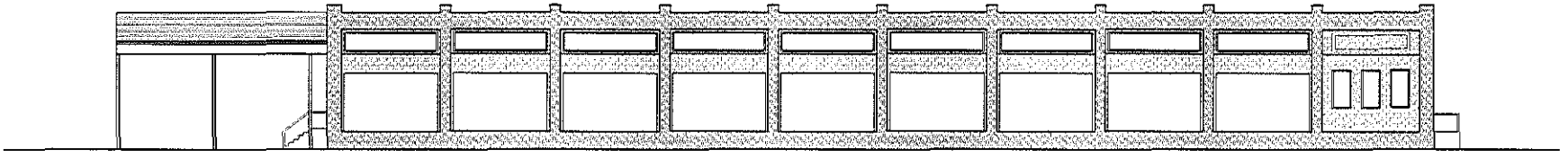
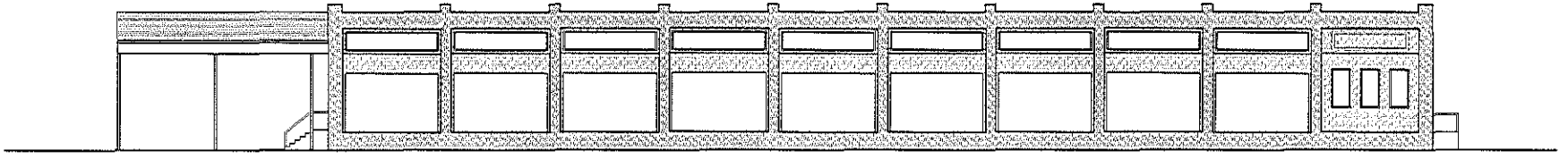


1105 2ND AVENUE SOUTH

EAST ELEVATION

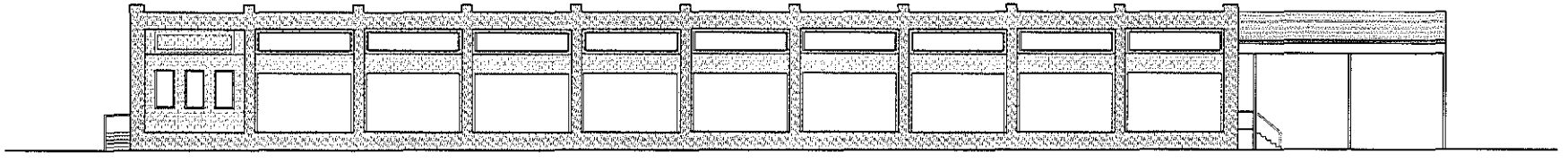
SCALE: 1/16"=1'-0"



1105 2ND AVENUE SOUTH

EAST ELEVATION

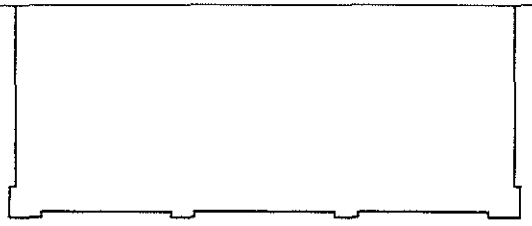
SCALE: 1/16"=1'-0"

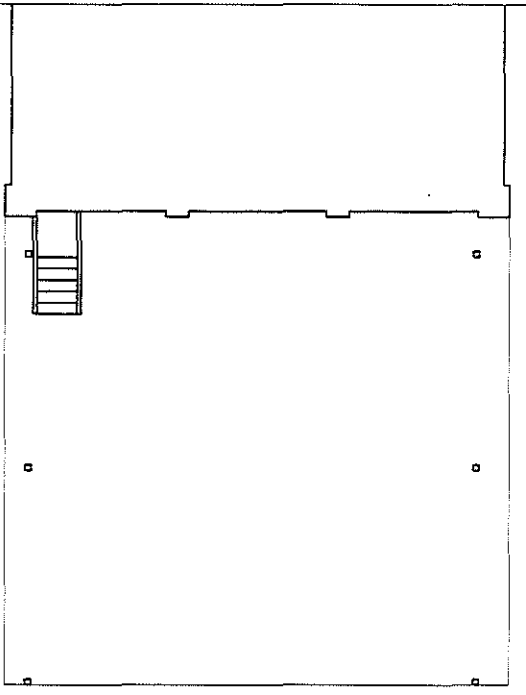


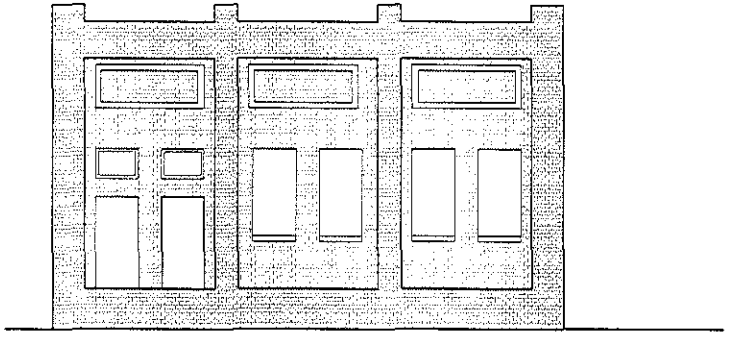
1105 2ND AVENUE SOUTH

WEST ELEVATION

SCALE: 1/16"=1'-0"

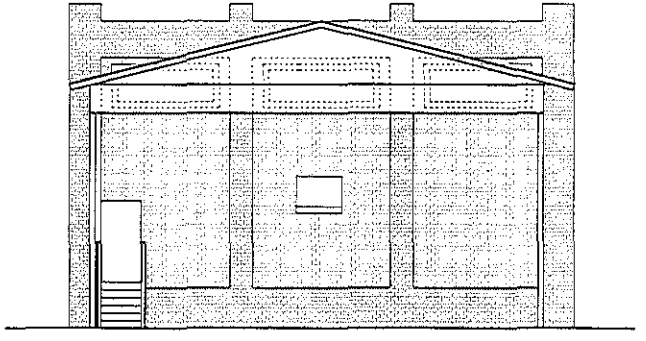






NORTH ELEVATION

SCALE: 1/16"=1'-0"



SOUTH ELEVATION

SCALE: 1/16"=1'-0"

1105
NOTICE
Meeting 11/13/2013
This property is being considered for a
Landmark Designation
HRPB Project # 13-00100228
For questions regarding this case
Please contact the City of Lake Worth
Planning Department: 586-1687

3. HRPB Project Number 13-00100228: Consideration of a request for local historic landmark designation for the subject property located at 1105 2nd Avenue South; PCN# 38-43-44-21-15-079-0170. 1:32:00

- Ms. Alterman: Advised the Board that the legal ad for the item was sufficient and that the general notice requirements for the meeting had been met; that the ad had correctly identified the property address and parcel control number, despite an error in the general description for the property, and thanked Ms. (Lynn) Anderson for pointing out an error in the general description for the property. She also advised that a corrected ad would be published before the request was heard by the Commission

a. Mr. Waters: Stated that the property had been donated to the City; that assistance from free interns through the Palm Beach historical society had originally done the research report, a few years previous but had never been followed through on; described the process by which the RFP was addressed; stated that the train depot was constructed right after the City's first hurricane; that there had been a freight embargo imposed by the federal government, which was followed by the market crash; and that the original structure was never used as a freight depot. He reviewed the specifics of the nomination form; and stated that the location was in the Artisinal Industrial District and potentially eligible for designation as a structure of National Historic significance

Ms. Christensen arrived at 7:45PM

- Ms. Christensen stated that she acknowledged the work done by consultants who had done the City's previous historic survey, and work done by Palm Beach County Historic Society interns in 2011 and 2012 which had been included in her research for the designation; and referenced the property identification on the historic Sanborn maps which had been included in backup materials for the meeting

b. Board Questions/Comments: Question as to how the open bay areas would be finished off; and discussion of the function of the area and the challenges to the property's accessibility

- Mr. Waters: Responded that the artists planned to leave the freight doors open to provide cross-ventilation, and make their work easily visible and interactive from the street; that there were sub-leases with a bronze casting group from New York; discussed the interest of the local Clay, Metal, Glass Studio; that accessibility to the facility location was currently being addressed; and that the RFP made clear that the building would be treated as an important historic structure

c. Public Comments:

- Dennis Dorsey, Atlantis: Introduced himself as a member of the Lake Worth Pioneer Association who had been involved in a number of books about Lake Worth; stated that there was an error in the meeting ad for the item. He requested re-advertisement of the legal ad since the City intended to apply for a federal grant.
  - Ms. Alterman: Stated that there was no (grant) money involved; that this was a request for local designation; that the part of the ad where the error had occurred was not a legal requirement; and stated that the purpose of a legal ad was to notify people that the item would be considered at a public meeting. She stated that, to repeat her earlier comment, the meeting ad correctly identified the property's PCN number and address, and that the ad was sufficient to meet the legal requirement for advertisement of the meeting. She stated that a second ad would be published in time to meet the advertising requirement for the City Commission meeting

d. **Action**: Motion made by Mr. Contin with a second by Mr. Robinson that, with respect to HRPB Project Number 13-00100228, the Board vote to recommend approval to the City Commission the designation of the property PCN 38-43-44-21-15-079-0170.

Vote: Ayes: Mr. Blackman; Mr. Robinson; Mr. Contin; and Mr. Zoellner.

Nays: None

Motion carried four (4) to zero (0)

This instrument prepared by and return to:
Barbara Alterman, Esquire
Law Offices of Glen J. Torcivia, P.A.
701 Northpoint Parkway, Suite 209
West Palm Beach, Florida 33407

NOTICE OF DESIGNATION AND HISTORIC PRESERVATION RESTRICTION

THIS NOTICE DESIGNATION AND HISTORIC PRESERVATION RESTRICTION is made by the CITY OF LAKE WORTH, FLORIDA, whose address is 7 North Dixie Highway, Lake Worth, Florida 33460.

RECITALS:

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

WHEREAS, this property was identified in the "Historic Property Survey of the City of Lake Worth Phase II" (Historic Property Associates, Inc. 1996) as a property of significance related to Lake Worth history; and

WHEREAS, the property is associated with early development of the City of Lake Worth, specifically its transportation and railway shipping history, which peaked in the Late 1920s; and

WHEREAS, the property is unique in the City of Lake Worth as it is the only known application of the Mission Revival Style to an industrial building that is still in existence today, and it retains a high degree of historic integrity; and

WHEREAS, the Historic Preservation Board, at its meeting of November 13, 2013, designated the property located at 1105 2nd Avenue South, Lake Worth, Florida, a Local Historic Landmark; and

WHEREAS, preservation of the Building in its current state will contribute to the preservation and maintenance of the scale and character of this important Local Historic Landmark of the City of Lake Worth for the enjoyment of the general public; and

WHEREAS, it is the policy of the City of Lake Worth as stated in its Comprehensive Plan of 2012 to provide for the protection, preservation or sensitive reuse of designated Local Historic Landmarks; and

WHEREAS, the City of Lake Worth recognizes the architectural, historic and cultural value (hereinafter "preservation values") and significance of the Building, and has the purpose of conserving and preserving the aforesaid preservation values and significance of the Building; and

WHEREAS, to that end, the City of Lake Worth desires a preservation restriction on the exterior of the Building on the Property; and

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

1. The foregoing recitals are hereby affirmed and incorporated herein.

2. The following described property in the City of Lake Worth, Florida has been designated as historic;

> Lot 17, Block 79, The Palm Beach Farms Co. Plat No. 2, The Township of Lucerne (now known as the City of Lake Worth), according to the plat thereof, as recorded in Plat Book 2, Pages 29 through 40, of the Public records of Palm Beach County, containing .6538 acres more or less.

3. Purpose. It is the Purpose of this Restriction to assure that the exterior architectural, historic, and cultural features of the Building will be retained and maintained substantially in their current condition for conservation and preservation purposes, and to prevent any change to the exterior of the Building that will significantly impair or interfere with the Building's preservation values.

4. Maintenance and Repair. Obligation to maintain shall require replacement, rebuilding, repair, and reconstruction of the Building whenever necessary in accordance with the policies and procedures of the City of Lake Worth Historic Resources Preservation Board, Florida Building Code, and with all Federal, State and local regulations.

5. Improvements. All improvements to the Property will conform to the City's formally adopted procedures for review and approval of such improvements. Improvements to the exterior shall not interfere with the historic character of the building.

6. Preservation Restriction. The City of Lake Worth does hereby voluntarily declare this preservation restriction (hereinafter "the Restriction") over the exterior of the Building on the Property.

7. Runs with the Land. The obligations imposed by this Restriction shall be deemed to run with the Property. This Restriction shall extend to and be binding upon the City of Lake Worth, their respective successors in interest, assigns and all persons hereafter.

8. Recording and Effective Date. The City of Lake Worth intends that the restrictions arising under this Restriction take effect on the day and year this instrument is recorded in the public records of the Palm Beach County.

9. Extinguishment. The City of Lake Worth hereby recognize that circumstances may arise that may make impossible the continued ownership or use of the Building in a manner consistent with the Purpose of this Restriction and necessitate extinguishment of the Restriction. Such circumstances may include, but are not limited to, partial or total destruction of the Building resulting from casualty.

10. Interpretation. This instrument shall be interpreted broadly to effect its Purpose and the transfer of rights and the restrictions on use herein contained.

11. Severability. It is the intent of the City of Lake Worth to bind themselves, their successors, heirs and assigns in perpetuity to each term of this instrument The invalidity or unenforceability of any provision of this instrument shall not affect the validity or enforceability of any other provision of this instrument or any ancillary or supplementary agreement relating to the subject matter thereof.

12. Amendment. The City of Lake Worth may amend this Restriction, provided that no amendment shall be made that will adversely affect the qualification of the Restriction. Any such amendment shall be consistent with the protection of the preservation values of the Building and the Purpose of this Restriction; shall not affect its perpetual duration and shall not adversely impact the overall architectural, historic, natural habitat, and open space values protected by this Restriction.

TO HAVE AND TO HOLD, the said Historic Preservation Restriction, unto the City of Lake worth and its successors, assigns, and heirs forever.

IN WITNESS WHEREOF, the City of Lake Worth, Florida has executed this Notice of designation and Historic Preservation Restriction signed this ___ day of _____, 2014.

LAKE WORTH CITY COMMISSION

By:_____
Pam Triolo, Mayor

Date:_____

Signed, sealed and delivered
In the presence of:

_____

Printed name:_____

_____

Printed name:_____

STATE OF FLORIDA
COUNTY OF PALM BEACH
The forgoing instrument was acknowledged before me on this _____ day of _____, 2014 by _____, who is personally known to me or who has produced _____ as identification.

_____
Notary Public, State of Florida

Printed name:_____

CITY OF LAKE WORTH

7 North Dixie Highway · Lake Worth, Florida 33460 · Phone: 561-586-1600· Fax: 561-586-1750

AGENDA DATE: January 7, 2014, Regular Meeting **DEPARTMENT:** Community Sustainability

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EXECUTIVE BRIEF

TITLE:
Ordinance No. 2014-04 - Second Reading and Public Hearing - regulate the hours of construction activities

SUMMARY:
The Ordinance amends Section 9-2.3 *Hours for Construction* to create construction activities regulations between 8 AM and 7 PM on weekdays and 8 AM to 6 PM on Saturday.

BACKGROUND AND JUSTIFICATION:
Currently, the City does not regulate hours of construction activities, which has resulted in constant complaints being made to staff from adjacent property owners and businesses. After reviewing the issue, staff has determined that, in order to preserve residents' and businesses health, safety, and welfare, there was a need to create regulations for hours of construction activities.

At the regular commission meeting of December 3, 2013, the Commission voted to have the construction hours amended to be 8 am to 7 pm on weekdays and 8 am to 6 pm on Saturday. The attached ordinance reflects that change in hours.

MOTION:
I move to approve/disapprove Ordinance No. 2014-04 on second reading.

ATTACHMENT(S):
Fiscal Impact Analysis – not applicable
Ordinance No. 2014-04

ORDINANCE NO. 2014-04 OF THE CITY COMMISSION OF LAKE WORTH, FLORIDA, AMENDING CHAPTER 9 BUILDING AND STRUCTURAL REGULATIONS, ARTICLE 1 IN GENERAL, OF THE CODE OF ORDINANCES; REGARDING HOURS FOR CONSTRUCTION; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

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

WHEREAS, the City adopted Chapter 9 of the code of ordinances on February 6, 1989; and

WHEREAS, as unforeseen circumstances arise, changes need to be made to address such issues; and

WHEREAS, the City Commission has reviewed the recommended amendments and has determined that they are in the best interest of the public health, safety and general welfare of the City and its residents.

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

Section 1. The foregoing recitals are hereby affirmed and incorporated herein.

Section 2. Chapter 9, Article 1, is amended as follows:

Section 9-2.3 Hours for Construction work

(a) *Definitions.* The following words, terms and phrases , when used in this section, shall have the meaning ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Construction work means work of a physical nature necessary to build, alter, and/or repair something that causes unreasonable noise as defined by section 15-24.1 of this Code.

Legal holiday is a public holiday established by law, during which work and government business is restricted.

(b) Hours for Construction work or other work resulting in excessive noise as defined by section 15-24.1 of this Code shall not begin until the hour of 8:00 a.m., and shall cease at the hour of 7:00 p.m. on weekdays. Construction shall not begin until the hour of 8:00 a.m., and shall cease at the hour of 6:00 p.m. on Saturday. All construction work is prohibited on Sunday and legal holidays.

(c) Exceptions to the hours for construction may be approved by the City Manager or City Building Official upon a showing of just cause.

(d) Hours for Construction work are subject to noise restrictions as set forth in section 15-24.6 of this Code.

Section 3. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared severable.

Section 4. All Ordinances or parts of Ordinances in conflict herein are hereby repealed.

Section 5. Section 1 of this Ordinance shall be codified.

Section 6. This Ordinance shall become effective ten (10) days after passage.

The passage of this Ordinance on first reading was moved by Commissioner Amoroso, seconded by Commissioner McVoy, and upon being put to a vote, the vote was as follows:

Mayor Pam Triolo	AYE
Vice Mayor Scott Maxwell	AYE
Commissioner Christopher McVoy	AYE
Commissioner Andy Amoroso	AYE
Commissioner John Szerdi	AYE

The Mayor, thereupon declared this Ordinance duly passed on first reading on the 3rd day of December, 2013.

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

Mayor Pam Triolo
Vice Mayor Scott Maxwell
Commissioner Christopher McVoy
Commissioner Andy Amoroso
Commissioner John Szerdi

The Mayor thereupon declared this Ordinance duly passed and enacted on the 7th day of January, 2014.

LAKE WORTH CITY COMMISSION

By:_____
Pam Triolo, Mayor

ATTEST:

_____
Pamela J. Lopez, City Clerk

CITY OF LAKE WORTH

7 North Dixie Highway · Lake Worth, Florida 33460 · Phone: 561-586-1600· Fax: 561-586-1750

AGENDA DATE: January 7, 2014, Regular Meeting **DEPARTMENT:** Community Sustainability

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EXECUTIVE BRIEF

TITLE:
Ordinance No. 2014-05 Second Reading and Public Hearing - establish restrictions, requirements and penalties for use of public rights of way, sidewalks, and properties

SUMMARY:
The Ordinance creates regulations for the use of the City's public right of ways, parking lots and other public properties. Specifically, the public right of ways and public properties adjacent to the City's major thoroughfares and in downtown areas are addressed.

BACKGROUND AND JUSTIFICATION:
During the past year, the City has experienced a number of instances where its public right of ways, including vehicular and pedestrian right of ways, and/or other public properties were utilized for commercial activities by unlicensed or unregulated vendors. The commercial activities of these vendors pose a threat to public safety and general welfare and have been identified as activities that the City does not wish to encourage or facilitate. By working in tandem with the Palm Beach County Sheriff's Office (PBSO) and the City Attorney's Office as well as the Department of Public Services, regulations and restrictions for the public right of ways and other public properties were developed. The regulations include application requirements for the conditioned use of pedestrian right of ways as well as penalties for use of the public right of ways and other public properties without City approval. The regulations and restrictions contained in this Ordinance are in addition to those regulations and restrictions applicable to sidewalk cafes; newsracks and newsstands; and, revocable permits authorized under Chapter 19 of the City's code of ordinances.

MOTION:
I move to approve/disapprove Ordinance No. 2014-05 on second reading

ATTACHMENT(S):
Fiscal Impact Analysis – not applicable
Ordinance No. 2014-05

ORDINANCE NO. 2014-05 OF THE CITY OF LAKE WORTH, FLORIDA, AMENDING CHAPTER 19, STREETS AND SIDEWALKS, TO ADD ARTICLE VI, ENTITLED “PEDESTRIAN AND VEHICULAR RIGHT OF WAYS AND OTHER PUBLIC PROPERTY”; PROVIDING FOR THE REGULATION OF BUSINESS IN PEDESTRIAN AND VEHICULAR RIGHT OF WAYS AND ON OTHER PUBLIC PROPERTY IN THE CITY; PROVIDING FOR THE CONDITIONED ISSUANCE OF PEDESTRIAN RIGHT OF WAY USE PERMITS; PROVIDING PROHIBITIONS FOR PEDDLERS AND BUSINESS CONDUCTED IN VEHICULAR RIGHT OF WAYS AND ON OTHER PUBLIC PROPERTY; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF LAWS IN CONFLICT; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE

* * *

WHEREAS, pedestrian and vehicular right of ways, public parking areas, and public property, especially in the downtown area and along the City’s major thoroughfares, create a unique interface of public and private property; and

WHEREAS, the City wishes to permit certain business uses in the pedestrian right of ways as an attraction to businesses while providing a comfortable, appealing and safe experience for patrons so long as a clear pedestrian path is maintained; and

WHEREAS, the City also wishes to prohibit or otherwise limit the transaction of business in the vehicular right of ways and on other public property in order to prevent and/or limit obstructions to citizens’ usage and safe passage of the same; and

WHEREAS, obstructions or encroachments of right of ways and public property can disrupt and interfere with public use of the right of ways and public property; and

WHEREAS, it is desirable to adopt policies and regulations which will enable the City to gain greater control over the disruption and interference with the public use of pedestrian and vehicular right of ways, and other public property located in the City in order to provide for and preserve the health, safety and well-being of the City's residents and visitors; and

WHEREAS, the City has determined that the adoption of the policies and regulations set forth herein will serve to protect the public health, safety and welfare and serves a valid public purpose.

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

Section 1. The foregoing "WHEREAS" clauses are true and correct and are hereby ratified and confirmed by the City Commission.

Section 2. Chapter 19 of the City's code of ordinances, entitled "Streets and Sidewalks", is hereby amended to add "Article VI", entitled "Pedestrian and Vehicular Right of Ways and Other Public Property" as follows:

ARTICLE VI. PEDESTRIAN AND VEHICULAR RIGHT OF WAYS AND OTHER PUBLIC PROPERTY

Sec. 19-73. Purpose.

The city considers pedestrian and vehicular right of ways, public parking areas, and other public property, especially in the downtown area and along the city's major thoroughfares, a unique interface of public and private property. The purpose of this article is to regulate conditions that contribute to obstructions of the vehicular right of ways, pedestrian right of ways, public parking lots or other public property located in the city.

Sec. 19-74. Intent.

The intent of this article is to allow certain business uses in the pedestrian right of ways as an attraction to businesses while providing a comfortable, appealing and safe experience for their patrons so long as a clear pedestrian path is maintained. In addition, it is the intent of this article to prohibit or otherwise limit the transaction of business in the vehicular right of ways, public parking lots and other public property located in the city.

Sec. 19-75. Applicability; public right of ways.

This article applies to pedestrian and vehicular right of ways that are a part of city-owned, maintained and/or leased property or public right of ways of other governmental entities within the city and public parking lots and other public property located in the city. This article does not apply to the use of the public right of ways for placement of utilities or similar uses by the city or normally requiring a permit, franchise or contract with the city; businesses permitted to have a sidewalk café under chapter 19, article IV of this code (as amended from time to time); uses in conjunction with a revocable permit issued under chapter 19, article III of this code (as amended from time to time); newsstands and/or newsracks permitted under chapter 19, article v of this code (as amended from time to time); or, the placement and/or maintenance of public service items.

Sec. 19-76 Definitions.

The following definitions shall apply in the interpretation of this article:

Downtown area shall be that area of the city bounded on the north by the northern boundary of the right of way known as Second Avenue North, on the west by the western boundary of the right of way known as A Street, on the south by the southern boundary of the right of way known as First Avenue South and on the east by the eastern boundary of the right of way known as Golfview Road.

Downtown area business shall be any business located in the defined downtown area.

Goods, wares and/or merchandise shall mean any business related item, object, article, or material including, but not be limited to, vegetables, produce, fruits, plants, flowers, food, drinks, frozen desserts, dairy products, cakes, pies, pastries and/or candy; tobacco or tobacco/smoking related products; leather goods, cosmetics, beauty aids, hair pieces, wearing apparel of any kind, accessories, jewelry, ornaments, art work, books, magazines or other similar items. "Goods, wares and/or merchandise" shall also include any item, object, article or material that draws attention to or otherwise complements any business or business related items including, but not limited to, decorative lighting, plants, benches, chairs, umbrellas, statues, flags and similar objects.

Major thoroughfares shall mean Federal Highway, Lake Avenue, Lucerne Avenue, Lake Worth Road, Tenth Avenue North and Sixth Avenue South in the City of Lake Worth.

Pedestrian shall mean a person traveling on foot or any person traveling in a wheelchair, either manually or mechanically propelled, or other low-powered, mechanically propelled vehicle designed specifically for use by a disabled person, or a baby or child in a carriage or stroller.

Pedestrian right of way shall mean the sidewalk or any portion of the public right of way designated and intended for pedestrian travel or movement that has been dedicated, deeded or leased to the public for public use and/or under the control of a public or governmental agency which is legally open to the public for use as a pedestrian pathway between the curb line and the legal building line of the abutting property.

Peddler shall mean any person, or agent of any business, traveling by foot, wagon, automotive vehicle, other vehicle, or any other type of conveyance, from place to place, from house to house, or from street to street, carrying, conveying, delivering or transporting goods, wares and/or merchandise, offering and exposing such items for sale, or making sales and delivering articles to purchasers; or who, without traveling from place to place, shall sell or offer the items for sale from a wagon, automotive vehicle, railroad car, or other vehicle or conveyance. Any person or agent of any business who solicits orders and, as a separate transaction, makes deliveries to purchasers as a part of a scheme or design to evade the provisions of this article shall be deemed a "peddler" subject to the provisions of this article. The term "peddler" shall also mean the same as the term "hawker" or the term "huckster." The term "peddler" shall also include transient merchant, itinerant merchant, itinerant vendor or any person, whether as owner, agent, consignee or employee, who engages in a temporary business of selling and delivering goods, wares and/or merchandise within the city, and who, in furtherance of such purpose, hires, leases, uses or occupies

any building, structure, motor vehicle, tent, railroad boxcar, boat, public room in any hotel, lodging house, apartment, shop or any street, alley or other place within the city for the exhibition and sale of such goods, wares and merchandise, either privately or at public auction. The term "peddler" shall not include any person who, while occupying a temporary location, does not sell from stock, but exhibits samples only for the purpose of securing orders for future delivery; provided that, such person shall not be relieved from complying with the provisions of this article merely by reason of associating temporarily with any local dealer, trader, merchant or auctioneer or by conducting such transient business in connection with, as a part of or in the name of any local dealer, trader, merchant or auctioneer.

Public parking lot shall mean an area, other than a street or alleyway, owned, leased, maintained or used by the city that is devoted to unenclosed parking spaces.

Public right of way obstruction shall mean any goods, wares and/or merchandise or stand(s) which in any way obstructs, in whole or in part, the free passage of pedestrians in the pedestrian right of ways or the passage of vehicles in the vehicular right of ways. "Public right of way obstruction" shall not include any good, wares and/or merchandise temporarily placed in the public right of way for delivery or pickup for the business adjacent to the applicable right of way; provided that said good, wares and/or merchandise do not remain in or on the public right of way for more than one hour.

Public service items shall be such items as trees, public benches, tree grates, tree wells, planters, light posts, utility posts, fire hydrants, waste containers, post office boxes, clocks, U.S. flags in designated positions, etc. owned or maintained by the city or a governmental agency.

Solicitors or canvassers shall mean any person who travels by foot, motor vehicle, other vehicle or other type of conveyance from place to place, house to house, or street to street, and is taking or attempting to take orders for the sale of goods or other property for future delivery, or for services to be furnished or performed in the future, whether or not such individual has, carries or exposes for sale a sample of the subject of such sale or whether he or she is collecting advance payments on such sales or not.

Stand or *stands* shall mean any stand, showcase, table, bench, rack, cart, stall or any other material, fixture, equipment or device whatever which is used for the purpose of displaying, exhibiting, carrying, transporting, storing or offering for sale, or the selling of any goods, wares and/or merchandise; and, shall include racks, stalls, or brackets for the parking, storage, or securing of bicycles or similar vehicles.

Vehicular right of way shall mean the portion street, alleyway or highway improved and intended for vehicle movement, including any parking lane or fire lane which has been dedicated, deeded or leased to the public for public use and under the control or maintenance of a public or governmental agency which is legally open to the public for vehicular traffic and/or parking.

Sec. 19-77. Downtown area and major thoroughfares requirements for public right of ways.

(a) Notwithstanding a permitted use of the pedestrian right of way under this article or code, each downtown area business or business along the major thoroughfares which is adjacent to a pedestrian right of way shall ensure a clear, uninterrupted and unobstructed pedestrian path of at least four (4) feet in width is provided at all times in the adjacent pedestrian right of way. In areas where public service items are present, the area of such public service items shall not be included in the calculation of the requisite four (4) feet.

(b) Notwithstanding a permitted use of the pedestrian right of way under this article or code, each downtown area business or business along the major thoroughfares which is adjacent to a pedestrian right of way shall ensure a clear, uninterrupted and unobstructed pedestrian path of at least nine (9) feet in height is provided at all times in the adjacent pedestrian right of way.

(c) Notwithstanding a permitted use of the pedestrian right of way under this article or code, all signs placed in the pedestrian right of way by a downtown area business or business along the major thoroughfares must conform to the requirements of this article, this code and all other laws for signs.

(d) Notwithstanding a permitted use of the public right of way under this article or code, each downtown area business or business along the major thoroughfares, which is directly or indirectly responsible for any public right of way obstruction, shall meet all applicable regulations pursuant to the Americans with Disabilities Act (hereinafter "ADA") with regards to any pedestrian or vehicular right of way, vehicular traffic or parking; or, the use of any crosswalk, wheelchair ramp, bus or taxi zone.

(e) Notwithstanding a permitted use of the public right of way under this article or code, each downtown area business or business along the major thoroughfares, which is directly or indirectly responsible for any public right of way obstruction, is hereby placed on notice that it is liable for any damages caused to any person and/or property which arises from or is related to the public right of way obstruction.

Sec. 19-78. Downtown area and major thoroughfares; permit required for use of the pedestrian right of way.

No downtown area business or business along the major thoroughfares shall use all or any portion of the pedestrian right of way without first obtaining a city pedestrian right of way use permit; a city special event permit; or, other city authorized permit. For purposes of this section, the term "use" means to construct, erect or place any stand(s), goods, ware and/or merchandise; in, on, over or under any pedestrian right of way.

Sec. 19-79. Downtown area or major thoroughfares pedestrian right of way use permits; generally.

(a) The public services director may issue a pedestrian right of way use permit for the construction or placement of any goods, wares or merchandise or stand(s) in, on, over or under the pedestrian right of way in the downtown area and along major thoroughfares.

(b) The applicant for a pedestrian right of way use permit shall be the lawful owner or occupant of the business that is adjacent to the pedestrian right of way in the downtown area or along the major thoroughfare.

(c) The use of the pedestrian right of way is restricted to the pedestrian right of way area abutting the boundary lines of the property on which the business owned and/or operated by the applicant is located.

(d) The goods, wares and/or merchandise permitted to be placed in, on or over the pedestrian right of way shall be limited to such goods, wares and/or merchandise sold by, reasonably related to, or which complement the adjacent business. The stand(s) permitted to be placed in, on, under or over the pedestrian right of way shall be limited to such stand(s) as is reasonably necessary for the display of the aforementioned goods, wares and/or merchandise.

Sec. 19-80. Downtown area and major thoroughfare pedestrian right of way use permit; application.

(a) *Application*. Application for a pedestrian right of way use permit shall be made to the city on the form prescribed and provided by the city. The application shall contain such information as required herein and as the public services director or his/her designee deems reasonably necessary to administer the requirements of this article including, but not limited to, a full and complete description of the use to be made of the pedestrian right of way and the duration of such proposed use.

(b) *Application fee.* An application fee shall be paid at the time of filing of the application with the city. The fee shall be in such amount as established by resolution of the city commission.

(c) *Submission Requirements*. Prior to submission, the applicant must have obtained all components of a City of Lake Worth Business License for its business in accordance with chapter 14 of this code and all other applicable licenses (as required from time to time).

(d) *Processing Requirements.* To be processed, an application for a pedestrian right of way use permit shall include, but not be limited to, the following information:

(1) Name and address of the applicant;

(2) The written consent of the property owner;

(3) Description of intended use; and,

(4) A plan for the maintenance and clearing of pedestrian right of way when the business is closed.

(e) *Insurance Requirements*. Before a pedestrian right of way use permit shall be issued, the applicant for the permit shall furnish proof of liability insurance coverage for such pedestrian right of way use, wherein the city and the Florida Department of Transportation ("FDOT") (as applicable) are named as "additional insureds", for liability limits of not less than two hundred thousand dollars ($200,000) for any one personal injury claim; three hundred thousand dollars ($300,000) for all personal injury claims in any one event; and, twenty-five thousand dollars ($25,000) for property damage. The city's risk manager may reduce or increase the amounts of insurance coverage required by this section as the public interest requires, or depending on the size and nature of the permitted use.

(f) *Indemnification Requirement*. Each business owner or occupant who obtains a pedestrian right of way use permit shall indemnify and hold the city and FDOT harmless from any and all claims for bodily injury and/or property damage that may arise out of or relate to the permitted use, including all legal costs and reasonable attorney fees associated therewith.

(g) *Approval.* The decision to issue the pedestrian right of way use permit shall be at the sole discretion of the public services director or designee in accordance with the requirements of this article and any lease(s) or other legal restrictions that may apply. The public services director or designee shall consult with all applicable city departments prior to issuance of the permit. This article shall in no way be construed as granting or creating a right in any applicant to obtain a pedestrian right of way use permit.

Sec. 19-81. Downtown area and major thoroughfare pedestrian right of way use permit requirements.

(a) If a pedestrian right of way use permit is issued, the property owner, owner of the business and/or business occupant (hereinafter jointly and

severally referred to as the "permittee") shall be responsible at all times for compliance with this article.

(b) All approved pedestrian right of way use permits are specifically conditioned on the permittee's continued maintenance of a safe passageway for all pedestrians in the pedestrian right of way.

(c) All pedestrian right of way use permits are also specifically conditioned on the permittee's continued compliance with the requirements of this article and code including, but not limited to, the following requirements:

(1) The permittee's use shall not block access to any utility lines.

(2) The permittee shall not place items within six (6) feet of bus stops, taxi stands, site triangles or other structures or areas as determined by the director of public services or designee.

(3) Where applicable, the permittee's use shall not be within six (6) feet of the pedestrian right of way beginning at the back of the curb projected as a straight line between city blocks. In areas where the six (6) foot setback does not provide sufficient clearance for ADA compliance, a minimum ADA clearance past the six (6) foot line must be maintained.

(4) The permittee shall not place goods, wares and/or merchandise or any stand(s) around the perimeter of a pedestrian right of way area which has the effect or appears to have the effect of forming a physical or visual barrier discouraging the use of the pedestrian right of way.

(5) The permittee shall not sell or offer for sale, directly or indirectly, homemade food items of any kind in the pedestrian right of way. All food products must be from approved sources such as an inspected and permitted food establishment that must be appropriately licensed.

(6) The permittee must not operate in violation of the city's noise control regulations, as required by section 15-24 through 15-24.10 of this code, and all other city ordinances (as amended from time to time).

(7) The permittee must not operate in any manner that constitutes a public nuisance.

(8) The permittee must not conduct its business in any parking space(s) counted as required parking for planning approval purposes.

(9) The permittee shall not place anything in or on any public service item.

(10) No sales transactions shall occur in or on the pedestrian right of way.

(11) The permittee shall continuously supervise the pedestrian right of way to ensure that compliance with this article and the code is maintained.

(12) All of permittee's goods, wares, and/or merchandise and/or stands used in, on, over or under the pedestrian right of way must be removed during those hours that the business is closed. If the business is lawfully open before sunrise or after sunset, all of permittee's goods, wares, and/or merchandise and/or stands used in, on, over or under the pedestrian right of way must be lighted and readily visible to passing pedestrians.

(13) The permittee shall immediately remove all goods, wares and/or merchandise and/or any stand(s) upon the request of the public services director or designee, the city's law enforcement agency or city fire personnel, who has determined that a clear pedestrian right of way is needed or such removal is required for use of travel or transportation, street cleaning or maintenance, street utility work, a crowd control, city event or parade, or an emergency.

(14) Such other requirements as may be reasonably imposed by the city to protect those pedestrians who are lawfully using the pedestrian right of way.

Sec. 19-82. Term of pedestrian right of way use permit; limitations.

(a) Pedestrian right of way use permits may be issued for varying terms, as set forth by resolution of the city commission, and as generally set forth below:

(1) Pedestrian Right of Way Use Permit – Long-Term. A pedestrian right of way use permit may be issued for the operation of a business in the downtown area or on a major thoroughfare for an indefinite period of time in conformance with requirements of this article and any reasonable conditions placed on the permit by the city.

(2) Pedestrian Right of Way Use Permit – Short-Term. A pedestrian right of way use permit may be issued for the operation of a business in the downtown area or on a major thoroughfare for

uses of a temporary nature not to exceed 30 days. A short-term pedestrian right of way use permit may be renewed up to a maximum of three times (not to exceed a consecutive period of 120 days).

(b) All permits issued pursuant to article shall be considered revocable, subject to suspension or revocation for violation of this article or this code or in the event of an emergency to protect the public health, safety or welfare. Any permittee who is granted a permit understands and agrees that the city's right to suspend or revoke the permit as stated herein is absolute and shall not result in any inequity to the person because of any authorized improvement(s) made by said permittee to the pedestrian right of way or any other expense incurred or paid by the permittee for the use of the pedestrian right of way. Accordingly, the use granted by a pedestrian right of way use permit shall not be construed as an irrevocable right or license or a right or license coupled with an interest because of said improvement(s) or expenses of the permittee.

(c) No permit issued under this section shall be transferrable.

(d) When a pedestrian right of way use permit is suspended, revoked or upon the expiration of a pedestrian right of way use permit, all use(s) of the pedestrian right of way authorized under this article must immediately cease and the permittee shall be responsible for returning the pedestrian right of way to its prior condition including any and all repairs due to the permittee's use of the pedestrian right of way.

Sec. 19-83. Conducting business within the pedestrian and vehicular right of ways prohibited.

It is unlawful for any person to conduct, solicit or attempt to solicit business or business, or exhibit for sale, offer for sale, deliver, or sell any service, goods, ware and/or merchandise from, in, and/or on any vehicular right of way, pedestrian right of way, public parking lot, or other public property in the city unless:

(a) Such person is operating pursuant to a current franchise or concession agreement with the city for such sales at such location;

(b) Such person received specific approval for such sales from the proper governmental authority if the right of way is owned by a government agency other than the city;

(c) Such person is operating a transportation service otherwise permitted by this code or state law;

(d) Such person is otherwise expressly permitted on public right of ways by this article or code and all conditions, permits, licenses, and regulations applicable thereto have been met or obtained;

(e) Such person falls within a recognized, constitutionally guaranteed exercise of the freedom of religion, speech, or the press; or,

(f) Such sales are in conjunction with a city approved special event permit issued to such person at such location.

Sec. 19-84. Hindering use of vehicular right of ways prohibited; nuisance.

(a) It is unlawful for any person or persons to willfully obstruct the free, convenient, and normal use of any vehicular right of way by impeding, hindering, stifling, retarding, or restraining traffic or passage thereon, or by standing or approaching motor vehicles thereon, or by endangering the safe movement of vehicles traveling thereon.

(b) In addition to the conditions above described, the city expressly declares that creation or maintenance of conditions affecting directly or indirectly the safe or free use and enjoyment of vehicular right of ways by the public to be a nuisance and violation of this article.

Sec. 19-85. Stopping, standing or parking on public right of way for certain purposes prohibited.

No person shall stand or park a vehicle:

(a) Upon any public right of way, public parking lot or any other public property for the purpose and intent of displaying such vehicle thereon for sale, hire, or rental;

(b) Upon any public right of way, public parking lot or any other public property for the purpose of painting, cleaning, waxing, greasing or repairing such vehicle, except repairs necessitated by an emergency;

(c) Upon any public right of way, public parking lot or any other public property for the purpose of displaying advertising; or,

(d) Upon any vehicular right of way, public parking lot or any other public property for the purpose of selling food, beverages or goods, ware and/or merchandise from his/her motor vehicle, except where allowed in accordance with a duly established city mobile food vendor court and with all city, county and/or state required licenses and/or permits.

Sec. 19-86. Driving on pedestrian right of way in downtown area and major thoroughfares prohibited.

(a) No person shall drive a motor vehicle upon or within any pedestrian right of way in the downtown area or along the major thoroughfares except to cross it upon a permanent or duly authorized temporary driveway.

(b) This prohibition shall not apply to the necessary operation of a city vehicle for city purposes and/or authorized city, county or state emergency vehicles; provided that such operation shall otherwise be in compliance with all applicable laws.

Sec. 19-87. Peddlers, solicitors or canvassers prohibited in downtown area and major thoroughfares; exceptions.

(a) No peddler shall conduct or engage in any business activities in the downtown area or along the major thoroughfares.

(b) No solicitors or canvassers shall conduct or engage in any soliciting or canvassing activities in the downtown area or along the major thoroughfares.

(c) This section shall not apply to:

(1) Authorized peddlers at the city green market or arts market;

(2) Authorized peddlers acting as concessionaries at a special event with the express written approval of the city or special event organizers/sponsors;

(3) Authorized peddlers conducting business pursuant to a franchise, permit or other written agreement with the city; or,

(4) Solicitors or canvassers who solicit or canvass exclusively for a non-profit or charitable cause in the downtown area or along major thoroughfares or are otherwise authorized by law in such areas.

Sec. 19-88. Penalties; enforcement; suspension and revocation.

(a) A violation of this article shall be subject to enforcement and penalties provided in section 1-6 of this code. Each violation shall be evidenced by a separate written citation. Each day of violation shall be deemed a separate offense. In addition, the city may utilize its code compliance procedures in order to enforce a violation of this article.

(b) In addition to enforcement and penalties provided in subsection (a) above, the city may remove any goods, wares and/or merchandise or

stand(s) placed in the pedestrian right of way and/or vehicular right of way in violation of this article; provided that:

(1) The violator or adjacent business owner fails or refuses to comply with this article after 24 hour written notice personally served on the violator or adjacent business owner, or posted at the adjacent business, which specifies the nature of the violation;

(2) The permittee has been notified of the city's intent to suspend or revoke his/her permit; the time to appeal said notice has expired; and, the permittee has failed to remove all goods, wares and/or merchandise or stand(s) placed in the pedestrian right of way;

(3) The violator or adjacent business owner fails or refuses to immediately comply with a demand to vacate or remove any goods, wares and/or merchandise or stand(s) placed in the pedestrian right of way and/or vehicular right of way, by the city, its law enforcement agency or its fire personnel in response to an emergency to protect the public health, safety or welfare or public property.

The city shall promptly notify any such violator or adjacent business owner whose property is removed pursuant to this section as to the location where the removed property can be reclaimed. The violator or adjacent business owner shall be entitled to promptly reclaim such property at reasonable times and upon payment of the costs associated with the city's removal.

(c) In addition to enforcement and penalties provided in subsections (a) and (b) of this section, any pedestrian right of way use permit issued under this article may be suspended or revoked by the city for:

(1) a violation of this article or the code;

(2) the suspension or revocation of the permittee's Business License;

(3) for fraud, misrepresentation or knowingly false statement contained in the permit application;

(4) for fraud, misrepresentation or knowingly false statement in the course of carrying on the business or otherwise using the pedestrian right of way pursuant to this article or code; or

(5) for otherwise conducting business in such a manner as to create a public nuisance, cause a breach of the peace or constitute a danger to the public health, safety, welfare, or morals or interfering with the rights of abutting property owners.

Any permittee who has received written notice from the city of its intent to suspend or revoke its pedestrian right of way use permit or the city's denial of an application for a pedestrian right of way use permit, may within five (5) business days of the receipt of such notice of revocation or suspension, appeal the notice of revocation or suspension in writing to the public services director or designee. Within a reasonable amount of time of receipt of the written appeal, the public services director or designee, shall grant or deny the appeal and notify the permittee in writing. If the appeal is denied, the permittee may make a final written appeal to the city manager within five (5) business days of the receipt of the public services director's or designee's written denial. The decision of the city manager shall be final and shall only be subject to review by writ of certiorari to the circuit court.

Section 3. If any provision of this Ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

Section 4. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 5. Section 2 of this Ordinance shall be codified.

Section 6. This Ordinance shall take effect ten (10) days after passage.

The passage of this Ordinance on first reading was moved by Commissioner Szerdi, seconded by Commissioner McVoy, and upon being put to a vote, the vote was as follows:

Mayor Pam Triolo	AYE
Vice Mayor Scott Maxwell	AYE
Commissioner Christopher McVoy	NAY
Commissioner Andy Amoroso	AYE
Commissioner John Szerdi	AYE

The Mayor thereupon declared this Ordinance duly passed on first reading on the 3rd day of December, 2013.

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

Mayor Pam Triolo
Vice Mayor Scott Maxwell
Commissioner Christopher McVoy
Commissioner Andy Amoroso
Commissioner John Szerdi

The Mayor thereupon declared this Ordinance duly passed and enacted on the 7th day of January, 2014.

LAKE WORTH CITY COMMISSION

By:_____
Pam Triolo, Mayor

ATTEST:

_____
Pamela J. Lopez, City Clerk

CITY OF LAKE WORTH

7 North Dixie Highway · Lake Worth, Florida 33460 · Phone: 561-586-1600· Fax: 561-586-1750

AGENDA DATE: January 7, 2014, Regular Meeting **DEPARTMENT:** Community Sustainability

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EXECUTIVE BRIEF

TITLE:
Ordinance No. 2014-06 - Second Reading and Public Hearing - amend Business Tax Receipts and Business Regulations by creating a two-part City Business License

SUMMARY:
The Ordinance will significantly update the Business Tax Receipts and Use & Occupancy Certificates programs to create a unified Lake Worth Business License that includes both activities on one license. The Ordinance will also clarify the application process, review procedures, enforcement, penalties, and revocation of licenses.

BACKGROUND AND JUSTIFICATION:
In September of 2011, the City drastically overhauled its Use & Occupancy Program affording an annual inspection process for commercial properties and a biennial inspection for residential rentals. Implementation over the past two (2) years has not been as successful as originally desired and there are many issues being raised as to what is the difference between a Business Tax Receipt, which is a tax, and the Use & Occupancy, which is vehicle to document land use and establish appropriate business operations in the City. During this same period, the Palm Beach Sheriff's Office (PBSO) and the City Attorney's Office have been collaborating on how to address inappropriate business operations, illegal rentals, and nuisance activities. The ordinance provided here addresses all of these issues raised including a mechanism to revoke a business license making it illegal for the business entity to continue operations.

Furthermore, the changes creating the Lake Worth Business License will combine the notices, renewals, applications, and receipts for both the City's Business Tax Receipts and Use & Occupancy Certificates. Combining them will afford a single receipt to be displayed in places of business and a single renewal mailer, saving the City at least $5,000 annually in printing and mailing costs. The combination also will ensure that the City collects both the tax and the certificate fee, which should generate increased revenues and improve compliance with the programs. At this time the additional revenue to be generated is difficult to estimate but Staff will come back to the Commission during the Fiscal Year 2015 budget cycle with an update on the generated revenue stream.

Following approval on First Reading, the City Attorney's Office and Staff reviewed the ordinance and made a few grammatical edits and one (1) addition for clarification. Those changes are shown at lines 838-881.

MOTION:
I move to approve/disapprove amended Ordinance No. 2014-06 on second reading

ATTACHMENT(S):
Fiscal Impact Analysis – not applicable
Ordinance No. 2014-06

ORDINANCE NO. 2014-06 OF THE CITY COMMISSION OF THE CITY OF LAKE WORTH, FLORIDA, AMENDING THE CODE OF ORDINANCES, AT CHAPTER 14, BUSINESS TAX RECEIPTS AND BUSINESS REGULATIONS, BY CREATING A TWO-PART CITY OF LAKE WORTH BUSINESS LICENSE CONSISTING OF A LOCAL BUSINESS TAX RECEIPT AND USE AND OCCUPANCY CERTIFICATE; BY RENAMING ARTICLE I FROM "IN GENERAL" TO "LOCAL BUSINESS TAX RECEIPT"; BY RENAMING ARTICLE II FROM "RESERVED" TO "USE AND OCCUPANCY CERTIFICATES"; BY AMENDING THE PROVISIONS REGARDING THE ISSUANCE OF A LOCAL BUSINESS TAX RECEIPT AND A USE AND OCCUPANCY CERTIFICATE; PROVIDING A SAVINGS CLAUSE, A CONFLICTS CLAUSE, A CODIFICATION CLAUSE, AND A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

****

WHEREAS, pursuant to the home rule powers of the City of Lake Worth ("City"), the City has the authority to exercise its police powers and regulatory powers to protect the health, safety and welfare of its citizens and visitors; and

WHEREAS, the City desires to create a two (2) part city business license called a "City of Lake Worth Business License" which consists of a local business tax receipt and use and occupancy certificate for all businesses that directly or indirectly conduct any business in the City limits; and

WHEREAS, the City's code of ordinances, Chapter 14, entitled "Business Tax Receipts and Business Regulations", Article I, entitled "In General", currently combines the requirements for a local business tax receipt and a use and occupancy certificate along with other general regulations for certain businesses in the City; and

WHEREAS, the City desires to physically separate the requirements for a local business tax receipt and a use and occupancy certificate in order to better clarify the requirements of each and necessity of each for a City of Lake Worth Business License; and

WHEREAS, in addition to separating the business tax receipt and the use and occupancy requirements, the City desires to amend the requirements of each in order to clarify them and to establish more effective enforcement procedures; and

WHEREAS, the amendments herein do not change the existing local business tax schedule, which is governed by Florida Statutes; however, the amendments herein will re-number the existing local business tax schedule from Section 14-20 to Section 14-24; and

WHEREAS, owners of real property who permit businesses to operate from their property without a valid local business tax receipt and current use and occupancy certificate contribute to a loss of tax revenue to the City and the proliferation of illegal businesses in the City; and

WHEREAS, the City has determined that clarifying the requirements for business tax receipts and use and occupancy certificates and establishing more effective enforcement procedures are necessary to ensure the tax revenue associated therewith and to prevent the operation and proliferation of illegal businesses in the City; and

WHEREAS, the lawful payment and collection of the local business tax and prevention and obliteration of illegal businesses in the City benefits the residents and visitors of the City; and

WHEREAS, the City has determined that the adoption of the amendments set forth herein for the City's local business tax receipts and use and occupancy certificates will serve to protect the public health, safety and welfare and serves a valid public purpose.

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

SECTION 1. The foregoing "WHEREAS" clauses are true and correct and are hereby ratified and confirmed by the City Commission.

SECTION 2. Except for the existing "Business Tax Schedule" (currently located at Section 14-20), the existing Chapter 14, Article I, IN GENERAL, is hereby amended in its entirety as follows:

ARTICLE I. LOCAL BUSINESS TAX RECEIPT (BTR)

Sec. 14-1. City of Lake Worth Business License.

It shall be unlawful for any person, or business, either directly or indirectly, to engage in or to conduct any business, profession or occupation as defined by this article, in the city, without first making application for, and having obtained a City of Lake Worth Business License. A City of Lake Worth Business License shall consist of a local business tax receipt as provided for in this article; and, a use and occupancy certificate as provided for in chapter 14, article II, of this code.

Sec. 14-2. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Business, profession or occupation means a person engaged in or managing any commercial, industrial, or professional activities. Activities include, but are not limited to, the making, buying, or selling goods or providing services, renting/leasing property for any purpose in exchange for compensation or for profit or non-profit purposes. Exempt from this definition are the customary religious, charitable or educational activities of nonprofit religious, nonprofit charitable and nonprofit educational institutions which are more particularly defined and limited in section 205.033, Florida Statutes.

Classification means the method by which a business or group of businesses is identified by size or type, or both.

License and *licensee* mean and shall include, respectively, the term "permit" or "permittee" or the holder for any use or period of time of any similar privilege, wherever relevant to any provisions of this article or other law or ordinance.

Local business tax means the fees charged and the method by which the city grants the privilege of engaging in or managing any business, profession or occupation within its jurisdiction. It does not mean any fees or licenses paid to any board, commission, or officer for permits, registration, examination, or inspection. Unless otherwise provided by law, these are deemed to be regulatory and in addition to, but not in lieu of, any local business tax imposed under the provisions of this article.

Person means any individual, firm, partnership, joint venture, syndicate, or other group or combination acting as a unit, association, corporation, company, estate, trust, business trust, trustee, executor, administrator, receiver, or other fiduciary, and includes the plural as well as the singular.

Premises means all lands, structures, places and also the equipment and appurtenances connection therewith in any business, and which is either affixed to or is otherwise used in connection with any such business.

Principal means a person who is an officer or director of a corporation, or who owns or controls, legally or beneficially, 30 percent or more of the capital stock of a corporation not registered with the Securities Exchange Commission, or pursuant to F.S. ch. 517, and its stock is for sale to the general public. If no person owns or controls, legally or beneficially, at least 30 percent of the capital stock, all stockholders shall be considered principals.

Receipt means the document that is issued by the city which bears the words "Local Business Tax Receipt" and evidences that the person in whose name the document is issued has complied with the provisions of this article relating to the business tax.

Retail merchant means any merchant who sells to the customer, or for any purpose other than resale.

Taxpayer means any person liable for taxes imposed under the provisions of this article.

Wholesale merchant means any merchant who sells to another for the purpose of resale.

Sec. 14-3. Local business tax receipt required; registration.

(a) It shall be unlawful for any person or business, either directly or indirectly, to conduct any business, profession or occupation or to use in connection therewith any vehicle, premises, machine or device, in whole or in part, for which a local business tax receipt is required by any law or ordinance of this city without a local business tax receipt being first procured and kept in effect at all times as required by this article or other law or ordinances of the city. Such local business tax receipts shall be required of:

(1) Any person who maintains a permanent business location or branch office within the city for the privilege of engaging in or managing any business within its jurisdiction;

(2) Any person who maintains a permanent business location or branch office within the city for the privilege of engaging in or managing any profession or occupation within its jurisdiction;

(3) Any person who does not qualify under the provisions of subsections (1) or (2) of this section but who transacts any business or engages in any occupation or profession in interstate commerce where such business tax is not prohibited by Section 8 of Article 1 of the United States Constitution.

(b) *Registration required*. Any person who engages in any business, occupation or profession within the city, not required to be receipted hereunder, shall be registered with the city by executing an information form provided by the city. The purpose of such registration is to provide the city with information concerning those who are doing business within the city and, where appropriate, to assure the city that such persons are receipted countywide by Palm Beach County.

Sec. 14-5. Application for local business tax receipt.

An application for a local business tax receipt shall be filed on a standard application form supplied by the city and such application shall not be processed until the application form is completed and the corresponding tax, as set forth herein is paid. All applicants applying for a local business tax receipt must submit a valid Florida driver's license, registration or other valid form of identification at the time of application.

Sec. 14-6. Duration, payment and proration of business tax and receipts.

(a) A local business tax receipt issued by the city shall be for one year expiring on September 30 of each year, regardless of the date application is made. No receipt shall be issued for a period of more than one year.

(b) Payment of a business tax may be made to the city beginning July 1 of each year, with all business taxes to be paid on or before September 30 of each year. If September 30 falls on a weekend or holiday, the tax is due and payable on or before the first working day following September 30.

(c) For each receipt issued between October 1 and April 1, the full tax for one year shall be paid, except as provided in this article. For each receipt issued between April 1 and July 1, one-half of the full tax for one year shall be paid, except as provided in this article. For each receipt due between July 1 and September 30, one-fourth of the full amount of tax for one year shall be paid, except as provided in this article.

(d) Upon payment of the tax, the city shall issue to the person paying the tax a receipt, signed by the city, which receipt shall expire at the end of the period for which such receipt is issued as specified in this section. The fact that the taxpayer has not received a bill or notice from the city that a business tax is due shall not be a defense in any prosecution for a violation of this article.

Sec. 14-7. Dates due and delinquent; penalties.

(a) All local business tax receipts issued hereunder may be renewed without penalty no later than September 30 by the taxpayer or their agent. Local business tax receipts not renewed by October 1 shall be considered delinquent and subject, respectively, to a delinquency penalty of ten (10) percent of the full year use and local business tax receipt fee for the month of October, plus an additional five (5) percent penalty for each month of the delinquency thereafter until paid. The total delinquency penalty shall never exceed twenty-five (25) percent of the full year local business tax receipt fee for the applicant.

(b) Any person who engages in or manages any business, occupation, or profession without first obtaining a local business tax receipt, if required, is subject to a penalty of 25 percent of the receipt due, in addition to any other penalty authorized by this article, this code or law.

(c) Any person who engages in any business, occupation, or profession covered by this article, who does not pay the required business tax within 150 days after an initial notice of tax due, and who does not obtain the required business tax receipt is subject to civil actions and penalties, including court costs, reasonable attorneys' fees, additional administrative costs incurred as a result of collection efforts, and a penalty of up to $250.00.

(d) In addition, a person operating a business in violation of this article shall be subject to a fine of up to $500.00 a day and/or 60 days in jail for each

day business is operated in violation of this article and/or this article may be enforced through the city's code compliance procedures.

Sec. 14-8. How local business tax receipt construed as to specific professions; pharmacies; other licenses to be provided.

(a) As established by city ordinance prior to October 13, 2010 and consistent with section 205.066, Florida Statutes, the local business tax as provided in this article for architects, auctioneers, accountants, dentists, civil engineers, lawyers, osteopaths, chiropractors, physicians, real estate salesmen or other professions regulated by the department of business and professional regulation, the Florida Supreme Court, or any other state regulatory agency, including any board or commission thereof, shall be construed to mean that each individual shall pay the local business tax herein provided, whether practicing by himself, herself or in partnership, except in the case of pharmacists practicing the profession of pharmacy as set forth below.

(b) *Pharmacies and pharmacists.* Consistent with section 205.196, Florida Statutes (as amended from time to time), the city shall not issue local business tax receipts to operate a pharmacy unless the applicant exhibits a current permit issued by the state board of pharmacy; however, no such local business tax receipt shall be required in order to practice the profession of pharmacy.

(c) Any person applying for or renewing a local business tax receipt to practice any profession regulated by the department of business and professional regulation, the Florida Supreme Court, or any other state regulatory agency, including any board or commission thereof, must exhibit an active state certificate, registration or license, or proof of copy of the same, associated with the business activity before a local business tax receipt may be issued.

Sec. 14-9. Local business tax receipts for sale of seasonal merchandise.

(a) As used in this section, "holiday" means:
- Valentine's Day (February 14)
- Mother's Day (second Sunday in May)
- Memorial Day (last Monday in May)
- Father's Day (second Sunday in June)
- Independence Day (July 4)
- Labor Day (first Monday in September)
- Halloween (October 31)
- Thanksgiving Day (last Thursday in November)
- Christmas (December 25)

(b) Seasonal local business tax receipts may be issued to conduct retail sales of merchandise associated with holidays, as defined herein, from vending carts, open air booths or similar outdoor facilities. Such activities shall be conducted only upon private property with the consent of the property owner and must otherwise comply with the city code.

(c) Such activities may be conducted only at the following locations:

(1) At a business or institutional location, but not less than one thousand (1,000) feet from the permanent business location of any licensed retail merchant who sells substantially similar merchandise in the merchant's normal course of business on days other than holidays as defined herein, and who derives not less than ten (10) percent of the merchant's gross revenues from the sale of such merchandise annually. The minimum separation distance shall be measured in a straight line from the cart, booth, or similar outdoor facility to the front door of the licensed retail merchant's business location. A separate local business tax receipt shall be required for each location. The local business tax receipt shall expire on the holiday. The local business tax receipt application shall identify the proposed location(s) and the nature of the merchandise to be sold, shall be executed by the property owner and the seasonal vendor, if other than the property owner, and shall be accompanied by a fee as stated in the business tax schedule for each location; or

(2) At the permanent business location of a licensed retail merchant, if the merchant sells substantially similar merchandise in the merchant's normal course of business on days other than holidays as defined herein, and derives not less than ten (10) percent of the merchant's gross revenues from the sale of such merchandise annually; provided, that the merchant shall comply with the requirements of the applicable zoning district regulations for open air retail displays and open air sales operations. If the merchant obtains a permit for the outdoor sales of merchandise pursuant to the applicable requirements of this code, a local business tax receipt for the sale of seasonal merchandise shall not be required under this section.

Sec. 14-10. Declaration where fee depends on variable factors within applicant's knowledge.

Whenever the amount of the local business tax applied for depends upon the amount of stock in trade carried by the applicant; the number of sleeping rooms in a hotel, motel, apartment or rooming house, etc.; the amount of capital invested in the business; the number of seats or spaces in a restaurant, etc.; the number of employees; the number of vehicles; or any other facts not

within the personal knowledge of the city, no local business tax receipt shall be issued until the applicant therefore has made and filed with the city a declaration setting forth the amount of stock in trade, the number of sleeping rooms, the amount of invested capital, the number of seats or spaces, the number of employees, the number of vehicles, or other facts upon which the amount of such receipt depends, which to the best of the applicant's knowledge and belief is true, correct and complete. The city reserves the right to further investigate the facts stated in the declaration, including without limitation an inspection of the premises, prior to issuance of the receipt if reasonable suspicion exists as to the accuracy of said declaration.

Sec. 14-11. Transfer of local business tax receipt to new owner.

(a) Any attempted transfer of a receipt either directly or indirectly in violation of this section is hereby declared void, and the local business tax receipt shall be deemed abandoned and forfeited. Upon notification that a taxpayer engaged in a transfer contrary to this section, the city shall officially suspend the receipt and notify the taxpayer of the suspension. The suspension shall remain in effect until all of the requirements of this article have been satisfied and a new receipt is issued by the city.

(b) Local business tax receipts granted or issued under the provisions of this article may be transferred with the approval and written authorization of the city, when there is a bona fide sale of the business and transfer of the property used and employed in the business; provided that, the original local business tax receipt shall be surrendered and filed with the city at the time application for transfer is made and such transferred local business tax receipt after being approved shall be of the same term and force and effect as the original local business tax receipt. Upon presentation of evidence of the sale and tender of the original receipt to the city, the city shall transfer the receipt to the transferee upon payment of a transfer fee of ten (10) percent of the annual local business tax receipt, respectively, but not less than three dollars ($3.00) nor more than twenty-five dollars ($25.00).

(c) Local business tax receipts granted or issued under the provisions of this article may also be transferred from location to location with the approval and written authorization of the city, provided no change of ownership has occurred or is in the process and the local business tax classification in which the local business tax receipt was originally issued remains unaffected; provided that, the original local business tax receipt shall be surrendered to and filed with the city at the time application for transfer is made and such transferred local business tax receipt, after being approved, shall be of the same term and force and effect as the original local business tax receipt. At the time any such local business tax receipt is transferred, the person applying for the transfer shall pay to the city a transfer fee of ten (10) percent of the annual local business tax receipt,

respectively, but not less than three dollars ($3.00) nor more than twenty-five dollars ($25.00).

Sec. 14-12. Agents responsible for obtaining receipt.

The agents or other representatives of nonresidents who are doing business in the city shall be personally responsible for compliance with this article by their principals and of the businesses they represent.

Sec. 14-13. Each location to have separate receipt.

If any person operates any business at more than one location, each location shall be considered a separate business and a separate business tax receipt therefore is required, unless otherwise provided for in this article.

Sec. 14-14. Tax for wholesale and retail merchants.

Any person who is both a wholesale and retail merchant, as defined in this article, is hereby required to pay a local business tax on both the retail and wholesale business.

Sec. 14-15. Compliance with other laws and ordinances prerequisite to issuance of receipt.

No business tax receipt shall be issued to any applicant for any business, profession or occupation or for any business location which does not otherwise meet all requirements of all other applicable laws and ordinances.

Sec. 14-16. Receipt not to protect persons from doing business not covered therein; receipt obtained by false statements void ab initio.

No local business tax receipt issued under the provisions of this article shall protect any person from prosecution for transacting any business or profession not covered by such local business tax receipt, nor shall it protect any merchant doing business with a greater stock in trade than covered by such local business tax receipt, or any hotel keeper or rooming house keeper having a greater number of rooms than is covered by such local business tax receipt. Any local business tax receipt issued upon any false statement shall be considered as void ab initio and shall not protect the holder thereof from prosecution for transacting business without a local business tax receipt.

Sec. 14-17. Evidence of engaging in business.

The fact that a person represents himself or herself as being engaged in any business for which a receipt is required for the transaction of such business, occupation or profession shall be evidence of the liability of such person to pay a business tax, regardless of whether such person actually

transacts any business, occupation or profession. Soliciting business; being open for business; displaying a sign or advertising which indicates the conduct of a business or profession at a given location; or, advertising a business or profession in the classified section of the telephone directory, city directory, the internet, print publications or other forms of media; shall be in any prosecutions under this article prima facie evidence of engaging in such business, profession or occupation, and the burden shall be upon the respondent to refute such evidence.

Sec. 14-18. Exemptions.

(a) *Florida Statutes.* The exemptions required in state law are hereby adopted and included in this section by reference (and as amended from time to time).

(b) *Dwelling unit not occupied by owner.* If the owner of a dwelling unit does not reside at the dwelling, and the dwelling is occupied by anyone, including a relative of the owner of the dwelling, there is a presumption that the dwelling is being rented and must have a business tax receipt. This presumption may be rebutted by the owner of the dwelling applying for an exemption from the business tax receipt. The exemption application shall include an affidavit of the owner that all persons residing at the dwelling are relatives of the owner and that these relatives pay no rent or other consideration for the privilege of living at the dwelling and that the relatives provide no maintenance or other services in return for the right to live at the dwelling. The application fee for the exemption shall be established by city resolution.

Sec. 14-19. Prerequisite for issuance.

The prerequisites for issuance of a business tax receipt required in state law are hereby adopted and included in this section by reference (and as amended from time to time).

Sec. 14-20. Authority of Director of Community Sustainability.

The city's director of the community sustainability department is hereby authorized to establish policies and procedures which implement the requirements of this article and clarify the requirements and procedures set forth herein.

Sec. 14-21. Duplicate receipt procedure.

The city shall make a charge of twenty-five dollars ($25.00) or other fee established by city resolution for each duplicate local business tax receipt issued to replace any local business tax receipt issued under the provisions of this article which has been lost, stolen, defaced or destroyed without any willful

conduct on the part of the taxpayer upon the filing by the taxpayer of a statement attesting to such fact.

Sec. 14-22. Receipt to be posted or carried.

All local business tax receipts granted hereunder shall be posted in a conspicuous place on the premises or location where the receipted business is being conducted. In the case of a mobile business profession or occupation, said certificate and receipt must be carried upon their person conducting business in the city.

Sec. 14-23. Business conducted in violation.

The issuance of a business tax receipt as provided in this article in no way authorizes or gives to any person the right or authority to conduct, engage in or carry on a business in violation of chapter 23 pertaining to land development regulations; any other section of this code; any other ordinance contained in the code of ordinances of the county; any laws, statutes or regulations of the state or its agencies and political subdivisions; or any law, statute or regulation of the United States government, its agencies or political subdivisions.

Sec. 14-24. Business tax schedule.

EXCEPT FOR RE-NUMBERING FROM SECTION 14-20 TO SECTION 14-24, THE EXISTING BUSINESS TAX SCHEDULE IS NOT AMENDED BY THIS ORDINANCE

Sec. 14-25. Classification prohibited.

The following businesses shall not be allowed to operate within the municipal boundaries of the city: car and/or trailer camps, carnivals, circuses, junk dealers, marble boards, minstrel and variety shows, push carts, sideshows, auto competitions, motorcycle races.

Reserve sections 14-26 to 14-30.

SECTION 3. The existing Chapter 14, Article II, RESERVED, is hereby deleted in its entirety and amended and replaced as follows:

ARTICLE II. USE AND OCCUPANCY CERTIFICATE AND THE GENERAL REGULATION OF BUSINESSES, PROFESSIONS OR OCCUPATIONS

Sec. 14-31. Purpose.

The purpose of this article is to regulate businesses within the city by verification of compliance with all applicable zoning regulations, life safety code

requirements, proper tenant separations, and all applicable city, county, and state regulations. The operation of businesses within the city without said verification process and safeguards associated therewith constitutes a danger to the health, safety and welfare of the community. The enforcement procedures set forth herein are adopted to maximize the city's ability to regulate businesses and limit and obliterate businesses operating within the city without the proper inspection and use and occupancy certificate.

Sec. 14-32. City of Lake Worth Business License

It shall be unlawful for any person, or business, either directly or indirectly, to engage in or to conduct any business, profession or occupation as defined by this article, in the city, without first making application for, and having obtained a City of Lake Worth Business License. A City of Lake Worth Business License shall consist of a use and occupancy certificate as provided for in this article and a local business tax receipt as required in chapter 14, article I, of this code.

Sec. 14-33. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Business means a person engaged in or managing any commercial, industrial, occupational or professional activities. Activities include, but are not limited to, the making, buying, or selling goods or providing services, renting/leasing property for any purpose in exchange for compensation or for profit or non-profit purposes.

Certificate holder means any person or business liable for a use and occupancy certificate under the provisions of this article.

Inspector means a city employee or designated agent of the city who is authorized to conduct inspections of a business, profession or occupation for compliance this article.

New business inspection means the inspection made by the inspector at the location or premises in which a business is to be conducted. The inspection is to verify compliance with all zoning regulations, life safety code requirements, proper tenant separations, and all applicable city, county, and state regulations.

Owner/applicant means the owner and/or operator of a business, who applies for a use and occupancy certificate for premises within the city, pursuant to the terms, provisions and conditions of this article.

Person means any individual, firm, partnership, joint venture, syndicate, or other group or combination acting as a unit, association, corporation, company, estate, trust, business trust, trustee, executor, administrator, receiver, or other fiduciary, and includes the plural as well as the singular.

Premises means all lands, structures, places and also the equipment and appurtenances connection therewith in any business, and which is either affixed to or is otherwise used in connection with any such business.

Use and occupancy certificate means the method by which the city grants approval for a business, as defined in this article, to occupy at a given location.

Use and occupancy inspection means an inspection of a business place or premises by the inspector by which the city verifies compliance with all applicable zoning regulations, life safety code requirements, proper tenant separations, and all applicable city, county, and state regulations. This includes a new business inspection and any inspection requested by law enforcement, fire prevention, code compliance or building official; upon a new owner obtaining title to the property; upon transfer of a local business tax receipt; or, as otherwise required by this code.

Sec. 14-34. Use and occupancy certificate required; exemption.

(a) It shall be unlawful for any person either directly or indirectly to engage in or to conduct any business in the city at a given location or premises without first making application for, and having obtained, a use and occupancy certificate. The fact that a person or business has not received a bill or notice from the city that a use and occupancy certificate and applicable fee(s) are required or due shall not be a defense in any prosecution for a violation of this article.

(b) *Dwelling unit not occupied by owner.* If the owner of a dwelling unit does not reside at the dwelling, and the dwelling is occupied by anyone, including a relative of the owner of the dwelling, there is a presumption that the dwelling is being rented and must have a use and occupancy certificate. This presumption may be rebutted by the owner of the dwelling applying for an exemption from the use and occupancy certificate. The exemption application shall include an affidavit of the owner that all persons residing at the dwelling are relatives of the owner and that these relatives pay no rent or other consideration for the privilege of living at the dwelling and that the relatives provide no maintenance or other services in return for the right to live at the dwelling. The application fee for the exemption shall be established by city resolution.

Sec. 14-35. Use and occupancy certificates and inspections required.

(a) It shall be unlawful for any person either directly or indirectly to engage in or to conduct any business, profession or occupation in the city at a given location or premises without a use and occupancy inspection as required herein.

(b) A use and occupancy inspection shall be required of persons or businesses:

(1) Upon the application for a new use and occupancy certificate; or

(2) Upon request of law enforcement, fire prevention, code compliance or building official as necessary to maintain the public health, safety and welfare at a given location or premises; or

(3) Upon a new owner obtaining title to a property on which a business, profession or occupation is conducted;

(4) Annually for all existing commercial and industrial properties;

(5) Biennial (every other year) for single family, multiple family, townhome or condominium unit(s) or other dwelling unit(s) being rented as residential dwelling units;

(6) Upon re-location of a business or transfer of a local business tax receipt to a new location; or,

(7) As otherwise required by this code.

Sec. 14-36. Application for use and occupancy certificate for new businesses; inspection; and fees.

(a) Before the city may issue a use and occupancy certificate for engaging in, or carrying on any business, it shall be the duty of the owner/applicant to file an application with the city.

(b) An application shall be filed on a standard application form supplied by the city and shall not be considered complete until the application satisfies the requirements of this section.

(c) *Contents.* In addition to other information as may be required, the application shall contain the following information and shall be accompanied by the following documents:

(1) *Identity.* An owner/applicant shall provide its legal name, any aliases, and date of birth or formation, if the owner/applicant is a partnership or corporation. A partnership shall provide the full and complete name of the partnership and the name and addresses of all partners. A corporation shall provide the exact and complete corporate name, the date of its incorporation, the name and address of the registered corporate agent for service of process, and the names and addresses of all corporate officers.

(2) *Address.* The application shall list the current local and legal domiciliary, a residential address of the owner/applicant and the name and address of an agent authorized to receive notice for purposes of this article.

(3) *Business name.* If the owner/applicant intends to conduct the business under a name other than that of the applicant, the applicant shall state the establishment's fictitious name and copy of its registration with the division of corporations of the department of state.

(4) *License/receipt history.* Whether the owner/applicant has had a previous license/receipt suspended or revoked, as well as the date of the suspension or revocation, and the location of the establishment for which the license/receipt was suspended or revoked, as well as the date of the suspension or revocation.

(5) *Operational information.*

i. Location of the proposed business, including the legal street address, and the owner/applicant's mailing address.

ii. The name, phone number and email address of the individual for the inspector to contact to schedule the new business inspection.

iii. The telephone number of the business.

iv. A copy of any license, registration, or certification required for the profession or occupation; or a copy of all applications for such license, registration, or certification. A use and occupancy certificate shall not be issued until copies of the final license, registration, or certification are provided to the city.

(d) *Affidavit.* A notarized, signed and sworn statement by the owner/applicant or their authorized agent verifying that the information within the application is truthful, independently verifiable, and complete. The owner/application or their authorized agent must provide a valid Florida driver's license, registration or other valid form of identification along with the affidavit.

(e) *Fees.* Each application shall be accompanied by the application fee established by city resolution. If the application is denied, the city shall retain the application fee to cover the administrative costs of processing the application. The application fees required for obtaining a use and occupancy certificate (new or renewal) are based on one (1) certificate for each individual piece of real property as described by the Palm Beach County Property Appraiser's office through the provision of a property control number and recorded deed. In addition to the application fee, the owner/applicant shall pay at the time of application the inspection fee established by city resolution. No additional inspection fee shall be required for the first re-inspection. If a use and occupancy certificate is not granted after the initial re-inspection, the inspection fee (as established by city resolution) shall be charged for each additional inspection of the location or premises.

(f) For each new certificate issued between October 1 and April 1, the full application fee for one year shall be paid, except as provided in this article. For each new certificate issued between April 1 and July 1, one-half of the full application fee for one year shall be paid, except as provided in this article. For each new certificate issued between July 1 and September 30, one-fourth of the full amount of application fee for one year shall be paid, except as provided in this article.

(g) If any of the information required in the application changes prior to any subsequent annual renewal date, the owner/applicant shall provide updated information within 30 days of such change.

(h) If the real property that is to be used for the operation of a business is subject to unpaid city fines, fees, code violation liens or city assessment liens, the city shall not issue a use and occupancy certificate or conduct a use and occupancy inspection until such time as all liens, fines, or fees on the property are fully paid, including interest due and any assessable costs and until all code violations are brought into compliance.

Sec. 14-37. Use and occupancy certificate existing businesses renewal; delinquency; penalty.

(a) All use and occupancy certificates issued hereunder may be renewed without penalty no later than September 30 by application for renewal and payment of the application fee. If September 30 is on a weekend or holiday, the renewal application and application fee shall be due and payable on or before the first working day following September 30.

(b) The renewal application shall be on a form provided by the city and not considered complete until the form is completed and all required information is provided to the city. If the owner/applicant submits the renewal application and application fee prior to the due date as set forth herein, but the application form is not complete, the city shall notify the owner/applicant and afford the owner/applicant ten (10) days to submit the required information before being considered delinquent.

(c) Use and occupancy certificates not approved for renewal by October 1 shall be considered delinquent and subject, respectively, to a delinquency penalty of ten (10) percent of the full year use and occupancy certificate fee for the month of October, plus an additional five (5) percent penalty for each month of the delinquency thereafter until paid. The total delinquency penalty shall never exceed twenty-five (25) percent of the full year certificate fee for the applicant.

Sec. 14-38. Term of use and occupancy certificate.

All use and occupancy certificates shall be sold beginning July 1 of each year. Use and occupancy certificates shall expire on September 30 of each year, and no use and occupancy certificate shall be issued for more than one year.

Sec. 14-39. Transfer of use and occupancy certificate to new owner.

(a) Use and occupancy certificates granted or issued under the provisions of this article may be transferred with the approval and written authorization of the city when there is a bona fide sale and transfer of the property used and employed in the business; provided that, the original use and occupancy certificate shall be surrendered and filed with the city at the time application for transfer is made, and such transferred use and occupancy certificate shall be of the same term and force and effect as the original use and occupancy certificate.

(b) At the time any such use and occupancy certificate is transferred, the person applying for the transfer shall pay to the city a transfer fee of ten (10) percent of the annual use and occupancy certificate, but not less than three dollars ($3.00) nor more than twenty-five dollars ($25.00).

(c) If a business is moved from one location to another location in the city, or if the business is transferred, a new use and occupancy certificate shall be required. No new use and occupancy certificate shall be issued until the appropriate application is made and a new business inspection is completed at the new business location or premises.

(d) If any person operates any business at more than one location, each location shall be considered a separate business; and a separate use and occupancy certificate is required for each.

Sec. 14-40. Duplicate use and occupancy certificates.

The city shall make a charge of twenty-five dollars ($25.00) for each duplicate use and occupancy certificate issued to replace any use and occupancy certificate issued under the provisions of this article which has been lost, stolen, defaced or destroyed without any willful conduct on the part of the certificate holder upon the filing by the certificate holder of a statement attesting to such fact.

Sec. 14-41. Use and occupancy certificate to be posted or carried.

All use and occupancy certificates granted hereunder shall be posted in a conspicuous place on the premises or at the location or premises where the certificated business is being conducted.

Sec. 14-42. Other certificates, licenses, taxes and regulations to be in addition to use and occupancy certificate.

The provisions of this article are cumulative and in addition to all other state, county and city laws which require certificates, licenses, permits, or business tax receipts, or provide for the collection of certificate, license, and permit fees, local business taxes and other charges. No use and occupancy certificate issued under this article shall exempt the certificate holder from any other certificate, license, permit fee, or tax required by law, or compliance with all applicable ordinances, rules, and laws.

Sec. 14-43. Limitation of use and occupancy certificate; use and occupancy certificate obtained by false statements void ab initio.

No use and occupancy certificate issued under the provisions of this article shall protect any person or business from prosecution for failing to comply with any other law or regulation applicable to the business, occupation or profession covered by such use and occupancy certificate. Any use and occupancy certificate issued upon any false statement shall be considered as void ab initio and shall not protect the holder thereof from prosecution for transacting business without a use and occupancy certificate.

Sec. 14-44. Authority of Director of Community Sustainability.

The city's director of the community sustainability department is hereby authorized to establish policies and procedures which implement the requirements of this article and clarify the requirements and procedures set forth herein.

Sec. 14-45. Denial, suspension or revocation of use and occupancy certificate; right of appeal.

(a) A use and occupancy certificate may be denied by the city upon application, or suspended or revoked by the special magistrate under the procedures for code compliance as set forth in this code, when it is determined that:

(1) An owner/applicant has misrepresented or failed to disclose material facts or information which is required to be included in the use and occupancy application and any other application required by the city, county or state; or

(2) An owner/applicant, as part of the business activity, has violated the city's code which regulates the use and/or operation of the premises, or it is determined that the continuation of the business activity tends to annoy the community or injure the health of the

citizens in general, or becomes manifestly injurious to the public morals; or

(3) The issuance of the use and occupancy certificate was contingent upon an owner/applicant's compliance with specific provisions of city, county, or state laws, and the owner/applicant has not satisfied such conditions within a time specified, or has violated such conditions or specific provisions law; or

(4) An owner/applicant has violated any provision of this article and has failed or refused to allow an inspection and/or cease or correct the violation at the subject location after having been notified of the need for an inspection and/or to cease or correct the violation by the city or the special magistrate; or

(5) The premises have been condemned by the local health authority for failure to meet sanitation standards; or

(6) The premises have been deemed unsafe by the City's Building Official per the Florida Building Code as amended from time to time; or

(7) The premises which are the subject of a use and occupancy certificate have been found to constitute a public nuisance by the city's nuisance abatement board or special magistrate pursuant to this code and/or Florida Statutes (as amended from time to time). The suspension or revocation shall be the use and occupancy certificate in effect on the date such public nuisance is based; or

(8) An owner/applicant is conducting a business from a premises which does not possess a valid and current business tax receipt; or

(9) The actual use of the property is different than what the use and occupancy is issued for, or is being operated in violation of the use and occupancy certificate.

(10) An owner/applicant has operated a business in the state, or any of the municipalities or political subdivisions of the state, that (i) has been declared by an administrative board of a county, municipality, or court in the state to constitute a public nuisance pursuant to sections 893.138, 60.05 and 823.05, Florida Statutes (as amended from time to time) within the past five years; (ii) in the past five years has received notice of a violation from a county or municipality and has been adjudicated by a special magistrate or code enforcement board for violating any code or ordinance in

force in any county or municipality in the state resulting from any of the following: (1) the operation of the applicant's business in a manner that affects the health, welfare, safety or morals of its residents; (2) the operation of the applicant's business contrary to a code or ordinance regulating or governing the business; or (3) noncompliance with minimum housing standards or the Florida Building Code; (iii) has a significant history of law enforcement response to reported incidents of criminal and/or illegal acts, or repeat victimization occurring on or at the premises where the applicant's business is/was located within the past five years; or, (iv) has had a license or certificate of use denied, suspended or revoked by any municipality, political subdivision, or department, division or agency of the state within the past five years.

(b) Upon determination by the city that an owner/operator is in violation of the provisions of this article, the city shall notify, in writing, the owner/operator of the grounds for such violation and provide such owner/operator notice of a hearing before the special magistrate pursuant to the city's code compliance procedures set forth in this code.

(c) A hearing before the special magistrate may also be requested by an owner/applicant aggrieved by a decision regarding denial of a use and occupancy certificate by the city. The request must be in writing and filed with the Code Compliance division within ten days of receipt of the decision complained of. The request must specify the decision and the principal's grievance. The code compliance division shall set the matter for a hearing before the City's special magistrate consistent with the procedures set forth herein for code compliance.

(d) If the owner/applicant fails to seek timely appellate review of an order of the special magistrate, or to comply timely with such order, the city shall pursue enforcement procedures including the closure of a business. Business closings required by suspension/revocation/denial orders shall be enforced by the city's law enforcement agency, and the costs for the enforcement action shall be placed as a lien against an owner/applicant's real and personal property.

(e) No fees shall be refunded if a use and occupancy certificate is suspended or revoked, or if a business is closed pursuant to this section.

(f) The special magistrate's findings shall constitute the final administrative action of the city for purposes of judicial review under state law.

(g) No use and occupancy certificate shall be suspended, denied, or revoked under this section for a period of more than 12 months. During such 12-month period, no new use and occupancy certificate shall be issued to an owner/applicant for the same premises or location during

the term of such suspension or revocation. At the end of any such period of suspension or revocation, an owner/applicant may apply for a new use and occupancy certificate at the subject premises or location.

Sec. 14-46. Engaging in business without use and occupancy certificate and issued on false statements.

(a) Any person engaged in any such business in any location or upon any premises in the city without first obtaining a use and occupancy certificate as required herein or the renewal thereof, shall pay a penalty of twenty-five (25) percent of the full year certificate year for such business in addition to the use and occupancy fees set forth herein (if the certificate is issued). In addition or if the certificate is not issued, such person may also be charged with a criminal penalty as provided in section 1-6 of this code and/or subject to code compliance procedures as set forth in this code.

(b) Any person, corporation or partnership which owns real property in the city and which by lease, license, grant or other written or oral arrangement permits any person to operate a business without a valid and current use and occupancy certificate shall be subject to a criminal penalty as provided in section 1-6 of this code and/or subject to code compliance procedures as set forth in this code.

(c) Any person who engages in any business, profession or occupation covered by this article, who does not apply for and pay the required renewal application fee within one hundred fifty (150) days after the annual renewal due date and notice of the same is subject to civil actions and penalties, including court costs, reasonable attorneys' fees, additional administrative costs incurred as a result of collection efforts, and a mandatory penalty of two hundred fifty dollars ($250.00) or as otherwise set by city resolution. In additions, such person may also be charged with a criminal penalty as provided in section 1-6 of this code and/or subject to code compliance procedures as set forth in this code.

Sec. 14-47. Duty of businesses that rent mailboxes.

Any business located in the city that rents mailboxes to other persons, partnerships, corporations or other entities shall, at least monthly, or more often if demanded by the city, supply the city with complete names and addresses of all those who rent mailboxes from that business.

Sec. 14-48. Persons dealing in used or secondhand personal property.

(a) *Definitions*. For the purpose of this section, the following words shall have the following meanings:

Pawn. A written or oral bailment of personal properties as security for an engagement or debt, redeemable in certain terms and with the implied power of sale on default. Further, any agreement whereby a purchaser agrees to hold property for a specified period of time to allow the seller the exclusive right to repurchase shall be deemed a pawn.

Pawn broker. Any person, either natural or otherwise, who loans or lends money or some other thing of value on the delivery or deposit of personal property taken by way of pawn, pledge or exchange as security for the repayment of money lent thereon; however, any bank or other institution authorized to conduct business under the laws of the State of Florida regulating banks or other similar institutions or under the laws of the United States, which bank or institution loans money or any other thing of value on stocks, bonds, securities or other contracts, shall not be deemed a pawn broker.

(b) *Identification and records*. Any person who sells property to a pawn broker or pledges the property as security for a loan shall present either a driver's license or other comparable identification to the pawn broker. For purposes of this section, credit cards, social security cards, handwritten identification cards and non-photo identification cards shall not be considered comparable identification. The broker shall keep records of each such sale or pledge of property which shall contain the following information:

(1) Type of identification presented to pawn broker by seller or pledger;

(2) The name and address as it appears on the item of identification;

(3) The identifying number appearing thereon;

(4) An accurate and true description of each article pawned, including a notation as to any identifying markings or characteristics, such as serial numbers, upon such pawned article;

(5) The amount of money or other consideration loaned thereon or paid or given therefor;

(6) The date and time of the acquisition of such article by the pawn broker;

(7) The seller's or pledger's signature and thumb print, sex, age, height, weight, build, color of hair, color of eyes, and complexion; and,

(8) The date upon which each pawned item is sold and the name and address of each purchaser.

One copy of the records required by this section shall be mailed or delivered to the city's law enforcement agency, or its designee, not less than twice a week and one (1) copy shall be kept at the pawn broker's place of business. Pawn brokers shall keep these records for two (2) years and shall allow law enforcement officers to inspect the pawn broker's records during business hours.

(c) *Violation and penalty*. Any pawn broker who intentionally commits any of the following acts shall be deemed in violation of this section and shall be subject to penalties as provided for in section 1-6 of this code and/or subject to code compliance procedures:

(1) Fails to obtain, retain or distribute records as required by this section;

(2) Purchases property or accepts property pledged as security for a loan without obtaining proper identification as required by this section;

(3) Purchases as property or accepts property pledged as security for a loan from any person under the influence of drugs or alcohol or any minor unless said minor has the written consent of his or her parent or guardian.

Sec. 14-49. Marking of commercial vehicles.

It shall be the duty of every person doing business within the city, to have each and every truck or other vehicle used on a job or in conjunction with a business operation within the city, painted or otherwise display the insignia to be used to designate the same or in the case of vehicles used by construction tradesmen, the name of the company together with the business address, telephone number, and state registration or certificate number.

Sec. 14-50. Solicitation of employment.

(a) *Purpose.* The purpose of this section, together with other applicable provisions of this code, is to reasonably regulate the time, place, and manner of the solicitation of temporary employees by occupants of vehicles which are being operated or stopped on or within public property and within or immediately adjacent to Lake and Lucerne Avenues public right of ways. These regulations are content-neutral and are not intended, and do not restrict the rights of free speech or alternative channels of communication, and are intended to ensure the compelling state interest of protecting both pedestrians and the operators of vehicles, and generally furthering the public's health, safety and general welfare.

(b) *Definitions*. For purpose of this section the following terms shall have the following definitions:

Business shall mean and include, any type of product, goods, services, performance or activity which is provided or performed or offered to be provided or performed, in exchange for money, labor, goods, or any other form of consideration.

Employment shall mean and include, services, industry or labor performed by a person for wages, or other compensation or under any contract of hire, written or oral, expressed or implied.

Occupant shall mean a person who occupies a vehicle.

Owner shall mean the fee owner of a commercial parking area, the lessee of an entire commercial parking area, or the property manager or agent of such fee owner or lessee.

Pedestrian shall mean any individual who is utilizing a public street, sidewalk, roadway, alley, or public or private parking area while traveling without the benefit of any vehicle or while traveling on a bicycle.

Person shall mean any individual, company, corporation, association, business or legal entity.

Public right of way or *public right of ways* shall mean a strip or strips of land dedicated or deeded to the perpetual use of the public.

Solicit or *solicitation for employment* shall mean and include, any request, offer, enticement, or action which announces the availability for or of employment or any request, offer, enticement or action which seeks to secure employment. Examples of behavior which constitutes solicitation or attempted solicitation includes, but is not limited to, waving arms, making hand signals, shouting to someone in a vehicle, jumping up and down, waving signs pointed so as to be readable by persons in vehicles, quickly approaching or rushing to vehicles, standing in the public right of way or immediately adjacent thereto while facing vehicles in the roadway, or entering the roadway portion of a public right of way. Solicitation as defined herein, shall be deemed complete when made, whether or not an actual employment relationship is created, a transaction is completed, or an exchange of money takes place.

Street shall mean all of the area dedicated to public use for public street purposes and shall include, but not be limited to, vehicular right of ways, roadways, alleys, sidewalks and driveways. For purposes of this section, streets, roadways, highways, alleys and driveways shall also be defined by the construction standards as established for same by the American Public Works Association.

Traveling along a street shall mean a vehicle being operated on a street, excluding vehicles lawfully parked at the edge of a street or temporarily, lawfully stopped at a marked passenger loading zone.

Vehicle means any vehicle as defined in the Florida Uniform Traffic Control Law.

(c) Prohibition of solicitation on public property and within or immediately adjacent to Lake and Lucerne Avenues public right of ways:

(1) It is unlawful for any person, while the occupant of any vehicle, to solicit, or attempt to solicit, employment or business from a person who is on public property within the Lake and Lucerne Avenues public right of ways or immediately adjacent thereto.

(2) This section shall not apply to public property, which has been designated by a resolution of the city commission, as a location where the solicitation of employment is permitted, and where notice has been conspicuously posted at the location by the city, in English or English and Spanish.

(3) This section shall not be construed so as to prohibit a business or property owner from soliciting or hiring employment at or on its premises. For the purposes of this section, vehicles, recreational vehicles, trailers, and other similar types of mobile locations shall not be considered a business establishment or premises.

(4) This section does not apply to operators of vehicles for hire that are licensed within the city.

SECTION 4. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared severable.

SECTION 5. All Ordinances or parts of Ordinances in conflict herein are hereby repealed.

SECTION 6. Sections 2 and 3 of this Ordinance shall be codified.

SECTION 7. This Ordinance shall become effective ten (10) days after passage.

The passage of this Ordinance on first reading was moved by Commissioner Amoroso, seconded by Commissioner McVoy, and upon being put to a vote, the vote was as follows:

Mayor Pam Triolo	AYE
Vice Mayor Scott Maxwell	AYE
Commissioner Christopher McVoy	AYE
Commissioner Andy Amoroso	AYE
Commissioner John Szerdi	AYE

The Mayor, thereupon declared this Ordinance duly passed on first reading on the 10th day of December, 2013.

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

Mayor Pam Triolo
Vice Mayor Scott Maxwell
Commissioner Christopher McVoy
Commissioner Andy Amoroso
Commissioner John Szerdi

The Mayor thereupon declared this Ordinance duly passed and enacted on the 7th day of January, 2014.

LAKE WORTH CITY COMMISSION

By:_____
Pam Triolo, Mayor

ATTEST:

_____
PAMELA J. LOPEZ, CITY CLERK

CITY OF LAKE WORTH

7 North Dixie Highway · Lake Worth, Florida 33460 · Phone: 561-586-1600· Fax: 561-586-1750

AGENDA DATE: January 7, 2014, Regular Meeting **DEPARTMENT:** Community Sustainability

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EXECUTIVE BRIEF

TITLE:

Discuss Park of Commerce and Boutwell Road Project - Owner's Representation, Engineering and Design, and Right of Way Ownership

SUMMARY:

Discussion of three (3) issues related to moving the Park of Commerce forward as the County's premier light industrial, research and development park.

BACKGROUND AND JUSTIFICATION:

Over the past 15 years, the City of Lake Worth in collaboration with a variety of governing entities has been working toward establishing the Park of Commerce (Park) as a shovel ready light industrial, research and development park to serve not only Palm Beach County but also the Gold Coast Region. To achieve this goal, the city is embarking on a multi-phase infrastructure improvement plan for the Park and an Annexation Inter Service Boundary Agreement to facilitate annexing the remaining County parcels in the Park. In addition, the City and Palm Beach County are collaborating on the future of Boutwell Road and the intersection at Tenth Avenue North. Moving all of these issues forward is critical to establishing the Park of Commerce is a premier development location and to facilitate shovel ready sites ready for investment.

CITY OF LAKE WORTH

7 North Dixie Highway · Lake Worth, Florida 33460 · Phone: 561-586-1600· Fax: 561-586-1750

AGENDA DATE: January 7, 2014, Regular Meeting **DEPARTMENT:** Community Sustainability

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EXECUTIVE BRIEF

TITLE:
Professional Services Agreement with Mock Roos & Associates for Engineering, Design and Construction Phase Services for the Park of Commerce Project Phase 1 - Boutwell Road from 2nd Avenue North to 10th Avenue North

SUMMARY:

A Professional Services Agreement has been negotiated with Mock Roos & Associates to provide Engineering, Design and Construction Phase Services for Phase I of the Boutwell Road Infrastructure Project (Project) in an amount not to exceed of $644,120 for a term of thirty (30) months.

BACKGROUND AND JUSTIFICATION:
In order to move forward on the infrastructure improvements for Boutwell Road in the City's Park of Commerce, the City prepared a formal Request for Proposals and initiated a competitive solicitation process to select a Engineering and Design Firm for the initial phase of the Project. Following a review of the submitted proposals and an interview panel discussion with three (3) of the short listed firms, Mock Roos was selected as the top candidate to serve in this capacity. Subsequently, City Staff negotiated a Professional Services Agreement in an amount not to exceed $644,120 for a term of thirty (30) months on an anticipated overall construction value of $5 to $5.5 million for the Project. The services to be provided under the agreement include eight (8) tasks outlined as follows (a detailed presentation of these tasks is attached):

1. Surveying
2. Preliminary Engineering/Master Plan Development
3. Construction Contract Drawings and Specifications
4. Regulatory Agency Permitting
5. Geotechnical Engineering Services
6. Coordination with Owner's Representative, City Staff and Other Entities
7. Bidding Phase Services
8. Construction Phase Services

This array of services will ensure a professional level of engineering and design services including construction phase services and timely delivery of the shovel ready designs to undertake construction of the Project.

The funding for this project is housed in multiple utility funds as shown in schedule below; Water Fund, Stormwater Fund, Road & Street Facility, and Sewer Fund. Said funds will be transferred into the Park of Commerce Fund by way of the 1st Budget Amendment to be presented to the Commission in January 2014.

MOTION:
I move to approve/not approve a Professional Services Agreement with Mock Roos & Associates in an amount not to exceed $644,120 for a term of thirty (30) months.

ATTACHMENT(S):
Fiscal Impact Analysis
Signed Professional Services Agreement including exhibits
Compensation Fee Breakdown
Mock Roos Presentation on Tasks, Responsibilities, Deliverables and Schedule

FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2014	2015	2016	2017	2017
Capital Expenditures	644,120	0	0	0	0
Operating Expenditures	0	0	0	0	0
External Revenues	0	0	0	0	0
Program Income	0	0	0	0	0
In-kind Match	0	0	0	0	0
Net Fiscal Impact	644,120	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:

Park of Commerce		Mock Roos Engineering, Design & Construction Contract				
Account Number (s)		**Account Description (s)**	**FY 2014 Budget**	**Current Balance**	**Agenda Expenses**	**Remaining Balance**
402-9010-581-91-80		Water Fund	6,151,297	6,071,297	(63,317)	6,007,981
305-5020-541-63-15		Road & Street Facility	5,330,669	5,317,549	(400,256)	4,917,293
305-5090-538-63-15		Storm Water Fund	2,106,960	2,106,960	(83,777)	2,023,183
305-7231-535-63-15		Sewer Fund	4,225,014	4,225,014	(63,317)	4,161,698
301-9010-581-91-80		P.O.C Capital Project	700,000	350,070	(33,454)	316,616
					(644,120)	

C. Department Fiscal Review: _____

AGREEMENT TO FURNISH PROFESSIONAL SERVICES TO THE

CITY OF LAKE WORTH

PARK OF COMMERCE
PHASE I

ENGINEERING SERVICES
MOCK, ROOS & ASSOCIATES, INC.

AGREEMENT TO FURNISH PROFESSIONAL SERVICES TO THE CITY OF LAKE WORTH

This Agreement made on the 3rd day of December, 2013, between the **City of Lake Worth**, a Florida municipal corporation located at 7 North Dixie Highway, Lake Worth, Florida 33460, hereinafter referred to as the "City" and **Mock, Roos & Associates, Inc.**, a Florida corporation, whose principle business address is 5720 Corporate Way, West Palm Beach, FL 33407, hereinafter referred to as the "CONSULTANT".

WHEREAS, the City is a municipal corporation organized and existing pursuant to the Charter and the Constitution of the State of Florida; and

WHEREAS, the City issued Request for Proposal # 12-13-200 for Engineering Services for the project known as the Park of Commerce Infrastructure Improvements Project - Phase I (hereinafter the "RFP"); and

WHEREAS, the CONSULTANT submitted a proposal in response to the RFP; and

WHEREAS, the City desires to award the RFP to the CONSULTANT for Engineering Services for the Park of Commerce Infrastructure Improvements Project - Phase I (hereinafter the "Project"); and

WHEREAS, the City finds awarding the RFP to the CONSULTANT as described herein serves a valid public purpose.

NOW THEREFORE, the City hereby engages the services of the CONSULTANT, and in consideration of the mutual promises herein contained, the sufficient of which is hereby acknowledged by both parties, the parties agree as follows:

ARTICLE 1 - SCOPE OF SERVICES

The CONSULTANT will provide the City with engineering services for the Project as specified and more fully described in the RFP and Exhibit "A", Lake Worth Park of Commerce – Phase 1 Infrastructure Improvements Scope of Services (dated October 29, 2013), both of which are attached hereto and incorporated herein (herein the "services"). The CONSULTANT shall cooperate and work with the City's selected Owner's Representative in the provision of all services. If there is any conflict between the RFP and Exhibit "A" regarding the CONSULTANT's services, Exhibit "A" will take precedence as the parties' negotiated agreement on the scope of services.

ARTICLE 2 - TERM OF AGREEMENT

A. Term: This Agreement shall become effective upon approval by the City Commission and execution by the Mayor. The services shall commence upon the issuance of a Notice to Proceed by the City. Unless earlier terminated as provided for herein, the initial term of this Agreement shall be for two (2) years from the date of

commencement (the "Initial Term" hereinafter) with two additional one year renewal options. The City, through the City Manager, may exercise the renewal option(s) provided that the City has approved funding for said renewal option(s). Each fiscal year of this Agreement and any renewals will be subject to the availability of finds lawfully appropriated for its purpose by the State of Florida (if applicable) and the City.

B. Time for Completion: All services provided for herein shall be completed by the CONSULTANT within thirty (30) months.

ARTICLE 3 – COMPENSATION

A. Services: The City shall pay the CONSULTANT a lump sum not to exceed Six Hundred Forty-Four Thousand One Hundred Twenty Dollars ($644,120) for the provision of all services (the "NTE Price"). The NTE Price is further broken down by Engineering Design & Permitting Services ($570,500) and Bidding & Construction Phase Services ($73,620) as provided in Exhibit "B", the Fee Summary and the CITY's payment of the NTE Price shall not exceed the NTE Price as further broken down in Exhibit "B". The CONSULTANT expressly acknowledges and agrees that the total cost to complete all services is the NTE Price and no additional costs shall be authorized without prior written approval from City's governing body or the City Manager (depending on the City's required level of approval for such costs). In no case shall the CONSULTANT bill the City for any amount not in the NTE Price.

B. Reimbursable Expenses: The CONSULTANT's reimbursable, out-of-pocket expenses including, but not limited to, travel, per diem and other living expenses, are included in the NTE Price and the City shall not be responsible for payment of any such reimbursable, out-of-pocket expenses except as provided for in the NTE Price.

C. Direct Project Expenses: Unless otherwise specifically stated herein, charges for printing, reproduction, use of computer-aided design equipment, field equipment, and any laboratory analysis performed by the CONSULTANT or its subconsultants, and the use of the CONSULTANT's and employee's automobiles is included in the NTE Price and the City shall not be responsible for payment of any other direct project expenses

D. Status Report: The CONSULTANT shall complete and submit a technical summary and budgetary status report with each invoice (format to be provided by City).

ARTICLE 4 - TERMS OF PAYMENT

A. Monthly Invoices: The CONSULTANT shall submit invoices once each month to the City for the services performed and the expenses and other charges accounted for under this Agreement during the preceding month. Separate invoices shall be submitted for each task as shown in Exhibit "A". Payment as prescribed in Article 3 for services rendered by the CONSULTANT during the previous billing period shall be processed in accordance with the Florida Prompt Payment Act, Section 218.70,

Florida Statutes.

B. Sales Tax: The CONSULTANT shall pay all applicable sales taxes; or the City shall provide to the CONSULTANT the tax exemption information, where and if appropriate.

ARTICLE 5 - TERMS OF PERFORMANCE

A. Starting Work: The CONSULTANT will not begin any of the services until authorized in writing by a Notice to Proceed from the City.

B. Ownership of Documents: The drawings, specifications, calculations, supporting documents, or other work products which are listed as deliverables by the CONSULTANT to the City shall become the property of the City upon delivery. The CONSULTANT may keep copies or samples thereof and shall have the right to use such drawings, specifications, calculations, supporting documents, or other documents. The City accepts sole responsibility for the reuse of any such documents in a manner other than as initially intended, or for any use of incomplete documents unless prior written approval is obtained from the CONSULTANT.

C. Account Records: The CONSULTANT's accounting records, insofar as they pertain to invoicing the City or for disbursements made from the CONSULTANT's account for services under this Agreement, shall be open to City's inspection and audit at the CONSULTANT's office upon reasonable prior notice and during normal business hours. Backup documentation for out-of-pocket expenses exceeding Twenty-Five and 00/100 Dollars ($25.00) each shall be available at the CONSULTANT's office. These records will be retained by the CONSULTANT for five (5) years after the calendar year in which the services to which they pertain were rendered or the disbursements were made.

D. Force Majeure: Neither party hereto shall be liable for its failure to perform hereunder due to any circumstances beyond its reasonable control, such as acts of God, wars, riots, national emergencies, sabotage, strikes, labor disputes, accidents, and governmental laws, ordinances, rules, or regulations. The CONSULTANT or City may suspend its performance under this Agreement as a result of a force majeure without being in default of this Agreement, but upon the removal of such force majeure, the CONSULTANT or City shall resume its performance as soon as is reasonably possible.

Upon the CONSULTANT's request, the City shall consider the facts and extent of any failure to perform the services and, if the CONSULTANT'S failure to perform was without its or its subconsultants fault or negligence, the schedule and/or any other affected provision of this Agreement may be revised accordingly, subject to the City's rights to change, terminate, or stop any or all of the services at any time. No extension shall be made for delay occurring more than seven (7) days before a notice of delay or claim therefore is made in writing to the City. In the case of continuing cause of delay, only one (1) notice of delay or claim is necessary.

E. Approval of Changes: The City, through the City Commission or the City Manager (as specifically identified herein) must approve in writing any changes in the scope of services which result in additional costs or expenses to the City, extension of the schedule or which would change the underlying purpose of the Project. Changes include, but are not limited to, issuing additional instructions, requesting additional work, direct omission of work previously ordered, or changes in time of performance.

F. Authorized Representative: Before starting work, the CONSULTANT shall designate an authorized representative acceptable to the City to represent and act for the CONSULTANT and shall inform the City in writing of the name and address of such representative together with a clear definition of the scope of their authority. The CONSULTANT shall keep the City informed of any subsequent changes in the foregoing. The authorized representative of the City shall be the City Manager or his designee.

G. Time of the Essence: Time is of the essence in the performance of this Agreement. The CONSULTANT shall at all times carry out its duties and responsibilities as expeditiously as possible and in accordance with the Project schedule, subject to delays in the schedule which are not the fault of CONSULTANT or its subconsultants.

H. Design/Construction Phase Services: Visits to construction sites and observations made by the CONSULTANT as part of construction phase services, if any, shall not relieve the construction contractor(s) of obligation to conduct comprehensive inspections of the work sufficient to insure conformance with the intent of the construction contract documents, and shall not relieve the construction contractor(s) of full responsibility for all construction means, methods, techniques, sequences, and procedures necessary for coordinating and completing all portions of the work under the construction contract(s) and for all safety precautions incidental thereto. Safety precautions administered by the CONSULTANT, if any, shall meet or exceed those policies enacted by the City. Further, CONSULTANT shall endeavor to make reasonable efforts to guard the City against defects and deficiencies in the services of the construction contractor(s) and to help determine if the provisions of the construction contract documents are being fulfilled. This paragraph does not, however, release the CONSULTANT from any liability which might be attributable to its negligent acts, errors, or omissions, including but not limited to design, construction phase services, or other services as defined in this Agreement, of the CONSULTANT.

I. Fiscal Non-funding: In the event sufficient budgeted funds are not available for a new fiscal period, the City shall notify the CONSULTANT of such occurrence and this Agreement shall terminate on the last day of the current fiscal period without penalty or expense to the City.

J. Personnel: The CONSULTANT represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Agreement. Such personnel shall not be employees of or have any contractual

relationship with the City. All of the services required hereunder shall be performed by the CONSULTANT or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services. The CONSULTANT shall furnish services in a manner consistent with industry standards and to a level of professional skill generally acceptable in the industry with regard to services of this kind. The CONSULTANT shall comply with all applicable laws in the provision of services under this Agreement. The CONSULTANT agrees that it is fully responsible to the City for the acts and omissions of subconsultants and of persons either directly or indirectly employed by the CONSULTANT. Nothing contained herein shall create any contractual relationship between any subconsultant and the City. All of the CONSULTANT's personnel (and all subconsultants) while on City premises, will comply with all City requirements governing conduct, safety, and security. The City reserves the right to request replacement of any of CONSULTANT's personnel furnished by the CONSULTANT.

K. Conflict of Interest: The CONSULTANT represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder, as provided for in Florida Statutes, Section 112.311. The CONSULTANT further represents that no person having any such conflicting interest shall be employed for said performance. The CONSULTANT shall promptly notify the City's representative, in writing, of all potential conflicts of interest for any prospective business association, interest or other circumstance which may influence or appear to influence the CONSULTANT'S judgment or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that the CONSULTANT may undertake and request an opinion of the City as to whether the association, interest or circumstance would, in the opinion of the City, constitute a conflict of interest if entered into by the CONSULTANT. The City agrees to notify the CONSULTANT of its opinion within thirty (30) days of receipt of notification by the CONSULTANT. If, in the opinion of the City, the prospective business association, interest or circumstance would not constitute a conflict of interest by the CONSULTANT, the City shall so state in the notification and the CONSULTANT shall, at its option, enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the City by the CONSULTANT under the terms of this Agreement.

L. Status as an Independent Contractor: The status of the CONSULTANT under this Agreement is that of an independent contractor. Nothing in this Agreement shall create or be construed as creating a partnership or joint venture between the City and the CONSULTANT. The CONSULTANT does not have the power or authority to bind the CITY in any promise, contract or representation other than as specifically provided for in this Agreement (if any).

M. News Releases / Publicity: The CONSULTANT shall not make any news releases, publicity releases, or advertisements relating to this Agreement or the tasks associated with the Project without prior written City approval.

N. Nondiscrimination: The CONSULTANT warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, political affiliation, marital status, handicap, or sexual orientation. Further, CONSULTANT shall not discriminate or permit discrimination against any employee or an applicant for employment on the basis of race, color, sex, religion, political affiliation, natural origin, ancestry, marital status, sexual orientation or handicap.

ARTICLE 6 - CITY'S RESPONSIBILITIES

A. Service of Others: The City shall furnish to the CONSULTANT, if required for performance of the Consultant's services, all available data prepared by or the result of the services of others, including without limitation (as may be appropriate): building plans and related drawings, core borings, probings, and subsurface explorations, hydraulic surveys, laboratory tests, and inspections of samples, materials, and equipment, appropriate professional interpretations of all of the foregoing; environmental assessments and impact statements, appropriate professional interpretations of all of the foregoing; property boundary, easement, rights-of-way, topographic and utility surveys; property descriptions; zoning, deed, and other land use restrictions; and any other special data or consultations relating to the Project.

B. Examine Work of the Consultant: Within a reasonable time so as not to delay the services of the CONSULTANT, the City shall examine all studies, reports, sketches, drawings, specifications, proposals, and other documents presented by the CONSULTANT, obtain advice of an attorney, insurance counselor, or other consultants, as the City deems appropriate, for such examinations and the rendering, if required, of written opinions pertaining thereto.

ARTICLE 7 – SUSPENSION BY CITY FOR CONVENIENCE

City may, at any time, without cause order CONSULTANT in writing to suspend, delay or interrupt its services in whole or in part for such period of time as City may determine for City's convenience. Such order shall be by written notice to the CONSULTANT providing at least ten (10) days advance notice unless such order is immediately necessary for the protection of the public health, safety or welfare or for the protection of property.

ARTICLE 8 –TERMINATION

A. Termination for Default by the City: If the City's authorized representative deems that the CONSULTANT is in default for failure to supply adequate personnel, or services of proper quality, or has failed in any other respect to satisfactorily perform the services specified in this Agreement, the City's authorized representative may give written notice to the CONSULTANT specifying the default(s) to be remedied within five (5) days. Such notice shall set forth the basis for any dissatisfaction and suggest corrective measures. If the CONSULTANT does not remedy defaults within five (5) days or commence steps to remedy default to the reasonable satisfaction of the City's

authorized representative, the City may do one or all of the following: secure such services from another consultant; withhold any money due or which may become due to the CONSULTANT for such services related to the claimed default(s); and/or, elect to immediately terminate this Agreement. No compensation shall be paid for de-mobilization, take-down, disengagement, wind-down, lost profits or other costs incurred due to termination of this Agreement for default.

B. Termination for Default by the Consultant: This Agreement may be terminated by the CONSULTANT upon thirty (30) days prior written notice to the City in the event of a failure by the City to perform in accordance with the terms of this Agreement through no fault of the CONSULTANT; provided the City fails to cure same within that thirty (30) day period.

C. Termination Without Cause by City: Notwithstanding the foregoing, the City reserves the right and may elect to terminate this Agreement at any time. At such time, the CONSULTANT shall be compensated only for those services which have been satisfactorily completed to the date of termination. No compensation shall be paid for de-mobilization, take-down, disengagement, wind-down, lost profits or other costs incurred due to termination of this Agreement without cause.

D. Early Termination: If this Agreement is terminated before the expiration of the Initial Term or expiration of any renewal term by either party, the CONSULTANT shall:

1. Stop service on the date and to the extent specified.

2. Terminate and settle all orders and subcontracts relating to the performance of the terminated services.

3. Transfer all work in progress, completed work, and other materials related to the terminated services to the City in the format acceptable to City.

4. Continue and complete all parts of the services that have not been terminated.

ARTICLE 9 –INDEMNIFICATION AND INSURANCE

A. Indemnification: The CONSULTANT agrees to assume liability for and indemnify, hold harmless, and defend the City, its commissioners, mayor, officers, employees, agents, and attorneys of, from, and against all liability and expense, including reasonable attorney's fees (at all trial and appellate levels), in connection with any and all claims, demands, damages, actions, causes of action, and suits in equity of whatever kind or nature, including claims for personal injury, property damage, equitable relief, or loss of use, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the CONSULTANT, its agents, officers, subconsultants, employees, or anyone else employed or utilized by the CONSULTANT in the performance of this Agreement. The CONSULTANT's liability hereunder shall include all attorney's fees and costs incurred by the City in the

enforcement of this indemnification provision. This includes claims made by the employees of the CONSULTANT against the City and the CONSULTANT hereby waives its entitlement, if any, to immunity under Section 440.11, Florida Statutes. The obligations contained in this provision shall survive termination of this Agreement and shall not be limited by the amount of any insurance required to be obtained or maintained under this Agreement.

Subject to the limitations set forth in this Article, the CONSULTANT shall assume control of the defense of any claim asserted by a third party against the City and, in connection with such defense, shall appoint lead counsel, in each case at the CONSULTANT's expense. The City shall have the right, at its option, to participate in the defense of any third party claim, without relieving CONSULTANT of any of its obligations hereunder. If the CONSULTANT assumes control of the defense of any third party claim in accordance with this paragraph, the CONSULTANT shall obtain the prior written consent of the City before entering into any settlement of such claim. Notwithstanding anything to the contrary in this Article, the CONSULTANT shall not assume or maintain control of the defense of any third party claim, but shall pay the fees of counsel retained by the City and all expenses, including experts' fees, if (i) an adverse determination with respect to the third party claim would, in the good faith judgment of the City, be detrimental in any material respect to the City's reputation; (ii) the third party claim seeks an injunction or equitable relief against the City; or (iii) the CONSULTANT has failed or is failing to prosecute or defend vigorously the third party claim. Each party shall cooperate, and cause its agents to cooperate, in the defense or prosecution of any third party claim and shall furnish or cause to be furnished such records and information, and attend such conferences, discovery proceedings, hearings, trials, or appeals, as may be reasonably requested in connection therewith.

It is the specific intent of the parties hereto that the foregoing indemnification complies with Section 725.08, Florida Statutes, as amended. CONSULTANT expressly agrees that it will not claim, and waives any claim, that this indemnification violates Section 725.08, Florida Statutes, as amended. Nothing contained in the foregoing indemnification shall be construed as a waiver of any immunity or limitation of liability the City may have under the doctrine of sovereign immunity or Section 768.28, Florida Statutes.

B. Insurance: The CONSULTANT shall not commence any services in connection with this Agreement until it has obtained all of the types of insurance required pursuant to the RFP and such insurance has been approved by the City. The City shall be named as an additional insured on all insurance except for Worker's Compensation Coverage and Professional Liability. The CONSULTANT shall require all subconsultants to obtain the same insurance as required herein (without the City named as an additional insured) and no subconsultant shall commence any services under this Agreement until the CONSULTANT has obtained a copy of all subconsultant(s) proofs of insurance. The CONSULTANT shall provide the City with proof of all subconsultant's insurance upon request by the City. The CONSULTANT's insurer shall have a currently valid Certificate of Authority issued by the State of Florida, Department of Insurance authorizing it to write insurance policies in the State

of Florida and be conducting business in the State of Florida. Insurers shall have at least a Policy Holders Rating of A-, and Financial Rating of Class IV as identified in the latest issue of "Bests Key Rating Guide" unless otherwise accepted by the City in writing. The CONSULTANT's insurance shall be considered primary and shall not be canceled or materially changed without at least thirty (30) days' notice to the City. The City's insurance, if any, shall be considered excess, as may be applicable to claims which arise out of indemnifications, insurance, certificates of insurance and any additional insurance provisions of this Agreement. The CONSULTANT shall procure and maintain all insurance listed above for the life of this Agreement. Receipt of certificates or other documentation of insurance or policies or copies of policies by the City or by any of its representatives which indicate less coverage than required by this Agreement does not constitute a waiver of the CONSULTANT's obligations to fulfill the requirements of this Article.

In addition to the insurance requirements of the RFP, CONSULTANT shall provide the following: Commercial Automobile Liability, with minimum coverage of $1,000,000 per occurrence. Coverage shall include bodily injury and property damage arising out of ownership, maintenance or use of any auto, including owned, non-owned and hired automobiles and employee non-ownership use.

C. Loss Deductible: The City shall be exempt from, and in no way liable for, any sums of money which may represent a deductible in any insurance policy. The payment of deductibles shall be the sole responsibility of the CONSULTANT or its subconsultants.

D. Waiver of Subrogation: The City and the CONSULTANT waive all rights against each other for damages caused by perils covered by insurance provided under this Agreement to the extent covered by such insurance, except such rights as they may have to the proceeds of such insurance held by the City and the CONSULTANT as trustees. The CONSULTANT shall require similar waivers from all subconsultants. The City and the CONSULTANT waive all rights against each other for loss or damage to any equipment used in connection with performance under this Agreement and covered by any property insurance. The CONSULTANT shall require similar waivers from all subconsultants. If the insurance policies referred to in this article require an endorsement to provide for continued coverage where there is a waiver of subrogation, the owner of such policies will cause them to be so endorsed; failure to obtain endorsement nullifies the waiver of subrogation.

ARTICLE 10 - SUCCESSORS AND ASSIGNS

The City and CONSULTANT each binds themselves and their partners, successors, executors, administrators, and assigns to the other party of this Agreement and to the partners, successors, executors, administrators, and assignees of such other party in respect to all covenants of this Agreement. The CONSULTANT shall not assign, sublet, or transfer any interest in this Agreement without the prior written consent of the City, which the City may withhold in its sole and absolute discretion. Nothing herein shall be construed as creating any personal liability on the part of any elected

official, officer, employee or agent of the City, nor shall it be construed as giving any rights or benefits hereunder to any third party other than the City and CONSULTANT.

ARTICLE 11 - REMEDIES

A. Claims, Counter-Claims, Disputes, Etc.: Prior to the filing of any claim, proceeding or litigation related to the Agreement, all claims, counter-claims, disputes, and other matters in questions between the CONSULTANT and the City will be first reviewed by authorized representatives of both parties for a recommended solution. If no solution or resolution is forthcoming, either party may pursue its claim, proceeding or litigation.

B. Governing Law and Venue: This Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of Florida. Each of the parties hereto (a) irrevocably submits itself to the exclusive jurisdiction of the Fifteenth Judicial Circuit Court, in and for Palm Beach County, Florida for state actions, and the jurisdiction of the United States District Court for the Southern District of Florida, West Palm Beach Division for federal actions, for the purposes of any suit, action or other proceeding arising out of, or relating to, this Agreement; (b) waives and agrees not to assert against any party hereto, by way of motion, as a defense or otherwise in any suit, action or other proceeding, (i) any claim that it is not personally subject to the jurisdiction of the above-named courts for any reason whatsoever, and (ii) to the extent permitted by applicable law, any claim that such suit, action or proceeding by any party hereto is brought in an inconvenient forum, or that the venue of such suit, action or proceeding is improper or that this Agreement or the subject matter hereof may not be enforced in or by such courts.

ARTICLE 12 – NOTICE

A. Any notice required to be given under this Agreement shall be given in writing and delivered by hand or through the instrumentality of certified mail of the United States Postal Service (return receipt requested) or other nationally recognized overnight courier service, such as Federal Express.

B. Unless otherwise notified in writing of a new address, all notices shall be made to each party at the below listed addresses. Any party shall have the right, from time to time, to change the address to which notices shall be sent by giving the other party at least ten (10) days prior notice of the address change.

All notices to the CONSULTANT shall be sent to:

Mock, Roos & Associates, Inc.
5720 Corporate Way
West Palm Beach, FL 33407,

All notices to the City shall be sent to:

Office of the City Manager
c/o City of Lake Worth
7 North Dixie Highway
Lake Worth, FL 33460.

ARTICLE 13 – NO CONTINGENT FEES

The CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the CONSULTANT any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this provision, the City shall have the right to terminate the Agreement without liability and at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

ARTICLE 14 – TRUTH-IN-NEGOTIATION CERTIFICATE

The signing of this Agreement by the CONSULTANT shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation of this Agreement are accurate, complete, and current at the time of contracting. The NTE Price and any additions thereto shall be adjusted to exclude any significant sums by which the City determines the NTE Price was increased due to inaccurate, incomplete, or non-current wage rates and other factual unit costs. All such contract adjustments shall be made within one (1) year following the end of this Agreement.

ARTICLE 15 – PUBLIC ENTITIES CRIMES

As provided in Sections 287.132 and 289.133, Florida Statutes, by entering into this Agreement or performing any service in furtherance thereof, the CONSULTANT certifies that it, its affiliates, suppliers, subconsultants and contractors who will perform under the terms and conditions of this Agreement have not been placed on the convicted vendor list maintained by the Florida Department of Management Services within the 36 months immediately preceding the date of this Agreement. This notice is required by Section 287.133, Florida Statutes.

ARTICLE 16 - NONEXCLUSIVE AGREEMENT

This Agreement is not intended to be and shall not be construed as an exclusive agreement, and the City may employ additional or other professional consulting firms to perform services contemplated by this Agreement without liability to the City.

ARTICLE 17 - MISCELLANEOUS

A. Validity, Severability and Reformation: The validity, interpretation, construction, and effect of this Agreement shall be in accordance with and be governed by the laws of the State of Florida. Any provision or part of this Agreement held to be void or unenforceable under any law shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon the parties. The parties agree that this Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision which comes as close as possible to expressing the intention of the stricken provision.

B. Headings: The headings of the sections of this Agreement and capitalizations are for the purpose of convenience only and shall not be deemed to expand or limit the provisions contained in such sections.

C. Entire Agreement and Conflicts: This Agreement, including the RFP and the exhibit hereto, constitutes the entire Agreement between the parties hereto and supersedes any prior negotiations, representations, Agreements, and understandings, either written or oral. This Agreement consists of the terms and conditions provided herein; the RFP (including all drawings, maps, specifications, exhibits and addenda attached thereto or referenced therein); Exhibit "A"; and, Exhibit "B". To the extent that there exists a conflict between this Agreement and the remaining documents, the terms, conditions, covenants, and/or provisions of this Agreement shall prevail with RFP (including all drawings, maps, specifications, exhibits and addenda attached thereto) next taking precedence. Notwithstanding the foregoing, if there is any conflict between the RFP and Exhibit "A" regarding the CONSULTANT's services, Exhibit "A" will take precedence as the parties' negotiated agreement on the scope of services. Wherever possible, the provisions of such documents shall be construed in such a manner as to avoid conflicts between provisions of the various documents.

D. Waiver: No waiver of any of the terms or conditions of this Agreement shall be effective unless in writing and executed by the party to be changed therewith. No waiver of any condition or of the breach of any term, covenant, representation, warranty or other provision hereof shall be deemed to be construed as a further or continuing waiver of any such condition or breach or a waiver of any other condition or of any breach of any other term, covenant, representation, warranty or other provision contained in this Agreement.

E. 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, claim or proceeding related to this Agreement.

F. Counterparts: This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but each of which together shall constitute one and the same instrument.

G. Preparation: This Agreement shall not be construed more strongly against either

party regardless of who was more responsible for its preparation.

ARTICLE 18 - PALM BEACH COUNTY INSPECTOR GENERAL

In accordance with Palm Beach County ordinance number 2011-009, the CONSULTANT acknowledges that this Agreement may be subject to investigation and/or audit by the Palm Beach County Inspector General. The CONSULTANT has reviewed Palm Beach County ordinance number 2011-009 and is aware of its rights and/or obligations under such ordinance.

ARTICLE 19 - PUBLIC RECORDS

The CONSULTANT shall comply with Florida's Public Records Laws, and specifically agrees to:

A. Keep and maintain public records that ordinarily and necessarily would be required by the City in order to perform the service.

B. Provide the public with access to public records on the same terms and conditions that the City would provide the records and at a cost that does not exceed the cost provided in this Chapter 119, Florida Statutes, or as otherwise provided by law.

C. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.

D. Meet all requirements for retaining public records and transfer, at no cost, to the City all public records in possession of the CONSULTANT upon termination of the Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the City in a format that is compatible with the information technology systems of the City.

ARTICLE 20 - REPRESENTATIONS/BINDING AUTHORITY

CONSULTANT has full power, authority and legal right to execute and deliver this Agreement and perform all of its obligations under this Agreement. By signing this Agreement, CONSULTANT hereby represents to the City that it has the authority and full legal power to execute this Agreement and any and all documents necessary to effectuate and implement the terms of this Agreement on behalf of the party for whom he or she is signing and to bind and obligate such party with respect to all provisions contained in this Agreement.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement to Furnish Professional Services on the day and date first above written:

CITY OF LAKE WORTH, FLORIDA

By: _____
Pam Triolo, Mayor

ATTEST:

_____
Pamela J. Lopez, City Clerk

Approved as to form and legal sufficiency:

_____ FOR
Glen J. Torcivia, City Attorney

MOCK, ROOS AND ASSOCIATES, INC.

By: _____

[Corporate Seal]

Print Name: THOMAS A BIGGS

Title: EXECUTIVE VICE PRESIDENT

STATE OF FLORIDA)
COUNTY OF PALM BEACH)

The foregoing instrument was acknowledged before me this 18th day of November, 2013 by Thomas Biggs, as Exec. Vice President (title), of Mock, Roos and Associates, Inc., a corporation authorized to do business in the State of Florida, and who is personally known to me or who has produced the following _____ as identification.

Notary Public _____

JANE E. HAYES
Commission # FF 040421
Expires August 15, 2017
Bonded Thru Troy Fain Insurance 800-385-7019

Print Name: Jane E. Hayes
My commission expires: 8/15/17

OCTOBER 29, 2013

EXHIBIT A
LAKE WORTH PARK OF COMMERCE – PHASE 1 INFRASTRUCTURE IMPROVEMENTS
SCOPE OF SERVICES

PROJECT OVERVIEW

The City of Lake Worth ("City) has embarked upon a major effort to improve the marketability of vacant lands within the City's Park of Commerce. Initial efforts required to reach this goal include an upgrade to the existing infrastructure within the area. The Lake Worth Park of Commerce (the "Park") is the land area within the City of Lake Worth generally bounded by the Keller Canal on the west, I-95 on the east, Lake Worth Road on the south and 10th Avenue North on the north. An Infrastructure Needs Assessment and Preliminary Engineering Study (the "Study") was conducted for the Park in November 2010, establishing those improvements vital to the redevelopment of the 393-acre industrial park. The entirety of the infrastructure redevelopment will be carried out in three phases. This scope of services addresses only the first phase of infrastructure improvements to be implemented within a period of three years, as established in the Study.

DESCRIPTION OF PHASE 1 IMPROVEMENTS

Following the recommendations provided in the Study, the Phase 1 Improvements include the reconstruction of the following roadways:

- Boutwell Road from 2nd Avenue North to a point approximately 600 lf south of the South Right-of-Way line of 10th Avenue North (approximately 2,800 lineal feet)

- 4th Avenue North intersection extending approximately 500 feet west of Boutwell Road.

- 7th Avenue North intersection extending approximately 500 feet east from Boutwell Road and approximately 500 feet west of Boutwell Road

The principal roadway into the Park is Boutwell Road, which is owned and maintained by Palm Beach County, and classified as a Thoroughfare Road (80' R/W) on the County's road network. 10th Avenue North is also owned and maintained by Palm Beach County. 4th Avenue North and 7th Avenue North are City owned streets.

The project also includes improvements to water mains and wastewater facilities, only within the areas affected by roadway improvements. In addition, it is intended that electric and telecommunication facilities will be installed within the same limits of the roadway construction elements. Electrical and

communication system improvements will be designed and construction coordinated by the City.

Existing rights-of-way along Boutwell Road vary from 50 to 60 feet wide. To construct the intended improvements additional right-of-way will be required, up to 80 feet total width, to be determined by the City. The preparation of right-of-way procurement documents to be utilized by others in the actual procurement process is included in this scope of services. Additional right-of way procurement documents along 4th Avenue North and/or 7th Avenue North for approximately 500 lf shall also be included.

SCOPE OF CONSULTANT SERVICES

The CONSULTANT shall provide the City with the necessary engineering and related services to prepare Contract Documents for bidding and construction of the improvements described above. All proposed construction drawings within the existing, or newly acquired right-of-way of Boutwell Road, will be performed in accordance with the Palm Beach County Thoroughfare Design Procedures. The CONSULTANT's Contract Documents shall include Construction Drawings, Construction Contract Front-End Documents, Specifications, Opinions of Probable Costs, and other items deemed appropriate.

I. Surveying

The CONSULTANT shall perform all field and office surveys required to support the engineering and related services to be performed. These services are in two forms as described below:

A. <u>Engineering Surveys</u> - Prepare a complete Topographic Survey of the Boutwell Road corridor as defined in Rule 5J-17.050 (10)(k) of the Minimum Technical Standards adopted by the Board of Professional Surveyors and Mappers. Topographical surveys will cover all existing right-of-way and extend approximately 25 feet outside of the right-of-way on private property. All side streets, public or private, connecting to Boutwell Road shall be included, as described in the Description of Phase 1 Improvements. In particular, the survey will include the following:

1. Obtain Horizontal (NAD 83/90) and Vertical (NAVD 88) control and verify right-of-way control. All Topographical surveys shall have stationing established from south to north and west to east. This shall be accomplished by creating a baseline in the field to collect pertinent data which shall include the following:

    a. Location of visible fixed improvements within the proposed project limits, including physical objects, roadway pavement, driveways, sidewalks, walls, curb, railroad tracks, drainage swales, trees, signs, fences, power poles and

buildings.

b. Location of above ground existing utilities: Power, BellSouth, Cable TV, Natural Gas, Potable Water (valves, fire hydrants, and meters), Force Mains (valves), Sanitary Sewer, Storm Sewers. Including invert elevations, pipe size, type and direction for storm and sanitary infrastructure.

c. Topography at major ground elevation changes to depict existing ground profile along existing roadway centerlines. Elevations shall be indicated at 50 foot station intervals, at a minimum. Intermediate grades shall be indicated at all significant grade breaks.

d. Roadway cross sections along the entire length of Boutwell Road and each side street (public or private) at 50 foot intervals, PC's and PT's of horizontal curves.

e. Benchmarks. Elevations to be referenced to an existing established City, County or FDOT vertical control network utilizing the North American Vertical Datum of 1988 (NAVD 88).

2. Provide plots of the complete Topographical survey at 1" = 20' scale, signed and sealed by registered land surveyor, along with a computer disk with survey and drawing information compatible for use with AutoCAD Civil 3D Version 2013.

B. Right-of-Way Surveys and Documents – In support of the City of Lake Worth performing rights-of-way acquisitions, the CONSULTANT will prepare an individual Boundary Survey for each of the individual properties to be impacted by right-of-way acquisition as defined in Rule 5J17-050 (10b) of the Minimum Technical Standards adopted by the State of Florida Board of Professional Surveyors and Mappers. The following tasks will be included:

1. Review of the current title work (provided by City) for each property with all back-up documentation to identify easements, encumbrances, and other factors that may affect the ability to clearly establish ownership, or to acquire the necessary right-of-way.

2. Prepare a Sketch and Legal Description for permanent Right-of-Way Acquisition for each affected parcel of land (estimated 16 parcels total), as defined in Rule 5J-17.052 (5)(a)(b) of the Minimum Technical Standards adopted by the Board of Professional Surveyors and Mappers, and meeting the requirements of Palm Beach County (reference Thoroughfare Road Design Procedures) Engineering

and Legal staff. The Sketch and Description will depict the entire parent tract along with the proposed land area for right-of-way acquisition for each parcel.

3. It is presumed that an overall Right-of-Way Procurement Map will not be required. This is to be confirmed in initial coordination with Palm Beach County. If required, it can be provided as an additional service.

4. If additional parcels are required due to roadway alignment decisions or if permanent or temporary easements are needed to construct the designed improvements, additional sketches and descriptions can be prepared as an additional service.

II. Preliminary Engineering/Master Plan Development

A. Conduct meetings with City staff and Agencies

The CONSULTANT will initially meet with City staff, and attend 1 initial meeting each with Palm Beach County and SFWMD, to facilitate agreement amongst the affected parties regarding the construction of Boutwell Road. Phasing of the improvement, as well as the ultimate conditions shall be discussed, along with right-of-way acquisition requirements, potential funding assistance, and any issues the City desires.

B. Submit Boutwell Road Typical Section

The CONSULTANT shall prepare one (1) engineering drawing of the proposed typical roadway section to be provided by the City that conforms to the requirements of Palm Beach County, fitting into the ultimate 80 foot right-of-way established under the current County Thoroughfare Map. Modification to the typical section or preparation of additional sections can be performed as additional services.

C. Prepare One (1) Roadway Geometric Plan

Based on the Palm Beach County approved typical section, the CONSULTANT will prepare a Geometric Plan of the proposed roadway improvements to Boutwell Road, 4th Avenue North intersection, and 7th Avenue North intersection. This plan will be on aerial photography at a scale of 1”=40’. The Plan will identify the proposed right-of-way acquisition requirements for the project.

D. Depict Storm Water Concept Plan

The conceptual storm water management plan will be developed to accommodate all new roadway surface runoff, meeting SFWMD criteria for Water Quality and Storm Attenuation. The plan will identify the proposed location(s) and concepts to be incorporated into the project for detention/retention facilities, including those that may be located outside the existing rights-of-way. Conceptual calculations will be performed supporting the applicability and functionality of the proposed system(s). The proposed system will be discussed with SFWMD officials for input prior to permit application for a new or modified permit in the current Detroit Street Drainage Basin. This plan will be overlayed onto the Roadway Geometric Plan.

E. Prepare Landscape Concept Plan

The Landscape architect shall prepare preliminary landscape drawings for the Boutwell Street right-of-way based on the roadway typical section and Roadway Geometric Plan. . The drawings shall also include design development documents for one (1) proposed entry sign at the South end of the project limits.

F. Depict Utility Concept Plan (Water/Sewer)

The CONSULTANT shall prepare Conceptual Utilities Improvement Drawings for the Phase 1 Area. These drawings will be overylayed onto the Roadway Geometric Plan.

1. <u>Preliminary Watermain Improvements Drawings</u>

The anticipated watermain improvements will include a 12-inch watermain along the west side of Boutwell Road (within the right-of-way) from Lake Worth Road to 600 lf south of 10th Avenue North. The watermain will connect to the 12-inch watermain along Lake Worth Road, the 8-inch watermain in 4th Avenue North, the 12-inch watermain in 7th Avenue North, and other connections as determined to be appropriate during the design phase. The project design will include valves, fire hydrants, and other appurtenances as necessary.

2. <u>Preliminary Wastewater Improvements Drawings</u>

The wastewater improvements will include:

a. A 6-inch forcemain is proposed on the west side of Boutwell Road from 7th Avenue North to 600 lf south of 10th Avenue North (within the Boutwell Road right-of-way).

b. A 6-inch forcemain is proposed between 2nd Avenue North and 4th Avenue North to replace an existing deteriorated forcemain (within the Boutwell Road right-of-way).

3. Electrical Design Coordination

Meet with electric utility personnel and City information technologies (IT) staff to coordinate their design of the underground electrical conduit system for electrical distribution and communications systems within the Phase I project limits.

4. Preliminary Roadway Lighting Drawings

Provide preliminary roadway lighting design in accordance with Illuminating Engineering Society standards, the National Electrical Code, and applicable local codes. Provide light fixture selection and details through coordination with the project team. Preliminary design will include the determination of the light pole locations along the project limits

G. Prepare preliminary Opinions of Probable Construction Cost

Prepare Preliminary Engineer's Opinion of Probable Construction Costs for each of the above described elements of the Preliminary Engineering efforts.

III. Construction Contract Drawings & Specifications

A. Prepare Roadway Construction Drawings for Boutwell Road, 4th Ave North intersection and 7th Ave North intersection in accordance with the PBC Thoroughfare Design Procedures – all drawings for each project element will be prepared on 11"x17" sheets. Roadway plan and profile sheets will be at a scale of 1'=40'H/1"=4'V. Drainage Map shall be at a scale of 1"=200'H. FDOT Standard Specifications for Road & Bridge Construction shall apply. Special Provisions included as necessary.

B. Prepare Storm Water/Drainage System Construction Drawings including the following:

1. Off- site improvements to include design of lateral outfall(s) along 7th Avenue North and Joyce Street to the existing Fitch Ditch and new retention facility.

Design of new retention facility and associated control structures to be prepared on plan/detail sheets, as appropriate. Required modifications to the existing Detroit Street Control Structure are included.

2. On- site improvements will include storm water collection facilities (catch basins, inlets, pipe culverts, etc.) all sized in accordance with Thoroughfare Design Standards for design storm events specified by Palm Beach County. All facilities will conform to FDOT Standard Indices for Construction. Details will be provided for special structures, or devices not covered in FDOT Standards.

3. The services of an underground utility locating service to perform "soft-digs" and potholes at locations of potential conflicts between proposed drainage and existing utilities systems can be provided as an additional service if requested or the City can dig up potential conflicts with City Crews.

C. Water and Sewer Facilities Construction Drawings

Prepare construction drawings and specifications for installation of all water and sewer facilities identified above in the Preliminary Engineering tasks. Proposed piping with valves and other standard features will be designed in concert with the roadway construction drawings.

D. Electrical Facilities Construction Drawings – Prepare construction drawings and specifications indicating the scope, extent, and character of the electrical work to be performed and furnished by the Contractor:

1. Design of electrical service and distribution for landscape irrigation equipment.

2. Design of street lighting.

3. Design of landscape and sign lighting at south entrance to the Park of Commerce.

Design of underground electrical conduits to accommodate the installation of power and communication cables by the City of Lake Worth will be developed, designed, and construction plans prepared by the City's electrical engineering staff.

E. Landscape and Irrigation Design

1. The Landscape Architect shall prepare streetscape planting construction drawings for the Boutwell Street right-of-way. The drawings shall be prepared at a scale to be determined by the Landscape Architect and Engineer and shall meet the streetscape standards of Palm Beach County.

2. The Landscape Architect shall prepare construction documents for the proposed identification sign located at the south entrance of the project.

3. The Landscape Architect shall prepare Landscape Irrigation construction drawings for the above indicated roadway landscape plan. The drawings shall delineate water source, mainlines, zones, heads and valves to control the system.

F. Signing and Pavement Marking Plan – The CONSULTANT will prepare signing and pavement marking drawings for the improved roadways. These drawings will conform to Palm Beach County Typicals No. T-P-06-001, and the Manual on Uniform Traffic Control Devices, as well as Standard Highway Signs Manual. Plan submittals for review by Palm Beach County staff will accompany roadway construction plan submittals.

G. Construction drawing preparation submittals/reviews by Palm Beach County Engineering will be performed in accordance with the PBC Thoroughfare Design Procedures, at the following progress milestones. Two additional plan sets will be provided to the City at each submittal. Appropriate comments from City and County will be addressed in the subsequent deliverable.

1. 35% (Phase ID Submittal)

2. 65% (Phase IID Submittal)

3. 96% (Phase III Submittal)

4. 100% (Phase IV and Final Submittals)

H. Right-of-Way acquisition document submittals/reviews by Palm Beach County Engineering will be required following the 65% (PBC Phase IID) submittal. Revisions to documents shall be performed in a timely manner, so as not to delay the procurement process.

I. Prepare opinions of probable construction costs at the 35%, 65%, 96%, and 100%/Final Submittals of construction drawings.

IV. Regulatory Agency Permitting

A. Prepare Palm Beach County permit application packages.

1. Roadway/Driveway Connection Permit

2. Utility/Right-of-Way Permit

B. Prepare SFWMD Permit Application Package.

1. Modification to Permit No. 50-01186-S includes ICPR Modeling, Stormwater management Calculations, Agency Coordination, and one (1) RAI Response.

C. Prepare LWDD permit application documenting the new pavement and storage conditions.

D. Prepare FDEP/PBC Department of Health permit applications for water main improvements and wastewater facility improvements.

1. 12-Inch Watermain along Boutwell Road

2. Forcemain along Boutwell Road

E. FDOT Utility Permit (Water Main Connection)

V. Geotechnical Engineering Services

A. CONSULTANT will retain the services of a Geotechnical Engineer to perform soils testing and analysis for the project. Field services will include:

1. Review our files for previous geotechnical work performed within the Lake Worth Park of Commerce area. Prepare a brief memorandum summarizing that data, and determining locations where additional data is needed.

2. Augment the existing data through drilling, roadway auger borings to depths of 8 feet spaced every 100 feet on alternating sides of the existing roadway.

3. Perform roadway pavement cores spaced at 1,000 feet.

4. Collect LBR samples for determination of subgrade design LBR values.

5. Perform muck probes along existing roadside swales as determined necessary.

6. Obtain 2 SPT borings 25 feet deep each at the location of proposed retention ponds.

7. Perform percolation tests at locations directed by the City.

8. Perform required laboratory tests as needed to determine soil characteristics profiles.

B. Provide professional consulting services to advise as to the suitability of the existing soils for construction of the project.

VI. Coordination with Owner's Rep, City staff, etc.

A. The CONSULTANT will coordinate with City staff and representatives on matters not necessarily included, but related to the performance of this scope of work. This will entail attendance at up to 12 meetings by Mock•Roos Project Director and Project Manager.

B. The CONSULTANT will provide support to the Community Outreach program with the following information:

1. Exhibits – One (1) Typical Roadway Section, one (1) Roadway Geometric Plan, and one (1) Landscape Plan.

2. Information – latest construction cost estimate, parcel/acquisition data.

VII. Bidding Phase Services

In concert with City staff and the Owner's Representative, the scope of each individual project and the number of projects to be bid for construction will be determined. For the purposes of this scope of services it is estimated that the Phase 1 improvements will be constructed in one project over a 14 month period. The CONSULTANT will assist the Owner in putting the designated project out to bid for construction. Bidding Phase Services for the project will include the following:

A. Prepare the City's bid advertisement to be placed in *The Palm Beach Post*.

B. Provide one pdf copy of construction documents to City for its distribution during bidding.

C. Coordinate with Owner's Representative to issue addendums responding to questions from prospective bidders, if necessary.

D. Attend one (1) pre-bid meeting to be coordinated by Owner's Representative.

E. Attend one meeting with City staff and Owner's Representative to review the "Recommendation of Award."

VIII. Construction Phase Services

The CONSULTANT will assist the City during construction by providing Construction Phase Services for the construction contract as follows:

A. Provide the Contractor with up to three (3) signed and sealed sets of construction drawings for use by the contractor in its City building permit application process.

B. Provide the Contractor one set of electronic AutoCAD files for Record Drawing preparation.

C. Attend a Pre-Construction Meeting to be coordinated by Owner's Representative. Review meeting minutes prepared by Owner's Representative.

D. Review the Contractor's shop drawing submittals for conformance with the Contract Documents. Up to two (2) reviews per shop drawing submittal are included; however, staff hours to evaluate "or equal" or "substitution" shop drawing packages may require additional service authorizations.

E. Provide up to 14 periodic site visits by the CONSULTANT's and sub-consultant's Project Engineers to review Contractor's work during the construction period.

F. Attend up to 14 formal monthly construction progress meetings between the Contractor, Contractor's subcontractors, Mock•Roos' consultants, Owner's Representative, and City staff during the construction period.

G. Attend up to 2 additional onsite construction meetings (as appropriate) between the Contractor, Contractor's subcontractors, Mock•Roos subconsultants, Owner Representative, and City staff during the construction period, as necessary.

H. Review minor (typically $10,000 or less) field directive changes, as requested by the City. Contractor payment for these items is to be covered under the general allowance established for the Project.

I. Review up to two (2) major change orders as requested by the City. It is assumed that these will be presented to the City Commission for approval.

J. Review the Contractor's Record Drawing (As-Built) submittals to check for conformance with the design in the Contract Documents, comment on corrections needed, and furnish an electronic AutoCAD file and PDF copy of the completed Record Drawings. Up to two (2) reviews of Record Drawing submittals are included in this scope. Additional reviews required to direct the Contractor in bringing the documents into compliance will require additional service authorizations.

K. Perform one (1) "substantial completion walk-through" with the Contractor, Contractor's subcontractors, Mock•Roos consultants, Owner's Representative, and City staff.

L. Perform one (1) "final completion walk-through" with the Contractor, Mock•Roos consultants, and City staff.

NOTE: The time for completion for Construction Phase Services shall run concurrent with the initial Construction Contract Time not including any approved time extensions. Any additional time required will necessitate an additional service authorization. This limited Scope of Construction Phase Services anticipates that either the Owner's Representative or City Staff will execute any permit required completion statements.

Exhibit B

Lake Worth Park of Commerce - Phase I
Fee Summary

Surveying	$81,090	☼
Preliminary Plan	$42,140	●
Construction Plans	$353,090	●
Regulatory Permitting	$45,290	☼
Geotechnical Services	$21,270	☼
Project Coordination	$24,820	●
Out of Pocket Expenses	$2,800	☼
Total Design & Permitting	$570,500	
Bidding Phase	$5,600	
Construction Phase	$67,070	
Out of Pocket Expenses	$950	☼
Total Bidding & Construction	$73,620	☐
Grand Total	$644,120	

● $420,050 / $5.5m = 7.6% - Design Phase Services
☐ $73,620 / $5.5m = 1.34% - Bid and Construction Phase Services
☼ Other services not typically measured vs construction cost

Lake Worth Park of Commerce - Phase I Infrastructure Improvements
City of Lake Worth
Compensation Fee Breakdown

Task		Task Description	Labor Classification: Project Director (Corporate Officer)	Senior Project Manager	Senior Engineer	Engineer	CADD Tech	Field Rep.	Admin. Assistant	Subconsultant	Sub	Sub Total	Line Total	Task Total
I.		**Surveying**											$0.00	
	A.	**Engineering Surveys (Including Consultant Coordination Time)**	4	24	16					$36,950	DJLA		$43,470.00	GENERAL
		1. Obtain Horizontal, Vertical, and Right-of-Way Control											$0.00	
		a. Location of Proposed Project Limits											$0.00	
		b. Location of Existing Above Ground Utilities											$0.00	
		c. Topography											$0.00	
		d. Roadway Cross Section											$0.00	
		e. Benchmarks											$0.00	
	B.	**Right-of-Way Survey and Documents (Including Consultant Coordination Time)**	2	20	16					$32,000	DJLA		$37,620.00	ROADWAY R/W
		1. Review Current Title Work Provided by Owner's Representative/City											$0.00	
		2. Sketches and Legal Descriptions (up to 16)											$0.00	
		3. Overall Right-of-Way Procurement Map (Not Applicable - additional If Required)											$0.00	
		Sub Total Task I	**6**	**44**	**32**	**0**	**0**	**0**	**0**	**$68,950**		**81,090**		**$81,090**
II.		**Project Initiation/Preliminary Roadway Plan**											$0.00	
	A.	**Attend meetings with PBC and SFWMD with key City Staff (2 meetings)**	8	8	8				2				$3,680.00	ROADWAY
	B.	**Submit Boutwell Road Typical Section to PBC (1 section)**		4	8		12						$2,720.00	
	C.	**Prepare Roadway Geometric Plan (1 plan)**	2	18	32		40						$10,840.00	
	D.	**Depict Storm Water/Drainage Concept on Geometric Plan (1 concept)**	2	4	24		28						$6,620.00	STORMWATER
		Right-of-Way Evaluation (by others)											$0.00	
	E.	**Prepare Landscape Concept Plan**		4						$8,600	2GHO		$9,200.00	LANDSCAPE
	F.	**Depict Utility Concept Plan on Geometric Plan (1 concept)**											$0.00	
		1. Preliminary Watermain Improvements (hours included in III.C. below)											$0.00	
		2. Preliminary Wastewater Improvements (hours included in III.C. below)											$0.00	
		3. Electrical Design Coordination	2							$1,000			$1,300.00	WATER & WASTEWATER
		4. Roadway Lighting		4	2					$2,000	SEC		$2,890.00	
	G.	**Prepare Preliminary Opinion of Probable Construction Costs**	1	4	12	12	12		4				$4,890.00	GENERAL
		Sub Total Task II	**15**	**46**	**86**	**12**	**92**	**0**	**6**	**$11,600**		**$42,140**		**$42,140**
III.		**Construction Contract Drawings & Specifications**											$0.00	
	A.	**Roadway Construction Drawings (Boutwell Road, 4th (500'), & 7th (500') Avenues)**											$0.00	
		1. Cover Sheet, Typical Section(s), Notes (3 sheets)		6	20	28	48		8				$10,920.00	ROADWAY
		2. Drainage Map (1"=200'H) (3 sheets)		6	16	20	40						$8,420.00	
		3. Plan & Profile Sheets (8 sheets)	4	56	80	96	160						$43,000.00	
		4. Construction Details (2 sheets)		12	24	28	52		4				$12,480.00	
		5. Drainage Structure Drawings (8 sheets)		20	26	32	48		4				$14,050.00	
		6. Roadway Cross Sections (21 sheets)		12	32	64	156		4				$25,560.00	
	B.	**Prepare Storm Water/Drainage System Construction Drawings**											$0.00	
		1. Off-Site Improvements (6 Sheets)	4	42	64	48	96		8				$29,140.00	STORM WATER
		2. On-Site Improvements (Covered under Task II.E)											$0.00	
		3. Underground Utility Locating (by City) (MR coordination hours shown)	2	4	8	10							$3,060.00	
	C.	**Water and Sewer Facilities Construction Drawings**											$0.00	
		1. Watermain Improvements (11 sheets)	4	8	58	122	172		16				$37,130.00	WATER & WASTEWATER
		2. Forcemain Improvements (8 sheets)	4	8	24	50	108		14				$19,760.00	
	D.	**Electrical Facilities Construction Drawings (MR coordination hours shown)**											$0.00	
		1. Electrical Service and Distribution for Landscape Irrigation Equipment	1	2	4					$5,000	SEC		$6,030.00	ELECT
		2. Design of Street Lighting	1	8	12					$9,000	SEC		$12,090.00	
		3. Design of Landscape and Sign Lighting at Lake Worth Road Intersection	1	4	4					$3,000	SEC		$4,330.00	
	E.	**Landscape and Irrigation Design (Include Consultant Coordination)**	2	12	12					$28,000	2GHO		$31,840.00	LANDSCAPE
		1. Landscape Architect - Streetscape Planting Drawings (Boutwell Road Only)											$0.00	
		2. Landscape Architect - Prepare Construction Documents		8	10		16		4				$4,170.00	
		3. Landscape Architect - Landscape Irrigation Construction Drawings			6		10		2				$1,790.00	
	F.	**Signing and Pavement Marking Plan (4 sheets, dual plan)**	4	16	26	56	102						$20,530.00	ROADWAY
	G.	**Construction Drawings Plan Preparation Submittal/Reviews**											$0.00	
		1. 35% (Phase ID Submittal)	4	16	12	12	8						$6,580.00	GENERAL
		2. 65% (Phase IID Submittal)	4	16	16	16	12			$300	SEC		$8,180.00	
		3. 96% (Phase III Submittal)	4	18	16	16	12			$600	SEC		$8,780.00	
		4. 100% (Phase IV and Final Submittals)	4	24	20	20	16			$600	SEC		$10,980.00	
		5. Provide 2 additional plan sets & documents at each County review submittal		4	4		10						$1,980.00	
		6. Attend review meeting with City staff and Owner's Representative (up to 4 meetings)	4	10	10								$3,550.00	
	H.	**Right-of-Way Acquisition Document Submittal/Reviews**	4	24	16								$6,520.00	ROADWAY

Task		Task Description	Labor Classification: Project Director (Corporate Officer)	Senior Project Manager	Senior Engineer	Engineer	CADD Tech	Field Rep.	Admin. Assistant	Subconsultant	Sub	Sub Total	Line Total	Task Total
	I.	**Prepare Opinions of Probable Construction Costs (35%, 65%, 96% and 100%/Final)**											$0.00	
		1. 35% (Phase ID Submittal)	2	8	16	8	8						$5,260.00	
		2. 65% (Phase IID Submittal)	2	12	18	10	10						$6,510.00	
		3. 96% (Phase III Submittal)	2	12	16	10	10						$6,220.00	
		4. 100% (Phase IV and Final Submittals)	2	8	10	8	6						$4,230.00	
		Sub Total Task III	**59**	**376**	**580**	**654**	**1100**	**0**	**64**	**$46,500**		**$353,090**		**$353,090**
IV.		**Regulatory Agency Permitting**											$0.00	
	A.	**Prepare Palm Beach County Permit Application Packages**											$0.00	
		1. Roadway/Driveway Connection Permit	1	4	8	12	8		4				$3,990.00	
		2. Utility/Right-of-Way Permit (Watermain/ Forcemain and Irrigation Permit)	1	4	10	12	16		8	$2,900	2GHO		$8,060.00	
	B.	**Prepare SFWMD Permit Application**											$0.00	
		1. Modification to Permit No. 50-01186-S	4	8	22	64			8				$11,870.00	
	C.	**Prepare LWDD Permit Application**	1	4	12	24	8						$5,530.00	
	D.	**Prepare FDEP/PBC Department of Health Permit Applications**											$0.00	
		1. 12-Inch Watermain along Boutwell Road	1	10	6	12	12		6				$5,040.00	
		2. 6-Inch Forcemain along Boutwell Road	1	10	6	16	20		8				$6,200.00	
	E.	**Prepare FDOT Utility Permit (Water Main Connection)**	1	10	6	12	8		4				$4,600.00	
		Sub Total Task IV	**10**	**50**	**70**	**152**	**72**	**0**	**38**	**$2,900**		**$45,290**		**$45,290**
V.		**Geotechnical Engineering Services**											$0.00	
	A.	**Geotechnical Engineering Services (Including Consultant Coordination)**	1	4	4								$1,330.00	
		1. Review Previous Files/Brief Memorandum											$0.00	
		2. Roadway Auger Borings								$6,030	DET		$6,030.00	
		3. Roadway Pavement Cores								$4,180	DET		$4,180.00	
		4. LBR Samples								$1,460	DET		$1,460.00	
		5. Perform Muck Probes								$2,050	DET		$2,050.00	
		6. Obtain 2 SPT Boring - 25' Deep Each								$2,950	DET		$2,950.00	
		7. Perform Percolation Tests								$1,520	DET		$1,520.00	
		8. Perform Laboratory Tests								$1,750	DET		$1,750.00	
	B.	**Professional Consulting Services Soils Suitability (Cost Included in Test)**											$0.00	
		Sub Total Task V	**1**	**4**	**4**	**0**	**0**	**0**	**0**	**$19,940**		**$21,270**		**$21,270**
VI.		**Coordination with Owner's Representative, City Staff, Etc.**											$0.00	
	A.	**General Project Meetings with City Staff and Owner's Representatives (up to 12)**	36	36					12	$2,600	SEC/2GHO		$14,120.00	
	B.	**Support Community Outreach Program (Exhibits)**	2	4	12	12	16		8	$5,100	2GHO		$10,700.00	
		Sub Total Task VI	**38**	**40**	**12**	**12**	**16**	**0**	**20**	**$7,700**		**$24,820**		**$24,820**
		Sub Total Labor Section	**129**	**560**	**784**	**830**	**1280**	**0**	**128**					
		Sub-Total Design & Permitting Services	**$19,350**	**$84,000**	**$113,680**	**$83,000**	**$102,400**	**$0**	**$7,680**	**$157,590**		**$567,700**		**$567,700**
		Out-of-Pocket Expenses										**$2,800**		**$2,800**
		TOTAL DESIGN & PERMITTING SERVICES										**$570,500**		**$570,500**
													$0.00	
VII.		**Bidding Phase Services**											$0.00	
	A.	**Prepare City's Bid Advertisement - Palm Beach Post (1 Project)**		1	2				4				$680.00	
	B.	**Provide City with Construction Drawings and Project Manual (1 Project)**		1	4				1				$790.00	
	C.	**Assist Owner's Rep. to Issue Addendums/Respond to Questions (1 Project)**	1	4	10				4				$2,440.00	
	D.	**Attend Pre-Bid Meeting (1 Project)**	1	4	4				1				$1,390.00	
	E.	**Attend One Meeting to Review Recommendation of Award (1 Project)**		2									$300.00	
		Sub Total Task VII	**2**	**12**	**20**	**0**	**0**	**0**	**10**	**$0**		**$5,600**		**$5,600**
VIII.		**Construction Phase Services**											$0.00	
	A.	**Provide Contractor with up to Three (3) sets of Contract Documents (1 Contract)**				2	4		2				$640.00	
	B.	**Provide Contractor with one set of electronic AutoCAD files (1 Contract)**				4							$400.00	
	C.	**Attend one (1) Pre-Construction Meeting (1 Contract)**	2	4	4					$1,500	SEC/2GHO		$2,980.00	
	D.	**Review Contractor's Shop Drawing Submittals (1 Contract)**		2	4	12				$900	SEC		$2,980.00	
	E.	**Provide Periodic Site Visits (up to 14 visits)**	8	21	49					$3,500	SEC		$14,955.00	
	F.	**Attend Formal Monthly Construction Progress Meetings (up to 14)**	8	56	56					$3,000	SEC/2GHO		$20,720.00	
	G.	**Attend Additional Onsite Construction Meetings (As requested - up to 2)**	2	8	8					$1,125	SEC		$3,785.00	
	H.	**Review Minor Field Directive Changes**		6	12								$2,640.00	
	I.	**Review Up to Two (2) Major Change Orders**	2	8	20								$4,400.00	
	J.	**Review Contractor's Record Drawings (As-Built) Submittals (up to 2 reviews)**	1	8	32	12							$7,190.00	
	K.	**Perform One (1) Substantial Completion "Walk-Through" (1 Project)**		8		8			4	$1,500	SEC/2GHO		$3,740.00	
	J.	**Perform One (1) Final Completion "Walk Through" (1 Project)**		4		8			4	$1,000	SEC/2GHO		$2,640.00	
		Sub-Total Task VIII	**23**	**125**	**185**	**46**	**4**	**0**	**10**	**$12,525**		**67,070**		**$67,070**

GENERAL

ROADWAY

WATER & WW

DRAINAGE

WATER & WW

ROADWAY

GENERAL

GENERAL

Task	Task Description	Labor Classification											
		Project Director (Corporate Officer)	Senior Project Manager	Senior Engineer	Engineer	CADD Tech	Field Rep.	Admin. Assistant	Subconsultant	Sub	Sub Total	Line Total	Task Total
	Sub Total Labor Section	25	137	205	46	4	0	20					
	Sub-Total Bidding & Construction Phase Services	$3,750	$20,550	$29,725	$4,600	$320	$0	$1,200	$12,525		$72,670		$72,670
	Out-of-Pocket Expenses										$950		$950
	TOTAL BIDDING & CONSTRUCTION PHASE SERVICES										$73,620		$73,620.00
	Labor Subtotal Hours	154	697	989	876	1,284	0	148					
	Labor Hourly Billing Rate	$150.00	$150.00	$145.00	$100.00	$80.00	$85.00	$60.00					
	Labor Individual Totals	$23,100	$104,550	$143,405	$87,600	$102,720	$0	$8,880	$170,115		$644,120		$644,120.00
	Labor Total	$640,370											
	Out-of-Pocket Expenses	$3,750											
	Project Total	**$644,120**											

Subconsultant Key
2GHO - Gentile Holloway O'Mahoney
DJLA - Dennis J. Leavy & Associates
SEC - Smith Engineering Consultants
DET - Dunkelberger Engineering & Testing
GHDS - Ground Hound Detection Services

Lake Worth Park of Commerce - Phase I
Fee Summary

Surveying	$81,090	☼
Preliminary Plan	$42,140	●
Construction Plans	$353,090	●
Regulatory Permitting	$45,290	☼
Geotechnical Services	$21,270	☼
Project Coordination	$24,820	●
Out of Pocket Expenses	$2,800	☼
Total Design & Permitting	$570,500	
Bidding Phase	$5,600	
Construction Phase	$67,070	
Out of Pocket Expenses	$950	☼
Total Bidding & Construction	$73,620	☐
Grand Total	$644,120	

● $420,050 / $5.5m = 7.6% - Design Phase Services
☐ $73,620 / $5.5m = 1.34% - Bid and Construction Phase Services
☼ Other services not typically measured vs construction cost

Deliverables

Preliminary Phase

1. Complete Topographic Survey for Boutwell Road Right-of-Way
2. Sketches & Legal Descriptions for up to 16 Right-of-Way Acquisition Parcels
3. One engineering drawing of Boutwell Road Typical Cross-Section
4. One Roadway Geometric Plan, on Aerial Photo with right-of-way requirements identified

Deliverables

Preliminary Phase (continued)

5. Conceptual Stormwater Management Plan
6. Conceptual Landscape Plan
7. Preliminary Watermain Improvement Plan
8. Preliminary Wastewater Improvement Plan
9. Preliminary Electrical System Improvements Basemap
10. Preliminary Roadway Lighting Plan
11. Preliminary Opinion of Probable Construction Cost

Deliverables

Design Phase

(1 set of Deliverables Due at 35%, 65%, 90%, and 100% Completion)

1. Roadway Construction Drawings
2. Stormwater System Construction Drawings (Onsite & Offsite)
3. Water & Sewer System Construction Drawings
4. Electrical Distribution Basemap (for City Staff)
5. Street & Landscape Lighting Construction Drawings
6. Landscaping & Irrigation System Construction Drawings
7. Signing & Pavement Marking Drawings
8. Engineer’s Opinion of Probable Construction Costs
9. Right-of-Way Acquisition Document Package to Palm Beach County at 65% Completion

Deliverables

Permit Application Packages

1. PBC Roadway/Driveway Connection Permit Application
2. PBC Utility/Right-of-Way Permit Applications
   - Water System Improvements
   - Sewer System Improvements
   - Electrical System Improvements
   - Irrigation System Improvements
3. SFWMD Surface Water Management Permit Applications

Deliverables

Permit Application Packages (continued)

4. LWDD Surface Water Permit Application

5. FDEP/PBCHD Permit Applications

   - Water System Improvements
   - Sewer System Improvements

6. FDOT Utility Permit Application for Watermain Connection in Lake Worth Road

Deliverables

Miscellaneous Deliverables

1. Soils Investigation Report with Test Results

2. Exhibits for Owners Representative Use for Community Outreach

    - Roadway Section Exhibit
    - Geometric Plan Exhibit
    - Engineer’s Opinion of Probable Construction Cost
    - Right-of-Way Acquisition Information

Deliverables

Bidding Documents

1. Bid Advertisement (for City Publication)

2. PDF copy of 100% Construction Documents

Construction Phase

1. Three (3) signed and sealed sets of Construction Drawings

2. One (1) electronic AutoCAD File of Construction Drawings

Owner's Rep vs. Mock•Roos Duties

We will cooperatively work together towards the common goal – a successful project

Major Tasks	Owner's Rep	Mock•Roos
R/W Needs Assessment	Lead	Assist
Community Outreach	Lead	Support
Public Involvement	Lead	Support
Land Acquisition	Lead	Support
Design (Admin)	Lead	Support
Design (Technical)	QA/QC	Lead
Permitting	Support	Lead
Bid Phase	Admin.	Support
Construction	Admin.	Support

Anticipated 100% Construction Drawing Package

1. Cover Sheet (1)
2. Typical Sections (2)
3. General & Construction Notes (1)
4. Summary of Quantities (1)
5. Summary of Quantities (1)
6. Drainage Map (1)
7. Geometric Layout Plan (1)
8. Plan & Profile Sheets (8)
9. Construction Details (2)

Construction Drawing Package

10. Drainage Structure Drawings (8)
11. Roadway Cross Sections (21)
12. Off-site Drainage Construction Plans, Details & Sections (6)
13. Water & Sewer Improvements Construction Plans & Details (19)
14. Roadway Lighting & Electrical Plan & Details (12)
15. Signing & Pavement Marking Plans (4)

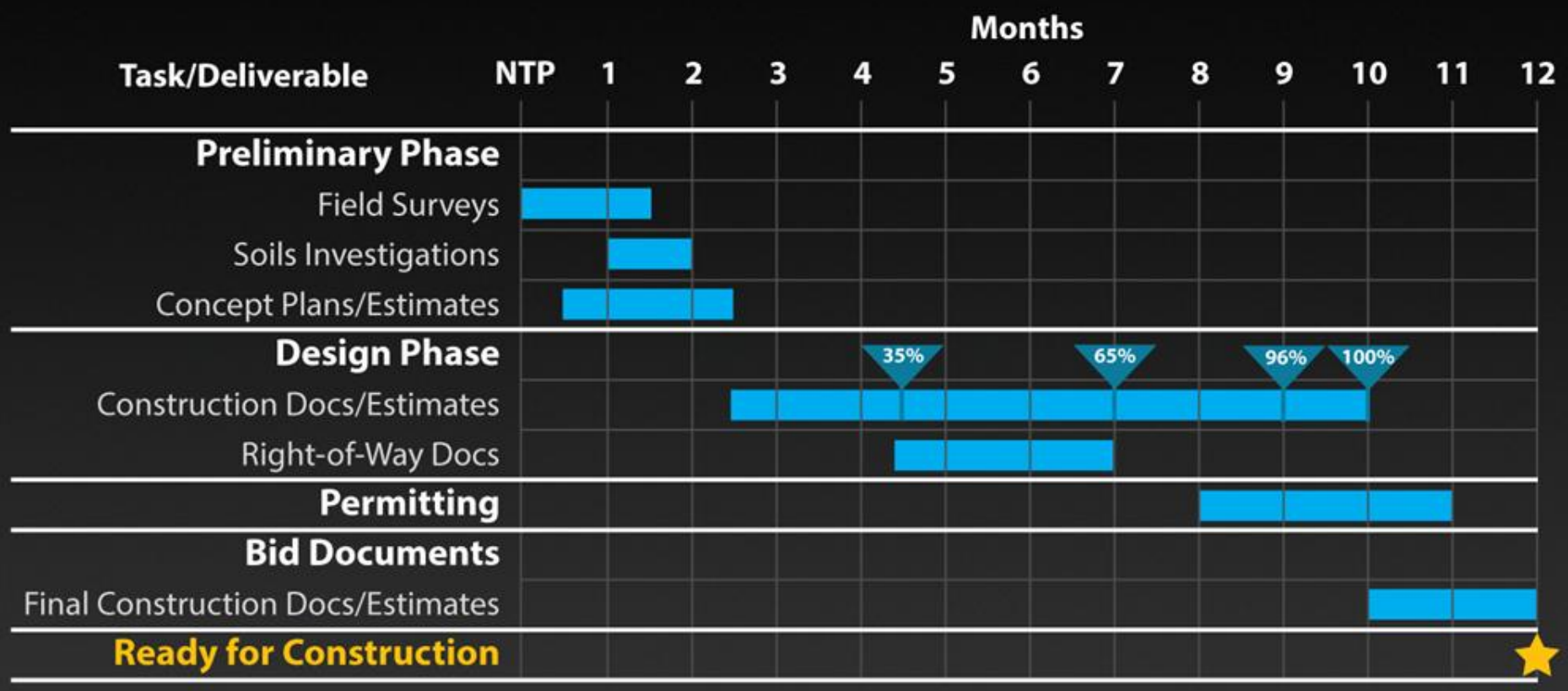
Total Estimated Sheets: 87

Landscape & Irrigation Drawing Package

1. Planting Plans – Roadway (8)
2. Planting Plans – Entry (1)
3. Planting Details & Specifications (2)
4. Irrigation Plans & Details (9)

Total Estimated Sheets: 20

Lake Worth Park of Commerce
Phase I Infrastructure - Project Schedule



CITY OF LAKE WORTH

7 North Dixie Highway · Lake Worth, Florida 33460 · Phone: 561-586-1600· Fax: 561-586-1750

AGENDA DATE: January 7, 2014, Regular Meeting **DEPARTMENT:** Community Sustainability

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EXECUTIVE BRIEF

TITLE:
Professional Services Agreement with Mathews Consulting, Inc. for Owner's Representation Services for the Park of Commerce Project Phase 1 - Boutwell Road from 2nd Avenue North to 10th Avenue North

SUMMARY:
A Professional Services Agreement has been negotiated with Mathews Consulting to serve as the owner's representative for Phase I of the Boutwell Road Infrastructure Project (Project) in an amount not to exceed of $349,930 for a term of thirty (30) months.

BACKGROUND AND JUSTIFICATION:
In order to move forward on the infrastructure improvements for Boutwell Road in the City's Park of Commerce, the City prepared a formal Request for Proposals and initiated a competitive solicitation process to select an Owner's Representative for the initial phase of the Project. Following a review of the submitted proposals and an interview panel discussion with three (3) of the short listed firms, Mathews Consulting was selected as the top candidate to serve in this capacity. Subsequently, City Staff negotiated a Professional Services Agreement in an amount not to exceed $349,930 for a term of thirty (30) months on an anticipated overall construction value of $5 to $5.5 million for the Project. The services to be provided under the agreement include eight (8) tasks outlined as follows (a detailed presentation of these tasks is attached):

1. Overall Project Management
2. Right of Way Needs Analysis
3. Land Acquisition Services/Relocation Plan
4. Public Outreach Services
5. Engineering Design Review
6. Bidding/Permitting Services
7. Services During Construction
8. Resident Project Representative Services

This array of services will ensure a professional level of coordination and over site between the City Staff and the provider of the Design and Engineering services for the Project. Currently, the City does not have sufficient staff capacity to undertake all of these tasks as required of the Project. Additionally, the costs to bring hire under contract all the professional individuals necessary to undertake these services exceeds the anticipated costs of this proposed agreement with an owner's representative.

MOTION:
I move to approve/not approve a Professional Services Agreement with Mathews Consulting in an amount not to exceed $349,930 for a term of thirty (30) months.

ATTACHMENT(S):
Fiscal Impact Analysis
Signed Professional Services Agreement including exhibits
Mathews Presentation of Tasks, Responsibilities, Deliverables and Schedule

FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2014	2015	2016	2017	2017
Capital Expenditures	349,930	0	0	0	0
Operating Expenditures	0	0	0	0	0
External Revenues	0	0	0	0	0
Program Income	0	0	0	0	0
In-kind Match	0	0	0	0	0
Net Fiscal Impact	349,930	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:

Park of Commerce	Mathews Consulting				
Account Number (s)	**Account Description (s)**	**FY 2014 Budget**	**Current Balance**	**Agenda Expenses**	**Remaining Balance**
301-9010-581-91-80	P.O.C Capital Project	700,000	700,000	(349,930)	350,070

C. Department Fiscal Review: _____

AGREEMENT TO FURNISH PROFESSIONAL SERVICES TO THE

CITY OF LAKE WORTH

PARK OF COMMERCE
PHASE I

OWNER'S REPRESENTATIVE

MATHEWS CONSULTING, INC.

AGREEMENT TO FURNISH PROFESSIONAL SERVICES TO THE CITY OF LAKE WORTH

This Agreement made on the 3rd day of December, 2013, between the **City of Lake Worth**, a Florida municipal corporation located at 7 North Dixie Highway, Lake Worth, Florida 33460, hereinafter referred to as the "City" and **Mathews Consulting, Inc.**, a Florida corporation, whose principle business address is 477 S. Rosemary Avenue, West Palm Beach, FL 33401, hereinafter referred to as the "CONSULTANT".

WHEREAS, the City is a municipal corporation organized and existing pursuant to the Charter and the Constitution of the State of Florida; and

WHEREAS, the City issued Request for Proposal # 12-13-201 for Owner's Representatives Services for the project known as the Park of Commerce Infrastructure Improvements Project - Phase I (hereinafter the "RFP"); and

WHEREAS, the CONSULTANT submitted a proposal in response to the RFP; and

WHEREAS, the City desires to award the RFP to the CONSULTANT for Owner's Representative Services for the Park of Commerce Infrastructure Improvements Project - Phase I (hereinafter the "Project"); and

WHEREAS, the City finds awarding the RFP to the CONSULTANT as described herein serves a valid public purpose.

NOW THEREFORE, the City hereby engages the services of the CONSULTANT, and in consideration of the mutual promises herein contained, the sufficient of which is hereby acknowledged by both parties, the parties agree as follows:

ARTICLE 1 - SCOPE OF SERVICES

The CONSULTANT will serve as the City's Owner's Representative for the Project and will provide all professional services as specified and more fully described in the RFP and Exhibit "A", OWNER'S REPRESENTATIVE SERVICES- CITY OF LAKE WORTH PARK OF COMMERCE- PHASE I (dated October 22, 2013), both of which are attached hereto and incorporated herein (herein the "services"). Such services shall include overseeing or otherwise reviewing the work of the City's selected engineering firm who will be providing engineering and related services to the City in connection with the Project (hereinafter the "Design Engineer"). If there is any conflict between the RFP and Exhibit "A" regarding the CONSULTANT's services, Exhibit "A" will take precedence as the parties' negotiated agreement on the scope of services.

ARTICLE 2 - TERM OF AGREEMENT

A. Term: This Agreement shall become effective upon approval by the City

Commission and execution by the Mayor. The services shall commence upon the issuance of a Notice to Proceed by the City. Unless earlier terminated as provided for herein, the initial term of this Agreement shall be for two (2) years from the date of commencement (the "Initial Term" hereinafter) with two additional one year renewal options. The City, through the City Manager, may exercise the renewal option(s) provided that the City has approved funding for said renewal option(s). Each fiscal year of this Agreement and any renewals will be subject to the availability of finds lawfully appropriated for its purpose by the State of Florida (if applicable) and the City.

B. Time for Completion: All services provided for herein shall be completed by the CONSULTANT within thirty (30) months.

ARTICLE 3 – COMPENSATION

A. Services: The City shall pay the CONSULTANT a sum not to exceed Three Hundred Forty-Nine Thousand Nine Hundred Thirty Dollars ($349,930) for the provision of all services (the "NTE Price"). Within the NTE Price, the CONSULTANT shall be provided allowances as set forth in Exhibit "A", for identified tasks depending on the actual scope of said tasks. The CONSULTANT expressly acknowledges and agrees that the total cost to complete all services is the NTE Price and no additional costs shall be authorized without prior written approval from City's governing body or the City Manager (depending on the City's required level of approval for such costs). In no case shall the CONSULTANT bill the City for any amount not in the NTE Price.

B. Reimbursable Expenses: The CONSULTANT's reimbursable, out-of-pocket expenses including, but not limited to, travel, per diem and other living expenses, are included in the NTE Price and the City shall not be responsible for payment of any such reimbursable, out-of-pocket expenses except as provided for in the NTE Price.

C. Direct Project Expenses: Unless otherwise specifically stated herein, charges for printing, reproduction, use of computer-aided design equipment, field equipment, and any laboratory analysis performed by the CONSULTANT or its subconsultants, and the use of the CONSULTANT's and employee's automobiles is included in the NTE Price and the City shall not be responsible for payment of any other direct project expenses

D. Status Report: The CONSULTANT shall complete and submit a technical summary and budgetary status report with each invoice (format to be provided by City).

ARTICLE 4 - TERMS OF PAYMENT

A. Monthly Invoices: The CONSULTANT shall submit invoices once each month to the City for the services performed and the expenses and other charges accounted for under this Agreement during the preceding month. Separate invoices shall be submitted for each task as shown in Exhibit "A". Payment as prescribed in Article 3 for services rendered by the CONSULTANT during the previous billing period shall be

processed in accordance with the Florida Prompt Payment Act, Section 218.70, Florida Statutes.

B. Sales Tax: The CONSULTANT shall pay all applicable sales taxes; or the City shall provide to the CONSULTANT the tax exemption information, where and if appropriate.

ARTICLE 5 - TERMS OF PERFORMANCE

A. Starting Work: The CONSULTANT will not begin any of the services until authorized in writing by a Notice to Proceed from the City.

B. Ownership of Documents: The drawings, specifications, calculations, supporting documents, or other work products which are listed as deliverables by the CONSULTANT to the City shall become the property of the City upon delivery. The CONSULTANT may keep copies or samples thereof and shall have the right to use such drawings, specifications, calculations, supporting documents, or other documents. The City accepts sole responsibility for the reuse of any such documents in a manner other than as initially intended, or for any use of incomplete documents unless prior written approval is obtained from the CONSULTANT.

C. Account Records: The CONSULTANT's accounting records, insofar as they pertain to invoicing the City or for disbursements made from the CONSULTANT's account for services under this Agreement, shall be open to City's inspection and audit at the CONSULTANT's office upon reasonable prior notice and during normal business hours. Backup documentation for out-of-pocket expenses exceeding Twenty-Five and 00/100 Dollars ($25.00) each shall be available at the CONSULTANT's office. These records will be retained by the CONSULTANT for five (5) years after the calendar year in which the services to which they pertain were rendered or the disbursements were made.

D. Force Majeure: Neither party hereto shall be liable for its failure to perform hereunder due to any circumstances beyond its reasonable control, such as acts of God, wars, riots, national emergencies, sabotage, strikes, labor disputes, accidents, and governmental laws, ordinances, rules, or regulations. The CONSULTANT or City may suspend its performance under this Agreement as a result of a force majeure without being in default of this Agreement, but upon the removal of such force majeure, the CONSULTANT or City shall resume its performance as soon as is reasonably possible.

Upon the CONSULTANT's request, the City shall consider the facts and extent of any failure to perform the services and, if the CONSULTANT'S failure to perform was without its or its subconsultants fault or negligence, the schedule and/or any other affected provision of this Agreement may be revised accordingly, subject to the City's rights to change, terminate, or stop any or all of the services at any time. No extension shall be made for delay occurring more than seven (7) days before a notice of delay or claim therefore is made in writing to the City. In the case of continuing cause of delay,

only one (1) notice of delay or claim is necessary.

E. Approval of Changes: The City, through the City Commission or the City Manager (as specifically identified herein) must approve in writing any changes in the scope of services which result in additional costs or expenses to the City, extension of the schedule or which would change the underlying purpose of the Project. Changes include, but are not limited to, issuing additional instructions, requesting additional work, direct omission of work previously ordered, or changes in time of performance.

F. Authorized Representative: Before starting work, the CONSULTANT shall designate an authorized representative acceptable to the City to represent and act for the CONSULTANT and shall inform the City in writing of the name and address of such representative together with a clear definition of the scope of their authority. The CONSULTANT shall keep the City informed of any subsequent changes in the foregoing. The authorized representative of the City shall be the City Manager or his designee.

G. Time of the Essence: Time is of the essence in the performance of this Agreement. The CONSULTANT shall at all times carry out its duties and responsibilities as expeditiously as possible and in accordance with the Project schedule, subject to delays in the schedule which are not the fault of CONSULTANT or its subconsultants.

H. Design/Construction Phase Services: Visits to construction sites and observations made by the CONSULTANT as part of construction phase services, if any, shall not relieve the construction contractor(s) of obligation to conduct comprehensive inspections of the work sufficient to insure conformance with the intent of the construction contract documents, and shall not relieve the construction contractor(s) of full responsibility for all construction means, methods, techniques, sequences, and procedures necessary for coordinating and completing all portions of the work under the construction contract(s) and for all safety precautions incidental thereto. Safety precautions administered by the CONSULTANT, if any, shall meet or exceed those policies enacted by the City. Further, CONSULTANT shall endeavor to make reasonable efforts to guard the City against defects and deficiencies in the services of the Design Engineer or construction contractor(s) and to help determine if the provisions of the design and/or construction contract documents are being fulfilled. This paragraph does not, however, release the CONSULTANT from any liability which might be attributable to its negligent acts, errors, or omissions, including but not limited to design, construction phase services, or other services as defined in this Agreement, of the CONSULTANT.

I. Fiscal Non-funding: In the event sufficient budgeted funds are not available for a new fiscal period, the City shall notify the CONSULTANT of such occurrence and this Agreement shall terminate on the last day of the current fiscal period without penalty or expense to the City.

J. Personnel: The CONSULTANT represents that it has, or will secure at its own

expense, all necessary personnel required to perform the services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with the City. All of the services required hereunder shall be performed by the CONSULTANT or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services. The CONSULTANT shall furnish services in a manner consistent with industry standards and to a level of professional skill generally acceptable in the industry with regard to services of this kind. The CONSULTANT shall comply with all applicable laws in the provision of services under this Agreement. The CONSULTANT agrees that it is fully responsible to the City for the acts and omissions of subconsultants and of persons either directly or indirectly employed by the CONSULTANT. Nothing contained herein shall create any contractual relationship between any subconsultant and the City. All of the CONSULTANT's personnel (and all subconsultants) while on City premises, will comply with all City requirements governing conduct, safety, and security. The City reserves the right to request replacement of any of CONSULTANT's personnel furnished by the CONSULTANT.

K. Conflict of Interest: The CONSULTANT represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder, as provided for in Florida Statutes, Section 112.311. The CONSULTANT further represents that no person having any such conflicting interest shall be employed for said performance. The CONSULTANT shall promptly notify the City's representative, in writing, of all potential conflicts of interest for any prospective business association, interest or other circumstance which may influence or appear to influence the CONSULTANT'S judgment or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that the CONSULTANT may undertake and request an opinion of the City as to whether the association, interest or circumstance would, in the opinion of the City, constitute a conflict of interest if entered into by the CONSULTANT. The City agrees to notify the CONSULTANT of its opinion within thirty (30) days of receipt of notification by the CONSULTANT. If, in the opinion of the City, the prospective business association, interest or circumstance would not constitute a conflict of interest by the CONSULTANT, the City shall so state in the notification and the CONSULTANT shall, at its option, enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the City by the CONSULTANT under the terms of this Agreement.

L. Status as an Independent Contractor: The status of the CONSULTANT under this Agreement is that of an independent contractor. Nothing in this Agreement shall create or be construed as creating a partnership or joint venture between the City and the CONSULTANT. The CONSULTANT does not have the power or authority to bind the CITY in any promise, contract or representation other than as specifically provided for in this Agreement (if any).

M. News Releases / Publicity: The CONSULTANT shall not make any news releases, publicity releases, or advertisements relating to this Agreement or the tasks

associated with the Project without prior written City approval.

N. Nondiscrimination: The CONSULTANT warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, political affiliation, marital status, handicap, or sexual orientation. Further, CONSULTANT shall not discriminate or permit discrimination against any employee or an applicant for employment on the basis of race, color, sex, religion, political affiliation, natural origin, ancestry, marital status, sexual orientation or handicap.

ARTICLE 6 - CITY'S RESPONSIBILITIES

A. Service of Others: The City shall furnish to the CONSULTANT, if required for performance of the Consultant's services, all available data prepared by or the result of the services of others, including without limitation (as may be appropriate): building plans and related drawings, core borings, probings, and subsurface explorations, hydraulic surveys, laboratory tests, and inspections of samples, materials, and equipment, appropriate professional interpretations of all of the foregoing; environmental assessments and impact statements, appropriate professional interpretations of all of the foregoing; property boundary, easement, rights-of-way, topographic and utility surveys; property descriptions; zoning, deed, and other land use restrictions; and any other special data or consultations relating to the Project.

B. Examine Work of the Consultant: Within a reasonable time so as not to delay the services of the CONSULTANT, the City shall examine all studies, reports, sketches, drawings, specifications, proposals, and other documents presented by the CONSULTANT, obtain advice of an attorney, insurance counselor, or other consultants, as the City deems appropriate, for such examinations and the rendering, if required, of written opinions pertaining thereto.

ARTICLE 7 – SUSPENSION BY CITY FOR CONVENIENCE

City may, at any time, without cause order CONSULTANT in writing to suspend, delay or interrupt its services in whole or in part for such period of time as City may determine for City's convenience. Such order shall be by written notice to the CONSULTANT providing at least ten (10) days advance notice unless such order is immediately necessary for the protection of the public health, safety or welfare or for the protection of property.

ARTICLE 8 –TERMINATION

A. Termination for Default by the City: If the City's authorized representative deems that the CONSULTANT is in default for failure to supply adequate personnel, or services of proper quality, or has failed in any other respect to satisfactorily perform the services specified in this Agreement, the City's authorized representative may give written notice to the CONSULTANT specifying the default(s) to be remedied within five (5) days. Such notice shall set forth the basis for any dissatisfaction and suggest

corrective measures. If the CONSULTANT does not remedy defaults within five (5) days or commence steps to remedy default to the reasonable satisfaction of the City's authorized representative, the City may do one or all of the following: secure such services from another consultant; withhold any money due or which may become due to the CONSULTANT for such services related to the claimed default(s); and/or, elect to immediately terminate this Agreement. No compensation shall be paid for de-mobilization, take-down, disengagement, wind-down, lost profits or other costs incurred due to termination of this Agreement for default.

B. Termination for Default by the Consultant: This Agreement may be terminated by the CONSULTANT upon thirty (30) days prior written notice to the City in the event of a failure by the City to perform in accordance with the terms of this Agreement through no fault of the CONSULTANT; provided the City fails to cure same within that thirty (30) day period.

C. Termination Without Cause by City: Notwithstanding the foregoing, the City reserves the right and may elect to terminate this Agreement at any time. At such time, the CONSULTANT shall be compensated only for those services which have been satisfactorily completed to the date of termination. No compensation shall be paid for de-mobilization, take-down, disengagement, wind-down, lost profits or other costs incurred due to termination of this Agreement without cause.

D. Early Termination: If this Agreement is terminated before the expiration of the Initial Term or expiration of any renewal term by either party, the CONSULTANT shall:

1. Stop service on the date and to the extent specified.

2. Terminate and settle all orders and subcontracts relating to the performance of the terminated services.

3. Transfer all work in progress, completed work, and other materials related to the terminated services to the City in the format acceptable to City.

4. Continue and complete all parts of the services that have not been terminated.

ARTICLE 9 –INDEMNIFICATION AND INSURANCE

A. Indemnification: The CONSULTANT agrees to assume liability for and indemnify, hold harmless, and defend the City, its commissioners, mayor, officers, employees, agents, and attorneys of, from, and against all liability and expense, including reasonable attorney's fees (at all trial and appellate levels), in connection with any and all claims, demands, damages, actions, causes of action, and suits in equity of whatever kind or nature, including claims for personal injury, property damage, equitable relief, or loss of use, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the CONSULTANT, its agents, officers, subconsultants, employees, or anyone else employed or utilized by the

CONSULTANT in the performance of this Agreement. The CONSULTANT's liability hereunder shall include all attorney's fees and costs incurred by the City in the enforcement of this indemnification provision. This includes claims made by the employees of the CONSULTANT against the City and the CONSULTANT hereby waives its entitlement, if any, to immunity under Section 440.11, Florida Statutes. The obligations contained in this provision shall survive termination of this Agreement and shall not be limited by the amount of any insurance required to be obtained or maintained under this Agreement.

Subject to the limitations set forth in this Article, the CONSULTANT shall assume control of the defense of any claim asserted by a third party against the City and, in connection with such defense, shall appoint lead counsel, in each case at the CONSULTANT's expense. The City shall have the right, at its option, to participate in the defense of any third party claim, without relieving CONSULTANT of any of its obligations hereunder. If the CONSULTANT assumes control of the defense of any third party claim in accordance with this paragraph, the CONSULTANT shall obtain the prior written consent of the City before entering into any settlement of such claim. Notwithstanding anything to the contrary in this Article, the CONSULTANT shall not assume or maintain control of the defense of any third party claim, but shall pay the fees of counsel retained by the City and all expenses, including experts' fees, if (i) an adverse determination with respect to the third party claim would, in the good faith judgment of the City, be detrimental in any material respect to the City's reputation; (ii) the third party claim seeks an injunction or equitable relief against the City; or (iii) the CONSULTANT has failed or is failing to prosecute or defend vigorously the third party claim. Each party shall cooperate, and cause its agents to cooperate, in the defense or prosecution of any third party claim and shall furnish or cause to be furnished such records and information, and attend such conferences, discovery proceedings, hearings, trials, or appeals, as may be reasonably requested in connection therewith.

It is the specific intent of the parties hereto that the foregoing indemnification complies with Section 725.08, Florida Statutes, as amended. CONSULTANT expressly agrees that it will not claim, and waives any claim, that this indemnification violates Section 725.08, Florida Statutes, as amended. Nothing contained in the foregoing indemnification shall be construed as a waiver of any immunity or limitation of liability the City may have under the doctrine of sovereign immunity or Section 768.28, Florida Statutes.

B. Insurance: The CONSULTANT shall not commence any services in connection with this Agreement until it has obtained all of the types of insurance required pursuant to the RFP and such insurance has been approved by the City. The City shall be named as an additional insured on all insurance except for Worker's Compensation Coverage and Professional Liability. The CONSULTANT shall require all subconsultants to obtain the same insurance as required herein (without the City named as an additional insured) and no subconsultant shall commence any services under this Agreement until the CONSULTANT has obtained a copy of all subconsultant(s) proofs of insurance. The CONSULTANT shall provide the City with proof of all subconsultant's insurance upon request by the City. The CONSULTANT's

insurer shall have a currently valid Certificate of Authority issued by the State of Florida, Department of Insurance authorizing it to write insurance policies in the State of Florida and be conducting business in the State of Florida. Insurers shall have at least a Policy Holders Rating of A-, and Financial Rating of Class IV as identified in the latest issue of "Bests Key Rating Guide" unless otherwise accepted by the City in writing. The CONSULTANT's insurance shall be considered primary and shall not be canceled or materially changed without at least thirty (30) days' notice to the City. The City's insurance, if any, shall be considered excess, as may be applicable to claims which arise out of indemnifications, insurance, certificates of insurance and any additional insurance provisions of this Agreement. The CONSULTANT shall procure and maintain all insurance listed above for the life of this Agreement. Receipt of certificates or other documentation of insurance or policies or copies of policies by the City or by any of its representatives which indicate less coverage than required by this Agreement does not constitute a waiver of the CONSULTANT's obligations to fulfill the requirements of this Article.

In addition to the insurance requirements of the RFP, CONSULTANT shall provide the following: Commercial Automobile Liability, with minimum coverage of $1,000,000 per occurrence. Coverage shall include bodily injury and property damage arising out of ownership, maintenance or use of any auto, including owned, non-owned and hired automobiles and employee non-ownership use.

C. Loss Deductible: The City shall be exempt from, and in no way liable for, any sums of money which may represent a deductible in any insurance policy. The payment of deductibles shall be the sole responsibility of the CONSULTANT or its subconsultants.

D. Waiver of Subrogation: The City and the CONSULTANT waive all rights against each other for damages caused by perils covered by insurance provided under this Agreement to the extent covered by such insurance, except such rights as they may have to the proceeds of such insurance held by the City and the CONSULTANT as trustees. The CONSULTANT shall require similar waivers from all subconsultants. The City and the CONSULTANT waive all rights against each other for loss or damage to any equipment used in connection with performance under this Agreement and covered by any property insurance. The CONSULTANT shall require similar waivers from all subconsultants. If the insurance policies referred to in this article require an endorsement to provide for continued coverage where there is a waiver of subrogation, the owner of such policies will cause them to be so endorsed; failure to obtain endorsement nullifies the waiver of subrogation.

ARTICLE 10 - SUCCESSORS AND ASSIGNS

The City and CONSULTANT each binds themselves and their partners, successors, executors, administrators, and assigns to the other party of this Agreement and to the partners, successors, executors, administrators, and assignees of such other party in respect to all covenants of this Agreement. The CONSULTANT shall not assign, sublet, or transfer any interest in this Agreement without the prior written consent of

the City, which the City may withhold in its sole and absolute discretion. Nothing herein shall be construed as creating any personal liability on the part of any elected official, officer, employee or agent of the City, nor shall it be construed as giving any rights or benefits hereunder to any third party other than the City and CONSULTANT.

ARTICLE 11 - REMEDIES

A. Claims, Counter-Claims, Disputes, Etc.: Prior to the filing of any claim, proceeding or litigation related to the Agreement, all claims, counter-claims, disputes, and other matters in questions between the CONSULTANT and the City will be first reviewed by authorized representatives of both parties for a recommended solution. If no solution or resolution is forthcoming, either party may pursue its claim, proceeding or litigation.

B. Governing Law and Venue: This Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of Florida. Each of the parties hereto (a) irrevocably submits itself to the exclusive jurisdiction of the Fifteenth Judicial Circuit Court, in and for Palm Beach County, Florida for state actions, and the jurisdiction of the United States District Court for the Southern District of Florida, West Palm Beach Division for federal actions, for the purposes of any suit, action or other proceeding arising out of, or relating to, this Agreement; (b) waives and agrees not to assert against any party hereto, by way of motion, as a defense or otherwise in any suit, action or other proceeding, (i) any claim that it is not personally subject to the jurisdiction of the above-named courts for any reason whatsoever, and (ii) to the extent permitted by applicable law, any claim that such suit, action or proceeding by any party hereto is brought in an inconvenient forum, or that the venue of such suit, action or proceeding is improper or that this Agreement or the subject matter hereof may not be enforced in or by such courts.

ARTICLE 12 – NOTICE

A. Any notice required to be given under this Agreement shall be given in writing and delivered by hand or through the instrumentality of certified mail of the United States Postal Service (return receipt requested) or other nationally recognized overnight courier service, such as Federal Express.

B. Unless otherwise notified in writing of a new address, all notices shall be made to each party at the below listed addresses. Any party shall have the right, from time to time, to change the address to which notices shall be sent by giving the other party at least ten (10) days prior notice of the address change.

All notices to the CONSULTANT shall be sent to:

Mathews Consulting, Inc.
Attn: David L. Mathews, P.E.
477 S. Rosemary Avenue, Suite 330
West Palm Beach, FL 33401

All notices to the City shall be sent to:

Office of the City Manager
c/o City of Lake Worth
7 North Dixie Highway
Lake Worth, FL 33460.

ARTICLE 13 – NO CONTINGENT FEES

The CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the CONSULTANT any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this provision, the City shall have the right to terminate the Agreement without liability and at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

ARTICLE 14 – TRUTH-IN-NEGOTIATION CERTIFICATE

The signing of this Agreement by the CONSULTANT shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation of this Agreement are accurate, complete, and current at the time of contracting. The NTE Price and any additions thereto shall be adjusted to exclude any significant sums by which the City determines the NTE Price was increased due to inaccurate, incomplete, or non-current wage rates and other factual unit costs. All such contract adjustments shall be made within one (1) year following the end of this Agreement.

ARTICLE 15 – PUBLIC ENTITIES CRIMES

As provided in Sections 287.132 and 289.133, Florida Statutes, by entering into this Agreement or performing any service in furtherance thereof, the CONSULTANT certifies that it, its affiliates, suppliers, subconsultants and contractors who will perform under the terms and conditions of this Agreement have not been placed on the convicted vendor list maintained by the Florida Department of Management Services within the 36 months immediately preceding the date of this Agreement. This notice is required by Section 287.133, Florida Statutes.

ARTICLE 16 - NONEXCLUSIVE AGREEMENT

This Agreement is not intended to be and shall not be construed as an exclusive agreement, and the City may employ additional or other professional consulting firms to perform services contemplated by this Agreement without liability to the City.

ARTICLE 17 - MISCELLANEOUS

A. Validity, Severability and Reformation: The validity, interpretation, construction, and effect of this Agreement shall be in accordance with and be governed by the laws of the State of Florida. Any provision or part of this Agreement held to be void or unenforceable under any law shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon the parties. The parties agree that this Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision which comes as close as possible to expressing the intention of the stricken provision.

B. Headings: The headings of the sections of this Agreement and capitalizations are for the purpose of convenience only and shall not be deemed to expand or limit the provisions contained in such sections.

C. Entire Agreement and Conflicts: This Agreement, including the RFP and the exhibit hereto, constitutes the entire Agreement between the parties hereto and supersedes any prior negotiations, representations, Agreements, and understandings, either written or oral. This Agreement consists of the terms and conditions provided herein; the RFP (including all drawings, maps, specifications, exhibits and addenda attached thereto or referenced therein); and, Exhibit "A". To the extent that there exists a conflict between this Agreement and the remaining documents, the terms, conditions, covenants, and/or provisions of this Agreement shall prevail with RFP (including all drawings, maps, specifications, exhibits and addenda attached thereto) next taking precedence. Notwithstanding the foregoing, if there is any conflict between the RFP and Exhibit "A" regarding the CONSULTANT's services, Exhibit "A" will take precedence as the parties' negotiated agreement on the scope of services. Wherever possible, the provisions of such documents shall be construed in such a manner as to avoid conflicts between provisions of the various documents.

D. Waiver: No waiver of any of the terms or conditions of this Agreement shall be effective unless in writing and executed by the party to be changed therewith. No waiver of any condition or of the breach of any term, covenant, representation, warranty or other provision hereof shall be deemed to be construed as a further or continuing waiver of any such condition or breach or a waiver of any other condition or of any breach of any other term, covenant, representation, warranty or other provision contained in this Agreement.

E. 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, claim or proceeding related to this Agreement.

F. Counterparts: This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but each of which together shall constitute one and the same instrument.

G. Preparation: This Agreement shall not be construed more strongly against either party regardless of who was more responsible for its preparation.

ARTICLE 18 - PALM BEACH COUNTY INSPECTOR GENERAL

In accordance with Palm Beach County ordinance number 2011-009, the CONSULTANT acknowledges that this Agreement may be subject to investigation and/or audit by the Palm Beach County Inspector General. The CONSULTANT has reviewed Palm Beach County ordinance number 2011-009 and is aware of its rights and/or obligations under such ordinance.

ARTICLE 19 - PUBLIC RECORDS

The CONSULTANT shall comply with Florida's Public Records Laws, and specifically agrees to:

A. Keep and maintain public records that ordinarily and necessarily would be required by the City in order to perform the service.

B. Provide the public with access to public records on the same terms and conditions that the City would provide the records and at a cost that does not exceed the cost provided in this Chapter 119, Florida Statutes, or as otherwise provided by law.

C. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.

D. Meet all requirements for retaining public records and transfer, at no cost, to the City all public records in possession of the CONSULTANT upon termination of the Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the City in a format that is compatible with the information technology systems of the City.

ARTICLE 20 - REPRESENTATIONS/BINDING AUTHORITY

CONSULTANT has full power, authority and legal right to execute and deliver this Agreement and perform all of its obligations under this Agreement. By signing this Agreement, CONSULTANT hereby represents to the City that it has the authority and full legal power to execute this Agreement and any and all documents necessary to effectuate and implement the terms of this Agreement on behalf of the party for whom he or she is signing and to bind and obligate such party with respect to all provisions contained in this Agreement.

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IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement to Furnish Professional Services on the day and date first above written:

CITY OF LAKE WORTH, FLORIDA

By: _____
Pam Triolo, Mayor

ATTEST:

_____
Pamela J. Lopez, City Clerk

Approved as to form and legal sufficiency:

_____ FOR
Glen J. Torcivia, City Attorney

MATHEWS CONSULTING, INC.

By: _____

Print Name: Rene L. Mathews, P.E.

Title: President

[Corporate Seal]

STATE OF FLORIDA)
COUNTY OF PALM BEACH)

The foregoing instrument was acknowledged before me this 18th day of November 2013 by RENE L. MATHEWS, as PRESIDENT (title), of Mathews Consulting, Inc., a corporation authorized to do business in the State of Florida, and who is personally known to me ~~or who has produced the following~~ _____ ~~as identification~~.

Notary Public

Print Name: VICTORIA PARSONS
My commission expires: 3/17/17

VICTORIA PARSONS
NOTARY PUBLIC
STATE OF FLORIDA
Comm# EE884755
Expires 3/17/2017

EXHIBIT "A"
OWNER'S REPRESENTATIVE SERVICES – CITY OF LAKE WORTH
PARK OF COMMERCE PHASE I
(DATED October 22, 2013)

Owner's Representative Services – City of Lake Worth Park of Commerce – Phase I

A. Background

The City of Lake Worth (CITY) recently selected Mathews Consulting to serve as the Owner's Representative (OR) for the Park of Commerce (POC) – Phase I Project. The project is located in central Palm Beach County and is bounded by 10th Avenue to the North, Lake Worth Road to the South, I-95 to the East and the E-4 Canal to the West. The infrastructure improvements consist of roadway redevelopment and utility upgrades for drainage, potable water, sanitary sewer, fire protection, electric supply, telecommunications, landscaping and street lighting. Phase I of the Park of Commerce infrastructure Improvements will center on upgrading Boutwell Road from 10th Avenue North to Lake Worth Road, including intersection improvements at 10th, 7th, 4th, and 10th Avenues North and Joyce Avenue. The CITY selected the Engineering Firm, Mock-Roos and Associates (Engineer of Record-EOR) to design and permit the Phase I infrastructure improvements. The intersection improvements at Boutwell Road/10th Avenue will be designed by Palm Beach County.

The ultimate build-out of the POC is anticipated to be carried out in three (3) phases for the redevelopment of the 393-acre industrial park, which will house an estimated 750,000 square feet (SF) of commercial space and 2,250,000 SF of light industrial and office space by the year 2015.

This Owner's Representative Contract provides the scope of work for Overall Project Management, Right of Way Needs Analysis, Land Acquisition, Public Outreach, Engineering Design Review, Bidding Services and Construction Administration and Resident Project Representative Services for the Park of Commerce – Phase I Project.

B. Scope of Services

The Engineering Services of Owner's Representative (OR) shall include the following tasks:

- Task 1 – Overall Project Management
- Task 2 – Right of Way Needs Analysis
- Task 3 – Land Acquisition Services/Relocation Plan
- Task 4 – Public Outreach Services
- Task 5 – Engineering Design Review
- Task 6 – Bidding Services
- Task 7 – Services During Construction
- Task 8 – Resident Project Representative Services

The specific scope of services to be provided by OR in this Contract includes the following:

Task 1 - Overall Project Management

Subtask 1.1 Project Kick-Off Meeting

OR shall coordinate a Kick-Off Meeting with the Design Team and CITY staff with the primary objectives of developing a clear understanding of the scope of work, verifying the CITY's goals and objectives, key concerns of all project participants, establishing design standards, and establishing

proper communication between OR Management Team, engineering design team and the CITY staff. The meeting agenda and meeting minutes shall be prepared by the OR.

Subtask 1.2 Comprehensive Project Coordination

OR shall provide project coordination between the CITY, the Engineering Design Team (Mock-Roos), other consultants, other governmental agencies and the construction contractor as necessary related to the design and construction of the project. This includes assisting the CITY with pre-qualification requirements of the construction contractors for the project.

The File Transfer Site (FTP) will be set up by the OR that will provide 24-hour access by the project team.

Subtask 1.3 Monthly Design Meetings

OR shall conduct monthly meetings (total of 12) with the Design Team and provide a written summary of the issues discussed. This assumes a design schedule of 12 months.

Subtask 1.4 Permitting Coordination

OR shall coordinate project permitting with Design Engineer and all relevant agencies. Services shall include permit expediting, analyzing design modifications based on agency comments, and providing recommendations based on impacts to construction costs and feasibility.

Subtask 1.5 Monthly Progress Reports

OR shall furnish to the CITY monthly reports containing (a) status of the project; (b) comparison of the project budget to costs incurred through the date of the report; (c) a comparison of the project schedule to the work actually completed through the date of the report; (d) any revision to the project schedule or project budget made during the month covered by the report; (e) the status of any regulatory agency requirements and activities to facilitate approval of the project; (f) update on land acquisitions; (g) public outreach updates; (h) a summary of change-orders made during the month covered by the report; (i) a list of all pending change orders and all outstanding or critical issues requiring action or approval by the CITY; (j) testing reports; (k) inspection reports; and (l) project construction photos, etc.

This subtask assumes 27 Progress Reports will be prepared (12 during land acquisition/design period and 15 during construction period, for a total of 27)

Subtask 1.6 Funding Assistance

OR shall provide funding assistance to the CITY. We have assumed 32 hours for this subtask.

Subtask 1.7 Presentations to City Commission

OR shall assist the CITY with the development of presentation materials at CITY commission and workshop meetings for the duration of the project. This includes OR providing power point presentations to the City Commission.

OR shall also present any construction change-orders to the City Commission.

Task 2 - Right of Way Needs Analysis

A very important component of this project will be the development of the Right-of-Way Needs Analysis that will be used for acquiring the right-of-way land acquisitions. This information is required before the Design Engineer can complete their design of the infrastructure improvements for the overall Phase I project. Boutwell Road functions as the major north-south corridor within the project area. This road currently has a 50 to 60 foot right-of-way width, and 80-feet has been targeted as the ultimate width. Currently development along Boutwell Road is primarily commercial and industrial use along with several mobile home parks. Palm Beach County maintains responsibility for all of Boutwell Road from 10th Avenue North to Lake Worth Road, and for 10th Avenue North from Interstate 95 to Boutwell Road.

Subtask 2.1 Coordination Meetings w/ Design Engineer

OR will coordinate as required with Design Engineer regarding the development of the right-of-way section(s) along Boutwell Road that will require Land Acquisitions.

Subtask 2.2 Coordination Meetings w/ Palm Beach County

OR will coordinate as required with Palm Beach County Engineering and Public Works, Roadway Production Division regarding the Right of Way Acquisition along Boutwell Road.

Subtask 2.3 Review Current Title Work

OR will review the title work that will be prepared by EOR surveyor. It is assumed that up to sixteen (16) parcels will be surveyed.

Subtask 2.4 Right of Way Needs Analysis Feasibility Study (Allowance)

OR will coordinate with CITY staff and Design Engineer to plan a pragmatic approach to Right of Way/Land Acquisition via a Right of Way Needs Analysis. The Analysis shall consider the consequential impacts of the right-of-way positioning by looking at the existing uses on the sites impacted. This will include but not be limited to the following:

- Which alignment would have the least impact on current uses?
- Which alignment would have the most cost efficient routing (land and road improvements combined)?
- Which alignment would add value or detract from values on adjoining properties so affected.
- (To the extent appropriate) how might the impact of the revised right-of-way advantage effected properties (financially and physically)?
- Engage in a targeted introduction to candidate land owners potentially subject to the Right of Way Needs of the program.
- Develop a profile of property owners effected by the Right of Way Acquisition and determine which would be most likely a supporter of collaborative negotiations and fair values.

<u>A $12,800 (NTE) allowance will be included in the project authorization for these services.</u>

Task 3 - Land Acquisition Services/Relocation Plan

Land Acquisition services include those activities required in advancing control over land areas strategic to the streetscape and utility improvement needs. The Land Acquisition Services shall be

provided on an hourly as needed basis. A detailed report including project progress and hours billed shall be included with each invoice.

Subtask 3.1 Coordination with Property Owner's/Background and Research (Allowance)

Once the preferred right-of-way requirements and routing are established, OR shall make initial soft introductions to effected land owners and representatives to inform them of the proposed improvements and solicit their concerns, interest and willingness to enter into a friendly collaboration.

OR shall qualify the likely level of difficulty with each party based upon their predisposition to be friendly or unfriendly. OR shall evaluate their individual needs and personality index as a condition precedent to follow up proposals. This shall include (a) pre-identify current sales comparables and tax assessments to frame value of reasonable expectation; (b) qualify each property owner in terms of their current ownership, such as, current debt status, seller status, current use and impact of acquisition to current net useable and efficient use; (c) produce list of alternative considerations that might be offered in favor of most effective pricing later in negotiations; and (d) generate impact analysis on the effect of public improvements on the residual lands (should that be significant).

A $26,800 (NTE) allowance will be included in the project authorization for these services.

Subtask 3.2 Appraisal Report for each Parcel (Allowance)

The Appraisal Manager shall make a detailed inspection of the properties as necessary to derive sound conclusions for the preparation of the appraisal reports. This includes generating up to three (3) individual proposals differing in price and terms that might effectively gain traction based upon earlier feedback from each property owner. Developing a general values expectation for each right-of-way and an impact statement outlining the benefits and consequences reasonably resulting from the streetscape and utility improvements as a custom information piece to each property owner or ownership group. Maintain a worst case condemnation approach in the face of unreasonable or excessive positioning.

OR shall review the range of proposals with CITY staff to gain support and input before contacting individual property owners with the acquisition terms.

A $33,400 (NTE) allowance will be included in the project authorization for these services.

Subtask 3.3 Land Acquisition Negotiations (Allowance)

Appraisal Manager shall coordinate with legal representatives of both parties (CITY and private owners) in the development of Purchase Agreements and side bar agreements that may contain special conditions. Appraisal Manager shall evaluate Seller reviews and terms for fairness and appropriateness and advise CITY as the preferred approach to take and negotiated conditions of a Purchase Agreement.

Appraisal Manager shall fully document on an ongoing basis all efforts to acquire each property and provide a written report to the CITY.

A $17,000 (NTE) allowance will be included in the project authorization for these services.

Subtask 3.4 Relocation Plan (Allowance)

OR shall prepare a Relocation Plan for the full scope of the project. The relocation plan shall address all identified relocation units on the Right of Way Needs Analysis and shall be submitted to CITY staff for approval prior to the initiation of negotiations.

A $10,000 (NTE) allowance will be included in the project authorization for these services.

Task 4 - Public Outreach Services

OR shall develop and implement a Public Outreach Program for all phases on the project (Acquisition Phase, Design Phase and Construction Phase).

Subtask 4.1 Property Owners/Commercial Entities (Acquisition Phase)

OR shall coordinate and interface with property owners in the project area. This includes seeking out strategic land owners for preliminary conversations, affirm land owners insight as an important objective, conducting public outreach meetings, develop presentations and provide speakers to attend public meetings and establish and maintain project telephone information line.

Subtask 4.2 Public Outreach Program (Design Phase)

OR shall coordinate and interface with the community in the project area during the design phase. This includes conducting public outreach meetings, develop presentations and provide speakers to attend public meetings, post project updates on CITY's web site, establish and maintain project telephone information line, provide email alerts, prepare project press releases and project fact sheets and develop and distribute a project newsletter.

Subtask 4.3 Public Outreach Program (Construction Phase)

OR shall coordinate and interface with the community in the project area during the construction phase. This includes conducting public outreach meetings, develop presentations and provide speakers to attend public meetings, post project updates on CITY's web site, establish and maintain project telephone information line, prepare traffic advisory flyers, provide email alerts, prepare project press releases and project fact sheets and develop and distribute a project newsletter. During construction the Outreach Program shall concentrate on traffic control (Maintenance of Traffic) and road/lane closures, noise/lighting control, access to houses/businesses, emergency vehicle/elderly care, mail delivery, trash pick-up, site restoration and project site safety.

Task 5 - Engineering Design Review

Quality Assurance Reviews (35% and 65% design completion) and a Constructibility Review (CR) (96% design completion) will be conducted of the engineering design documents prepared by the Design Engineer (Mock-Roos), for the Phase I infrastructure improvements to the Lake Worth Park of Commerce.

The 35% and 65% quality assurance reviews will be 1-day reviews and our review comments will be red-lined on the drawings, specifications and construction cost estimate.

The CR review will be performed during a 2-day workshop session. All team members will work as a group at the designated workshop location for the entire 2-day period. CR worksheets and forms

will be provided to each team member to use for documenting comments. As comments are generated, they shall be recorded in report format, and a final workshop document will be produced for presentation to the CITY and the Design Engineer on the days following the workshop session. (Hence, there will be no delay between conducting the CR workshop and producing a final report).

Subtask 5.1 35% and 65% Quality Assurance Reviews

OR shall facilitate 35% and 65% design completion quality assurance reviews on the Mock-Roos design packages, each planned over a 1-day period. The QA/QC reviews will review contract documents (design drawings, technical specifications, and engineer cost estimates) at the 35% and 65% design stages. The contract documents are assumed to fully describe and size all roadway designs, drainage facilities, water mains, pump stations and force mains, decorative street lighting, site civil, landscaping and irrigation, etc. of the project commensurate with the level of completion. Quality Assurance review comments will be red-lined on the drawings, technical specifications and construction cost estimate. The redlined comments will be provided to the Design Engineer. Note: since the CITY is designing the backbone for undergrounding the electric in the project area, this segment of the design will not be reviewed by the OR.

Subtask 5.2 96% Constructability Review

OR shall facilitate a 96% design completion constructibility review workshop and planned over a 2-day period. The workshop will review contract documents (design drawings, technical specifications, and front end documents) at the 96% design stage, prepared by Mock-Roos. The contract documents are assumed to include all final site and system locations and plan/profile views, sections and details necessary for all project disciplines to complete a thorough review. The documents will be reviewed for clarity, consistency, completeness, ease of construction, code compliance and discipline coordination. The workshop is strictly a constructibility review and will primarily focus on those areas and components of the project which could potentially result in change orders and delays for the project. However, issues or items identified as potential value enhancements for the project will be so noted and reported. During the review period, OR will prepare the final constructibility review report identifying constructibility issues and recommendations for improvements to the contract documents. CR results will be presented in a group team meeting in the week following the workshop. Note: since the CITY is designing the backbone for undergrounding the electric in the project area, this segment of the design will not be reviewed by the OR.

Task 6 - Bidding Services

Subtask 6.1 Bid Document Advertisements

OR shall coordinate Contract Document Packages (i.e. drawings and front-ends/specifications) with the Design Engineer for CITY advertisement and bidding purposes. It is assumed that only one (1) construction contract will be issued for the project.

Subtask 6.2 Pre-Bid Conference

OR shall prepare agenda and conduct pre-bid conference with interested contractors. OR shall provide a written summary of issues discussed and distribute meeting minutes.

Subtask 6.3 Bid Clarification / Addenda

OR shall address questions and Requests for Information (RFI's) from prospective bidders and suppliers. OR shall issue addendum to provide corrections, supplemental information or clarification,

as appropriate, to interpret, clarify, or expand the bidding documents. The Addendum's shall be provided to the CITY Procurement Services for issuance to the prospective bidders.

Subtask 6.4 Contract Award

OR shall review bid packages received, prepare bid tabulation sheet and recommend award to the lowest responsive and responsible bidder. OR shall submit to CITY written recommendation concerning construction contract award.

Task 7 - Services During Construction (SDC)

The specific SDC phase services to be provided by the OR include the following:

Subtask 7.1 Conformed Contract Documents

OR shall coordinate with Design Engineer for preparation of the conformed Construction Contract Documents for use by the OR, EOR, Contractor and CITY. OR shall distribute the conformed contract documents to all parties.

Subtask 7.2 Pre-Construction Conference

OR shall prepare agenda and conduct pre-construction conference with selected Contractor, Design Engineer and CITY staff in accordance with "Standard Preconstruction Forms" that will be developed by OR for the project. Prepare and issue written minutes of meeting.

Subtask 7.3 Submittal Review

OR shall receive reviewed Shop Drawing and Product submittals from the EOR. OR will post the reviewed shop drawings to the FTP site.

Subtask 7.4 Monthly Construction Meetings

OR shall attend construction progress meetings with the Contractor, Design Engineer and CITY every month and provide an agenda and written summary of the issues discussed. Project meetings will be conducted by the OR Construction Manager. Following the meeting, the Construction Manager will prepare and distribute meeting minutes (within 24 to 36 hours after meeting) to the CITY and other attendees. Meetings will be held at either the Construction Field Trailer located at the project site or at CITY facilities if no Construction Field Trailer is included in the project. Fifteen (15) progress meetings are included in the budget for this task.

Subtask 7.5 Pay Estimate Review Assistance

OR shall assist the EOR in the review of monthly payment applications submitted in a format acceptable to the CITY. EOR shall verify the quantities as represented on the pay request and make a recommendation to the OR/CITY to proceed, with the payment as requested, or as modified based on OR's review.

Subtask 7.6 Construction Schedule Review

OR shall monitor the construction schedule monthly and report to the CITY conditions which may cause delay in completion. This subtask assumes 15 month construction duration.

Subtask 7.7 Construction RFI Assistance

OR shall review the EOR's responses to the Contractor's Request For Information (RFI) regarding the design documents. A total of twenty (20) RFI reviews have been included in this task. OR shall post the approved RFI responses on the FTP site.

Subtask 7.8 Review/Prepare Change Orders

OR shall prepare and negotiate Change Orders (CO) and Field Change Directives (FCD) during the 15-month construction period. For the purpose of this Contract, it is assumed that up to 10 CO and 40 FCD will be prepared during the 15-month construction period.

Subtask 7.9 Start-Up Assistance

OR shall assist EOR with start-up and testing for the pump station.

Subtask 7.10 Substantial and Final Inspection

OR shall assist EOR during preliminary and final inspections and review the Contractor "punch list" prepared by EOR to achieve Substantial and Final Completion. OR shall advise the CITY that Final Acceptance of the project has been reached in accordance with the Contract Documents.

Subtask 7.11 Landscape Review/Material Inspection

OR shall provide review of planting material inspection before the plants are delivered to the job-site. OR shall review that the landscape materials meet the intent of the Contract Documents and approved shop drawings. OR shall also ensure that the Contractor is keeping the plants watered and healthy until the project is turned over to the CITY.

Subtask 7.12 Project Closeout Documentation

OR shall assist the EOR and Contractor to ensure that all required project closeout information as stated in the Contract Documents are submitted to the CITY.

Task 8 - Resident Project Representative Services

The Resident Project Representative Phase services to be provided by the OR include the following:

Subtask 8.1 Resident Project Representative

OR shall provide a part-time (15 hours/week) Resident Project Representative (RPR) during the construction of the work in a total period of not-to-exceed 330 working days (for a total of 990 hours) for the construction contract. Activities performed under this task consist of furnishing an RPR during the construction of the project, to observe the quality of the construction work, and to determine, in general, if the construction is proceeding in accordance with the contract documents. The RPR shall:

- Serve as CITY's liaison with construction contractor, working principally through the contractor's superintendent and assisting him in understanding the intent of the contract documents.
- Conduct on-site observations of the work in progress to assist in determining if the work is proceeding in accordance with the contract documents and that completed work conforms to the contract documents. Report, in writing to the CITY, whenever OR believes that work is unsatisfactory, faulty or defective, or does not conform to the contract documents, or does not meet the requirements of inspections, tests or approval required to be made, or has been damaged prior to final payment.
- Accompany visiting inspectors representing public or regulatory agencies having jurisdiction over the project. Record, in writing, the outcome of these inspections and report same to CITY.
- Consider and evaluate construction contractor's suggestions for modifications in drawings or specifications and report them to the Design Engineer and CITY, in writing. OR shall make recommendation for action by the CITY.
- Assist the Contractor in coordinating all required density testing, etc. as required by the Construction Documents.
- RPR shall work with the EOR/Contractor and develop a Daily Quantity Sheet (based on the approved Schedule of Values) to be reviewed and accepted each day agreeing to the quantities of Schedule of Value items installed.

LIMITATIONS OF AUTHORITY

Except upon written instructions of CONSULTANT, Resident Project Representative:

1. Shall not authorize any deviation from the Contract Documents or approve any substitute materials or equipment.
2. Shall not exceed limitations on CONSULTANT's authority as set forth in the Contract Documents.
3. Shall not undertake any of the responsibilities of Contractor, Subcontractors or expedite the Work.

4. Shall not advise on or issue directions relative to any aspect of the means, methods, techniques, sequences or procedures of construction unless such is specifically called for in the Contract Documents.

5. Shall not authorize Owner to occupy the Project in whole or in part.

C. Assumptions

In addition to the work items discussed above, the following assumptions were made in establishing the scope of this Contract and associated fee. Changes and/ or modifications in the above work items or these assumptions are considered an Additional Services Item under the terms of the contract. Assumptions include:

1. Subtask 2.4, Subtask 3.1, Subtask 3.2, Subtask 3.3 and Subtask 3.4 are shown with an allowance amount that will be billed on a not-to-exceed basis. Depending on the number of affected parcels that will be required for the project and the total number of parties representing this ownership, the amounts shown may be more or may be less. Mathews Consulting will require strict billing records from our subconsultant for this work – Group One. Mathews Consulting will notify the CITY when we are at 75% of the amount shown for each allowance amount.
2. The Contract Documents will be prepared for only one (1) bid package. No pre-purchase of materials and/or equipment is presumed. Re-bidding of the project is considered an Additional Services item.
3. The design time-frame is assumed to be 12 months.
4. The construction time-frame is assumed to be 15 months. The construction man-hours are based on the following:
   - Construction duration (NTP issued to Contractor) = 450 calendar days (330 working days)
   - RPR Services = Weekend work and/or night-time work is not included in this scope and budget.

   If SDC or RPR is extended beyond 15 months, then an Amendment to this Contract will be executed for the additional work.

D. Additional Services

The following are examples of some specific Additional Services Items that may be required, but are not included within this Amendment. Generally, a condition contrary to the work description in Section B or assumptions of Section C (upon which the construction management fee is based) is considered an Additional Services Item. Examples include:

1. Additional supervision or construction observation in excess of that specified in this Contract.

2. Assisting the CITY in the settlement of construction contract claims will be an additional service.

These and other services can be provided, if desired by the CITY, under separate Contract(s) or by an amendment to this Contract. Services performed will be on an as-directed basis in accordance with a written Notice to Proceed from the CITY.

E. Compensation

Compensation by the CITY to the OR for all tasks will be on a Not-to-Exceed (time utilized) basis in accordance with the above mentioned Agreement. The estimated compensation for the services described in this Contract is **$349,930** as shown in Table 1 below and detailed in Attachment 1.

TABLE 1: LABOR AND EXPENSE SUMMARY

	Total Cost
Task 1 – Overall Project Management	$71,742
Task 2 – Right of Way Needs Analysis	$22,150
Task 3 – Land Acquisition Services/Relocation Plan	$89,600
Task 4 – Public Outreach Services	$12,982
Task 5 – Engineering Design Review	$18,038
Task 6 – Bidding Services	$3,953
Task 7 – Services During Construction	$38,255
Task 8 – Resident Project Representative Services	$85,710
Reimbursables	$7,500
Totals	**$349,930**

F. Schedule

The completion dates for this work will be as follows:

Engineering Services	**Time per Phase**
Task 1 – Overall Project Management	27 months
Task 2 – Right of Way Needs Analysis	2 months
Task 3 – Land Acquisition Services/Relocation Plan	3 months
Task 4 – Public Outreach Services	On-going
Task 5 – Engineering Design Review	1 month
Task 6 – Bidding Services	3 months
Task 7 – Services During Construction	15 months
Task 8 – Resident Project Representative Services	15 months
Total Duration:	**30 months**

APPROVED BY:

CITY OF LAKE WORTH, FLORIDA

By: _____

Michael Bornstein
City Manager

Dated this _____day of _____, 2013.

SUBMITTED BY:

Mathews Consulting, Inc.

By: _____

Rene L. Mathews, P.E.
President

Dated this _____day of _____, 2013.

Attachment 1

Owner's Representative Services - City of Lake Worth Park of Commerce - Phase I

Budget Summary for Mathews Consulting, Inc.

Task No.	Task Description	(Dave M.) Principal $150.00	(Rene M.) (Rebecca T.) Principal $150.00	(Tyler D.) Senior Engineer $137.00	(Jim J.) Sr.Eng. Technician $104.00	Construction Manager $104.00	Construction Inspector $85.00	Clerical $65.00	Total Labor	Sub-Consultant Services
		Labor Classification and Hourly Rates								
1	Overall Project Management									
1.1	Project Kick-Off Meeting	6	3			3		2	$1,792.00	$1,200.00
1.2	Comprehensive Project Coordination	230						40	$37,100.00	
1.3	Monthly Design Meetings (12 mtgs)	40						8	$6,520.00	
1.4	Permitting Coordination/Meetings (SFWMD&PBCHD)	12						3	$1,995.00	
1.5	Monthly Progress Reports	54	2					15	$9,375.00	$2,000.00
1.6	Funding Assistance	8	25						$4,950.00	
1.7	Presentations to City Commission	25	10			15			$6,810.00	
	Subtotal Task 1	375	40	0	0	18	0	68	$68,542.00	$3,200.00
2	Right of Way Needs Analysis									
2.1	Coordination Meetings w/ Design Engineer	2	9						$1,650.00	$1,600.00
2.2	Coordination Meetings w/ Palm Beach County	2	12						$2,100.00	$1,600.00
2.3	Review Current Title Work		12						$1,600.00	
2.4	Right of Way Needs Analysis Feasibility Study	4							$600.00	$12,800.00
	Subtotal Task 2	8	33	0	0	0	0	0	$6,150.00	$16,000.00
3	Land Acquistion Services/Relocation Plan									
3.1	Coord. w/ Property's Owner's/Background & Research	4							$600.00	$26,800.00
3.2	Appraisal Report for each Parcel	4							$600.00	$33,400.00
3.3	Land Acquistion Negotiations	4							$600.00	$17,000.00
3.4	Relocation Plan	4							$600.00	$10,000.00
	Subtotal Task 3	16	0	0	0	0	0	0	$2,400.00	$87,200.00
4	Public Outreach Services									
4.1	Property Owners/Commercial Entities (Acq. Phase)	1	8						$1,350.00	$3,000.00
4.2	Public Outreach Program (Design Phase)	1	25		4				$4,316.00	
4.3	Public Outreach Program (Construction Phase)	1	25		4				$4,316.00	
	Subtotal Task 4	3	58	0	8	0	0	0	$9,982.00	$3,000.00
5	Engineering Design Review									
5.1A	35% QA/QC Review	4	8	8		8		2	$3,858.00	
5.1B	65% QA/QC Review	4	8	8		8		2	$3,858.00	
5.2	96% Constructibility Review	4	48			18		10	$10,322.00	
	Subtotal Task 5	12	64	16	0	34	0	14	$18,038.00	$0.00
6	Bidding Assistance									
6.1	Bid Advertisement	3						1	$615.00	
6.2	Pre-Bid Conference	3				5		1	$1,036.00	
6.3	Bid Clarification/Addenda	4				2		1	$873.00	
6.4	Contract Award	5				5		4	$1,530.00	
	Subtotal Task 6	15	0	0	0	12	0	7	$3,953.00	$0.00
7	Construction Administration Services									
7.1	Distribute Conformed Const. Documents	3			2			2	$788.00	
7.2	Preconstruction Conference	3				5	2		$1,140.00	
7.3	Submittal Coordination	15						15	$3,225.00	
7.4	Monthly Progress Meetings					38			$3,952.00	
7.5	Pay Estimate Review Assistance					15			$1,560.00	
7.6	Construction Schedule Review					25			$2,600.00	
7.7	Contractor RFI's Assistance	5	5			20			$3,580.00	
7.8	Review/Prepare Change Orders	7				100		12	$12,230.00	
7.9	Start-Up Assistance					10			$1,040.00	
7.10	Substantial and Final Inspections Assistance					20			$2,080.00	
7.11	Landscape Review/Material Inspection	15	15						$4,500.00	
7.12	Project Closeout Documentation					15			$1,560.00	
	Subtotal Task 7	48	20	0	2	248	2	29	$38,266.00	$0.00
8	Construction Inspections									
8.1	Resident Project Representative (15 months)					15	990		$85,710.00	
	Subtotal Task 8	0	0	0	0	15	990	0	$85,710.00	$0.00
	Labor Subtotal Hours	477	215	16	10	327	992	118		$109,400.00
	Labor Subtotal	$71,550	$32,250	$2,192	$1,040	$34,008	$84,320	$7,670	$233,030.00	
	Labor Total Costs	$233,030								
	Subconsultant Costs Total	$109,400								
	Subconsultant Multiplier	NONE								
	Subconsultant Total	$109,400								
	Reimbursble Expenses	$7,500								
	Project Total	$349,930								

OP ID: JMC

DATE (MM/DD/YYYY) 11/15/2013

ACORD CERTIFICATE OF LIABILITY INSURANCE

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
ACEC/MARSH
701 Market St, Ste. 1100
St. Louis, MO 63101
Sharon L. Zach
Phone: 800-338-1391
Fax: 888-621-3173

CONTACT NAME:
PHONE (A/C, No, Ext):
FAX (A/C, No):
E-MAIL ADDRESS:
PRODUCER CUSTOMER ID #: MATHE-1

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : Hartford Insurance Company	22357
INSURER B :	
INSURER C :	
INSURER D :	
INSURER E :	
INSURER F :	

INSURED
Mathews Consulting, Inc.
477 S. Rosemary Avenue #330
West Palm Beach, FL 33401

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	GENERAL LIABILITY X COMMERCIAL GENERAL LIABILITY CLAIMS-MADE X OCCUR PROFESSIONAL LIAB EXCL GEN'L AGGREGATE LIMIT APPLIES PER: POLICY X PRO-JECT LOC			84SBGLB7335	11/01/2013	11/01/2014	EACH OCCURRENCE	$ 1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	$ 1,000,000
							MED EXP (Any one person)	$ 10,000
							PERSONAL & ADV INJURY	$ 1,000,000
							GENERAL AGGREGATE	$ 2,000,000
							PRODUCTS - COMP/OP AGG	$ 2,000,000
								$
A	AUTOMOBILE LIABILITY X ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS X HIRED AUTOS X NON-OWNED AUTOS			84UEGLL7958	11/01/2013	11/01/2014	COMBINED SINGLE LIMIT (Ea accident)	$ 1,000,000
							BODILY INJURY (Per person)	$
							BODILY INJURY (Per accident)	$
							PROPERTY DAMAGE (Per accident)	$
								$
								$
A	X UMBRELLA LIAB X OCCUR EXCESS LIAB CLAIMS-MADE DEDUCTIBLE X RETENTION $ 10,000			84SBGLB7335	11/01/2013	11/01/2014	EACH OCCURRENCE	$ 1,000,000
							AGGREGATE	$ 1,000,000
								$
								$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y/N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N/A	84WBGGJ0270	11/01/2013	11/01/2014	X WC STATU-TORY LIMITS OTH-ER	
							E.L. EACH ACCIDENT	$ 500,000
							E.L. DISEASE - EA EMPLOYEE	$ 500,000
							E.L. DISEASE - POLICY LIMIT	$ 500,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
RE: City of Lake Worth; Park of Commerce-Phase 1 - When required by written contract: The City of Lake Worth is included as additional insured for above coverages except WC. Coverage is primary and non-contributory to any other insurance carried except Umbrella. Waiver of Subrogation is included in favor or additional insureds for all policies. 30 notice of cancellation.

CERTIFICATE HOLDER

OFFICE

Office of The City Manager
c/o City of Lake Worth
7 North Dixie Hwy
Lake Worth, FL 33460

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Jeff Conolly

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MATHCON-01 CBARTON

ACORD

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 11/18/2013

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

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PRODUCER
Collinsworth, Alter, Fowler & French, LLC
8000 Governors Square Blvd
Suite 301
Miami Lakes, FL 33016

CONTACT NAME: Zoraida Gonzalez
PHONE (A/C, No, Ext): (305) 822-7800 FAX (A/C, No): (305) 362-2443
E-MAIL ADDRESS: zgonzalez@caffllc.com

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : Colony Specialty Ins Co	
INSURER B :	
INSURER C :	
INSURER D :	
INSURER E :	
INSURER F :	

INSURED
Mathews Consulting, Inc.
477 South Rosemary Ave.
Suite 330
West Palm Beach, FL 33401

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
	GENERAL LIABILITY						EACH OCCURRENCE	$
	COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence)	$
	CLAIMS-MADE / OCCUR						MED EXP (Any one person)	$
							PERSONAL & ADV INJURY	$
							GENERAL AGGREGATE	$
	GEN'L AGGREGATE LIMIT APPLIES PER: POLICY / PRO-JECT / LOC						PRODUCTS - COMP/OP AGG	$
								$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	$
	ANY AUTO						BODILY INJURY (Per person)	$
	ALL OWNED AUTOS / SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	HIRED AUTOS / NON-OWNED AUTOS						PROPERTY DAMAGE (Per accident)	$
								$
	UMBRELLA LIAB / OCCUR						EACH OCCURRENCE	$
	EXCESS LIAB / CLAIMS-MADE						AGGREGATE	$
	DED / RETENTION $							$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						WC STATU-TORY LIMITS / OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y / N (Mandatory in NH)		N / A				E.L. EACH ACCIDENT	$
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	$
							E.L. DISEASE - POLICY LIMIT	$
A	Professional Liab.			IAE1189903	5/1/2013	5/1/2014	Each Claim	3,000,000
A	Claims-Made Basis			IAE1189903	5/1/2013	5/1/2014	Annual Aggregate	3,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
Professional Liability Retroactive Date 01/01/1998; Professional Liability Deductible $25,000 Each Claim

RE: Project: City of Lake Worth Park of Commerce - Phase I

CERTIFICATE HOLDER

Office of the City Manager
c/o City of Lake Worth
7 North Dixie Highway
Lake Worth, FL 33460

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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Presentation for:

Park of Commerce Phase I Owner's Representative Services

MATHEWS CONSULTING

CIVIL ENGINEERS

January 7, 2014

Presentation Outline

1 Mathews Consulting Team

2 Project Responsibilities

3 Project Tasks

4 Project Schedule

5 Project Deliverables

MATHEWS CONSULTING
CIVIL ENGINEERS

Project Team

Park of Commerce Phase 1
Owner's Representative Services
RFP #12-13-201

Note: Our Construction Manager will be involved with all aspects of each task assignment. This will ensure continuity through the duration of the projects.

City Staff

Project Director
David L. Mathews, P.E.
(23 Years Exp.)

Value Engineering
Rene Mathews, P.E.
Rebecca Travis, P.E.

Construction Manager
Aaron Cutler, G.C.
(14 Years Exp.)

Assistant Construction Manager
Rick Chipman, CGC

Mock - Roos
(Engineer of Record)

Public Outreach
Rebecca Travis, P.E.
Courtney Marshall

Resident Project Representative
Dale Scott (44 Years Exp.)
Richard Chipman (31 Years Exp.)

Construction Claims
Rene L. Mathews, P.E.
Aaron Cutler, G.C.

Bidding
David L. Mathews, P.E.
Aaron Cutler, G.C.

Specialty Subconsultants
Right-of-Way Needs Analysis & Land Acquisition Services
Group One

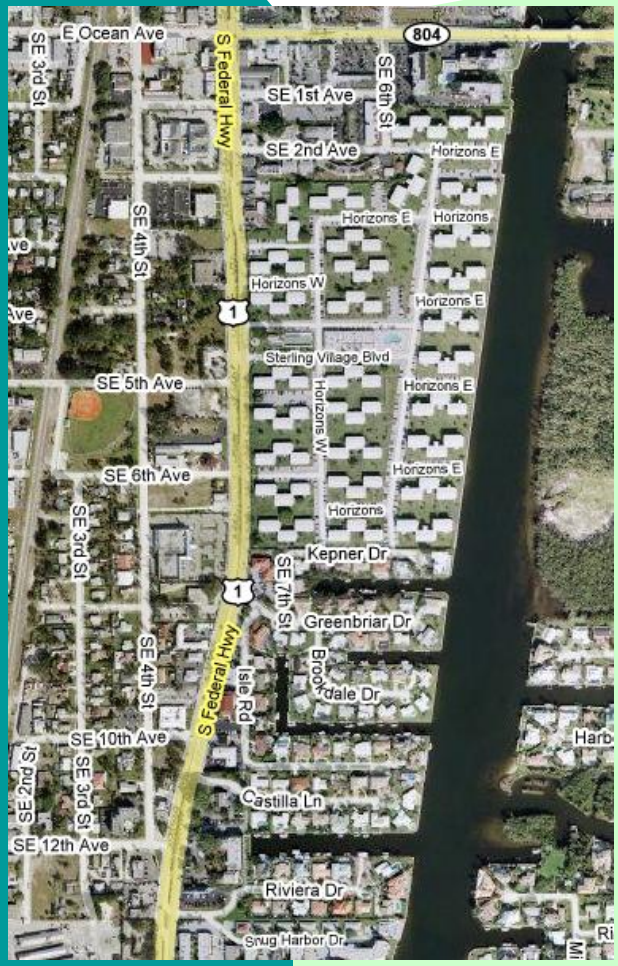
Mathews Consulting is positioned to provide Responsive, Quality Service

Mathews Consulting

City of Lake Worth

We are located 9 miles from City of Lake Worth and 10 minutes from Park of Commerce

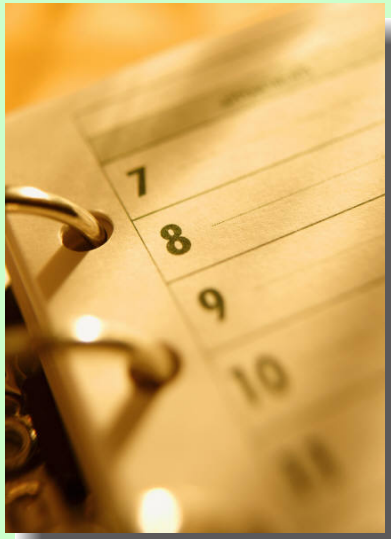
Recent Similar Experience –
Owner's Representative



- City of Boynton Beach CMS (3 Yr. Project)
  - CH2MHill (roadways/stormwater/water) è $19M
  - URS (water) è $1.2M
  - Wantman (WW PS/FM) è $1.0M
- City of Boynton Beach – SE Federal Hwy Corridor Improvements CMS
  - PBS&J (roadways/storm/water/water) è $2.2M
  - Completed August 2012
- PBCWUD – Southern Region WWTP 35 MGD Upgrade / PS 5229 Mods
  - Hazen & Sawyer) è $16M
  - Completed 2005

Project Responsibilities – Overall Project Management

- Monthly progress meetings (during design & construction phase)
  - Project Status Update
  - ROW Acquisition Updates
  - Schedule Update
  - Construction Cost Update
  - Permitting Updates
  - Public Outreach Updates
  - PBC Roadway Updates
  - Project Constraints



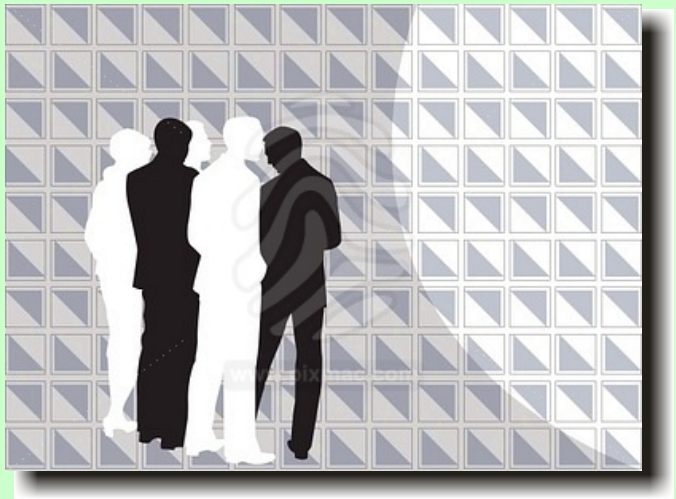
Project Responsibilities – Land Acquisition

- Coordination Meetings w/ Mock-Roos
- Coordination Meetings w/ PBC
- Coordination Meetings w/ Property Owners / Background & Research
- Review Current Title Work
- Right of Way Analysis Feasibility Study
- Appraisal Report for Each Parcel (Est. 16)
- Land Acquisition Negotiations

Project Responsibilities - Community Involvement Plan (3 Steps)

- Step 1 – Property Owners / Commercial Entities (Acquisition Phase)
- Step 2 – Public Outreach Program (Design Phase)
- Step 3 – Public Outreach Program (Construction Phase)

Plan is specifically tailored for the audience and the stage of the project!

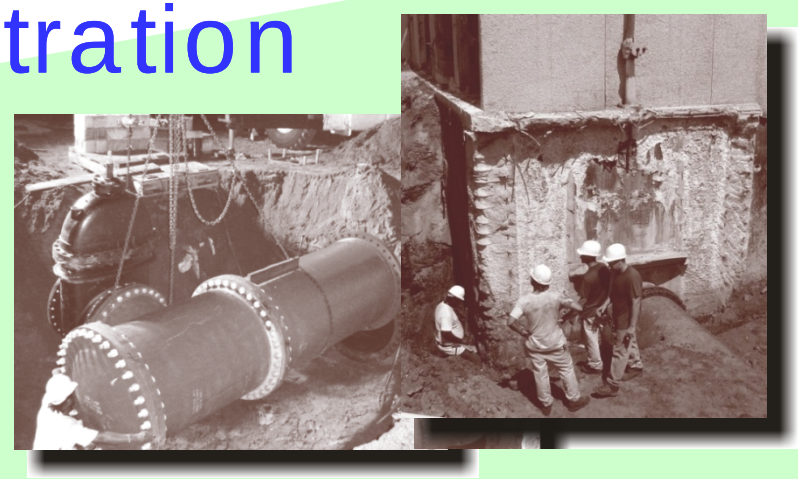


Project Responsibilities - Value Engineering Services

- 35% Quality Assurance Review
- 65% Quality Assurance Review
- 96% Constructibility Review

Served as PBC VE Consultant for last 12 Yrs.

Project Responsibilities - Construction Administration



- Construction Management
  - Project Administration
  - Pay Requests
  - Site Visits
  - Contract Clarification
  - Substitute Materials
  - Startup/Testing
  - Punchlists
  - Final Certification

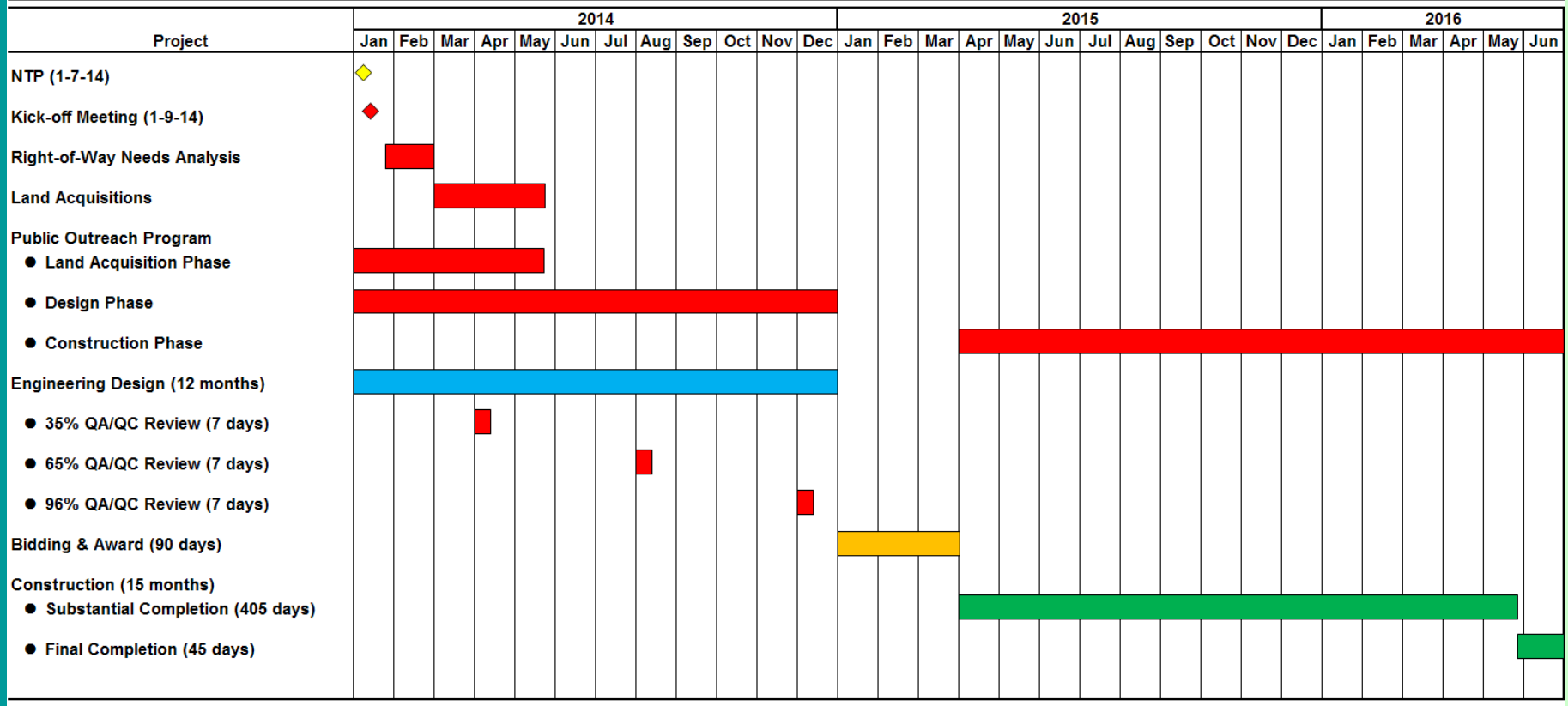
Our CMS Team is responsive to solving any conflicts!

- On-Site Inspection
  - Monitors Day to Day Progress
  - Monitors Quality of Construction
  - Ensures Compliance with Contract Documents
  - Schedule Monitoring
  - Job Site Record Keeping
  - Site Coordination

Project Tasks

- Task 1 – Overall Project Management
- Task 2 – Right of Way Needs Assessment
- Task 3 – Land Acquisition Services
- Task 4 – Public Outreach Services
- Task 5 – Engineering Design Review
- Task 6 – Bidding Services
- Task 7 – Construction Administration Services
- Task 8 – Resident Project Representative Services

Park of Commerce - Phase 1: Owner's Representative Services - Project Schedule (January 7, 2014)



Note
Design Time - Frame = 12
Bidding Time - Frame = 3
Construction Duration = 15

TOTAL TIME - FRAME - 30 MON

MATHEWS CONSULTING
CIVIL ENGINEERS

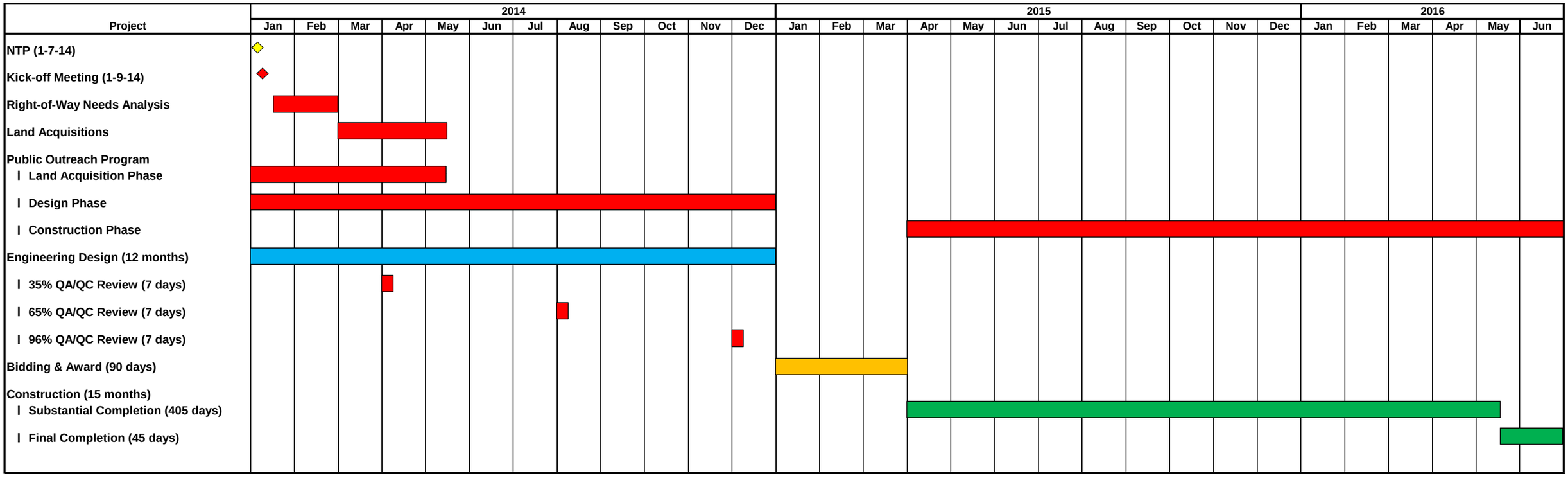
Project Deliverables

- Monthly Design Meeting Minutes (total of 12)
- Monthly Progress Report (total of 27)
- Presentations to City Commission
- Right of Way Analysis Feasibility Study
- Appraisal Report for each Parcel (Est. 16 Parcels)
- Assist in Development of Purchase Agreements
- Relocation Plan
- Public Outreach Program
- Quality Assurance Reviews on 35% & 65% Design
- Constructibility Review on 96% Design

Project Deliverables

- Pre-Bid Conference Meeting Minutes
- Recommend Award of Construction Contract
- Pre-Construction Conference Meeting Minutes
- Monthly Construction Meeting Minutes
- Monitor Contractor's Construction Schedule
- Prepare & Negotiate any Change Orders
- Prepare any Field Change Directives
- Daily Field Inspection Reports
- Daily Photographs of Construction Progress
- Checking Contractor's Daily Installed Quantities
- Prepare Contractor's Punchlist(s)

Park of Commerce - Phase 1: Owner's Representative Services - Project Schedule (January 7, 2014)



Notes:
Design Time - Frame = 12 Months
Bidding Time - Frame = 3 Months
Construction Duration = 15 Months

TOTAL TIME - FRAME - 30 MONTHS

CITY OF LAKE WORTH FLORIDA

MATHEWS CONSULTING
CIVIL ENGINEERS

CITY OF LAKE WORTH

7 North Dixie Highway · Lake Worth, Florida 33460 · Phone: 561-586-1600· Fax: 561-586-1750

AGENDA DATE: January 7, 2014, Regular Meeting **DEPARTMENT:** Community Sustainability

---

EXECUTIVE BRIEF

TITLE:
Discuss right of way ownership for Boutwell Road and the Park of Commerce Project

SUMMARY:
The ownership and future maintenance of Boutwell Road through the Park of Commerce is an issue to be considered as the infrastructure improvement moves forward.

BACKGROUND AND JUSTIFICATION:
In working with Palm Beach County on the overall approach to undertaking the infrastructure improvements along Boutwell Road and the intersection at Tenth Avenue North, the County has not included the intersection improvements within the soon to be adopted Five (5) Year County Capital Improvement Plan (Plan) for roadways. However, there will be an opportunity to approach the County to amend the Plan next spring 2014. One avenue to gain support and encourage the inclusion of the intersection in the Plan is for the City to be open to taking over the ownership and maintenance of Boutwell Road, once it is completed. City ownership of the roadway not only will help facilitate funding for the intersection but also allow for an aesthetically pleasing design to be developed commensurate the importance of the Park. County standard roadway requirements would not allow the City the luxury of providing for a signature roadway. The City's ownership of Boutwell Road would allow for more flexibility in the design and a more expeditious design, permitting and construction phasing. The County Engineering Office also has agreed to work with the City on the development of the plans and will participate in design review at regular intervals as well as assist with coordinating the intersection improvements if included as part of the County Plan.

Since the Park of Commerce is such a high profile endeavor with support from the Business Development Board (BDB) of Palm Beach County, the Treasure Coast Regional Planning Commission (TCRPC) and other economic development entities, the inclusion of the intersection improvements at Tenth Avenue North in the County's Plan is realistic and achievable. In addition, the transfer of roadway ownership will ensure a seamless project that meets all of the expectations of the City and establishes the Park of Commerce as a shovel ready investment opportunity

MOTION:
I move to direct City Staff to continue the feasibility efforts in coordination with Palm Beach County to facilitate the transfer of ownership and maintenance of Boutwell Road to the City of Lake Worth.

ATTACHMENT(S):
Fiscal Impact Analysis – To Be Determined

CITY OF LAKE WORTH

7 North Dixie Highway · Lake Worth, Florida 33460 · Phone: 561-586-1600· Fax: 561-586-1750

AGENDA DATE: January 7, 2014, Regular Meeting **DEPARTMENT:** Finance

---

EXECUTIVE BRIEF

TITLE:
Resolution No. 04-2014 - Fiscal Year 2014 first quarter budget amendment

SUMMARY:
This Resolution amends the City of Lake Worth FY 2013/2014 budget by appropriating existing fund balances in several funds:

General Fund –Expense- providing funding for additional staff for pot hole patching(as authorized by the Commission 10/15/2013), termination pay and implementation of the right of way permitting function, correcting the omission of a portion of the payment required for the Fire Pension plan.

Grants Fund Revenue and expense – putting in place appropriations for the CDBG grant for 9th Avenue South Greenway that is being considered at the same meeting.

Casino Construction Fund - Expense- reimbursement to the Capital fund for amounts spent from that fund on the building these amounts were within the adopted budget for the Casino Construction Fund

Electric Fund – Revenue - Putting in place the anticipated receipt of insurance proceeds for the transformer repair and amounts paid by developments for utility work. Expense – providing for inventory expenses and capital carry forward projects

Water Fund - Expense – providing for capital carry forward projects and accelerating other capital projects.

Local Sewer Fund - Expense – providing for capital carry forward projects and accelerating other capital projects.

Regional Sewer Fund - Expense – providing for capital carry forward projects and accelerating other capital projects.

Stormwater Fund - Expense – providing for capital carry forward projects.

Refuse Fund - Expense – providing for accelerating vehicle replacement.

Information Technology Fund- Expense – providing for capital carry forward projects.

Self Insurance Fund - Expense – providing for additional projected legal costs and loss prevention training for employees.

Fleet Management Fund- Revenue and Expense – providing for purchase of an additional refuse truck other side of the refuse item above.

Minor changes to other funds are also included.

BACKGROUND AND JUSTIFICATION:

The City of Lake Worth FY 2013/2014 budget as adopted (in September 2013) and contained estimates for all expenditures and in particular a number of ongoing capital projects. This budget amendment re-budgets those that were not completed prior to the end of the fiscal year.

This amendment also contains corrections to the amounts originally adopted based on a further review of the original budget and adjusts other accounts for current trends/costs.

The funds for all these adjustments are available within each of funds either through the transfer of appropriations among departments or through the use of available fund balance (based on the current unaudited FY 2013 results of operations).

MOTION:

I move to approve/disapprove Resolution No. 04-2014 to amend the Fiscal Year 2014 budget.

ATTACHMENT(S):

Fiscal Impact Analysis – not applicable
Resolution including Fund Summaries

RESOLUTION NO. 04-2014, A GENERAL APPROPRIATION RESOLUTION OF THE CITY OF LAKE WORTH, A MUNICIPAL CORPORATION OF THE STATE OF FLORIDA, MAKING SEPARATE AND SEVERAL BUDGET AMENDMENTS AND CORRESPONDING APPROPRIATIONS FOR THE CITY'S NECESSARY OPERATING EXPENSES, THE USES AND EXPENSES OF THE VARIOUS FUNDS AND DEPARTMENTS OF THE CITY FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2013 AND ENDING SEPTEMBER 30, 2014; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Lake Worth, Florida (the "City") previously adopted the FY 2013 Annual Operating Budget pursuant to Resolution 40-2013 on September 30, 2014; and

WHEREAS, the City finds it is necessary and essential to amend the FY 2013 Annual Operating Budget as set forth in this Resolution; and,

WHEREAS, adoption of the FY 2013 Annual Operating Budget amendments set forth herein serves a valid public purpose.

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

Section 1. The above recitals are hereby ratified and confirmed as being true and correct and are hereby incorporated into this Resolution.

Section 2. As hereinafter stated in this Resolution, the term "fiscal year" shall mean the period of time beginning October 1, 2013, and ending and including September 30, 2014.

Section 3 The funds and available resources and revenues that are set out in Exhibit "A" and incorporated herein by reference, be, and the same hereby are, appropriated to provide the monies to be used to pay the necessary operating and other expenses of the respective funds and departments of the City for the fiscal year.

Section 4. The sums, which are set out in Exhibit "A" and herein incorporated by reference, listed as operating and other expenses of the respective funds and departments of the City, be, and the same hereby are, appropriated and shall be paid out of the revenues herein appropriated for the fiscal year.

Section 5. The revenues and the expenses for which appropriations are hereby made, all set forth above, shall be as set out in the Amended City of Lake Worth Operating Budget for the fiscal year as attached in Exhibit "A".

Section 6. The sums set out in Exhibit "A" are hereinbefore incorporated by reference and based upon departmental estimates prepared by the City Manager and the Finance Director, shall be, and the same hereby are, fixed

and adopted as the amended budget for the operation of the City and its other enterprises for the fiscal year.

Section 7. Except as amended in Exhibit "A" hereto, the remainder of the Annual Operating Budget for the fiscal year remains in full force and effect.

Section 8. This Resolution shall become effective immediately upon passage.

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

Mayor Pam Triolo
Vice Mayor Scott Maxwell
Commissioner Christopher McVoy
Commissioner Andy Amoroso
Commissioner John Szerdi

Mayor Pam Triolo thereupon declared this Resolution duly passed and adopted on the 7th day of January, 2014.

LAKE WORTH CITY COMMISSION

By:_____
Pam Triolo, Mayor

ATTEST:

_____
Pamela J. Lopez, City Clerk

EXHIBIT "A"
BUDGET AMENDMENTS

City of Lake Worth
FY 2014
1st Budget Amendment

General Fund

	FY 2014 Original Budget	FY 2014 Revised Budget	FY 2014 1st Budget Amendment	FY 2014 Amended Budget
Source of Funds				
Ad valorem	5,788,123	5,788,123	-	5,788,123
Sales, Use & Fuel	813,000	813,000	-	813,000
Franchise Fees	41,600	41,600	-	41,600
Utility Services Taxes	4,259,000	4,259,000	-	4,259,000
Business Licenses	660,000	660,000	-	660,000
Permits	138,000	138,000	-	138,000
State Shared Revenues	4,657,500	4,657,500	-	4,657,500
Shared revenue local units	1,031,243	1,031,243	-	1,031,243
General Government	244,790	244,790	-	244,790
Public Safety	395,000	395,000	-	395,000
Physical Environment	660,000	660,000	-	660,000
Transportation	33,000	33,000	-	33,000
Culture/Recreation	132,940	132,940	-	132,940
Judgments & Fines	72,000	72,000	-	72,000
Violations of Local Ordinances	211,500	211,500	-	211,500
Interest & other Earnings	61,000	61,000	-	61,000
Rents & Royalties	21,300	21,300	-	21,300
Other Miscellaneous Revenue	10,000	10,000	-	10,000
Contribution from Enterprise	9,850,464	9,850,464	-	9,850,464
Non-Operating Sources/Reimbursements	169,999	169,999	-	169,999
Transfers In	265,541	265,541	-	265,541
subtotal	29,516,000	29,516,000	-	29,516,000
Use of Fund Balance	372,060	372,060	254,890	626,950
Total Sources of Funds	29,888,060	29,888,060	254,890	30,142,950
Use of Funds				
City Commission	226,981	226,981	-	226,981
Internal Auditor	223,905	223,905	-	223,905
City Clerk	424,856	424,856	(14,400)	410,456
City Attorney	590,085	590,085	-	590,085
City Manager	472,562	472,562	750	473,312
Finance / OMB	1,452,902	1,452,902	44,750	1,497,652
Human Resources / Personnel	200,443	200,443	1,925	202,368
Human Resources / Benefits	-	-	-	-
Community Sustainability - Admininstration	219,746	219,746	6,050	225,796
Community Sustainability / Business Licenses	105,652	105,652	5,850	111,502
Community Sustainability / Planning & Zoning	562,156	562,156	12,300	574,456
Community Sustainability / Code Enforcement	894,745	894,745	33,568	928,313
Public Safety - Police Services	15,057,593	15,057,593	-	15,057,593
Public Safety - Fire Services	2,890,607	2,890,607	117,976	3,008,583
Public Services - Administration	234,475	234,475	-	234,475
Public Services - Streets Maintenance	578,549	578,549	60,000	638,549
Public Services - Parking	11,998	11,998	-	11,998
Public Services - Grounds Maintenance	1,575,253	1,575,253	21,500	1,596,753
Public Services - Cemetery	282,872	282,872	-	282,872
Facilities Management- Custodial	86,385	86,385	-	86,385
Facilities Management- Maintenance	971,047	971,047	8,450	979,497
Leisure Services - Library	491,574	491,574	-	491,574
Leisure Services - Recreation / Athletics	407,509	407,509	-	407,509
Leisure Services - Rec / Facility Rentals	487,533	487,533	-	487,533
Leisure Services - Rec / Community Programs	457,725	457,725	(43,829)	413,896
Non-Departmental	80,000	80,000	-	80,000
Transfer Out - Capital Projects	-	-	-	-
Transfers Out- CRA & Building Fund	646,275	646,275	-	646,275
Transfer Out - Golf Course Operations	254,632	254,632	-	254,632
Transfer Out - Grants	-	-	-	-
subtotal	29,888,060	29,888,060	254,890	30,142,950
Reserve for future use	-	-	-	-
Total Uses of Funds	29,888,060	29,888,060	254,890	30,142,950
Fund Balance Analysis:				
Actual Available Fund Balance / Estimated	3,595,130	3,595,130	16,750	3,611,880
Use of fund balance	(372,060)	(372,060)	(254,890)	(626,950)
Reserve for future capital projects		-		-
Advance forgiveness		-		-
Fund Balance reclassifiaction -		-		-
Golf Advance Forgiveness		-		-
Estimated Remaining Available Fund Balance	3,223,070	3,223,070	(238,140)	2,984,930

City of Lake Worth
FY 2014
1st Budget Amendment

Building Permit Fund

	FY 2014 Original Budget	FY 2014 Revised Budget	FY 2014 1st Budget Amendment	FY 2014 Amended Budget
Source of Funds				
Permits	625,000	625,000	-	625,000
Plan Review	-	-	-	-
General Government	100	100	-	100
Other Miscellaneous Revenue	-	-	-	-
Transfers In	23,985	23,985	-	23,985
subtotal	649,085	649,085	-	649,085
Use of Fund Balance	-	-	5,200	-
Total Sources of Funds	649,085	649,085	5,200	649,085
Use of Funds				
Building Services	595,922	595,922	5,200	601,122
Non-Departmental	220	220	-	220
Transfers Out	-	-	-	-
subtotal	596,142	596,142	5,200	601,342
Reserve for future use	52,943	52,943	-	47,743
Total Uses of Funds	649,085	649,085	5,200	649,085
Fund Balance Analysis:				
Actual Available Fund Balance / Estimated	607,712	607,712		607,712
Reserve for future use	52,943	52,943	(5,200)	47,743
Estimated Remaining Fund Balance	660,655	660,655	(5,200)	655,455

City of Lake Worth
FY 2014
1st Budget Amendment

Beach Fund

	FY 2014 Original Budget	FY 2014 Revised Budget	FY 2014 1st Budget Amendment	FY 2014 Amended Budget
Source of Funds				
Transportation	1,002,880	1,002,880	-	1,002,880
Culture/Recreation	30,440	30,440	5,000	35,440
Violations	100,000	100,000	-	100,000
Rents & Royalties	825,015	825,015	-	825,015
Donations	-	-	-	-
Misc. Revenue	-	-	-	-
Transfers	26,675	26,675	-	26,675
Advance	-	-	-	-
subtotal	1,985,010	1,985,010	5,000	1,990,010
Use of Fund Balance	433,474	433,474	7,099	440,573
Total Sources of Funds	2,418,484	2,418,484	12,099	2,430,583
Use of Funds				
Beach Parking	357,210	357,210	-	357,210
Casino Building	401,411	401,411	-	401,411
Ballroom	147,658	147,658	11,502	159,160
Pool	268,636	268,636	-	268,636
Beach	598,948	598,948	-	598,948
Beach Park	253,787	253,787	597	254,384
Pier	27,834	27,834	-	27,834
Capital Outlay				
Principal	250,000	250,000	-	250,000
Interest	50,000	50,000	-	50,000
Non-Departmental	63,000	63,000	-	63,000
Special Events	-	-	-	-
subtotal	2,418,484	2,418,484	12,099	2,430,583
Reserve for future use	-	-	-	-
Total Uses of Funds	2,418,484	2,418,484	12,099	2,430,583
Fund Balance Analysis:				
Actual Available Fund Balance / Estimated	501,872	501,872		501,872
Use of fund balance	(433,474)	(433,474)	(7,099)	(440,573)
Estimated Remaining Fund Balance	68,398	68,398	(7,099)	61,299

City of Lake Worth
FY 2014
1st Budget Amendment

Grants

	FY 2014 Original Budget	FY 2014 Revised Budget	FY 2014 1st Budget Amendment	FY 2014 Amended Budget
Source of Funds				
Federal Grants:				
Culture/Recreation	16,669	16,669		16,669
General Government	-	-		-
Physical Enviornment	1,837,396	1,837,396	212,396	2,049,792
Public Safety	27,469	27,469		27,469
Transportation	-	-		-
Total Federal Grants	1,881,534	1,881,534	212,396	2,093,930
State Grants - culture/recreation	-	-		
Grants From Local Units - culture/recreation	-	-		-
Miscellaneous Income	-	-		-
Transfers In	-	-		-
subtotal	-	-	-	-
Use of Fund Balance	-	-	-	-
Total Sources of Funds	1,881,534	1,881,534	212,396	2,093,930
Use of Funds				
CDBG - Sunset Ridge improvement	-	-		-
CDBG - Sunset Ridge equipment	-	-		-
CDBG - Street Calming	-	-		-
CDBG - Wimbeley Gym	-	-		-
CDBG - Infrastructure	1,047,396	1,047,396	212,396	1,259,792
CDBG - Shuffleboard courts parking area, etc.	-	-		-
ARRA Justice Assistance Grant	27,469	27,469		27,469
DOJ-YEC Afterschool & Crime Prevention	-	-		-
EECGB from Refuse	-	-		-
ARRA Leap - Local Energy Assurance Plan	-	-		-
Bryant Park	-	-		-
Derelict Vessel Grant	-	-		-
PBC Bryant Park Water Front Access	-	-		-
Youth Empowerment Grant - 2011	-	-		-
State Aid to Library	16,669	16,669		16,669
Urban and Community Forest Program	15,000	15,000		15,000
Cycle for Transportation Alternatives Program	775,000	775,000		775,000
Transfers Out	-	-		-
subtotal	1,881,534	1,881,534	212,396	2,093,930
Reserve for future use	-	-	-	-
Total Uses of Funds	1,881,534	1,881,534	212,396	2,093,930
Fund Balance Analysis:				
Actual Available Fund Balance / Estimated	-	-		-
Use of fund balance	-	-	-	-
Estimated Remaining Fund Balance	-	-	-	-

City of Lake Worth
FY 2014
1st Budget Amendment

Capital Projects Fund

	FY 2014 Original Budget	FY 2014 Revised Budget	FY 2014 1st Budget Amendment	FY 2014 Amended Budget
Source of Funds				
Federal Grants	-	-	-	-
Interest & Other Earnings	-	-	-	-
Other Miscellaneous Rev				
Transfers In	-	-	142,370	142,370
subtotal	-	-	142,370	142,370
Use of Fund Balance	2,641,845	2,641,845	351,150	2,992,995
Total Sources of Funds	2,641,845	2,641,845	493,520	3,135,365
Use of Funds				
General Improvements	140,543	140,543	142,370	282,913
Public Services Bldg	1,261,028	1,261,028	-	1,261,028
Road Improvements	-	-	345,400	345,400
Park Furnishings	-	-	5,750	5,750
ADA Compliance	-	-		-
Golf course restoration	108,774	108,774	-	108,774
Building Licensing - building renovation	-	-		-
Roof replacement - Bryant Park	30,000	30,000		30,000
Gym and Public safety building air conditioners	79,000	79,000		79,000
City Hall alarm system & electric upgrade	40,000	40,000		40,000
Lighting Howard Park Playground				-
ADA playground apron at Howard Park				-
Security lighting at Sunset Park				-
Shuffle Board Court renovation	37,500	37,500		37,500
Gymansium floor/Bleachers	95,000	95,000		95,000
Land acquisition	5,000,000	5,000,000		5,000,000
Building renovations	1,600,000	1,600,000		1,600,000
Landfill restoration	-	-		-
subtotal Capital Projects	8,391,845	8,391,845	493,520	8,885,365
Transfers Out	900,000	900,000		900,000
Advance - Beach fund	-	-	-	-
Non Operating				-
Debt Proceeds	(6,600,000)	(6,600,000)		(6,600,000)
Repayment from Beach Fund - P & I	(50,000)	(50,000)		(50,000)
Dept Payments- Principal	-	-		-
Debt Payments- Interest	-	-		-
subtotal	2,641,845	2,641,845	493,520	3,135,365
Reserve for future use	-	-	-	-
Total Uses of Funds	2,641,845	2,641,845	493,520	3,135,365
Fund Balance Analysis:				
Actual Available Fund Balance / Estimated	2,641,845	2,641,845	351,150	2,992,995
Use of fund balance	(2,641,845)	(2,641,845)	(351,150)	(2,992,995)
Estimated Remaining Fund Balance	-	-	-	-
Transfers In				
	-	-	-	-
Transfers Out				
Park of Commerce Fund	700,000	700,000		700,000
Code Remediation Fund	200,000	200,000		200,000
to Road improvement Fund	-	-		-
	900,000	125,000	-	900,000

City of Lake Worth
FY 2014
1st Budget Amendment

Golf Fund

	FY 2014 Original Budget	FY 2014 Revised Budget	FY 2014 1st Budget Amendment	FY 2014 Amended Budget
Source of Funds				
General Government	-	-	-	-
Culture/Recreation	1,135,628	1,135,628	-	1,135,628
Donations	-	-	10,000	10,000
Transfers In	285,770	285,770	-	285,770
subtotal	1,421,398	1,421,398	10,000	1,431,398
Use of Fund Balance	-	-	-	-
Total Sources of Funds	1,421,398	1,421,398	10,000	1,431,398
Use of Funds				
Golf Course	1,086,386	1,086,386	10,000	1,096,386
Restaurant /Clubhouse	-	-	-	-
Non-Departmental	16,462	16,462	-	16,462
Transfers Out	-	-	-	-
Repayment cash advance	110,000	110,000		110,000
Debt Payments- Principal	-	-	-	-
Debt Payments- Interest	-	-	-	-
Capital Outlay	-	-	-	-
subtotal	1,212,848	1,212,848	10,000	1,222,848
Reserve for future use	208,550	208,550	-	208,550
Total Uses of Funds	1,421,398	1,421,398	10,000	1,431,398
Fund Balance Analysis:				
Actual Available Fund Balance / Estimate	(208,550)	(208,550)		(208,550)
Reserve for future use	208,550	208,550	-	208,550
Estimated Remaining Fund Balance	-	-	-	-
Capital Outlay				
* Golf Course	-	-	-	-
* Restaurant/Clubhouse	-	-	-	-
Non-Departmental				
Interfund Admin Services	-	-	-	-
Contribution to General Fund	-	-	-	-
Bank Service charges	16,462	16,462	-	16,462
Total Non-Departmental	16,462	16,462	-	16,462

97
98

City of Lake Worth
FY 2014
1st Budget Amendment

Casino Fund

	FY 2014 Original Budget	FY 2014 Revised Budget	FY 2014 1st Budget Amendment	FY 2014 Amended Budget
Source of Funds				
Transfers				
Advance				
subtotal	-	-	-	-
Use of Fund Balance	-	-	142,370	142,370
Total Sources of Funds	-	-	142,370	142,370
Use of Funds				
Casino Building				
Capital Outlay				
Principal				
Interest				
Non-Departmental	-	-	-	-
Special Events				
Transfers	-	-	142,370	142,370
subtotal	-	-	142,370	142,370
Reserve for future use	-	-	-	-
Total Uses of Funds	-	-	142,370	142,370
Fund Balance Analysis:				
Actual Available Fund Balance / Estimated				142,370
Use of fund balance	-			(142,370)
Estimated Remaining Fund Balance	-	-	-	-

City of Lake Worth
FY 2014
1st Budget Amendment

Electric Fund

	FY 2014 Original Budget	FY 2014 Revised Budget	FY 2014 1st Budget Amendment	FY 2014 Amended Budget
Source of Funds				
General Government	71,500	71,500	-	71,500
Physical Environment	49,549,383	49,549,383	-	49,549,383
Violations of Local Ordinance	40,000	40,000	-	40,000
Interest & Other Earnings	219,665	219,665	-	219,665
Sale of Surplus Material	-	-	-	-
Other Miscellaneous Rev	177,000	177,000	857,000	1,034,000
Contribution from Enterprise	1,691,677	1,691,677	-	1,691,677
Transfers In	155,409	155,409	-	155,409
subtotal	51,904,634	51,904,634	857,000	52,761,634
Use of Fund Balance	8,483,635	8,483,635	4,828,883	13,312,518
Total Sources of Funds	60,388,269	60,388,269	5,685,883	66,074,152
Use of Funds				
Administration	1,198,067	1,198,067	52,842	1,250,909
Engineering	1,562,107	1,562,107	1,500	1,563,607
Power Plant	3,130,382	3,130,382	-	3,130,382
System Operation	31,507,618	31,507,618	-	31,507,618
Transmission & Distrib.	4,897,579	4,897,579	2,294,400	7,191,979
Customer Service	1,514,417	1,514,417	-	1,514,417
Interfund Admin Services	2,151,041	2,151,041	-	2,151,041
Contributions to General Fund	4,141,958	4,141,958	-	4,141,958
Non-Departmental Other	963,419	963,419	-	963,419
Transfers Out	-	-	-	-
Capital Outlay	6,305,500	6,305,500	3,337,141	9,642,641
Debt Payments- Principal	635,000	635,000	-	635,000
Debt Payments- Interest	669,300	669,300	-	669,300
Depreciation	1,711,881	1,711,881	-	1,711,881
subtotal	60,388,269	60,388,269	5,685,883	66,074,152
Reserve for future use	-	-	-	-
Total Uses of Funds	60,388,269	60,388,269	5,685,883	66,074,152
Net Assets Analysis:				
Actual Available Net Assets / Estimated	23,663,824	23,663,824	3,651,541	27,315,365
Use of Net Assets	(8,483,635)	(8,483,635)	(4,828,883)	(13,312,518)
Non cash items:				-
Depreciation	1,711,881	1,711,881		1,711,881
Available bond proceeds to be used	(9,978,000)	(9,978,000)		(9,978,000)
Estimated Remaining Fund Balance	6,914,070	6,914,070	(1,177,342)	5,736,728
Capital Outlay	6,305,500	6,305,500	3,337,141	9,642,641
* Utility Customer Service	-	-	-	-
* Administration	60,000	60,000	393,440	453,440
* Engineering	-	-	-	-
* Steam Power Generation	-	-	230,600	230,600
* Power System Operation	20,000	20,000	612,219	632,219
* Transmission & Distrib.	6,225,500	6,225,500	2,100,882	8,326,382
* Non-departmental	-	-	-	-

City of Lake Worth
FY 2014
1st Budget Amendment

Water Fund

	FY 2014 Original Budget	FY 2014 Revised Budget	FY 2014 1st Budget Amendment	FY 2014 Amended Budget
Source of Funds				
Physical Environment	12,244,470	12,244,470	-	12,244,470
Violation of Lake Worth Ordinance	500	500	-	500
Interest & other Earnings	107,838	107,838	-	107,838
Spec Assess/Impact	5,000	5,000	-	5,000
Transfers In/Advances	166,667	166,667	-	166,667
subtotal	12,524,475	12,524,475	-	12,524,475
Use of Fund Balance	9,033,816	9,033,816	3,640,387	12,674,203
Total Sources of Funds	21,558,291	21,558,291	3,640,387	25,198,678
Use of Funds				
Administration	-	-	-	-
Pumping	405,459	525,459	120,000	645,459
Water Treatment Plant	4,637,314	4,517,314	203,500	4,720,814
Transmission & Distrib.	1,390,181	1,390,181	171,650	1,561,831
Customer Service	-	-	-	-
Non-Departmental Other	106,838	106,838	-	106,838
Interfund Admin Services	1,468,466	1,468,466	-	1,468,466
Contribution to General Fund	1,030,564	1,030,564	-	1,030,564
Transfers Out - Master Plan Project Fund	6,151,297	6,071,297	80,000	6,151,297
Capital Outlay	2,506,400	2,586,400	3,065,237	5,651,637
Debt Payments- Principal	1,034,214	1,034,214	-	1,034,214
Debt Payments- Interest	770,984	770,984	-	770,984
Depreciation	2,056,574	2,056,574	-	2,056,574
subtotal	21,558,291	21,558,291	3,640,387	25,198,678
Reserve for future use	-	-	-	-
Total Uses of Funds	21,558,291	21,558,291	3,640,387	25,198,678
Net Assets Analysis:				
Actual Available Net Assets / Estimated	19,097,471	19,097,471	2,725,237	21,822,708
Use of Net Assets	(9,033,816)	(9,033,816)	(3,640,387)	(12,674,203)
Non Cash Items- Depreciation	2,056,574	2,056,574		2,056,574
Less Cash Advances:				-
Grant Fund	(395,000)	(395,000)		(395,000)
Beach Project	(3,150,000)	(3,150,000)		(3,150,000)
Casino Project	(3,833,333)	(3,833,333)		(3,833,333)
Estimated Remaining Fund Balance	4,741,896	4,741,896	(915,150)	3,826,746
Capital Outlay	2,506,400	2,586,400	3,065,237	5,651,637
* Treatment	2,146,400	2,226,400	2,477,573	4,703,973
* Distribution	360,000	360,000	587,664	947,664
* Non-Departmental	-	-	-	-

City of Lake Worth
FY 2014
1st Budget Amendment

Local Sewer Fund

	FY 2014 Original Budget	FY 2014 Revised Budget	FY 2014 1st Budget Amendment	FY 2014 Amended Budget
Source of Funds				
Physical Environment	6,352,524	6,352,524	-	6,352,524
Interest & other Earnings	73,412	73,412	-	73,412
Spec Assess/Impact	5,000	5,000	-	5,000
Transfers In	-	-	-	-
subtotal	6,430,936	6,430,936	-	6,430,936
Use of Fund Balance	4,922,756	4,922,756	1,113,133	6,035,889
Total Sources of Funds	11,353,692	11,353,692	1,113,133	12,466,825
Use of Funds				
Pumping	813,893	813,893	14,400	828,293
Sewer Collection	1,256,043	1,256,043	-	1,256,043
Non-Departmental Other	37,686	37,686	-	37,686
Regional System Expense	2,483,257	2,483,257	-	2,483,257
Interfund Admin Services	858,469	858,469	-	858,469
Contribution to General Fund	595,817	595,817	-	595,817
Transfers Out - Master Plan Project Fund	4,225,014	4,112,014	113,000	4,225,014
Capital Outlay	480,000	593,000	985,733	1,578,733
Depreciation	603,513	603,513	-	603,513
subtotal	11,353,692	11,353,692	1,113,133	12,466,825
Reserve for future use	-	-	-	-
Total Uses of Funds	11,353,692	11,353,692	1,113,133	12,466,825
Net Assets Analysis:				
Actual Available Net Assets / Estimated	7,018,745	7,018,745	901,733	7,920,478
Use of Net Assets	(4,922,756)	(4,922,756)	(1,113,133)	(6,035,889)
Adjustment for Non Cash Item- Depreciation	603,513	603,513		603,513
Estimated Remaining Fund Balance	2,699,502	2,699,502	(211,400)	2,488,102
Capital Outlay	480,000	593,000	985,733	1,578,733
Pumping	85,000	85,000	-	85,000
Sewer Collection	395,000	508,000	985,733	1,493,733

City of Lake Worth
FY 2014
1st Budget Amendment

Regional Sewer Fund

	FY 2014 Original Budget	FY 2014 Revised Budget	FY 2014 1st Budget Amendment	FY 2014 Amended Budget
Source of Funds				
Physical Environment	4,947,692	4,947,691	-	4,947,691
Miscellaneous Revenue	-	-	-	-
Interest & other Earnings	40,000	40,000	-	40,000
Transfers In				
subtotal	4,987,692	4,987,691	-	4,987,691
Use of Fund Balance	389,557	389,557	1,053,391	1,442,948
Total Sources of Funds	5,377,249	5,377,248	1,053,391	6,430,639
Use of Funds				
Pumping	4,306,384	4,306,384	90,000	4,396,384
Non-Department Other	303,325	303,324	-	303,324
Interfund Admin Services	338,389	338,389	-	338,389
Transfers Out	-	-	-	-
Capital Outlay	-	-	963,391	963,391
Depreciation	429,151	429,151	-	429,151
subtotal	5,377,249	5,377,248	1,053,391	6,430,639
Reserve for future use	-	-	-	-
Total Uses of Funds	5,377,249	5,377,248	1,053,391	6,430,639
Net Assets Analysis:				
Actual Available Net Assets / Estimated	3,737,419	3,737,419	253,391	3,990,810
Use of Net Assets	(389,557)	(389,557)	(1,053,391)	(1,442,948)
Adjustment for Non Cash Item- Depreciation	429,151	429,151		429,151
Estimated Remaining Fund Balance	3,777,013	3,777,013	(800,000)	2,977,013
Capital Outlay	-	-	963,391	963,391
* Non-Departmental	-	-	963,391	963,391

City of Lake Worth
FY 2014
1st Budget Amendment

Stormwater Fund

	FY 2014 Original Budget	FY 2014 Revised Budget	FY 2014 1st Budget Amendment	FY 2014 Amended Budget
Source of Funds				
Physical Environment	2,107,000	2,107,000	-	2,107,000
Interest & other Earnings	46,936	46,936	-	46,936
Misc. Revenue	-	-	-	-
Transfers In				
subtotal	2,153,936	2,153,936	-	2,153,936
Use of Fund Balance	2,086,340	2,086,340	368,356	2,454,696
Total Sources of Funds	4,240,276	4,240,276	368,356	4,608,632
Use of Funds				
Stormwater	1,254,765	1,254,765	30,353	1,285,118
Non-Department Other	1,829	1,829	-	1,829
Interfund Admin Services	138,522	138,522	-	138,522
Contribution to General Fund	164,071	164,071	-	164,071
Transfers Out - Master Plan Project Fund	2,106,960	1,768,957	338,003	2,106,960
Capital Outlay	297,780	635,783	-	635,783
Depreciation	276,349	276,349	-	276,349
subtotal	4,240,276	4,240,276	368,356	4,608,632
Reserve for future use	-	-	-	-
Total Uses of Funds	4,240,276	4,240,276	368,356	4,608,632
Net Assets Analysis:				
Actual Available Net Assets / Estimated	3,223,077	3,223,077	338,356	3,561,433
Use of Net Assets	(2,086,340)	(2,086,340)	(368,356)	(2,454,696)
Adjustment for Non Cash Item- Depreciation	276,349	276,349		276,349
Estimated Remaining Fund Balance	1,413,086	1,413,086	(30,000)	1,383,086

City of Lake Worth
FY 2014
1st Budget Amendment

Refuse Fund

	FY 2014 Original Budget	FY 2014 Revised Budget	FY 2014 1st Budget Amendment	FY 2014 Amended Budget
Source of Funds				
Taxes	5,150	5,150	-	5,150
Franchise Fees	5,200	5,200	-	5,200
Physical Environment	5,092,600	5,092,600	-	5,092,600
Interest & other Earnings	11,500	11,500	-	11,500
Transfers In	-	-	-	-
subtotal	5,114,450	5,114,450	-	5,114,450
Use of Fund Balance	311,246	311,246	281,062	592,308
Total Sources of Funds	5,425,696	5,425,696	281,062	5,706,758
Use of Funds				
Refuse, Collection	-	-	-	-
Residential Collection	2,259,592	2,259,592	31,062	2,290,654
Commercial Collection	975,548	975,548	250,000	1,225,548
Recycling	593,694	593,694	-	593,694
Rolloffs	436,285	436,285	-	436,285
Non-Department Other	195,306	195,306	-	195,306
Interfund Admin Services	190,193	190,193	-	190,193
Contribution to General Fund	439,651	439,651	-	439,651
Capital Outlay	-	-	-	-
Transfers Out(SWA Annual Assessment refund)	255,174	255,174	-	255,174
Debt Payments- Principal	-	-	-	-
Debt Payments- Interest	-	-	-	-
Vehicle Replacement contribution	-	-	-	-
Depreciation	80,253	80,253	-	80,253
subtotal	5,425,696	5,425,696	281,062	5,706,758
Reserve for future use	-	-	-	-
Total Uses of Funds	5,425,696	5,425,696	281,062	5,706,758
Net Assets Analysis:				
Actual Available Net Assets / Estimated	2,448,597	2,448,597		2,448,597
Use of Net Assets	(311,246)	(311,246)	(281,062)	(592,308)
Adjustment for Non Cash Item- Depreciation	80,253	80,253		80,253
Estimated Remaining Fund Balance	2,217,604	2,217,604	(281,062)	1,936,542
Capital Outlay	-	-	-	-
Residential	-	-	-	-
Commercial	-	-	-	-

City of Lake Worth
FY 2014
1st Budget Amendment

Information Technology Fund

	FY 2014 Original Budget	FY 2014 Revised Budget	FY 2014 1st Budget Amendment	FY 2014 Amended Budget
Source of Funds				
General Government	1,465,338	1,465,338	-	1,465,338
Other Miscellaneous Rev	-	-	-	-
Capital Contributions	-	-	23,250	23,250
subtotal	1,465,338	1,465,338	23,250	1,488,588
Use of Fund Balance	83,171	83,171	218,305	301,476
Total Sources of Funds	1,548,509	1,548,509	241,555	1,790,064
Use of Funds				
Technical	1,290,683	1,290,683	31,400	1,322,083
Non-Departmental	-	-	-	-
Capital	170,000	170,000	210,155	380,155
Depreciation	87,826	87,826	-	87,826
Transfers Out	-	-	-	-
subtotal	1,548,509	1,548,509	241,555	1,790,064
Reserve for future use	-	-	-	-
Total Uses of Funds	1,548,509	1,548,509	241,555	1,790,064
Net Assets Analysis:				
Actual Available Net Assets / Estimated	279,721	279,721	218,305	498,026
Use of Net Assets	(83,171)	(83,171)	(218,305)	(301,476)
Estimated Remaining Fund Balance	196,550	196,550	-	196,550

City of Lake Worth
FY 2014
1st Budget Amendment

Self Insurance Fund

	FY 2014 Original Budget	FY 2014 Revised Budget	FY 2014 1st Budget Amendment	FY 2014 Amended Budget
Source of Funds				
General Government	1,742,360	1,742,360	-	1,742,360
Interest & Other Earnings	35,000	35,000	-	35,000
Other Miscellaneous Revenue	-	-	-	-
Transfers/Advances	83,333	83,333	-	83,333
subtotal	1,860,693	1,860,693	-	1,860,693
Use of Fund Balance	8,017,498	8,017,498	-	8,017,498
Total Sources of Funds	9,878,191	9,878,191	-	9,878,191
Use of Funds				
Property & Liability	1,293,224	1,293,224	157,820	1,451,044
Worker's Compensation	442,035	442,035	146,300	588,335
Non-Departmental	4,152	4,152	-	4,152
Contingency - For Future Use	8,138,780	8,138,780	(304,120)	7,834,660
Transfers Out	-	-	-	-
subtotal	9,878,191	9,878,191	-	9,878,191
Reserve for future use	-	-	-	-
Total Uses of Funds	9,878,191	9,878,191	-	9,878,191
Net Assets Analysis:				
Actual Available Net Assets / Estimated	8,017,498	8,017,498		8,017,498
Reserve for future use	121,282	121,282		(182,838)
Advance to Casino Building project	(1,916,667)	(1,916,667)		(1,916,667)
				-
Reserves	(6,222,113)	(6,222,113)		(6,222,113)
Estimated Remaining Fund Balance	-	-	-	(304,120)
Schedule of Reserves:				
Catastrophe Reserve	5,168,918	5,168,918		5,168,918
Reserve for Estimated Losses for Worker Compensation	1,163,000	1,163,000		1,163,000
Reserve for Estimated Losses for Auto Liability	549,000	549,000		549,000
Reserve for Estimated Losses for Building Deductibles	(658,805)	(658,805)		(658,805)
	6,222,113	6,222,113		6,222,113

City of Lake Worth
FY 2014
1st Budget Amendment

Fleet Management Fund

	FY 2014 Original Budget	FY 2014 Revised Budget	FY 2014 1st Budget Amendment	FY 2014 Amended Budget
Source of Funds				
Intergovernmental	-	-	-	-
General Government	872,700	872,700	-	872,700
Miscellaneous Revenue	-	-	-	-
Non-Operating Sources	515,000	515,000	260,000	775,000
Transfers In				
subtotal	1,387,700	1,387,700	260,000	1,647,700
Use of Fund Balance	123,511	123,511	-	123,511
Total Sources of Funds	1,511,211	1,511,211	260,000	1,771,211
Use of Funds				
Garage Maintenance	719,704	719,704	-	719,704
Non-Departmental	117,125	117,125	-	117,125
Transfers Out				
Capital	615,000	615,000	260,000	875,000
Reserve for Future Capital Expenditures	59,382	59,382	-	59,382
subtotal	1,511,211	1,511,211	260,000	1,771,211
Reserve for future use	-	-	-	-
Total Uses of Funds	1,511,211	1,511,211	260,000	1,771,211
Net Assets Analysis:				
Actual Available Net Assets / Estimated	492,111	492,111		492,111
PY Reserve for Future Capital Expenditures	(368,600)	(368,600)		(368,600)
Use of Net Assets	(123,511)	(123,511)		(123,511)
Estimated Remaining Fund Balance	-	-	-	-

City of Lake Worth
FY 2014
1st Budget Amendment

Employee Benefits Fund

	FY 2014 Original Budget	FY 2014 Revised Budget	FY 2014 1st Budget Amendment	FY 2014 Amended Budget
Source of Funds				
General Government	7,944,689	7,944,689	-	7,944,689
Shared Revenue Local Units	20,000	20,000	-	20,000
Employee and retiree contributions				
Other Miscellaneous Revenue				
subtotal	7,964,689	7,964,689	-	7,964,689
Use of Fund Balance	252,806	252,806	2,225	255,031
Total Sources of Funds	8,217,495	8,217,495	2,225	8,219,720
Use of Funds				
Benefits	8,217,495	8,217,495	2,225	8,219,720
Non-Departmental				
Transfers Out				
subtotal	8,217,495	8,217,495	2,225	8,219,720
Reserve for future use	-	-	-	-
Total Uses of Funds	8,217,495	8,217,495	2,225	8,219,720
Excess Expenses over Revenues				
Actual Available Fund Balance / Estimated	1,046,410	1,046,410		1,046,410
Use of Net Assets	(252,806)	(252,806)		(255,031)
Estimated Remaining Fund Balance	793,604	793,604	-	791,379

CITY OF LAKE WORTH

7 North Dixie Highway · Lake Worth, Florida 33460 · Phone: 561-586-1600· Fax: 561-586-1750

AGENDA DATE: January 7, 2014, Regular Meeting **DEPARTMENT:** Finance

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EXECUTIVE BRIEF

TITLE:
Resolution No. 05-2014 - amend the Fiscal Year 2014 Comprehensive Fee Schedule to include special events at the Beach Complex and permit and review fees for right of way usage

SUMMARY:
The Resolution provides for new right of way usage fees and special events at Beach Complex.

BACKGROUND AND JUSTIFICATION:
On September 12, 2013, the City Commission adopted Resolution No. 41-2013 establishing the fees for City services and other charges for Fiscal Year 2013-2014. The effective date of the charges was October 1, 2013. After adoption, it was discovered, that:

- The admission fees for Community Dance Night, Sand Sculpting Event vendor fees, and all other event related fees were inadvertently omitted from the Beach Complex Special Events Fees section.

These corrections however minor, do impact the fees and charges originally authorized by Commission on September 12th, 2013; and said corrections are hereby submitted for Commission approval.

- Sale of merchandise, including percentage markups and discounts for all items sold at the Golf Pro Shop.

Additionally, on January 7, 2014, the City Commission will take action on Ordinance No. 2014-05 to regulate right-of-way usage and establish permitting and review fees by resolution. If the ordinance is approved, this resolution will establish those fees. The effective date of this resolution will be the same as Ordinance No. 2014-05.

MOTION:
I move to approve/disapprove Resolution No. 05-2014.

ATTACHMENT(S):
Resolution

RESOLUTION NO. 05-2014 OF THE CITY OF LAKE WORTH, FLORIDA,ESTABLISHING PERMIT AND REVIEW FEES FOR RIGHT-OF-WAY USAGE; ESTABLISHING BEACH COMPLEX SPECIAL EVENTS FEES; AUTHORIZING THE SALE OF MERCHANDISE, INCLUDING PERCENTAGE MARKUPS AND DISCOUNTS, AT THE GOLF PRO SHOP; AMENDING RESOLUTION NOS. 41-2013, 61-2013, AND 68-2013; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Commission adopted Resolution 41-2013 on September 12, 2013 establishing the original schedule of fees and charges for the 2013-2014 fiscal year for City services which was later amended with Resolutions 61-2013 and 68-2013; and

WHEREAS, the City desires to amend the City-wide fee schedule to establish: (1) review and permit fees for Right-of-Way usage as mentioned in Ordinance 2014-05; (2) special event and activities fees at the Beach Complex; and, (3) to authorize the sale of merchandise, including percentage markups and discounts, at the Golf Pro Shop; and

WHEREAS, the establishment of additional fees and charges to be added to the City-wide fee schedule serves a valid public purpose.

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

Section 1. The foregoing recitals are incorporated into this Resolution as true and correct statements.

Section 2. The revised schedule of fees and charges for the 2013-2014 fiscal year, which is attached hereto as Exhibit “A” and incorporated herein is hereby adopted.

Section 3. Except as revised herein all other fees and charges adopted by the City remain unchanged.

Section 4. All Resolutions or parts of Resolutions in conflict herewith are hereby repealed.

Section 5. If any provision of this resolution or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this Resolution which can be given effect without the invalid provision or application and to this end the provisions of this Resolution are declared severable.

Section 6. That this Resolution shall take effect ten days after adoption.

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

Mayor Pam Triolo
Vice Mayor Scott Maxwell
Commissioner Christopher McVoy
Commissioner Andy Amoroso
Commissioner John Szerdi

The Mayor thereupon declared this Resolution duly passed and adopted on this 7th day of January, 2014.

LAKE WORTH CITY COMMISSION

By:_____
Pam Triolo, Mayor

ATTEST:

_____
Pamela J. Lopez, City Clerk

EXHIBIT A

CITY OF LAKE WORTH

SCHEDULE OF FEES AND CHARGES FOR SERVICES

EFFECTIVE – FY 2013-2014

- Original Adoption of Fee Reso # 41-2013 (9/12/13) Effective 10/1/2013
- Amendment 1 – Reso # 61-2013 – 11/5/2013
- Amendment 2 – Reso # 68-2013 – 12/3/2013
- Amendment 3 - Pending Commission Approval – Jan 7th, 2014

Prepared by Finance Department |SCarr | Effective by Resolution – October 1, 2013

TABLE OF CONTENTS
"Schedule of Fees and Charges for Services"

EXHIBIT A

T.O.C Amendment to Fee Resolution – January 7th, 2014

LEISURE SERVICES

BEACH AND POOL

Dive-In Movies (At Pool).....1

GOLF PRO SHOP

Sale, markup and discount of merchandise.....2

BEACH COMPLEX

Fees for All food Festivals & Events.....3

Rental Fees Add-On for Ballroom Events.....4

COMMUNITY SUSTAINABILITY

PLANNING & ZONING

Right-of-Way Use Permit Review Fees.....5

PUBLIC SERVICES

STREETS

Site Plan Review Fees.....6

EXHIBIT A

SCHEDULE OF FEES AND CHARGES FOR SERVICES

Originating Department	Description of Services Provided	Fees ($)		
LEISURE SERVICES	**Beach and Pool**	**Resident**	**Non-Resident**	**Deposit**
Pool Admission	Children (3years & under) Includes sales tax	Free	Free	-
	Youth (ages 4 to 17 years old) Incl. sales tax	$ 3	$ 4	-
	Adult (18 years & older) Incl. sales tax	4	5	-
Summer Membership	Residents - Incl. sales tax	125	175	-
	Family - Incl. sales tax	25	25	-
	Additional Family Member - Incl. sales tax	5	5	-
Parking Fees	Beach (Per hr) - Incl. sales tax when applicable	2	2	-
	Old Bridge Park (Per hr) Incl. sales tax when applicable	2	2	-
	Old Bridge Park (Tenant/Employee Pass /per month) ***Plus tax***	40	40	-
	Beach Parking Decal (annual) ***Plus tax***	30	-	-
	Boat Ramp and Boat Ramp over flow (per day) - Incl. sales tax	10	10	-
	Downtown Parking lot (per hr) Includes tax when applicable	1.50	1.50	-
Dive - In Movies (At Pool)	Youth (Ages 4 -17 yrs) - Includes sales tax	$4.00	$5.00	NA
	Adult (18 yrs & Older) - Includes sales tax	$5.00	$7.00	NA
	Popcorn/Soda/Treats (each) - Includes sales tax	$1.00	$1.00	NA

Footnote / Explanation	
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78

79

EXHIBIT A

SCHEDULE OF FEES AND CHARGES FOR SERVICES

Originating Department	Description of Services Provided	Fees $	
LEISURE SERVICES	**Golf Pro Shop Merchandise**	**Minimum Markup**	**Maximum Markup**
Sale of Merchandise *	The Golf Pro Shop buys golf merchandise and other products for resale to customers at the Golf Course. The City Manager or the designee of the City Manager shall determine the sale price and hence, percentage markups and discounts (where applicable) on all merchandise sold at the Golf Pro Shop.	TBD *	TBD *
	(Sales tax to be added to price of merchandise) **The following items are in the merchandise catelog:** (Antigua) Men's Tops (Callaway) Men's Gloves (Antigua) Ladies' Top (True Links) Men's Golf Shoe		

Footnote / Explanation	
*	
@	**Markups and Discounts:** The City Manager or the designee of the City Manager will determine the sale price and hence, the % markup on all merchandise sold at the Golf Pro Shop; and includes discounts. The Golf Course Operations Manager must request written approval to change the price structure of merchandise sold at the Golf Pro Shop.
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80
81

EXHIBIT A

SCHEDULE OF FEES AND CHARGES FOR SERVICES

Originating Department	Description of Services Provided	Fees ($)		
LEISURE SERVICES	Beach Complex Event Fees	* LW Business	Non- LW Business	Non-profit
All Festivals and Special Events	Non-Food Vendor Booth (All fees Include sales tax, and must be noted in vendor contract)	$ 100.00	$ 250.00	$ 150.00
	Food & Beverage Vendor Booth (All fees Include sales tax, and must be noted in vendor contract)	$ 300.00	$250: plus 25% of gross	NA
	Merchandise Fees (Includes sales tax) (t-shirts, posters, cups, pins, etc)	$2 - $25	$2 - $25	NA
	Activity Fees (face-painting, bounce house, etc) (Includes sales tax)	$1 - $5	$1 - $5	NA

Footnote / Explanation	
*	*Lake Worth Businesses / Restaurants*
@	
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82
83

EXHIBIT A

SCHEDULE OF FEES AND CHARGES FOR SERVICES

Originating Department	Description of Services Provided	Fees ($)	
LEISURE SERVICES	Casino Ballroom Event Fees	Charge	Units
Add-On Rental Fees [1] *(Plus sales tax)*	PA System	$ 100.00	per event
	Projector/Screen/TV	$ 100.00	per event
	Wireless Microphone Rental	$ 50.00	per event
	Additional White Folding Chairs (over 100)	$ 2.00	per chair
	Additional Silver Chiavari Chairs (over 200)	$ 5.50	per chair
	Linen Rentals (depending on Fabric & Size)	$12 - $20	Varies
	Bar Front Customization	$ 150.00	per bar face
	Stage Rental (4x6 with skirting)	$ 100.00	per event
Dance Nights in Ballroom	Regular Dances (includes parking)	$20 per couple; $12 per person	
	* Special Dances (includes parking) *Valentines, Anniversary, July 4th (Includes sales tax)	$30 per couple; $17 per person	

Footnote / Explanation	
*	*Special Dances relate to: Valentines, Anniversary, July 4th celebrations*
@	
1	*Add-On Rental Fees category - Sales tax to be added on*
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84
85

EXHIBIT A

SCHEDULE OF FEES AND CHARGES FOR SERVICES

Originating Department	Description of Services Provided	Fees ($)
COMMUNITY SUSTAINABILITY	Planning, Zoning & Historic Preservation (LDRs)	Costs
PLANNING & ZONING FEES	Right-of-Way Use Permit Review	$ 25.00

Footnote / Explanation	

86
87

EXHIBIT A

SCHEDULE OF FEES AND CHARGES FOR SERVICES

Originating Department	Description of Services Provided	Fees ($)
COMMUNITY SUSTAINABILITY	Public Services Fees	Costs
Site Plan Review Fees	Right Of Way Use Initial Permit Review	$ 25.00
	Short Term: Right Of Way Use Permit is not to exceed thirty (30) Days. Permit may be renewed up to a maximum of three (3) times per each renewal not exceeding one hundred twenty (120) consecutive days.	$ 25.00
	Long Term: Right of Way Use will be determined during the permitting process.	$ 40.00
Footnote / Explanation		

CITY OF LAKE WORTH

7 North Dixie Highway · Lake Worth, Florida 33460 · Phone: 561-586-1600· Fax: 561-586-1750

AGENDA DATE: January 7, 2014, Regular Meeting **DEPARTMENT:** City Manager

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EXECUTIVE BRIEF

TITLE:
Lease Agreement with the County to create and maintain a nature preserve

SUMMARY:

The Agreement allows the County to create and maintain a nature preserve on a 13 acre parcel of submerged and upland land, which is owned by the City. The property is generally bounded on the east by State Road A1A, on the south at a point roughly 800 feet north of the City's southern municipal boundary, on the west by the bulkhead line, and on the north by State Road 802 (Lake Avenue).

BACKGROUND AND JUSTIFICATION:
In June, 2012, Gulf Stream Plaza, Inc. surrendered its long term lease back to the City with the intent that the property be used for a natural/conservation area. It was anticipated that Palm Beach County Environmental Resources Management would restore and manage the property.

The surrender of the lease provided that the name designation of the property acknowledge the Steinhardt family.

This lease agreement with Palm Beach County provides, that subject to funding, the County will restore and manage the property as a nature preserve for future generations. The agreement provides that the upland area will be reserved for future public amenities, including parking. Before anything is restored or constructed on the property, the County will submit plans and get approval from the City.

The property will be open to the public and the City agrees to assume responsibility for public safety and law enforcement on the property.

The City also agrees to use its best efforts to initiate and seek approval on a referendum to allow the County to lease and maintain the property for 99 years, as a nature preserve. Presently, the property has a Future Land Use Designation of Conservation and a zoning of Conservation.

MOTION:
I move to approve/disapprove the lease agreement between Palm Beach County and the City of Lake Worth.

ATTACHMENT(S):
Fiscal Impact Analysis – not applicable
Lease Agreement

LEASE AGREEMENT
BETWEEN
PALM BEACH COUNTY
AND
THE CITY OF LAKE WORTH

THIS LEASE AGREEMENT is made and entered into on this _____ day of _____, 2014, by and between the City of Lake Worth, a Florida municipal corporation, hereinafter referred to as the "City", and Palm Beach County, Florida, a political subdivision of the State of Florida, hereinafter referred to as the "County". The City and the County shall hereinafter be referred to collectively as the "parties".

WITNESSETH:

WHEREAS, the Florida Interlocal Cooperation Act of 1969 (Section 163.01, Florida Statutes) allows governmental units to enter into intergovernmental agreements to make the most efficient use of their powers by enabling them to cooperate with each other on a basis of mutual advantage; and

WHEREAS, the City owns an approximate 13 acre tract of real property that is located within the City boundaries (the "City tract"); and

WHEREAS, the City supports projects to improve the water quality and habitats within the Lake Worth Lagoon; and

WHEREAS, an environmental restoration project along the shoreline of the City tract is identified in the Lake Worth Lagoon Management Plan endorsed and approved by the County and municipalities that border the Lake Worth Lagoon, including the City of Lake Worth; and

Whereas, the City has designated the City Tract as Conservation on both its Future Land Use Map of the City Comprehensive Plan, and the City's Official Zoning Map; and

WHEREAS, the County and the City deem that it is in the best interest of the residents and citizens of Palm Beach County and the City of Lake Worth to maintain and manage the City tract as a nature preserve, and to preserve the City tract and its associated biological communities in their natural state for future generations as examples of intact native Florida ecosystems; and

WHEREAS, the City and the County wish to restore, improve and protect natural features of the City tract to include: (1) maritime hammock; (2) seagrasses; (3) mangrove wetland; and, (4) oyster reef habitat; and

WHEREAS, the City wishes to lease the City tract to the County and the County wishes to lease the City tract from the City to assist in the construction of the natural features and to manage the City tract; and

WHEREAS, the City wishes to ensure that a portion of the upland property is reserved for possible future public amenities, including parking; and

WHEREAS, the execution of this Lease Agreement is in the best interest of the County, City and the residents and citizens of the same.

NOW, THEREFORE, in consideration of the mutual covenants, agreements and restrictions set forth herein, the parties agree as follows:

ARTICLE I – GENERAL

1. The foregoing recitals are true and correct and are incorporated herein as if fully set forth herein.

2. The purpose of this Lease Agreement is to provide a mechanism for the County and the City to cooperate in the restoration, management, and the construction of environmental restoration features within the City tract.

3. The City tract consists of two plots of land south of Lake Worth Road (SR 802) east of the Intracoastal Waterway and west of State Road A1A. The approximately 13 acres of land is located within the boundaries of the City. The two parcels are described in Exhibit "A" and are referred to herein as the "City tract".

4. The County and City hereby agree to cooperate in the development and construction of environmental enhancement and restoration elements to the City tract including parking and limited public amenities. Work associated with these enhancement and restoration elements are contingent upon available funding. During the life of this Lease Agreement, the County will maintain the environmental enhancement features to be constructed as provided herein. Such environmental enhancement and restoration elements are depicted in Exhibit "B".

5. The City hereby leases and the County hereby accepts the lease from the City of the City tract depicted in Exhibit "A". The City tract shall consist of the real property depicted in Exhibit "A" together with any current or future improvements thereon depicted in Exhibit "B". The County shall pay the City rent at the rate of $1.00 per year. All rent due hereunder shall be payable in advance on or before the Effective Date. The County is a tax-exempt entity as is evidenced by tax exemption #60-2211419753 C. No sales or use tax shall be included or charged with the annual rent.

6. The term of this Lease Agreement shall commence upon signature by both parties ("the Effective Date") and shall be for a period of nineteen years and eleven months. In accordance with the City's Charter, the City shall use its best efforts to place a referendum before registered voters within ten years of execution of the Lease Agreement to provide for a full 99-year lease term. The parties understand that the County wishes to manage the City tract according to the terms of this Lease Agreement for a period of 99 years

7. The County hereby agrees to manage the City tract as a nature preserve with limited public amenities including parking, and contingent on receipt of necessary approvals, permits and funding, to design and construct environmental enhancement features within the City tract in accordance with this Lease Agreement and in accordance with all applicable federal, state and local laws, rules and regulations.

8. The County shall use its best efforts to maintain and restore existing biological communities on the City tract in their natural state as examples of seagrass, oyster, mangrove, and maritime hammock ecosystems. It is the intent of the parties that the City tract shall be managed as a nature preserve, to provide scientific and educational benefits, and to provide recreational opportunities for residents and citizens of the City and the County. The City tract shall be kept in its natural state such that present and future generations will be able to experience the natural values currently exhibited thereon, acts of God or other events beyond the control of the County or the City notwithstanding.

9. The City shall use its best efforts, through its agents and employees, to prevent the unauthorized use of the City tract or any use not compatible with the management of the site as a nature preserve.

10. The City tract shall be open to the public. Any permanent or temporary restrictions on access will be agreed to jointly by the County and the City prior to the completion of the environmental restoration project.

11. The City agrees that it will not amend the Comprehensive Plan designation on this property without the express consent of the County

12. The City hereby represents and warrants that it is seized of the City tract in fee simple, that it has good title thereto, that it has full right to grant this Lease Agreement of the City tract to the County, and that it is not aware of any hazardous condition on the City tract that might affect any lawful use of the City tract . The City also represents to the County that it is not aware of any chemical, material, or substance on the property that is prohibited, limited, or regulated by federal, state, county, regional, or local authority. The City shall not be required under the terms of this Lease to remove any chemical material or substance that is prohibited, limited, or regulated by federal, state, regional, or local requirements. Notwithstanding, if during the term of this Lease Agreement a hazardous condition or any prohibited, limited, or regulated chemical, material, or substance is discovered on the City tract, the City hereby forever releases the County from any and all liability and responsibility for the same and the County may immediately terminate this Lease upon written notice to the City. In the event that the County causes any hazardous condition on the property, County hereby forever releases the City for any and all liability and responsibility for same.

13. The parties shall prepare, separately or jointly, brochures and other educational material describing the natural resources, uses, and management of the City tract. Any such materials prepared by one party shall be submitted to the other party for its prior review and approval. Approval shall not be unreasonably withheld. The cost of any jointly-prepared materials shall be shared equally by the parties. The costs of any material prepared individually shall be solely that party's responsibility.

ARTICLE II – RESPONSIBILITIES OF THE COUNTY

14. The County agrees to identify a County employee as a contact person to interact with the City in planning for and constructing the restoration project on the City tract and in managing the City tract as a nature preserve.

15. To the extent that funding is available and approved by the Board of County Commissioners, the County will construct all or portions of the environmental enhancement features as depicted in Exhibit B.

16. The County shall manage the City tract for habitat preservation and passive recreation, keeping the City tract in its natural state as agreed upon by both parties as appropriate for a nature preserve. Management shall include, but shall not be limited to, removal of exotic non-native invasive vegetation, planting of native vegetation, preservation of wetland areas, periodic removal of trash and debris during coastal cleanup events, and other maintenance and preservation activities deemed necessary by the County. The County will provide all necessary personnel, professional services, equipment, materials and supplies for ongoing, site-specific management of the City tract.

17. The County will manage the City tract to be consistent with its efforts on a countywide basis to protect ecosystems and populations of listed species throughout the County's natural areas.

18. The County will erect a kiosk identifying the City tract as owned by the City and open to the public as a nature preserve, as having improvements constructed with funding sources from other partners, and as managed by the County. The County further agrees to identify the tract as Steinhardt Cove or other similar name incorporating the Steinhardt name.

ARTICLE III – RESPONSIBILITIES OF THE CITY

19. The City shall identify a City employee as the contact person to interact with the County in planning for and constructing the restoration project on the City tract and to assist in managing the City tract as a nature preserve.

20. The City shall assume sole responsibility for public safety and law enforcement within and outside the City tract. The City shall perform routine patrols of

the City tract boundaries and use its best efforts to prevent vandalism, vehicular trespass, dumping, and damage to the City tract and natural resources.

21. The City shall assume sole responsibility for the daily opening and closing of any gate providing public access to the City tract. This responsibility may be delegated to a local resident or stewardship group which the City will be solely responsible for.

22. The City shall, in reviewing any proposed changes to, uses of, or activities on, real property immediately adjacent to the City tract, within the jurisdiction of the City, consider the protection of the biological communities on the City tract nature preserve and the potential for adverse impacts to the species present.

23. The City will promptly consult with the County to determine the future of the City tract should any unforeseen events or activities, either natural or human-made, severely limit or eliminate the natural resources presently on the City tract.

ARTICLE IV - DESIGN AND CONSTRUCTION OF ENVIRONMENTAL ENHANCEMENT FEATURES

24. In the event that the County is unable to provide the necessary funds, the County will not be obligated to construct any of the environmental enhancement features pursuant to this Lease Agreement; however, the County will continue to manage the City tract as a nature preserve pursuant to this Lease Agreement.

25. The County shall provide conceptual designs for mangrove, seagrass, oyster and maritime components dependent on the County obtaining the funds, and in accordance with the requirements of this Lease Agreement.

26. The County shall provide a copy of the final design development plans to the City's contact person for review and approval. The City's contact person shall review such plans to ensure consistency with the intent of this Lease Agreement. The City shall expeditiously review and approve any site plan and associated engineering design plans for the proposed project that require approval by the City.

27. The County shall not commence construction of any improvement(s) until the City has approved the final design development plans for such improvement(s). Such approvals shall not be unreasonably withheld.

28. The parties understand and agree that construction of the environmental enhancement features on the City tract is dependent upon receiving all necessary permits and approvals.

29. To the extent permitted by law, the City shall waive any municipal fees, assessments, or permit fees applicable to the City tract due to the construction, use and maintenance of the environmental enhancement features.

ARTICLE IV - MISCELLANEOUS

30. Captions. The Captions and section designations herein set forth are for convenience only and shall have no substantive meaning.

31. Effective Date of Agreement. This Lease Agreement is expressly contingent upon the approval of the Palm Beach County Board of County Commissioners, and the Lake Worth City Commission, and shall become effective only when signed by both parties.

32. Indemnification. Each party shall be liable for its own actions and negligence and, to the extent permitted under Florida law, the County shall indemnify, defend and hold harmless the City against any actions, claims or damages arising out of the County's negligence, and the City shall indemnify, defend and hold harmless the County against

any actions, claims or damages arising out of the City's negligence. However, nothing in this paragraph shall be interpreted as a waiver of the City's or the County's sovereign immunity as provided in Section 768.28, Florida Statutes, as amended from time to time.

33. Insurance. Without waiving the right to sovereign immunity as provided by Chapter 768.28, Florida Statutes, the parties acknowledge to be insured or self-insured for General Liability and Automobile Liability under Florida's sovereign immunity statute with monetary waiver limits of $200,000 Per Person and $300,000 Per Occurrence, or such limits that may change and be set forth by the legislature. The parties acknowledge to be insured or self-insured for Worker's Compensation & Employer's Liability insurance in accordance with Chapter 440, Florida Statutes. When requested, the parties agree to provide a Certificate of Insurance evidencing insurance or self-insurance and/or sovereign immunity status, which the parties agree to recognize as acceptable for the above mentioned coverages.

34. Severability. In the event that any section, paragraph, sentence, clause, or provision hereof shall be held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this Lease Agreement and the same shall remain in full force and effect.

35. Governing Law. This Lease Agreement shall be governed by the laws of the State of Florida. Venue shall be in Palm Beach County, Florida.

36. Notice. For the purposes of this Lease Agreement, notices to the other party shall be deemed sufficient when addressed to the following persons and addresses and deposited in the United States Mail:

a. City of Lake Worth
Office of the City Manager
7 North Dixie Highway
Lake Worth, Florida 33460

With copy to:
Law Offices of Glen Torcivia
City Attorney
701 Northpoint Parkway
Suite 209
West Palm Beach, Florida 33407

b. Palm Beach County
Department Director
Department of Environmental Resources Management
2300 N. Jog Road
West Palm Beach, Florida 33411-2743

With copy to:
County Attorney's Office
Palm Beach County, 6th Floor
301 N. Olive Avenue
West Palm Beach, FL 33401

Should either party change its address, written notice of such new address shall promptly be sent to the other party.

37. Budgetary Approval. This Lease Agreement and all obligations of County hereunder are subject to and contingent upon annual budgetary funding by the Board of County Commissioners of Palm Beach County.

38. Termination.
If either party fails to fulfill its obligations under this Lease Agreement in a timely and proper manner, the other party shall have the right to terminate this Agreement by giving

written notice of any deficiency and its intent to terminate. The other party shall then have one hundred and eighty (180) days from receipt of notice to correct the stated deficiency. If the other party fails to correct the deficiency within this time, unless otherwise agreed by the parties, this Lease Agreement shall terminate at the expiration of the one hundred and eighty (180) day time period.

The County may terminate this Lease for convenience by giving a one year written notice to the City.

39. Non-exclusivity of Remedies. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

40. Non-Discrimination. The parties agree that no person shall, on the grounds of race, color, sex, national origin, disability, religion, ancestry, marital status, age, sexual orientation, familial status, gender identity or gender expression be excluded from the benefits of, or be subjected to any form of discrimination under any activity carried out by the performance of this Lease Agreement.

41. Construction. No party shall be considered the author of this Lease Agreement since the parties hereto have participated in drafting this document to arrive at a final Lease Agreement. Thus, the terms of this Agreement shall not be strictly construed against one party as opposed to the other party based upon who drafted it.

42. Recording. The City shall record this Lease Agreement in the public records of Palm Beach County, Florida.

43. Incorporation by Reference. Exhibits attached hereto and referenced herein shall be deemed to be incorporated in this Lease Agreement by reference.

44. Hazardous Substances. The County shall comply with all applicable Federal, State and local laws, regulations and ordinances protecting the environment and natural resources and regulating hazardous substances.

45. Entirety of Agreement. This Lease Agreement shall be deemed to be the sole agreement between the parties, and no prior agreements or other prior writings shall supersede that which is contained in this Lease Agreement. The Lease Agreement may be amended only by written document executed by both parties.

46. Palm Beach County has established the Office of the Inspector General in Palm Beach County Code, Section 2-421-2-440, as may be amended. The Inspector General's authority includes but is not limited to the power to review past, present and proposed County contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of the any party contracting with the County, its officers, agents, employees, and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud.

Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be in violation of Palm Beach County Code, Section 2-421 - 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

WHEREFORE, the parties hereto have set their hands and seals on the day set forth next to their signatures.

ATTEST:

_____, Clerk

BY:_____
Deputy Clerk

DATE:_____

(SEAL)

PALM BEACH COUNTY, FLORIDA,
BY ITS BOARD OF COUNTY
COMMISSIONERS

BY:_____
Priscilla A. Taylor, Mayor

DATE:_____

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

BY:_____
Assistant County Attorney

DATE:_____

APPROVED AS TO TERMS AND
CONDITIONS:

BY:_____
Robert Robbins, Director
Environmental Resources Management

DATE:_____

ATTEST:

BY:_____
Pamela J. Lopez, City Clerk

DATE:_____

(SEAL)

CITY OF LAKE WORTH, FLORIDA,
BY ITS COMMISSION

BY:_____
Pam Triolo, Mayor

DATE:_____

REVIEWED AND APPROVED
FOR EXECUTION:

BY: _____
Michael Bornstein, City Manager

DATE: _____

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

BY:_____
City Attorney

DATE:_____

EXHIBIT A

LEGAL DESCRIPTION

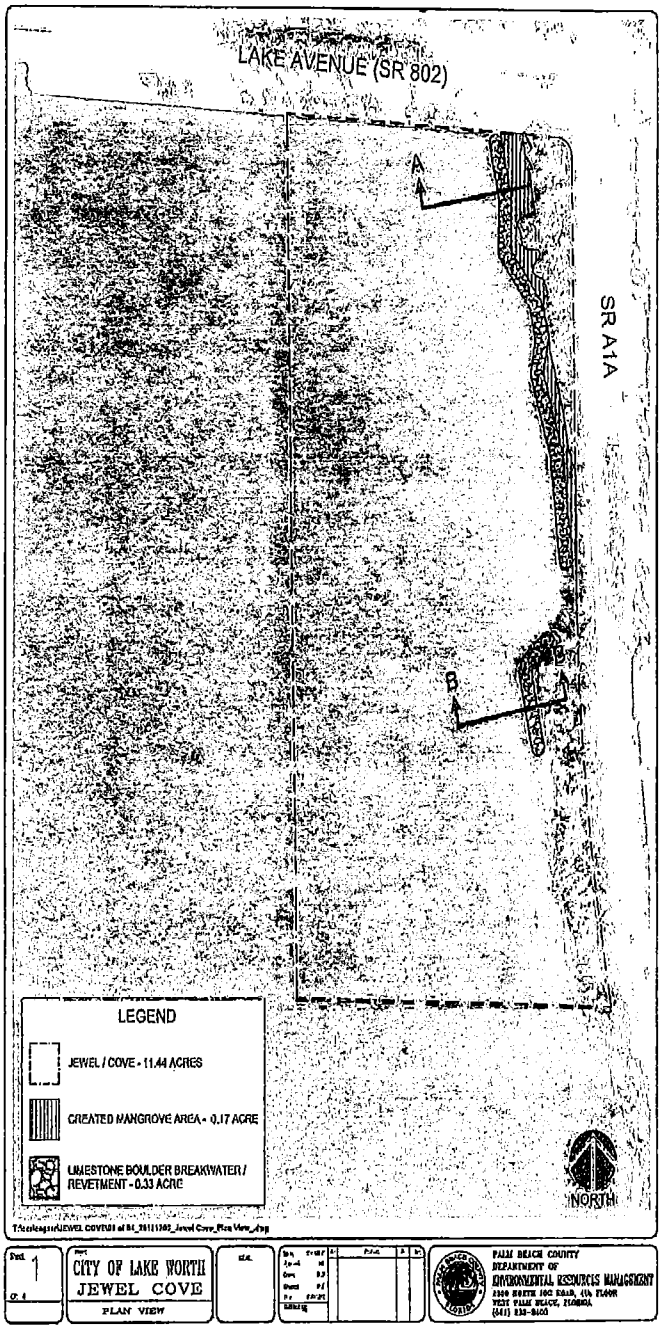
A parcel of submerged land in Lake Worth, Palm Beach County, Florida, more particular described as follows:

Beginning at a point in the South right-of-way line of Lake Worth Road at the intersection with the center line of State Road A1A, in Section 26, Township 44 South, Range 43 East, in the City of Lake Worth, Palm Beach County, Florida; thence running North 86º00'26" West a distance of 500 feet along the South right-of-way line of Lake Worth Road; thence running South 0º30'26" East parallel to said State Road A1A in the waters of Lake Worth a distance of 1200 feet to the South property line of the Lake Worth Casino property; thence running South 88º03'00" East a distance of 550 feet, more or less, along said South property line to the centerline of State Road A1A; thence in a Northerly direction along the centerline of said State Road A1A to the point of beginning. LESS the R/W for State Road A1A, containing 13 acres more or less, lying and being in Section 26 and 27, Township 44 South, Range 43 East, Palm Beach County, Florida. Containing 13 acres, more or less, and lying and being in the County of Palm Beach, in said State of Florida, and more particularly described as follows:

Commencing at the intersection of the South right-of-way line of Lake Worth Road (SR 802) and the centerline of State Road A1A (Section No 9306-11) in Section 26, Township 44 South, Range 43 East, in the City of Lake Worth, Palm Beach County, Florida; thence N-86º-00'-26"-W, along the said South right-of-way line of Lake Worth Road, a distance of 169,40 feet to the point of beginning; thence continue N-86º-00'-26"-W, along the said South right-of-way line of Lake Worth Road, a distance of 330.61 feet to a point; thence S-0º-30'-26"-E, a distance of 1227.06 feet to a point on the Easterly extension of the South line of the City of Lake Worth property; thence S-88º-14'-56"-E, along the said South line, a distance of 496.05 feet to a point on the Westerly right-of-way line of said State Road A1A; thence Northerly, along the arc of a curve, having a radius of 2914.93 feet and a central angle of 10º19'38", a distance of 525.40 feet to the end of said curve; thence N-0º-30'-26"W, along the Westerly righty-of-way line of said State Road A1A, a distance of 569.47 feet to the beginning of a curve, concave to the Northeast, Northwesterly and Westerly, along the arc of said curve, a distance of 192.50 feet to the end of the said curve and the point of the beginning.

LESS the North 400 feet thereof.

Exhibit B



Exhibi
"B"

CITY OF LAKE WORTH

7 North Dixie Highway · Lake Worth, Florida 33460 · Phone: 561-586-1600· Fax: 561-586-1750

AGENDA DATE: January 7, 2014, Regular Meeting **DEPARTMENT:** Electric

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EXECUTIVE BRIEF

TITLE:
Contractor Agreements with Davey Tree Experts for line clearance and easement/right of way alley clearing services

SUMMARY:
The Agreements will continue the utility line clearance and easement/right of way clearing (tree trimming) program for electric utility reliability and safety as well as associated alley mowing for access.

BACKGROUND AND JUSTIFICATION:
Sealed bids were opened December 3, 2013, for Utility Line Clearance Services and Utility Easement/ Right of Way Clearance Services (separate Invitation for Bids). Three bids were received for Line Clearance and two bids were received for Right of Way Clearance. The Davey Tree Expert Company is recommended as the low cost preferred contractor for both services. The agreements are for an initial term of three years with one (1) 2-year renewal. These agreements will maintain the current services. Said services are essential to allow for continued line clearance and easement/right of way and alley clearing services that will not interrupt nor potentially disrupt City operations.

The Electric Utility Advisory Board reviewed the agreement proposals on December 4, 2013, and recommended the award to the Davey Tree Expert Company.

MOTION:
I move to approve/disapprove the Contractor Agreements with Davey Tree Expert Company for line clearance and easement/right of way clearance.

ATTACHMENT(S):
1) Fiscal Impact Analysis
2) Bid Analysis Tabulation
3) Davey Tree Expert Contractor Agreements

4) FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2014	2015	2016	2017	2018
Capital Expenditures	0	0	0	0	0
(Line Clearance)	(361,080)	(355,680)	(360,000)		
(ROW Clearance)	(205,946)	(222,643)	(225,000)		
Operating Expenditures	567,026	578,323	585,000		
External Revenues	0	0	0	0	0
Program Income	0	0	0	0	0
In-kind Match	0	0	0	0	0
Net Fiscal Impact	567,026	578,323	585,000	0	0
No. of Addn'l Full-Time Employee Positions	0	0	0	0	0

Funding for old contract – 10-1-13 to 1-31-14 = $188,892.00
Funding for new contract – 2-3-14 to 9-30-14 = $378,134.00
Total for FY14 $567,026.00

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

The funds have been budgeted in the 2014 operational accounts:

- 401-6034-531.34-10 – Maintenance / Labor

Utilities/Electric T&D							
Account Number	Account Description		FY 2014 Acct Level Budget	FY 2014 Davey Tree Budget	Agenda Item 1st tier contract	Agenda Item 2nd tier contract	Remaining Balance
401-6034-531.34-10	Contractual Service / Maintenance		641,000	600,000	-188,892	-378,134	32,974

C. Fiscal Review:

Debra Jackson – T&D Utilities Coordinator

CITY OF LAKE WORTH
7 N. Dixie Highway
Lake Worth, FL 33460

BID TABULATION
IFB UT-TD-13-14-**104**
Utility Line Clearance Services

No. of Bidders: 3	**The Davey Tree Expert Company** Steven Marshall 330-673-9511 Steve.Marshall@Davey.com		**Asplundh Tree Expert Company** Matthew Asplundh 215-784-4219 Matt@Asplundg.com		**Burford's Tree, Inc.** Jason Mitchell 678-378-2110 Jason-Mitchell@burfordstree.com	
Combined Labor & Equipment Crew - Hourly Rates	40 Hours/Week Regular Hours	Overtime Hours	40 Hours/Week Regular Hours	Overtime Hours	40 Hours/Week Regular Hours	Overtime Hours
Line Clearance Worker	$ 28.50 / hr	$ 38.48 / hr	$ 29.50 / hr	$ 40.71 / hr	$ 33.85 / hr	$ 43.23 / hr
Line Clearance Worker	$ 28.50 / hr	$ 38.48 / hr	$ 29.50 / hr	$ 40.71 / hr	$ 33.85 / hr	$ 43.23 / hr
Additional Labor and/or Equipment Hourly Rates if Needed	40 Hours/Week Regular Hours	Overtime Hours	40 Hours/Week Regular Hours	Overtime Hours	40 Hours/Week Regular Hours	Overtime Hours
Truck	$ 13.50 / hr	$ 13.50 / hr	$ 14.00 / hr	$ 14.00 / hr	$ 15.79 / hr	$ 105.00 / hr
Chipper	$ 3.74 / hr	$ 3.74 / hr	$ 4.25 / hr	$ 4.25 / hr	$ 4.00 / hr	$ 3.74 / hr
Line Clearance Worker	$ 21.42 / hr	$ 28.91 / hr	$ 29.50 / hr	$ 40.71 / hr	$ 21.38 / hr	$ 29.93 / hr
Other Related Costs	None Listed		None Listed		Any add'l needs, cost + 10%	
Can meet Insurance Rqmnts	Yes		Yes		Yes	
Can meet Timing Rqmnts	Yes		Yes		Yes	
References: 1.	Orlando Utilities		FPL		Duke Energy-Distrib-St.Petrsbg	
2.	Tampa Electric		Duke Energy		Duke Energy-Distrib-NPRichey	
3.	Kissimmee Utility Authority		Southern Company		FPL	
4.	Peace River Electric		American Electric Power		CLECO	
5.	City of Mount Dora		WE Energies		Fairhope Public Utilities	
# of Yrs of Similar Exp:	8 years		85 years		18 years	
# of FT Employees	7,450		28,784		1,100	
State of Incorp.	Ohio		Pennsylvania		Alabama	
Subcontractors	None		None		None	
Drug Free Certification	Yes		Yes		Yes	
Public Enity Crime Form	Yes		Yes		Yes	
Licences/Training Info	Yes		None Submitted		None Submitted	

Opened by: Kari Hansen
(561) 586-1674
Khansen@Lakeworth.org

CITY OF LAKE WORTH
7 N. Dixie Highway
Lake Worth, FL 33460

BID TABULATION
IFB UT-TD-13-14-**103**
Utility Easement/Right of Way Clearance Services

No. of Bidders: 2	**The Davey Tree Expert Company**		**DBI Services**	
	Steven Marshall 330-673-9511 Steve.Marshall@Davey.com		John Greene 561-881-1291 Jgreene@DBIServices.com	
CREW # 1 - HOURLY RATES	40 Hours/Week Regular Hours	Overtime Hours	40 Hours/Week Regular Hours	Overtime Hours
Line Clearance Worker	$ 26.76 / hr	$ 36.13 / hr	$ 71.25 / hr	$ 105.00 / hr
Ground Worker	$ 26.76 / hr	$ 36.13 / hr	$ 40.00 / hr	$ 60.00 / hr
CREW # 1 - HOURLY RATES	40 Hours/Week Regular Hours	Overtime Hours	40 Hours/Week Regular Hours	Overtime Hours
Line Clearance Worker	$ 22.31 / hr	$ 30.12 / hr	$ 71.25 / hr	$ 105.00 / hr
Ground Worker	$ 17.85 / hr	$ 24.10 / hr	$ 40.00 / hr	$ 60.00 / hr
Other Related Costs	None Listed		None Listed	
Can meet Insurance Rqmnts	Yes		Yes	
Can meet Timing Rqmnts	Yes		Yes	
References: 1.	Orlando Utilities		FPL	
2.	Tampa Electric		Duke Power	
3.	Kissimmee Utility Authority		Seminole Electric Co-Op	
4.	Peace River Electric		Northern PBC Imprv District	
5.	City of Mount Dora		St. Lucie County	
# of Yrs of Similar Exp:	8 years		25 years	
# of FT Employees	7,450		20 Division	
State of Incorp.	Ohio		Pennsylvania	
Subcontractors	None		None	
Drug Free Certification	Yes		Yes	
Public Enity Crime Form	Yes		Yes	
Licences/Training Info	Yes		PBC Bus Tax Receipt Only	

Opened by: Kari Hansen
(561) 586-1674
Khansen@Lakeworth.org

CONTRACTOR AGREEMENT
(Utility Line Clearance Services)

THIS AGREEMENT is made this _____day of _____, 2013 between the **City of Lake Worth**, Florida, a municipal corporation, hereinafter the "CITY", with its principle office located at 7 North Dixie Highway, Lake Worth, Florida 33460, and, **The Davey Tree Expert Company,** a corporation authorized to do business in the State of Florida, hereinafter the "CONTRACTOR", with its principal office located at 1500 N. Mantua Street, Kent, OH 44240-5193.

RECITALS

WHEREAS, the CITY is a municipal corporation organized and existing pursuant to the Charter and the Constitution of the State of Florida;

WHEREAS, the CITY issued Invitation for Bid UT-TD-13-14-104 (hereinafter "IFB") for the procurement of qualified firms with substantial experience and capabilities to perform utility line clearance services, forestry management and vegetation management in and around electrical power lines within the City of Lake Worth service area (hereinafter the "Services");

WHEREAS, CONTRACTOR submitted a bid to perform the work described and set out in the IFB;

WHEREAS, the CITY desires to accept CONTRACTOR's bid in order for CONTRACTOR to render the Services to the CITY as provided herein;

WHEREAS, the CONTRACTOR further warrants that it is experienced and capable of performing the Services hereunder in a professional and competent manner;

WHEREAS, the CITY finds awarding IFB to the CONTRACTOR as described herein serves a valid public purpose.

NOW THEREFORE, the CITY hereby engages the services of the CONTRACTOR, and in consideration of the mutual promises herein contained, the sufficient of which is hereby acknowledged by both parties, the parties agree as follows:

I. TERM: The term of this Agreement and time for completion of the Services shall be for an initial period of thirty-six (36) months from the date work is commenced, as provided for herein, with one twenty-four (24) month renewal option. The CITY's manager may authorize the renewal option for the CITY provided that the amount for said renewal option has been appropriately funded in the City's annual budget. In addition to other completion requirements, completion of the Services shall require written authorization that all Services have been rendered to the satisfaction of the CITY executed by both the CITY and CONTRACTOR Project Manager(s) as designated

herein. Notwithstanding the foregoing, the CITY may terminate the Agreement subject to the provisions of Section XIII of this Agreement.

II. SCOPE OF WORK:

2.1 The scope of service is to provide utility line clearance services, forestry management and vegetation management in and around electrical power lines within the City of Lake Worth service area, as more specifically set forth in the IFB which is incorporated herein by reference. Services shall commence upon the issuance of a notice to proceed by the CITY.

2.2 The CONTRACTOR represents to the CITY that the work to be performed under this Agreement shall be in accordance with accepted and established trade practices and procedures recognized in the CONTRACTOR's trade in general and that the CONTRACTOR's work shall conform to the highest standards and in accordance with this Agreement.

2.3 The CONTRACTOR represents that it is licensed to do business in the State of Florida and holds and will maintain all applicable licenses required for the work to be completed under this Agreement. The CONTRACTOR further warrants its capability and experience to perform the work provided for herein in a professional and competent manner.

2.4 At all times during the term of the contract, the successful CONTRACTOR shall act as an independent contractor and at no time shall be considered an agent or partner of the CITY. The CITY reserves the right to delete or amend any of the Services as listed and described herein.

III. USE OF AGENTS OR ASSISTANTS: To the extent reasonably necessary to enable the CONTRACTOR to perform its work hereunder, the CONTRACTOR shall be authorized to engage the services of any agents or assistants which it may deem proper, and may further employ, engage, or retain the services of such other persons or corporations to aid or assist in the proper performance its duties. All costs of the services of, or expenses incurred by, such agents or assistance shall be paid by the CONTRACTOR.

IV. PROJECT MANAGEMENT: Both parties shall appoint a Project Manager who shall meet to coordinate, review and insure performance by the CONTRACTOR under this Agreement. The Project Manager appointed by the CITY will oversee the daily administration of the work to be performed by the CONTRACTOR under this Agreement but is not authorized to modify this Agreement.

V. EQUIPMENT:

5.1 The CONTRACTOR shall provide all equipment necessary to complete the Services to be performed hereunder. Such equipment rates, including additional equipment needed temporarily, shall be included in the CONTRACTORS hourly rates as set fully in section 6.1 of this Agreement. In the event CONTRACTOR requires equipment from the CITY, the CONTRACTOR shall meet and confer with the CITY before work commences.

5.2 In the event the CITY's equipment is to be utilized, any costs chargeable to the CONTRACTOR shall be agreed upon in advance of the commencement of work.

5.3 All equipment and storage facilities of CONTRACTOR may be inspected by the CITY at any time. The CITY reserves the right to reject the use of any equipment or storage facilities after inspection.

VI. FEE AND ORDERING MECHANISM

6.1 For the materials, labor and equipment necessary to provide the Services under this Agreement, the CONTRACTOR shall be entitled to a fee for actual work performed and accepted by the CITY in accordance with the IFB and in an amount not to exceed the hourly rates in the CONTRACTOR's bid proposal in response to the IFB, which bid proposal is incorporated herein by reference FB.

6.2 Should the CITY require additional or unforeseen work not included in this Agreement, fees and payment for such work will be set forth in a separate Addendum, as authorized in accordance with the CITY's procurement code prior to any such additional work being performed by the CONTRACTOR.

6.3 The CITY's ordering mechanism for all work performed under this Agreement shall be a CITY Purchase Order; however, the terms and conditions stated in a CITY Purchase Order shall not apply. CONTRACTOR shall not perform work under this Agreement without a CITY Purchase Order specifically for this purpose. CONTRACTOR shall not perform work which is out of scope, nor exceed any not to exceed amounts expressed on the Purchase Order. Note that the CITY's Fiscal Year ends on September 30th of each calendar year. The CITY cannot authorize work beyond September 30th of each calendar year, prior to the annual budget being approved by the City Commission. Additionally, the CITY must have budgeted appropriate funds for this work in any subsequent Fiscal Year. If the budget is approved for said work, the CITY will issue a new Purchase Order each Fiscal Year, for required and approved work.

6.4 Rates shall be reflected as "hourly, per man". Rates shall be based on a forty (40) hour work week. Requirement is for three (3) line clearance crews. Each crew will consist of two (2) experienced line clearance workers capable of bucket trimming and climbing. (Total of six (6) individuals or three (3) crews).

VII. MAXIMUM COSTS: The CONTRACTOR expressly acknowledges and agrees that the hourly rates to complete all work is as specified herein and no additional costs shall be authorized without prior written approval from CITY's governing body.

VIII. INVOICE:

8.1 The CONTRACTOR shall submit a properly itemized invoice for services performed and expenses incurred under this Agreement to the CITY Project Manager for approval prior to receiving compensation. The invoice shall include: 1) Purchase Order Number; 2) Date and Location of Services Performed; 3) The name, hours worked and billing rate of each employee furnished, and the hours of operations and billing rate for equipment used and any materials furnished; and 4) Total costs billed. CONTRACTOR shall also cooperate with and provide any other necessary information to CITY relating to services performed.

8.2 The CONTRACTOR shall be paid within thirty (30) after the presentation of a completed invoice, subject to the approval and acceptance of the work by designated representatives of the CITY. Interest payments will only be made in accordance with the Florida Prompt Payment Act, F.S. 218.70.

8.3 The billing rate shall be computed by considering the hours worked to begin and end at suitable assembly points reasonably near the job sites. No charges for equipment or labor shall be made for work stoppages in excess of thirty (30) minutes which are due to mechanical failures, weather conditions or any other causes except as noted on each CITY Purchase Order.

IX. AUDIT BY CITY: The CONTRACTOR shall permit the CITY, or any authorized representatives of the CITY, at all reasonable times, access to and the right to examine all records, books, papers or documents related to the CONTRACTOR's performance under this Agreement including, but not limited to, expenses for sub-contractors, agents or assistants, direct and indirect charges for work performed and detailed documentation for all such work performed or to per performed under this Agreement.

X. COPIES OF DATA/DOCUMENTS: Copies or original documents prepared by the CONTRACTOR in relation to work associated with this Agreement shall be provided to the CITY. Data collected, stored, and/or provided shall be in a form acceptable to the CITY and agreed upon by the CITY.

XI. OWNERSHIP: Each and every report, draft, work product, map, record, and other document reproduced, prepared, or caused to be prepared by the CONTRACTOR pursuant to or in connection with this Agreement shall be the exclusive property of the CITY.

XII. WRITTEN AUTHORIZATION REQUIRED: The CONTRACTOR shall not make changes in the Scope of Work or perform any additional work or provide any additional material under this Agreement without first obtaining written authorization from the CITY for such additional work or materials. Additional labor or materials provided without written authorization shall be done at the CONTRACTOR's sole risk and without payment from the CITY.

XIII. DEFAULTS, TERMINATION OF AGREEMENT

13.1 If the Project Manager deems that the CONTRACTOR is in default for failure to supply an adequate working force or has failed in any other respect to satisfactorily perform the work specified in this Agreement; or, is in material breach of a term or condition of this Agreement, the Project Manager may give written notice to the CONTRACTOR specifying defaults to be remedied within three (3) days. Such notice shall set forth the basis for any dissatisfaction and suggest corrective measures. If the CONTRACTOR does not remedy defaults within three (3) days or commence good faith steps to remedy the default to the reasonable satisfaction of the Project Manager, the CITY may take such action to remedy the default and all expenses related thereto shall be borne by the CONTRACTOR including, without limitation, utilization of another contractor to provide for such work; and/or, the CITY may withhold any money due or which may become due to the CONTRACTOR for such expense and/or work related to the claimed default. Alternatively, or in addition to the foregoing, if after three (3) days the CONTRACTOR has not remedied defaults or commenced good faith steps to remedy defaults to the satisfaction of the Project Manager, the CITY may elect to terminate this Agreement. No compensation shall be paid for de-mobilization, take-down, disengagement wind-down, lost profits or other costs incurred due to termination of this Agreement under this paragraph 13.1.

13.2 Notwithstanding paragraph 13.1, the CITY reserves the right and may elect to terminate this Agreement at any time. At such time, the CONTRACTOR would be compensated only for those Services which have been satisfactorily completed to the date of termination. No compensation shall be paid for de-mobilization, take-down, disengagement wind-down, lost profits or other costs incurred due to termination of this Agreement under this paragraph 13.2.

XIV. INSURANCE

14.1 The CONTRACTOR shall, at its own expense, procure and maintain throughout the term of this Agreement, with insurers acceptable to the CITY, the types and amounts of insurance conforming to the minimum requirements set forth in the IFB. The CONTRACTOR shall not commence work until the required insurance is in force and evidence of insurance acceptable to the CITY has been provided to, and approved by, the CITY. An appropriate Certification of Insurance shall be satisfactory evidence of insurance. Until such insurance is no longer required by this Contract, the CONTRACTOR shall provide the CITY with renewal or replacement evidence of insurance at least thirty (30) days prior to the expiration or termination of such insurance.

14.2 The insurance provided by the CONTRACTOR shall apply on a primary basis. Any insurance, or self-insurance, maintained by the City Commission shall be excess of, and shall not contribute with, the insurance provided by the CONTRACTOR. Except as otherwise specified, no deductible or self-insured retention is permitted.

14.3 Compliance with these insurance requirements shall not limit the liability of the CONTRACTOR. Any remedy provided to the CITY by the insurance provided by the CITY shall be in addition to and not in lieu of any other remedy (including, but not limited to, as an indemnitee of the CONTRACTOR) available to the CITY under this Agreement or otherwise.

14.4 Neither approval nor failure to disapprove insurance furnished by the CONTRACTOR shall relieve the CONTRACTOR from responsibility to provide insurance as required by this Agreement.

14.5 The CONTRACTOR's failure to obtain, pay for, or maintain any required insurance shall constitute a material breach upon which the CITY may immediately terminate or suspend this Agreement. In the event of any termination or suspension, the CITY may use the services of another contractor without the CITY incurring any liability to the CONTRACTOR.

14.6 At its sole discretion, the CITY may obtain or renew the CONTRACTOR's insurance, and the CITY may pay all or part of the premiums. Upon demand, the CONTRACTOR shall repay the CITY all monies paid to obtain or renew the insurance. The CITY may offset the cost of the premium against any monies due the CONTRACTOR from the CITY.

XV. WAIVER OF BREACH: The waiver of either parts of any breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach of that same or any other provision.

XVI. INDEMNITY:

16.1 The CONTRACTOR shall indemnify, defend, save and hold harmless the CITY, its officers, agents and employees, from any claim, demand, suit, loss, cost or expense for any damages that may be asserted, claimed or recovered against or from CITY, its officials, agents, or employees by reason of any damage to property or personal injury, including death and which damage, injury or death arises out of or is incidental to or in any way connected with CONTRACTOR's performance of the Services or caused by or arising out of (a) any act, omission, default or negligence of CONTRACTOR in the provision of the Services under this Agreement; (b) property damage or personal injury, which damage, injury or death arises out of or is incidental to or in any way connected with CONTRACTOR's execution of Services under this Agreement; or (c) the violation of federal, state, county or municipal laws, ordinances or regulations by CONTRACTOR. This indemnification includes, but is not limited to, the performance of the agreement by CONTRACTOR or any act or omission of CONTRACTOR, its agents, servants, contractors, patrons, guests or invitees and includes any costs, attorneys' fees, expenses and liabilities incurred in the defense of any such claims or the investigation thereof. CONTRACTOR agrees to pay all claims and losses and shall defend all suits, in the name of the CITY, its employees, and officers, including but not limited to appellate proceedings, and shall pay all costs, judgments and attorneys' fees which may issue thereon. CITY reserves the right to select its own legal counsel to conduct any defense in any such proceeding and all costs and fees associated therewith shall be the responsibility of CONTRACTOR under this indemnification provision. To the extent considered necessary by the CITY, any sums due CONTRACTOR under this Agreement may be retained by CITY until all of CITY's claims for indemnification have been resolved, and any amount withheld shall not be subject to the payment of interest by CITY. This indemnification is separate and apart from, and in no way limited by, any insurance provided pursuant to the contract or otherwise. This paragraph shall not be construed to require CONTRACTOR to indemnify the CITY for its own negligence, or intentional acts of the CITY, its agents or employees. This clause shall survive the expiration or termination of this Agreement.

16.2 The CONTRACTOR's obligation to indemnify, defend and hold harmless shall remain in effect and shall be binding upon the CONTRACTOR whether such injury or damage shall accrue, or may be discovered, before or after termination of this Agreement.

16.3 The CONTRACTOR's failure to comply with this section's provisions shall constitute a material breach upon which the CITY may immediately terminate or suspend this Agreement.

XVII. ENTIRE AGREEMENT AND ORDER OF PRECEDENCE

17.1 This Agreement consists of the terms and conditions provided herein; the IFB (including all drawings, maps, specifications, exhibits and addenda attached thereto or referenced therein); and, the CONTRACTOR's bid proposal. To the extent that there exists a conflict between this Agreement and the remaining documents, the terms, conditions, covenants, and/or provisions of this Agreement shall prevail with the IFB (including all drawings, maps, specifications, exhibits and addenda attached thereto) next taking precedence. Wherever possible, the provisions of such documents shall be construed in such a manner as to avoid conflicts between provisions of the various documents.

17.2 This Agreement supersedes any and all other Agreements, either oral or in writing, between the parties hereto with respect to the subject matter hereof, and no other Agreement, statement, or promise relating to the subject matter of this Agreement which is not contained herein shall be valid or binding.

XVIII. ASSIGNMENT

18.1 Nothing under this Agreement shall be construed to give any rights or benefits to any party other than the CITY and the CONTRACTOR. All duties and responsibilities under this Agreement shall be for the sole and exclusive benefit of the CITY and the CONTRACTOR and not for the benefit or any other party. The CONTRACTOR shall not assign any right or interest in this Agreement, and shall not delegate any duty owned, without the CITY's prior written consent. Any attempted assignment or delegation shall be void and totally ineffective for all purposes, and shall constitute a material breach upon which the CITY may immediately terminate or suspend this Agreement.

18.2 In the event the CITY consents to an assignment or delegation, the assignee, delegate, or its legal representative shall agree in writing to personally assume, perform, and be bound by this Agreement's covenants, conditions, obligations and provisions.

XIX. SUCCESSORS AND ASSIGNS: Subject to the provision regarding assignment, this Agreement shall be binding on the heirs, executors, administrators, successors, and assigns of the respective parties.

XX. WAIVER OF TRIAL BY JURY: TO ENCOURAGE PROMPT AND EQUITABLE RESOLUTION OF ANY LITIGATION, EACH PARTY HEREBY WAIVES ITS RIGHTS TO A TRIAL BY JURY IN ANY LITIGATION RELATED TO THIS AGREEMENT.

XXI. GOVERNING LAW AND REMEDIES:

21.1 The validity of this Agreement and of any of its terms or provisions, as well as the rights and duties of the parties hereunder, shall be governed by the laws of the State of Florida and venue shall be in Palm Beach County, Florida.

21.2 No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

XXII. TIME IS OF THE ESSENCE:

22.1 Time is of the essence in the completion of Services as specified herein.

22.2 In addition, the CITY may recover from the CONTRACTOR any amounts paid by the CITY for damages suffered to third parties as a result of the CONTRACTOR's failure to complete the Services as required in this Agreement.

XXIII. NOTICES: All notices hereunder must be in writing and, unless otherwise provided herein, shall be deemed validly given on the date when personally delivered to the address indicated below; or on the third (3rd) business day following deposit, postage prepaid, using certified mail, return receipt requested, in any U.S. postal mailbox or at any U.S. Post Office; or when sent via nationally recognized overnight courier to the address indicated below. Should the CITY or the CONTRACTOR have a change of address, the other party shall immediately be notified in writing of such change, provided, however, that each address for notice must include a street address and not merely a post office box. All notices, demands or requests from the CONTRACTOR to the CITY shall be given to the CITY addresses as follows:

Michael Bornstein, CITY Manager
CITY of Lake Worth
7 North Dixie Hwy
Lake Worth, Florida 33460

CITY of Lake Worth Florida
c/o The Law Offices of Glen J. Torcivia & Associates, P.A.
701 Northpoint Parkway, Suite 209
West Palm Beach, FL 33407

All notices, demands or requests from the CITY to the CONTRACTOR shall be given to the CONTRACTOR address as follows:

Steven A. Marshall

The Davey Tree Expert Company
1500 N. Mantua Street
Kent, OH 44240-5193

XXIV. SEVERABILITY: Should any part, term or provision of this Agreement or any document required herein to be executed be declared invalid, void or unenforceable, all remaining parts, terms and provisions hereof shall remain in full force and effect and shall in no way be invalidated, impaired or affected thereby.

XXV. DELAYS AND FORCES OF NATURE:

25.1 The CONTRACTOR shall not be considered in default by reason of a delay in timely performance if such delay and failure arises out of causes reasonably beyond the control of the CONTRACTOR or its subcontractors and without their fault or negligence. Upon the CONTRACTOR's request, the CITY shall consider the facts and extent of any such delay and failure to timely perform the work for reason beyond the control of the CONTRACTOR and, if the CONTRACTOR'S delay and failure to timely perform was without it or its subcontractors' fault or negligence, as determined by the CITY in its sole discretion, the time of completion shall be extended for any reasonable time that the CITY, in its sole discretion, may decide; subject to the CITY'S rights to change, terminate, or stop any or all of the work at any time. If the CONTRACTOR is delayed at any time in the progress of the work by any act or neglect of the CITY or its employees, or by any other contractor employed by the CITY, or by changes ordered by the CITY or in an unusual delay in transportation, unavoidable casualties, or any causes beyond the CONTRACTOR'S control, or by delay authorized by the CITY pending negotiation or by any cause which the CITY, in its sole discretion, shall decide justifies the delay, then the time of completion shall be extended for any reasonable time the CITY, in its sole discretion, may decide. No extension of time shall be made for any delay occurring more than five (5) days before a claim therefore is made in writing to the CITY. In the case of continuing cause of delay, only one (1) claim is necessary. The CONTRACTOR's sole remedy for a delay in completion of the work for any reason will be an extension of time to complete the work and CONTRACTOR specifically waives any right to seek any monetary damages or losses for a delay in completion of the work, including, but not limited to, waiving any right to seek monetary amounts for lost profits, additional overhead, salaries, lost productivity, efficiency losses, or any other alleged monetary losses which may be allegedly suffered by CONTRACTOR due to a delay in completion of the work.

25.2 Neither party shall be considered in default in the performance of its obligations hereunder or any of them, if such obligations were prevented or delayed by any cause, existing or future beyond the reasonable control of such party which include but are not limited to acts of God, labor disputes or civil unrest.

XXVI. COUNTERPARTS: This Agreement may be executed in counterparts, each of which shall be an original, but all of which shall constitute one and the same document. Each of the parties shall sign a sufficient number of counterparts, so that each party will receive a fully executed original of this Agreement.

XXVII. LIMITATIONS OF LIABILITY: Under no circumstances shall either party be liable to the other for any consequential, incidental, special, punitive, or any other form of indirect or non-compensatory damages.

XXVIII. PUBLIC ENTITY CRIMES: CONTRACTOR acknowledges and agrees that a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier or sub-contractor under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statues, for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list. CONTRACTOR will advise the CITY immediately if it becomes aware of any violation of this statute.

XXIX. PREPARATION: This Agreement shall not be construed more strongly against either party regardless of who was more responsible for its preparation.

XXX. PALM BEACH COUNTY INSPECTOR GENERAL: In accordance with Palm Beach County ordinance number 2011-009, the CONTRACTOR acknowledges that this Agreement may be subject to investigation and/or audit by the Palm Beach County Inspector General. The CONTRACTOR has reviewed Palm Beach County ordinance number 2011-009 and is aware of its rights and/or obligations under such ordinance.

XXXI. ENFORCEMENT COSTS: All parties shall be responsible for their own attorneys' fees, court costs and expenses if any legal action or other proceeding is brought for any dispute, disagreement, or issue of construction or interpretation arising hereunder whether relating to the Contract's execution, validity, the obligations provided therein, or performance of this Contract, or because of an alleged breach, default or misrepresentation in connection with any provisions of this Contract.

REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK
SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF the parties hereto have made and executed this Agreement on the day and year first above written.

CITY OF LAKE WORTH, FLORIDA

By: _____
Pam Triolo, Mayor

ATTEST:

_____
Pamela J. Lopez, CITY Clerk

Approved as to form and legal sufficiency:

_____
Glen J. Torcivia, CITY Attorney

[Corporate Seal]

CONTRACTOR: **THE DAVEY TREE EXPERT COMPANY**

By: Mark Vaughn

Print Name: Mark Vaughn

Title: Vice President & General Manager

STATE OF Ohio)
COUNTY OF Portage)

The foregoing instrument was acknowledged before me this 19th day of December, 2013 by Mark Vaughn, as VP & GM (title), of The Davey Tree Expert Company, a corporation authorized to do business in the State of Florida, and who is personally known to me or who has produced the following personally known as identification.

Notary Public

Janis M Hittle
Print Name: JANIS M. HITTLE
My commission expires: Nov. 12, 2017

NOTARIAL SEAL
STATE OF OHIO

JANIS M. HITTLE
NOTARY PUBLIC
STATE OF OHIO
Comm. Expires
November 12, 2017

CONTRACTOR AGREEMENT
(Utility Easement/Right-of-Way Clearance Services)

THIS AGREEMENT is made this _____day of _____, 2013 between the **City of Lake Worth**, Florida, a municipal corporation, hereinafter the "CITY", with its principle office located at 7 North Dixie Highway, Lake Worth, Florida 33460, and, **The Davey Tree Expert Company,** a corporation authorized to do business in the State of Florida, hereinafter the "CONTRACTOR", with its principal office located at 1500 N. Mantua Street, Kent, OH 44240-5193.

RECITALS

WHEREAS, the CITY is a municipal corporation organized and existing pursuant to the Charter and the Constitution of the State of Florida;

WHEREAS, the CITY issued Invitation for Bid UT-TD-13-14-103 (hereinafter "IFB") for the procurement of qualified firms with substantial experience and capabilities to cut, clear and maintain the easements and Right of Ways for the City of Lake Worth's Transmission & Distribution Division (hereinafter the "Services");

WHEREAS, CONTRACTOR submitted a bid to perform the work described and set out in the IFB;

WHEREAS, the CITY desires to accept CONTRACTOR's bid in order for CONTRACTOR to render the Services to the CITY as provided herein;

WHEREAS, the CONTRACTOR further warrants that it is experienced and capable of performing the Services hereunder in a professional and competent manner;

WHEREAS, the CITY finds awarding IFB to the CONTRACTOR as described herein serves a valid public purpose.

NOW THEREFORE, the CITY hereby engages the services of the CONTRACTOR, and in consideration of the mutual promises herein contained, the sufficient of which is hereby acknowledged by both parties, the parties agree as follows:

I. TERM: The term of this Agreement and time for completion of the Services shall be for an initial period of thirty-six (36) months from the date work is commenced, as provided for herein, with one twenty-four (24) month renewal option. The CITY's manager may authorize the renewal option for the CITY provided that the amount for said renewal option has been appropriately funded in the City's annual budget. In addition to other completion requirements, completion of the Services shall require written authorization that all Services have been rendered to the satisfaction of the CITY executed by both the CITY and CONTRACTOR Project Manager(s) as designated

herein. Notwithstanding the foregoing, the CITY may terminate the Agreement subject to the provisions of Section XIII of this Agreement.

II. SCOPE OF WORK:

2.1 The scope of service is to cut, clear and maintain the easements and right of ways for the City of Lake Worth's Transmission & Distribution Division, as more specifically set forth in the IFB which is incorporated herein by reference. Services shall commence upon the issuance of a notice to proceed by the CITY.

2.2 The CONTRACTOR represents to the CITY that the work to be performed under this Agreement shall be in accordance with accepted and established trade practices and procedures recognized in the CONTRACTOR's trade in general and that the CONTRACTOR's work shall conform to the highest standards and in accordance with this Agreement.

2.3 The CONTRACTOR represents that it is licensed to do business in the State of Florida and holds and will maintain all applicable licenses required for the work to be completed under this Agreement. The CONTRACTOR further warrants its capability and experience to perform the work provided for herein in a professional and competent manner.

2.4 At all times during the term of the contract, the successful CONTRACTOR shall act as an independent contractor and at no time shall be considered an agent or partner of the CITY. The CITY reserves the right to delete or amend any of the Services as listed and described herein.

III. USE OF AGENTS OR ASSISTANTS: To the extent reasonably necessary to enable the CONTRACTOR to perform its work hereunder, the CONTRACTOR shall be authorized to engage the services of any agents or assistants which it may deem proper, and may further employ, engage, or retain the services of such other persons or corporations to aid or assist in the proper performance its duties. All costs of the services of, or expenses incurred by, such agents or assistance shall be paid by the CONTRACTOR.

IV. PROJECT MANAGEMENT: Both parties shall appoint a Project Manager who shall meet to coordinate, review and insure performance by the CONTRACTOR under this Agreement. The Project Manager appointed by the CITY will oversee the daily administration of the work to be performed by the CONTRACTOR under this Agreement but is not authorized to modify this Agreement.

V. EQUIPMENT:

5.1 The CONTRACTOR shall provide all equipment necessary to complete the Services to be performed hereunder. Such equipment rates, including additional equipment needed temporarily, shall be included in the CONTRACTORS hourly rates as set fully in section 6.1 of this Agreement. In the event CONTRACTOR requires equipment from the CITY, the CONTRACTOR shall meet and confer with the CITY before work commences.

5.2 In the event the CITY's equipment is to be utilized, any costs chargeable to the CONTRACTOR shall be agreed upon in advance of the commencement of work.

5.3 All equipment and storage facilities of CONTRACTOR may be inspected by the CITY at any time. The CITY reserves the right to reject the use of any equipment or storage facilities after inspection.

VI. FEE AND ORDERING MECHANISM

6.1 For the materials, labor and equipment necessary to provide the Services under this Agreement, the CONTRACTOR shall be entitled to a fee for actual work performed and accepted by the CITY in accordance with the IFB and in an amount not to exceed the hourly rates in the CONTRACTOR's bid proposal in response to the IFB, which bid proposal is incorporated herein by reference FB.

6.2 Should the CITY require additional or unforeseen work not included in this Agreement, fees and payment for such work will be set forth in a separate Addendum, as authorized in accordance with the CITY's procurement code prior to any such additional work being performed by the CONTRACTOR.

6.3 The CITY's ordering mechanism for all work performed under this Agreement shall be a CITY Purchase Order; however, the terms and conditions stated in a CITY Purchase Order shall not apply. CONTRACTOR shall not perform work under this Agreement without a CITY Purchase Order specifically for this purpose. CONTRACTOR shall not perform work which is out of scope, nor exceed any not to exceed amounts expressed on the Purchase Order. Note that the CITY's Fiscal Year ends on September 30th of each calendar year. The CITY cannot authorize work beyond September 30th of each calendar year, prior to the annual budget being approved by the City Commission. Additionally, the CITY must have budgeted appropriate funds for this work in any subsequent Fiscal Year. If the budget is approved for said work, the CITY will issue a new Purchase Order each Fiscal Year, for required and approved work.

6.4 Rates shall be reflected as "hourly, per man". Rates shall be based on a forty (40) hour work week. Requirement is for three (3) line clearance crews. Each crew will consist of two (2) experienced line clearance workers capable of bucket trimming and climbing. (Total of six (6) individuals or three (3) crews).

VII. MAXIMUM COSTS: The CONTRACTOR expressly acknowledges and agrees that the hourly rates to complete all work is as specified herein and no additional costs shall be authorized without prior written approval from CITY's governing body.

VIII. INVOICE:

8.1 The CONTRACTOR shall submit a properly itemized invoice for services performed and expenses incurred under this Agreement to the CITY Project Manager for approval prior to receiving compensation. The invoice shall include: 1) Purchase Order Number; 2) Date and Location of Services Performed; 3) The name, hours worked and billing rate of each employee furnished, and the hours of operations and billing rate for equipment used and any materials furnished; and 4) Total costs billed. CONTRACTOR shall also cooperate with and provide any other necessary information to CITY relating to services performed.

8.2 The CONTRACTOR shall be paid within thirty (30) after the presentation of a completed invoice, subject to the approval and acceptance of the work by designated representatives of the CITY. Interest payments will only be made in accordance with the Florida Prompt Payment Act, F.S. 218.70.

8.3 The billing rate shall be computed by considering the hours worked to begin and end at suitable assembly points reasonably near the job sites. No charges for equipment or labor shall be made for work stoppages in excess of thirty (30) minutes which are due to mechanical failures, weather conditions or any other causes except as noted on each CITY Purchase Order.

IX. AUDIT BY CITY: The CONTRACTOR shall permit the CITY, or any authorized representatives of the CITY, at all reasonable times, access to and the right to examine all records, books, papers or documents related to the CONTRACTOR's performance under this Agreement including, but not limited to, expenses for sub-contractors, agents or assistants, direct and indirect charges for work performed and detailed documentation for all such work performed or to per performed under this Agreement.

X. COPIES OF DATA/DOCUMENTS: Copies or original documents prepared by the CONTRACTOR in relation to work associated with this Agreement shall be provided to the CITY. Data collected, stored, and/or provided shall be in a form acceptable to the CITY and agreed upon by the CITY.

XI. OWNERSHIP: Each and every report, draft, work product, map, record, and other document reproduced, prepared, or caused to be prepared by the CONTRACTOR pursuant to or in connection with this Agreement shall be the exclusive property of the CITY.

XII. WRITTEN AUTHORIZATION REQUIRED: The CONTRACTOR shall not make changes in the Scope of Work or perform any additional work or provide any additional material under this Agreement without first obtaining written authorization from the CITY for such additional work or materials. Additional labor or materials provided without written authorization shall be done at the CONTRACTOR's sole risk and without payment from the CITY.

XIII. DEFAULTS, TERMINATION OF AGREEMENT

13.1 If the Project Manager deems that the CONTRACTOR is in default for failure to supply an adequate working force or has failed in any other respect to satisfactorily perform the work specified in this Agreement; or, is in material breach of a term or condition of this Agreement, the Project Manager may give written notice to the CONTRACTOR specifying defaults to be remedied within three (3) days. Such notice shall set forth the basis for any dissatisfaction and suggest corrective measures. If the CONTRACTOR does not remedy defaults within three (3) days or commence good faith steps to remedy the default to the reasonable satisfaction of the Project Manager, the CITY may take such action to remedy the default and all expenses related thereto shall be borne by the CONTRACTOR including, without limitation, utilization of another contractor to provide for such work; and/or, the CITY may withhold any money due or which may become due to the CONTRACTOR for such expense and/or work related to the claimed default. Alternatively, or in addition to the foregoing, if after three (3) days the CONTRACTOR has not remedied defaults or commenced good faith steps to remedy defaults to the satisfaction of the Project Manager, the CITY may elect to terminate this Agreement. No compensation shall be paid for de-mobilization, take-down, disengagement wind-down, lost profits or other costs incurred due to termination of this Agreement under this paragraph 13.1.

13.2 Notwithstanding paragraph 13.1, the CITY reserves the right and may elect to terminate this Agreement at any time. At such time, the CONTRACTOR would be compensated only for those Services which have been satisfactorily completed to the date of termination. No compensation shall be paid for de-mobilization, take-down, disengagement wind-down, lost profits or other costs incurred due to termination of this Agreement under this paragraph 13.2.

XIV. INSURANCE

14.1 The CONTRACTOR shall, at its own expense, procure and maintain throughout the term of this Agreement, with insurers acceptable to the CITY, the types and amounts of insurance conforming to the minimum requirements set forth in the IFB. The CONTRACTOR shall not commence work until the required insurance is in force and evidence of insurance acceptable to the CITY has been provided to, and approved by, the CITY. An appropriate Certification of Insurance shall be satisfactory evidence of insurance. Until such insurance is no longer required by this Contract, the CONTRACTOR shall provide the CITY with renewal or replacement evidence of insurance at least thirty (30) days prior to the expiration or termination of such insurance.

14.2 The insurance provided by the CONTRACTOR shall apply on a primary basis. Any insurance, or self-insurance, maintained by the City Commission shall be excess of, and shall not contribute with, the insurance provided by the CONTRACTOR. Except as otherwise specified, no deductible or self-insured retention is permitted.

14.3 Compliance with these insurance requirements shall not limit the liability of the CONTRACTOR. Any remedy provided to the CITY by the insurance provided by the CITY shall be in addition to and not in lieu of any other remedy (including, but not limited to, as an indemnitee of the CONTRACTOR) available to the CITY under this Agreement or otherwise.

14.4 Neither approval nor failure to disapprove insurance furnished by the CONTRACTOR shall relieve the CONTRACTOR from responsibility to provide insurance as required by this Agreement.

14.5 The CONTRACTOR's failure to obtain, pay for, or maintain any required insurance shall constitute a material breach upon which the CITY may immediately terminate or suspend this Agreement. In the event of any termination or suspension, the CITY may use the services of another contractor without the CITY incurring any liability to the CONTRACTOR.

14.6 At its sole discretion, the CITY may obtain or renew the CONTRACTOR's insurance, and the CITY may pay all or part of the premiums. Upon demand, the CONTRACTOR shall repay the CITY all monies paid to obtain or renew the insurance. The CITY may offset the cost of the premium against any monies due the CONTRACTOR from the CITY.

XV. WAIVER OF BREACH: The waiver of either parts of any breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach of that same or any other provision.

XVI. INDEMNITY:

16.1 The CONTRACTOR shall indemnify, defend, save and hold harmless the CITY, its officers, agents and employees, from any claim, demand, suit, loss, cost or expense for any damages that may be asserted, claimed or recovered against or from CITY, its officials, agents, or employees by reason of any damage to property or personal injury, including death and which damage, injury or death arises out of or is incidental to or in any way connected with CONTRACTOR's performance of the Services or caused by or arising out of (a) any act, omission, default or negligence of CONTRACTOR in the provision of the Services under this Agreement; (b) property damage or personal injury, which damage, injury or death arises out of or is incidental to or in any way connected with CONTRACTOR's execution of Services under this Agreement; or (c) the violation of federal, state, county or municipal laws, ordinances or regulations by CONTRACTOR. This indemnification includes, but is not limited to, the performance of the agreement by CONTRACTOR or any act or omission of CONTRACTOR, its agents, servants, contractors, patrons, guests or invitees and includes any costs, attorneys' fees, expenses and liabilities incurred in the defense of any such claims or the investigation thereof. CONTRACTOR agrees to pay all claims and losses and shall defend all suits, in the name of the CITY, its employees, and officers, including but not limited to appellate proceedings, and shall pay all costs, judgments and attorneys' fees which may issue thereon. CITY reserves the right to select its own legal counsel to conduct any defense in any such proceeding and all costs and fees associated therewith shall be the responsibility of CONTRACTOR under this indemnification provision. To the extent considered necessary by the CITY, any sums due CONTRACTOR under this Agreement may be retained by CITY until all of CITY's claims for indemnification have been resolved, and any amount withheld shall not be subject to the payment of interest by CITY. This indemnification is separate and apart from, and in no way limited by, any insurance provided pursuant to the contract or otherwise. This paragraph shall not be construed to require CONTRACTOR to indemnify the CITY for its own negligence, or intentional acts of the CITY, its agents or employees. This clause shall survive the expiration or termination of this Agreement.

16.2 The CONTRACTOR's obligation to indemnify, defend and hold harmless shall remain in effect and shall be binding upon the CONTRACTOR whether such injury or damage shall accrue, or may be discovered, before or after termination of this Agreement.

16.3 The CONTRACTOR's failure to comply with this section's provisions shall constitute a material breach upon which the CITY may immediately terminate or suspend this Agreement.

XVII. ENTIRE AGREEMENT AND ORDER OF PRECEDENCE

17.1 This Agreement consists of the terms and conditions provided herein; the IFB (including all drawings, maps, specifications, exhibits and addenda attached thereto or referenced therein); and, the CONTRACTOR's bid proposal. To the extent that there exists a conflict between this Agreement and the remaining documents, the terms, conditions, covenants, and/or provisions of this Agreement shall prevail with the IFB (including all drawings, maps, specifications, exhibits and addenda attached thereto) next taking precedence. Wherever possible, the provisions of such documents shall be construed in such a manner as to avoid conflicts between provisions of the various documents.

17.2 This Agreement supersedes any and all other Agreements, either oral or in writing, between the parties hereto with respect to the subject matter hereof, and no other Agreement, statement, or promise relating to the subject matter of this Agreement which is not contained herein shall be valid or binding.

XVIII. ASSIGNMENT

18.1 Nothing under this Agreement shall be construed to give any rights or benefits to any party other than the CITY and the CONTRACTOR. All duties and responsibilities under this Agreement shall be for the sole and exclusive benefit of the CITY and the CONTRACTOR and not for the benefit or any other party. The CONTRACTOR shall not assign any right or interest in this Agreement, and shall not delegate any duty owned, without the CITY's prior written consent. Any attempted assignment or delegation shall be void and totally ineffective for all purposes, and shall constitute a material breach upon which the CITY may immediately terminate or suspend this Agreement.

18.2 In the event the CITY consents to an assignment or delegation, the assignee, delegate, or its legal representative shall agree in writing to personally assume, perform, and be bound by this Agreement's covenants, conditions, obligations and provisions.

XIX. SUCCESSORS AND ASSIGNS: Subject to the provision regarding assignment, this Agreement shall be binding on the heirs, executors, administrators, successors, and assigns of the respective parties.

XX. WAIVER OF TRIAL BY JURY: TO ENCOURAGE PROMPT AND EQUITABLE RESOLUTION OF ANY LITIGATION, EACH PARTY HEREBY WAIVES ITS RIGHTS TO A TRIAL BY JURY IN ANY LITIGATION RELATED TO THIS AGREEMENT.

XXI. GOVERNING LAW AND REMEDIES:

21.1 The validity of this Agreement and of any of its terms or provisions, as well as the rights and duties of the parties hereunder, shall be governed by the laws of the State of Florida and venue shall be in Palm Beach County, Florida.

21.2 No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

XXII. TIME IS OF THE ESSENCE:

22.1 Time is of the essence in the completion of Services as specified herein.

22.2 In addition, the CITY may recover from the CONTRACTOR any amounts paid by the CITY for damages suffered to third parties as a result of the CONTRACTOR's failure to complete the Services as required in this Agreement.

XXIII. NOTICES: All notices hereunder must be in writing and, unless otherwise provided herein, shall be deemed validly given on the date when personally delivered to the address indicated below; or on the third (3rd) business day following deposit, postage prepaid, using certified mail, return receipt requested, in any U.S. postal mailbox or at any U.S. Post Office; or when sent via nationally recognized overnight courier to the address indicated below. Should the CITY or the CONTRACTOR have a change of address, the other party shall immediately be notified in writing of such change, provided, however, that each address for notice must include a street address and not merely a post office box. All notices, demands or requests from the CONTRACTOR to the CITY shall be given to the CITY addresses as follows:

Michael Bornstein, CITY Manager
CITY of Lake Worth
7 North Dixie Hwy
Lake Worth, Florida 33460

CITY of Lake Worth Florida
c/o The Law Offices of Glen J. Torcivia & Associates, P.A.
701 Northpoint Parkway, Suite 209
West Palm Beach, FL 33407

All notices, demands or requests from the CITY to the CONTRACTOR shall be given to the CONTRACTOR address as follows:

Steven A. Marshall
The Davey Tree Expert Company
1500 N. Mantua Street
Kent, OH 44240-5193

XXIV. SEVERABILITY: Should any part, term or provision of this Agreement or any document required herein to be executed be declared invalid, void or unenforceable, all remaining parts, terms and provisions hereof shall remain in full force and effect and shall in no way be invalidated, impaired or affected thereby.

XXV. DELAYS AND FORCES OF NATURE:

25.1 The CONTRACTOR shall not be considered in default by reason of a delay in timely performance if such delay and failure arises out of causes reasonably beyond the control of the CONTRACTOR or its subcontractors and without their fault or negligence. Upon the CONTRACTOR's request, the CITY shall consider the facts and extent of any such delay and failure to timely perform the work for reason beyond the control of the CONTRACTOR and, if the CONTRACTOR'S delay and failure to timely perform was without it or its subcontractors' fault or negligence, as determined by the CITY in its sole discretion, the time of completion shall be extended for any reasonable time that the CITY, in its sole discretion, may decide; subject to the CITY'S rights to change, terminate, or stop any or all of the work at any time. If the CONTRACTOR is delayed at any time in the progress of the work by any act or neglect of the CITY or its employees, or by any other contractor employed by the CITY, or by changes ordered by the CITY or in an unusual delay in transportation, unavoidable casualties, or any causes beyond the CONTRACTOR'S control, or by delay authorized by the CITY pending negotiation or by any cause which the CITY, in its sole discretion, shall decide justifies the delay, then the time of completion shall be extended for any reasonable time the CITY, in its sole discretion, may decide. No extension of time shall be made for any delay occurring more than five (5) days before a claim therefore is made in writing to the CITY. In the case of continuing cause of delay, only one (1) claim is necessary. The CONTRACTOR's sole remedy for a delay in completion of the work for any reason will be an extension of time to complete the work and CONTRACTOR specifically waives any right to seek any monetary damages or losses for a delay in completion of the work, including, but not limited to, waiving any right to seek monetary amounts for lost profits, additional overhead, salaries, lost productivity, efficiency losses, or any other alleged monetary losses which may be allegedly suffered by CONTRACTOR due to a delay in completion of the work.

25.2 Neither party shall be considered in default in the performance of its obligations hereunder or any of them, if such obligations were prevented or delayed by any cause,

existing or future beyond the reasonable control of such party which include but are not limited to acts of God, labor disputes or civil unrest.

XXVI. COUNTERPARTS: This Agreement may be executed in counterparts, each of which shall be an original, but all of which shall constitute one and the same document. Each of the parties shall sign a sufficient number of counterparts, so that each party will receive a fully executed original of this Agreement.

XXVII. LIMITATIONS OF LIABILITY: Under no circumstances shall either party be liable to the other for any consequential, incidental, special, punitive, or any other form of indirect or non-compensatory damages.

XXVIII. PUBLIC ENTITY CRIMES: CONTRACTOR acknowledges and agrees that a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier or sub-contractor under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statues, for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list. CONTRACTOR will advise the CITY immediately if it becomes aware of any violation of this statute.

XXIX. PREPARATION: This Agreement shall not be construed more strongly against either party regardless of who was more responsible for its preparation.

XXX. PALM BEACH COUNTY INSPECTOR GENERAL: In accordance with Palm Beach County ordinance number 2011-009, the CONTRACTOR acknowledges that this Agreement may be subject to investigation and/or audit by the Palm Beach County Inspector General. The CONTRACTOR has reviewed Palm Beach County ordinance number 2011-009 and is aware of its rights and/or obligations under such ordinance.

XXXI. ENFORCEMENT COSTS: All parties shall be responsible for their own attorneys' fees, court costs and expenses if any legal action or other proceeding is brought for any dispute, disagreement, or issue of construction or interpretation arising hereunder whether relating to the Contract's execution, validity, the obligations provided therein, or performance of this Contract, or because of an alleged breach, default or misrepresentation in connection with any provisions of this Contract.

IN WITNESS WHEREOF the parties hereto have made and executed this Agreement on the day and year first above written.

CITY OF LAKE WORTH, FLORIDA

By: _____
Pam Triolo, Mayor

ATTEST:

_____
Pamela J. Lopez, City Clerk

Approved as to form and legal sufficiency:

_____
Glen J. Torcivia, City Attorney

CONTRACTOR: **THE DAVEY TREE EXPERT COMPANY**

By: Mark Vaughn

[Corporate Seal]

Print Name: Mark Vaughn

Title: Vice President & General Manager

STATE OF Ohio)
COUNTY OF Portage)

The foregoing instrument was acknowledged before me this 19th day of December, 2013 by Mark Vaughn, as VP & GM (title), of The Davey Tree Expert Company, a corporation authorized to do business in the State of Florida, and who is personally known to me or who has produced the following personally known as identification.

Notary Public

JANIS M. HITTLE
NOTARY PUBLIC
STATE OF OHIO
Comm. Expires
November 12, 2017

Janis M Hittle
Print Name: JANIS M. HITTLE
My commission expires: Nov. 12, 2017

CITY OF LAKE WORTH
7 North Dixie Highway · Lake Worth, Florida 33460 · Phone: 561-586-1600· Fax: 561-586-1750

DRAFT
AGENDA
CITY OF LAKE WORTH
CITY COMMISSION MEETING
CITY HALL COMMISSION CHAMBER
TUESDAY, JANUARY 28, 2014 - 6:00 PM

1. **ROLL CALL:**

2. **INVOCATION:** Offered by Pastor Sherry Colby of Victory Worship Center

3. **PLEDGE OF ALLEGIANCE:** Led by Commissioner Andy Amoroso

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

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

6. **COMMISSION LIAISON REPORTS AND COMMENTS:**

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

8. **APPROVAL OF MINUTES:**

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

10. **PUBLIC HEARINGS:**

11. **UNFINISHED BUSINESS:**

12. **NEW BUSINESS:**

    A. Ordinance No. 2014-xx - First Reading - amend the City Tree Board to provide for the election of its officers and schedule the public hearing date for February 11, 2014

    B. Professional Services Agreement with URS Corporation Southern for Engineering, Design and Construction Services for the Roadway and Utilities Master Plan Capital Projects

    C. Professional Services Agreement with Craven Thompson & Associates, Inc. for Engineering, Design and Construction Services for the Roadway and Utilities Master Plan Capital Projects

D. Agreement with Mock Roos and Associates for design and bid phase services for the Water Treatment Plant Disinfection System and Instrumentation Improvements

13. LAKE WORTH ELECTRIC UTILITY:

A. CONSENT AGENDA:

B. PUBLIC HEARING:

C. NEW BUSINESS:

14. CITY ATTORNEY'S REPORT:

15. CITY MANAGER'S REPORT:

A. February 11, 2014 draft Commission agenda

16. 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)

NOTE:ONE OR MORE MEMBERS OF ANY BOARD, AUTHORITY OR COMMISSION MAY ATTEND AND SPEAK AT ANY MEETING OF ANOTHER CITY BOARD, AUTHORITY OR COMMISSION.