



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, JUNE 17, 2014 - 6:00 PM**

1. **ROLL CALL:**
2. **INVOCATION:** Offered by Father Quesnel Delvard of Sacred Heart Catholic 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. Update provided by Senator Jeff Clemens
6. **COMMISSION LIAISON REPORTS AND COMMENTS:**
7. **PUBLIC PARTICIPATION OF NON-AGENDAED ITEMS AND CONSENT AGENDA:**
8. **APPROVAL OF MINUTES:**
 - A. City Commission Meeting - June 3, 2014
9. **CONSENT AGENDA:** (public comment allowed during Public Participation of Non-Agendaed items)
 - A. Resolution No. 31-2014 - authorize the execution of the Fiscal Year 2015-2017 Palm Beach County Urban County Program Interlocal Cooperation Agreement
 - B. Resolution No. 32-2014 - third amendment to the Fiscal Year 2014 budget
 - C. Amendment #5 to an agreement with Hy-Byrd Inspection Services for plans review and inspection services during Fiscal Year 2014
 - D. Variance Agreement with Luis and Magling Gonzalez to allow brick pavers on a driveway and City right-of-way at 1837 Terrace Drive East
 - E. Annual contracts to four companies for paving, concrete, and striping services

Agenda Date: June 17, 2014 Regular Meeting

F. Purchase Agreement with Trekker Tractor, LLC to replace a backhoe for use by the Water Systems Department

G. Contractor Agreement with Shannon Chemical Corp. for purchase of SNC-N2 Phosphate for the Water Treatment Plant

10. PUBLIC HEARINGS:

11. UNFINISHED BUSINESS:

12. NEW BUSINESS:

A. Ordinance No 2014-19 - First Reading - update the Police Retirement System to comply with the Internal Revenue Service Code and favorable ruling on the Police Retirement System and schedule the public hearing date for July 1, 2014

B. Ordinance No. 2014-20 - First Reading - update the General Employees Retirement System to comply with the Internal Revenue Service Code and favorable ruling on the Employees Retirement System and schedule the public hearing date for July 1, 2014

C. Ordinance No. 2014-21 - First Reading - provide for the annual payment from Division II to Division I of the Police Pension System and schedule the public hearing date for July 1, 2014

D. Report from Internal Auditor

13. LAKE WORTH ELECTRIC UTILITY:

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

B. **PUBLIC HEARING:**

C. **NEW BUSINESS:**

1) Purchase seven 150kVA padmount transformers from Wesco Distribution

14. CITY ATTORNEY'S REPORT:

15. CITY MANAGER'S REPORT:

A. July 1, 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.

**MINUTES
CITY OF LAKE WORTH
REGULAR MEETING OF THE CITY COMMISSION
JUNE 3, 2014 – 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 City Hall, 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, City Attorney Glen Torcivia, and City Clerk Pamela Lopez.

2. INVOCATION:

The invocation was offered by City Manager Bornstein.

2. PLEDGE OF ALLEGIANCE:

The pledge of allegiance was led by Commissioner John Szerdi.

4. AGENDA - Additions/Deletions/Reordering:

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

- Add to Consent Agenda, Item D - Resolution No. 30-2014 – conditional conveyance of property located at 110 North F Street to the Community Redevelopment Agency;
- Add to New Business, Item A additional backup material; and
- Approve the agenda as amended.

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

5. PRESENTATIONS:

A. Update provided by Representative Bill Hager

Representative Hager explained the boundaries of District 89, said he completed four years as a State Legislator, and his name would be on the November 2014 election ballot for reelection. He commented that elected officials carried values with them, which predicted the way they would vote 95% of the time. The Florida Session ended with the adoption of a balanced budget. He said that, during the recession years, the State's budget was cut by \$15 billion to balance the budget. This year, education

was funded at its highest level and the focus continued to be on the economy and growing businesses. He said that everyone who wanted a job and wanted to work could. Money was delegated to expand the Port of Palm Beach; 6,000 jobs were created over the past four years; and Palm Beach State College's tuition rate was the lowest in the State. Florida had no state income tax, but competed for businesses with Texas, which also had no state income tax. Businesses were moving from high-tax states to low-tax states and Florida gained two Congressional seats while New York lost one seat due to growth.

Request/comment summary:

1. Vice Mayor Maxwell thanked Representative Hager for spearheading a Bill to regulate sober homes.
2. Commissioner Szerdi commented about the All Aboard Florida high speed railway plan and creating an east/west traffic movement.

B. Introduction of Water Treatment Plant Supervisor and Chief Operator by Mark Farrington and Larry Johnson

Larry Johnson, Water Utilities Director, introduced Tim Sloan as the new Water Treatment Plant Supervisor and Melvin Pinckney as the new Chief Water Treatment Plant Operator. He said both of them would be responsible for keeping the quality of water up.

C. Update provided by the City Recreation Board

Austin Brookley, Board Chairperson, provided an update on the City Recreation Board's activities, which included their work on the Easter Egg Hunt event. He said the members would be focusing on the Bicycle Giveaway event planned for the fall and on their website. Additionally, the members would continue to work with City staff.

D. Update provided by Parrot Cove Neighborhood Association

Anthony Marotta, President, provided an update on Parrot Cove Neighborhood Association's activities, which included information on their boundaries, number of homes, formation in 2001, dues, mission to help community efforts for improvement, membership in the Neighborhood Association Presidents Council, and newsletter publication. He announced that approximately 120 people attended an event at Bradley's Restaurant, they held a block party in April, and their next block party was planned for early August. He provided an update on their accomplishments, said the members were creating a new logo and would replace their street banners, were working on a plan to remove graffiti, would be participating in the annual July 4th Raft Race, and were currently working on a home and garden tour event in March 2015.

Request/comment summary:

1. Commissioner Szerdi commented that the Parrot Cove Neighborhood Association was working with The Cottages of Lake Worth organization.
2. Commissioner Amoroso suggested the association auction their old banners as a way to raise money.

6. COMMISSION LIAISON REPORTS AND COMMENTS:

Commissioner Amoroso: said he hosted a local art class this week, announced the July 4th events were coming up soon and volunteers were needed, said the LULA arts mural was going up on Lake Avenue, announced that he hosted a Park Avenue Restaurant Conciege event and that they were good at promoting Lake Worth, said he was excited about the opening of the Gulfstream Hotel, encouraged the City Manager and Commission to move forward with looking at ways to reduce the cost of lighting and to include the Dark Ideas with Siemen's recommendations.

Commissioner McVoy: apologized for being absent at the May 20, 2014, Commission meeting; said he was in Madison, WI to see what was going on there; commented that he was glad the City had a City Tree Board; said the trees were attractive; observed that Madison, WI had bicycle lanes everywhere; announced his bus trip to Washington, DC to bring attention to human right violations in Venezuela.

Vice Mayor Maxwell: announced that he attended two very nice Memorial Day ceremonies in Lake Worth and Lantana, reminded everyone that Memorial Day was a day to recognize American heroes, and encouraged everyone to attend Memorial Day events. He said he received many comments about the lack of doggy bag stations and asked for them to be installed in neighborhoods.

Mayor Triolo: announced her attendance at the Memorial Day services, thanked everyone for attending, and said the City's Veterans Day Parade would be coming soon.

Request/comment summary:

1. Commissioner Amoroso commented that the City never had a policy about doggy bag stations and neighborhood associations paid for them. He suggested businesses could pay for the bags in exchange for having their names on them.

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: Mary Lindsey, Loretta Sharpe, Peter Timm, Dustin Zacks, and Richard Stowe.

The following individuals spoke on issues written on their comment cards.

Michael Kase said people liked to walk their dogs, advertisements on doggy bags could fund the doggy stations, supported bicycle lanes and energy saving efficiency, said he's removed graffiti from trash cans, spoke about traffic flow arrows, and asked why there were no signs at the Casino Building to advertise rental availability for conferences or receptions.

Mark Parrilla said he reported water spewing from the ground near Pinecrest Cemetery and staff responded immediately at 7:00 PM on a Friday. He said he wanted to give praise to the City's staff for their quick response.

Tammy Pansa offered to maintain the doggy stations if she was given a key; said the Port of Palm Beach was a unique natural resource, dive site, and tourist area that would be lost if it was dredged; and said there was free neuter and spay services for dogs and cats being offered.

Request/comment summary:

1. Commissioner Szerdi commented that there was money in the Energy Conservation Fund for digital electrical meters that could be installed inside homes for individuals to monitor their usage.
2. Commissioner McVoy requested verification of the payout amount for the \$63.5 million General Obligation Bond.

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 Work Session – April 22, 2014**
- B. City Commission Meeting – May 6, 2014**
- C. City Commission Work Session – May 13, 2014**
- D. City Commission Meeting – May 20, 2014**

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

9. CONSENT AGENDA:

Action: Motion made by Commissioner Amoroso and seconded by Commissioner McVoy to approve the Consent Agenda, as amended.

A. Resolution No. 27-2014 – declare expenditures of City funds as valid public purposes

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

RESOLUTION NO. 27-2014 OF THE CITY OF LAKE WORTH, AMENDING CITY RESOLUTION 06-2014 DECLARING EXPENDITURES OF CITY FUNDS FOR FOOD/REFRESHMENTS FOR CERTAIN EVENTS - AS VALID PUBLIC PURPOSES; AND, PROVIDING FOR AN EFFECTIVE DATE.

B. Resolution No. 28-2014 – submit an application for Fiscal Year 2014 Edward Byrne Memorial Justice Assistance Grant Program funding

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

RESOLUTION NO. 28-2014 OF THE CITY OF LAKE WORTH, FLORIDA, AUTHORIZING THE SUBMISSION OF AN APPLICATION TO THE U.S. DEPARTMENT OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, BUREAU OF JUSTICE ASSISTANCE FOR GRANT FUNDS PROVIDED THROUGH THE FISCAL YEAR 2014 EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT PROGRAM IN THE AMOUNT OF \$33,102; PROVIDING FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

C. Ratify a member to the Library Board

D. (Added) Resolution No. 30-2014 – conditional conveyance of property located at 110 North F Street to the Community Redevelopment Agency

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

RESOLUTION NO. 30-2014 OF THE CITY OF LAKE WORTH, FLORIDA, AUTHORIZING THE CONDITIONAL CONVEYANCE OF 110 N. F STREET TO THE LAKE WORTH COMMUNITY DEVELOPMENT AGENCY; AUTHORIZING THE CITY MANAGER TO ASSIST THE CRA IN GRANTS; AND PROVIDING FOR AN EFFECTIVE DATE.

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

10. PUBLIC HEARINGS:

There were no Public Hearings items on the agenda.

11. UNFINISHED BUSINESS:

There were no Unfinished Business items on the agenda.

12. NEW BUSINESS:

A. Resolution No. 29-2014 – call for a bond referendum election on August 26, 2014

Action: Motion made by Vice Mayor Maxwell and seconded by Commissioner Amoroso to approve Resolution No. 29-2014.

City Manager Bornstein explained that the Resolution provided for a bond referendum question to be placed on the August 26, 2014, Primary Election. The General Obligation Bonds, in the amount of \$63.5 Million, would fund roadways, sidewalks, streetlights, streetscapes, drainage and water and sewer facilities within the City. These projects have been commonly referred to as the Lake Worth 2020 Plan.

City Attorney Torcivia read the following resolution by title only:

RESOLUTION NO. 29-2014 OF THE CITY COMMISSION OF THE CITY OF LAKE WORTH, FLORIDA, CALLING A BOND REFERENDUM FOR THE ISSUANCE OF GENERAL OBLIGATION BONDS TO CONSTRUCT CERTAIN CAPITAL IMPROVEMENTS; AND PROVIDING AN EFFECTIVE DATE.

City Attorney Torcivia explained that theoretically the improvements could be paid through an assessment; however, it was not realistic because of the way assessment amounts were calculated. In the State of Florida, there had been no successful assessments for roadway improvements and that the City could expect the assessment to be challenged by property owners. He read the following ballot question into the record:

Official Ballot
City of Lake Worth, Florida
Bond Referendum Election – August 26, 2014

APPROVAL OF "LAKE WORTH 2020" BONDS FOR PUBLIC INFRASTRUCTURE PROJECTS WITHIN THE CITY.

Shall the City of Lake Worth be authorized to issue bonds to acquire and improve roadway, sidewalk, streetlight, streetscape, drainage and water and sewer facilities located within the City in one or more series not exceeding a total principal amount of \$63,500,000, payable from an annual ad valorem tax maturing not later than 30 years from the date of each issuance and bearing interest at a rate not exceeding the maximum legal rate?

For bonds _____ Against bonds _____

Request/comment summary:

1. Mayor Triolo commented that the money could never be used for anything other than its intended use, and the usage would be written in the bonds' covenants.

Commissioner McVoy provided a PowerPoint presentation on his concerns. He said he was in support of the tranches distribution, but had issues with rising sea level and climate changes due to global warming disruption. As a coastal community, any changes in climate or sea level would affect Lake Worth. An engineer study, done in 2012, reported that any changes in infrastructure needed to take into consideration the rising sea level. He said the study pointed out that major storms, storm frequency coupled with higher sea level rise, and storm water risks. Other parts of the country were paying attention to the climate change and Miami Beach, Ft. Lauderdale, and Broward County were very active in putting a community resiliency plan forward. He said the City was responsible for its citizens' protection and limiting its liability due to inactivity.

He suggested the following:

- 1) Conduct formal assessment of the City's vulnerability to climate change;
- 2) Assess the costs and infrastructure implications of assessment; and
- 3) Incorporate the costs into the bond referendum.

He said he was convinced that the City had done his first suggestion, but could not support placing the bond question on the ballot at this time.

Request/comment summary:

2. Commissioner Szerdi commented that staff spent a lot of time on some of the issues suggested by Commissioner McVoy.
3. Commissioner Szerdi commented that Camp Dresser & McGee, who performed the engineering study, could not come up with a solution.
4. Commissioner Szerdi commented that the City could have constructed the new Casino Building on pilings, but chose not to.
5. Commissioner Szerdi commented that backflow preventers could be installed to mitigate the dissipation of water.
6. Commissioner Szerdi commented that there were many smart people trying to figure out how to address sea level rising. On the State and Federal levels, people were failing to come up with a solution due to the lack of technology currently available. At this time there was no way to

determine a cost to add to the bond.

Mayor Triolo announced that it was time for public comment.

JoAnn Golden said she was a former Commissioner who served between 2007 and 2011; said she had the same concerns as Commissioner McVoy; commented that 18% of the bond money went towards green products, but there was nothing green about the City and making sure residents were safe; Public Utilities just ripped out alleys; asked about coordination of the projects with sea level rising; and that the City held four quick district meetings with little public input and comment.

Peter Timm said the cost of the bond was \$138 million, asked what would happen if there was not enough money to finish all of the projects, and asked if the City could tax the residents more. He cited the number of residential and commercial properties that would pay for the bond.

Loretta Sharpe commented that the residents elected their officials to tell them about what were the most important things for the City. She said the County Property Appraiser came to a public Lake Worth meeting and explained that infrastructure was included in determining property values. She said residents hired the Commission, and they were doing the best job they could. If grant money was received, then the amount of the bond would be reduced.

Mark Parrilla asked the Commission to vote unanimously on placing the question on the August 26, 2014, ballot. This vote would send a message to the community that the Commission did hear from the public. He thanked the Commission for being forward thinkers. He said a former Commissioner had told him there was no money to pave roads in the Genesis Neighborhood, but this Commission found \$700,000 for roadway improvements. He supported the issue going to the voters.

Barbara Jean Weber said each of the Commissioners had interesting ideas and truths in what they were saying. There was also truth in what the residents were saying. Everyone wanted what was best for the City. She asked if the project could be broken into pieces, if the Park of Commerce improvements could be isolated, if the bond could be broken up to just include roads and sidewalks, and if federal grant funds were available. She asked that her comments and questions be given thought.

Michael Chase Flack said Commissioner McVoy's comments were on target. He said he was attending San Francisco State University when there was an earthquake and saw people left with nothing. He comment that he had friends who owned 10 properties in Lake Worth, and they were an example of good landlords, but they may be put in a position to not be such good landlords or may have to leave Lake Worth. He asked what the City would do with people who currently put money into their rental

properties. If the bond drove rental property owners' profits and losses thinner, then they may choose to take the lower road.

Terry Brokovich said he supported the Lake Worth 2020 Plan and supported the referendum question going to the voters. He asked for a change in the resolution because some of the wording regarding capital improvements was missing. He said he hoped the bond could be paid off earlier than 30 years, agreed with the bond, and said the City needed to get out of the 1960's and 1970's.

Scott Eller commented that he traveled a lot and was seldom in Lake Worth. He asked about the number of roadway improvements in College Park and more curbing. He said he would be in favor of delaying the bond because of Commissioner McVoy's comments and asked the City to look deeper into getting grant funds.

Richard Stowe asked the Commission to vote against the resolution. He said he was a former chairperson of the Santa Barbara Transportation Committee, and they paid for their roadways through a utility tax. He said having a question on the August ballot would have less voter turnout and suggested it be placed on the November ballot. He said haste made waste and asked the Commission to slow down and consider putting this on the November ballot.

Wes Blackman said there was a regional inequality of property values in Palm Beach County. If his house was located one-half mile north of its current location in Lake worth, it would be worth \$150,000 more. Everyone needed to look at the reason for this inequality. This bond would be doing something different. He said he would have to pay \$330 per year and was willing to pay and take a risk in order to raise or better Lake Worth's footing over other Palm Beach municipalities.

Herman Robinson asked, "If not now, then when?" The referendum question was to ask for money for basic needs. If not done now, it would cost more later. There was a momentum going on and it needed to keep going. There was a need to count on the voters to be the salesmen. The voters needed to sell Lake Worth to people who would invest here. There was a need to send a message that Lake Worth residents were willing to invest in their own community.

Mayor Triolo read the comment card written by Steve Ellman. Mr. Ellman wrote asking what Lake Worth 2020 was designed to stand for. [Was it] carrying out climate conditions and sea level or likely future climate conditions and sea level.

Greg Rice said this issue was extremely critical to the City. There was a comment made about moving the question onto the November ballot; however, the Palm Beach County Supervisor of Elections told municipalities

not to place anything on the November ballot due to its length. The City paid the highest utility rate, but people still moved into the City. Infrastructures were not addressed in the past because of other priorities. He said no one wanted to pay more in taxes, but the improvements would cost somebody.

Mayor Triolo recessed the meeting at 8:07 PM and reconvened at 8:22 PM.

Request/comment summary:

7. Commissioner McVoy commented that he supported allowing the issue to go to the voters, but that it was not ready to go to them.
8. Commissioner Amoroso commented that the Commission was actively pursuing federal grant moneys. He said there had been no infrastructure improvements made in 40 years, and that the Commission was hearing from the public.
9. Commissioner Szerdi commented that since April 16, 2013, there were 16 public meetings held in which the topic was discussed. It began with discussions under the name of the Roadway and Utilities Master Plan (RUMP) and later was renamed to Lake Worth 2020.
10. Vice Mayor Maxwell commented that this was the single most important issue a Commissioner would have to vote on in 100 years. If the Commission knew what to do to address sea level rise and climate change, and their specific costs, then the Commission would include it into the bond. The problems would not fix themselves, but continue to worsen. He said this was the reason why the Commission were asking voters to dig deeper in their pockets.
11. Mayor Triolo commented that Lake Worth 2020 addressed the basic level of public safety.

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:

There were no Lake Worth Electric Utility New Business items on the agenda.

14. CITY ATTORNEY'S REPORT:

City Attorney Torcivia did not provide a report.

15. CITY MANAGER'S REPORT

A. June 17, 2014 – draft Commission agenda

City Manager Bornstein did not provide a report.

16. ADJOURNMENT:

Action: Motion made by Commissioner Amoroso and seconded by Vice Mayor Maxwell to adjourn the meeting at 9:11 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: June 17, 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: June 17, 2014, Regular Meeting

DEPARTMENT: City Manager's Office

EXECUTIVE BRIEF

TITLE:

Resolution No. 31-2014 - authorize the execution of the Fiscal Year 2015-2017 Palm Beach County Urban County Program Interlocal Cooperation Agreement

SUMMARY:

The Resolution authorizes the execution of a new Interlocal Cooperation Agreement to participate in the Palm Beach County Urban County Program for Fiscal Years 2015, 2016 and 2017.

BACKGROUND AND JUSTIFICATION:

The Palm Beach County Entitlement Jurisdiction serves unincorporated areas and non-entitlement municipalities (those with populations under the 50,000 threshold) within Palm Beach County through its Urban County Program by providing participants with the opportunity to access funding allocated by the U.S. Department of Housing and Urban Development (HUD) through its Community Development Block Grant (CDBG), HOME Investment Partnerships (HOME), and Emergency Solutions Grant (ESG) programs. It further provides participants with access to economic stimulus and/or disaster recovery funding that is distributed to the County by HUD.

Although participation in the County's Program will preclude the City from applying for competitive State CDBG funds, it will ensure that the City will receive its full portion of the annual formula allocation of CDBG funding that the County receives from HUD, as well as the opportunity to access other funding as referenced above.

MOTION:

I move to approve/not approve Resolution No. 31-2014.

ATTACHMENT(S):

Fiscal Impact Analysis – not applicable
Resolution
Agreement

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RESOLUTION NO. 31-2014 OF THE CITY OF LAKE WORTH, FLORIDA, AUTHORIZING THE EXECUTION OF AN INTERLOCAL COOPERATION AGREEMENT TO PARTICIPATE IN THE PALM BEACH COUNTY URBAN COUNTY PARTNERSHIP PROGRAM FOR FISCAL YEARS 2015, 2016 AND 2017; PROVIDING FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

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

WHEREAS, Palm Beach County has invited the City to enter into a new Interlocal Cooperation Agreement to participate in its Urban County Program for Fiscal Years 2015, 2016 and 2017; and

WHEREAS, the City desires to participate in the Palm Beach County Urban County Program by entering into an Interlocal Cooperation Agreement with Palm Beach County that will enable the City to access funding under the CDBG, HOME and ESG Programs, as well as economic stimulus or disaster recovery funding that is distributed by HUD to the Palm Beach County Entitlement Jurisdiction during Fiscal Years 2015, 2016 and 2017.

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 and authorizes the Mayor to execute four (4) originals of the Interlocal Cooperation Agreement to participate in the Palm Beach County Urban County Program for Fiscal Years 2015, 2016 and 2017.

SECTION 3: Upon execution of the Resolution, one copy shall be provided to the City Manager. 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.

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

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

Mayor Pam Triolo thereupon declared this Resolution duly passed and adopted on the 17th day of June, 2014.

LAKE WORTH CITY COMMISSION

By: _____
Pam Triolo, Mayor

ATTEST:

Pamela J. Lopez, City Clerk

**INTERLOCAL COOPERATION AGREEMENT
BETWEEN PALM BEACH COUNTY
AND
CITY OF LAKE WORTH**

THIS AGREEMENT made and entered into on _____, by and between **Palm Beach County**, a political subdivision of the State of Florida, hereinafter referred to as the "County", and **City of Lake Worth**, a municipality duly organized and existing by virtue of the laws of the State of Florida, hereinafter referred to as the "Municipality".

WHEREAS, the parties hereto have the common power to perform Community Development Block Grant (CDBG) Program, Emergency Solutions Grant (ESG) Program and Home Investment Partnerships (HOME) Program activities within their jurisdictions, said common powers being pursuant to Section 125.01, Florida Statutes, and Chapter 163, Part III, Florida Statutes; and

WHEREAS, Section 163.01, Florida Statutes, known as the "Florida Interlocal Cooperation Act" authorizes local governments 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 that will harmonize geographic, economic, population and other factors influencing the needs and development of local communities; and

WHEREAS, Title I of the Housing and Community Development Act of 1974, as amended, mandates that a county must enter into interlocal cooperation agreements with municipalities in its jurisdiction for the purposes of implementing CDBG activities within said municipalities; and

WHEREAS, such interlocal cooperation agreements are also required to implement the HOME Program under Title II of the National Affordable Housing Act of 1990, as amended, and the ESG Program under the Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009 (HEARTH Act); and

WHEREAS, the County desires to join with the Municipality in order to carry out the planning and professional services necessary to implement the CDBG, ESG and HOME Programs during Federal Fiscal Years 2015, 2016 and 2017, and during subsequent Federal Fiscal Years; and

WHEREAS, the County and the Municipality agree to cooperate to undertake or assist in undertaking community renewal and lower income housing assistance activities; and

WHEREAS, the County and Municipality wish to cooperate in the implementation of the goals and objectives of the County's Consolidated Plan, as approved by the U.S. Department of Housing and Urban Development (HUD); and

WHEREAS, the Municipality desires to cooperate with the County for the purpose of implementing the CDBG, ESG and HOME Programs; and

WHEREAS, the governing bodies of the County and the Municipality have each authorized this Agreement.

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

1. This Agreement covers the CDBG, ESG and HOME Programs and pertains to funds that the County is qualified to receive from HUD under said Programs for Federal Fiscal Years 2015, 2016 and 2017 which cover the three-year urban county qualification period beginning on October 1, 2015, and ending on September 30, 2018 (hereinafter the "Qualification Period"). This Agreement shall remain in effect until the CDBG, ESG and HOME funds and program income

received (with respect to activities carried out during the Qualification Period and during any subsequent three-year qualification periods covered by any renewal of this Agreement) are expended and the funded activities are completed. Neither the Municipality nor the County may terminate, or withdraw from, this Agreement while it remains in effect.

2. This Agreement shall be automatically renewed for a three-year qualification period at the end of the Qualification Period and at the end of each subsequent qualification period unless either party provides the other party a written notice in which it elects not to participate in a new qualification period. If such notice be given, the party electing not to participate shall also send a copy of the written notice to the HUD field office with jurisdiction over the County.

The County shall, by the date specified in HUD's Urban County Qualification Notice for the next qualification period, notify the Municipality in writing of its right not to participate, and the County shall provide a copy of such written notice to the HUD field office with jurisdiction over the County by the date specified in the Urban County Qualification Notice.

3. While this Agreement is in full force and effect, during the Qualification Period and during any subsequent three-year qualification periods covered by any renewal of this Agreement, the County and the Municipality agree to amend this Agreement to incorporate any changes necessary to meet the requirements for cooperation agreements as set forth by HUD in its Urban County Qualification Notices applicable to all subsequent three-year qualification periods, and to provide HUD such amendments as provided in the Urban County Qualification Notices. Failure to comply with the aforesaid shall void the automatic renewal of this Agreement.
4. The Municipality, by executing this Agreement, understands that:
 - (a) It may not apply for any grants from appropriations under the State of Florida CDBG Program for fiscal years during the period in which it participates in the County's CDBG Program.
 - (b) It may receive a formula allocation under the HOME Program only through the County. Even if the County does not receive a HOME formula allocation, the Municipality understands that it may not receive HOME Program funds from a HOME consortium with other local governments. This, however, does not preclude the County or the Municipality from applying to the State of Florida for HOME Program funds if the State of Florida so allows.
 - (c) It may receive a formula allocation under the ESG Program only through the County. This, however, does not preclude the County or the Municipality from applying to the State of Florida for ESG Program funds if the State of Florida so allows.
5. This Agreement is contingent upon the County's qualification as an "urban county" under the CDBG Program as determined by HUD, as well as HUD's award of funds under the CDBG, ESG and HOME Programs.
6. The County and the Municipality agree to cooperate to undertake, or assist in undertaking, community renewal and lower income housing assistance activities. The County and the Municipality also agree to cooperate to enable the County to expend CDBG, ESG and HOME Program funds on eligible activities within the Municipality's jurisdiction during the Qualification Period and during any subsequent qualification periods covered by the renewal of this Agreement.
7. The Municipality shall assist and cooperate with the County in the preparation of the HUD required Consolidated Plan for the use of CDBG, ESG, and HOME Program funds. The County shall prepare the Consolidated Plan application and other necessary documents, and shall take full responsibility and assume all obligations as the applicant. The County and the Municipality agree to comply with said Consolidated Plan and implement activities as outlined in the Action Plan approved by HUD for the use of CDBG, ESG, and HOME Program funds. The

County and the Municipality agree that the County is hereby permitted to undertake or assist in undertaking essential community development and housing assistance activities within the Municipality's jurisdiction.

8. The County, through its Department of Economic Sustainability, shall assist the Municipality in undertaking all professional and administrative services necessary for the purposes of implementing activities of the CDBG, ESG and HOME Programs, including preparation of all applications and other necessary documents, planning and other administrative activities, as required.
9. Pursuant to 24 CFR 570.501(b), the Municipality is subject to the same requirements applicable to subrecipients, including the requirements of a written agreement as described in 24 CFR 570.503.
10. The Municipality may not sell, trade, or otherwise transfer all or any portion of CDBG Program funds to another metropolitan city, urban county, unit of general local government, or Indian tribe, or insular area that directly or indirectly receives CDBG Program funds in exchange for any other funds, credits or non-Federal considerations, but must use such CDBG Program funds for activities under Title I of the Housing and Community Development Act of 1974, as amended.
11. The Municipality and the County shall take all actions necessary to assure compliance with the County's certification required by Section 104(b) of Title I of the Housing and Community Development Act of 1974, as amended, regarding Title VI of the Civil Rights Act of 1964, the Fair Housing Act, and affirmatively furthering fair housing. The Municipality and the County shall comply with Section 109 of Title I of the Housing and Community Development Act of 1974, which incorporates Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975), the Americans with Disabilities Act of 1990 and other applicable laws. The County shall not fund any activities in, or in support of, the Municipality should the Municipality not affirmatively further fair housing within its jurisdiction or should the Municipality impede the County's actions to comply with the County's fair housing certification.
12. The Municipality agrees that no person shall on the grounds of race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity or expression, or genetic information, 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.
13. The Municipality has adopted, and is enforcing, a policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in non-violent civil rights demonstrations; and the Municipality has adopted, and is enforcing, a policy of enforcing applicable State and local laws against physically barring entrance to, or exit from, a facility or location which is the subject of such non-violent civil rights demonstrations within jurisdictions.
14. 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 Municipality, 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.

- 15. 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.
- 16. Nothing contained herein shall be deemed to authorize the delegation of the constitutional or statutory duties of the state, county or municipal officers.
- 17. A copy of this Agreement shall be filed with the Clerk and Comptroller in and for Palm Beach County.
- 18. Any prior agreements or contracts regarding the duties and obligations of the parties enumerated herein are hereby declared to be null and void.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officials.

(MUNICIPAL SEAL BELOW)

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

ATTEST:

By: _____
Pam Triolo, Mayor

By: _____
Pamela Lopez, City Clerk

By: W. A. Torcivia
Glen Torcivia, City Attorney

(COUNTY SEAL BELOW)

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

ATTEST: SHARON R. BOCK,
Clerk & Comptroller

By: _____
Priscilla A. Taylor, Mayor

By: _____
Deputy Clerk

Document No.: _____

Approved as to Form and
Legal Sufficiency

Approved as to Terms and Conditions
Department of Economic Sustainability

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

By: _____
Sherry Howard
Deputy Director

LEGAL CERTIFICATION BY PALM BEACH COUNTY

As Legal Counsel for Palm Beach County, Florida, I hereby state that the terms and provisions of this Agreement entered into on _____ by and between **Palm Beach County** and **City of Lake Worth** are fully authorized under State and local law, and that the Agreement provides full legal authority for Palm Beach County to undertake, or assist in undertaking, community renewal and lower income housing assistance activities.

Tammy K. Fields, Chief Assistant County Attorney
Palm Beach County, Florida



CITY OF LAKE WORTH

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

AGENDA DATE: June 17, 2014, Regular Meeting

DEPARTMENT: Finance

EXECUTIVE BRIEF

TITLE:

Resolution No. 32-2014 – third amendment to the Fiscal Year 2014 budget

SUMMARY:

The Resolution transfers existing balances from several projects to make funds available for the purpose of creating an information program for the Lake Worth 2020 project and related proposed General Obligation bond issue. The total amount of the transfers is \$50,000.

BACKGROUND AND JUSTIFICATION:

This amendment provides the funding needed to inform the citizens of Lake Worth through several methods including mailers, ads, presentation materials and handouts. The funds for this resolution are available within each of the projects either through previous transfers or prior year appropriations.

MOTION:

I move to approve/disapprove Resolution No. 32-2014 to amend the Fiscal Year 2014 budget.

ATTACHMENT(S):

Fiscal Impact Analysis – not applicable
Resolution

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RESOLUTION NO. 32-2014, A GENERAL APPROPRIATION RESOLUTION OF THE CITY OF LAKE WORTH, A MUNICIPAL CORPORATION OF THE STATE OF FLORIDA, MAKING A BUDGET AMENDMENT AND CORRESPONDING APPROPRIATIONS FOR THE CITY’S NECESSARY OPERATING EXPENSES, THE USES AND EXPENSES OF THE VARIOUS 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 2014 Annual Operating Budget pursuant to Resolution 40-2013 on September 30, 2013; and

WHEREAS, the City previously amended the FY 2014 Annual Operating Budget pursuant to Resolution 04-2014 on January 7, 2014 and Resolution 25-2014 on May 6, 2014; and

WHEREAS, the City finds it is necessary and essential to amend the FY 2014 Annual Operating Budget as set forth in this Resolution; and

WHEREAS, adoption of the FY 2014 Annual Operating Budget amendment 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 fund 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 fund 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 expenses for which an appropriation is 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”.

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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 and in exhibit "A" to Resolution 04-2014 and exhibit "A" to Resolution 25-2014, 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 17th day of July, 2014.

LAKE WORTH CITY COMMISSION

By: _____
Pam Triolo, Mayor

ATTEST:

Pamela J. Lopez, City Clerk

EXHIBIT A
 Resolution 32-2014
 City of Lake Worth
 FY 2014 3rd Budget Amendment
 Page 1 of 1

Master Infrastructure Plan

	FY 2014 Budget	FY 2014 3rd Budget Amendment	FY 2014 Amended Budget
<u>Source of Funds</u>			
Stormwater Management Infrastructure	\$1,404,640	(\$20,000)	\$1,384,640
Water Utility Service Infrastructure	4,100,864	(15,000)	4,085,864
Sewer/Wastewater Service Infrastructure	<u>2,816,672</u>	<u>(15,000)</u>	<u>2,801,672</u>
Total Source of Funds	<u>8,322,176</u>	<u>(50,000)</u>	<u>8,272,176</u>
<u>Use of Funds</u>			
Road and Street Facilities Promotional Activities	<u>10,000</u>	<u>50,000</u>	<u>60,000</u>
Total Use of Funds	<u>10,000</u>	<u>50,000</u>	<u>60,000</u>
Net impact on Fund	<u>\$8,332,176</u>	<u>\$0</u>	<u>\$8,332,176</u>



CITY OF LAKE WORTH

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

AGENDA DATE: June 17, 2014, Regular Meeting

DEPARTMENT: Community Sustainability

EXECUTIVE BRIEF

TITLE:

Amendment #5 to an agreement with Hy-Byrd Inspection Services for plans review and inspection services during Fiscal Year 2014

SUMMARY:

The Amendment authorizes Hy-Byrd Inspection Services, Inc., to continue to provide plans review and inspection services through September 30, 2014 in an amount of \$50,000.

BACKGROUND AND JUSTIFICATION:

Since August of 2012, the City has been recruiting for a Plans Reviewer/Inspector for the Building Division. The Plans Reviewer/Inspector position remains open as no applicant with the required experience and certifications to meet the minimum qualifications for the position has been successfully recruited.

For the City to maintain levels of services the contract with Hy-Byrd requires an amendment to allow for an additional expenditure for plans review and inspection services for Fiscal Year 2014.

The City conducted a good faith review and analysis of local firms offering Building Division services before entering the agreement with Hy-Byrd. The City obtained three (3) quotes from such firms and found Hy-Byrd to be well qualified, responsible, responsive, and the most affordable firm.

Consistent with section 2-112(j) of the City's Procurement Code, the City Commission may authorize the waiver of procurement procedures upon the recommendation of the City Manager that it is not practicable or advantageous for the City to do so because the goods or services cannot reasonably be acquired through the normal purchasing process due to insufficient time, the nature of the goods or services or other factors. Purchases authorized by waiver process shall be acquired after conducting a good faith review of available sources and negotiations as to price, delivery and terms. Accordingly, the City Manager recommends a waiver of the procurement procedures for the amendment to the agreement with Hy-Byrd.

MOTION:

I move to approve/disapprove an amended agreement with Hy-Byrd Inspection Services through September 30, 2014.

ATTACHMENT(S):

Fiscal Impact Analysis
Original contract for Hy-Byrd Inspection Services
First Amendment to contract
Second Amendment to contract
Third Amendment to contract
Fourth Amendment to contract
Fifth Amendment to contract

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	\$50,000	0	0	0	0
External Revenues	0	0	0	0	0
Program Income	0	0	0	0	0
In-kind Match	0	0	0	0	0
Net Fiscal Impact	\$50,000	0	0	0	0

No. of Addn'l Full-Time Employee Positions	0	0	0	0	0
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B. This agenda item will require \$50,000 to be transferred from staffing account 103-2020-515.12-10 to other contractual services account 103-2020-515.34.50, which will be done via a budget transfer. The transfer will provide for a total of \$115,000 of funding for outside contractual services for the Fiscal Year 2014. This fifth amendment provides for a not-to-exceed amount of \$115,000 for Hy-Byrd's services. This will leave a \$5,000 cushion of funds in the other contractual services account.

Hy-Byrd Inc		Building Division Services				
Account Number	Account Description	FY14 Budget	Not To Exceed	Difference	Agenda Item Expenditure	Remaining Balance
103-2020-515.34-50	Contractual Services	65,000	115,000	-50,000	50,000	5,000

C. Department Fiscal Review: _CS/WW_

PROFESSIONAL SERVICES AGREEMENT
(Inspection Services)

THIS AGREEMENT ("Agreement") is entered into by and between the City of Lake Worth, a Florida municipal corporation ("City") and HY-BYRD, INC., a Florida corporation ("Consultant").

RECITALS

WHEREAS, the City is in need of certain building official, inspection and plan review services for the period of October 1, 2012 to December 31, 2012; and,

WHEREAS, the Consultant is willing to provide appropriately licensed personnel to provide the City with the building official, inspection and plan review services for the required period; and,

WHEREAS, the purpose of this Agreement is to set forth certain terms and conditions for the provision of services by the Consultant to the City.

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained, the sufficiency of which is hereby acknowledged by the parties, the City and the Consultant agree as follows:

SECTION 1: INCORPORATION OF RECITALS. The foregoing Recitals are incorporated into this Agreement as true and correct statements.

SECTION 2: CONSULTANT'S SERVICES. As more specifically set forth in the Consultant's proposal, which is attached hereto as **EXHIBIT "A"** and incorporated herein by reference, the Consultant shall provide the City with building official, plan review and inspection services.

SECTION 3: INDEPENDENT CONTRACTOR RELATIONSHIP. No relationship of employer or employee is created by this Agreement, it being understood that Consultant will act hereunder as an independent contractor and none of the Consultant's, officers, directors, employees, independent contractors, representatives or agents performing services for Consultant pursuant to this Agreement shall have any claim under this Agreement or otherwise against the City for compensation of any kind under this Agreement. The relationship between the City and Consultant is that of independent contractors, and neither shall be considered a joint venturer, partner, employee, agent, representative or other relationship of the other for any purpose expressly or by implication.

SECTION 4: TERM AND TERMINATION.

a. **Term.** The term of this Agreement is for three (3) months commencing October 1, 2012 and ending December 31, 2012 ("Term"). The parties may agree in writing to extend the Term of this Agreement.

b. Termination without cause. Either party may terminate this Agreement at any time with or without cause by giving not less than fifteen (15) days prior written notice of termination.

c. Termination for cause. Either party may terminate this Agreement at any time in the event that the other party engages in any act or makes any omission constituting a material breach of any term or condition of this Agreement. The party electing to terminate this Agreement shall provide the other party with written notice specifying the nature of the breach. The party receiving the notice shall then have three (3) days from the date of the notice in which to remedy the breach. If such corrective action is not taken within three (3) days, then this Agreement shall terminate at the end of the three (3) day period without further notice or demand.

d. Effect of Termination. Termination of this Agreement shall not affect any rights, obligations, and liabilities of the parties arising out of transactions which occurred prior to termination. Notwithstanding the foregoing, the parties acknowledge and agree that the City is a municipal corporation and political subdivision of the state of Florida, and as such, this Agreement (and all Exhibits hereto) are subject to budgeting and appropriation by the City of funds sufficient to pay the costs associated herewith in any fiscal year of the City. Notwithstanding anything in this Agreement to the contrary, in the event that no funds are appropriated or budgeted by the City's governing board in any fiscal year to pay the costs associated with the City's obligations under this Agreement, or in the event the funds budgeted or appropriated are, or are estimated by the City to be, insufficient to pay the costs associated with the City's obligations hereunder in any fiscal period, then the City will notify Consultant of such occurrence and either the City or Consultant may terminate this Agreement by notifying the other in writing, which notice shall specify a date of termination no earlier than twenty-four (24) hours after giving of such notice. Termination in accordance with the preceding sentence shall be without penalty or expense to the City of any kind whatsoever; however, City shall pay Consultant for all services performed under this Agreement through the date of termination.

SECTION 5: COMPENSATION.

a. Payments. The City agrees to compensate the Consultant in accordance with the fee schedule set forth in **Exhibit "A"**; **provided that, the total amount to be paid the Consultant under this Agreement shall not exceed Fifteen Thousand Dollars (\$15,000.00) for the Term.** The City shall not reimburse the Consultant for any additional costs incurred as a direct or indirect result of the Consultant providing service to the City under this Agreement and not set forth in **Exhibit "A"**.

b. Invoices. The Consultant shall render weekly invoices to the City for services that have been rendered in conformity with this Agreement in the previous week. Invoices will normally be paid within thirty (30) days following the City's receipt of the Consultant's invoice.

SECTION 6: INDEMNIFICATION. The Consultant, its officers, employees and agents shall indemnify and hold harmless the City, including its officers, employees and agents from liabilities, damages, losses, and costs, including but not limited to, reasonable attorney's fees (at

the trial and appellate levels), to the extent caused by the negligence of the Consultant, its officers, directors, employees, representatives and agents employed or utilized by the Consultant in the performance of the services under this Agreement. The City agrees to be responsible for its own negligence. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the City or the Consultant, nor shall this Agreement be construed as a waiver of sovereign immunity for the City beyond the waiver provided in section 768.28, Florida Statutes.

SECTION 7: COMPLIANCE AND DISQUALIFICATION. Each of the parties agrees to perform its responsibilities under this Agreement in conformance with all laws, regulations and administrative instructions that relate to the parties' performance of this Agreement, including, without limitation, the applicable licensure requirements and the Florida Building Code.

SECTION 8: 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 authorized or permitted under federal, state and local law to perform such services.

SECTION 9: SUB-CONSULTANTS. The City reserves the right to accept the use of a sub-consultant or to reject the selection of a particular sub-consultant and approve all qualifications of any sub-consultant in order to make a determination as to the capability of the sub-consultant to perform properly under this Agreement. All sub-consultants providing professional services to the Consultant under this Agreement will also be required to provide their own insurance coverage identical to those contained in this Agreement. In the event that a sub-consultant does not have insurance or does not meet the insurance limits as stated in this Agreement, the Consultant shall indemnify and hold harmless the City for any claim in excess of the sub-consultant's insurance coverage, arising out of the negligent acts, errors or omissions of the sub-consultant.

SECTION 10: FEDERAL AND STATE TAX. The City is exempt from payment of Florida State Sales and Use Tax. The Consultant is not authorized to use the City's Tax Exemption Number.

SECTION 11: INSURANCE. Prior to commencing any services, the Consultant shall provide proof of insurance coverage as required hereunder. Such insurance policy(s) shall be issued by the United States Treasury or insurance carriers approved and authorized to do business in the State of Florida, and who must have a rating of no less than "excellent" by A.M. Best or as mutually agreed upon by the City and the Consultant. All such insurance policies may not be modified or terminated without the express written authorization of the City.

Type of Coverage

Amount of Coverage

Professional liability/
Errors and Omissions

\$1,000,000 per occurrence
\$2, 000,000 annual aggregate

Commercial general liability (Products/completed operations Contractual, insurance broad form property, Independent Consultant, personal injury)	\$1, 000,000 per occurrence \$2,000,000 annual aggregate
Excess liability	\$1,000,000
Automobile (owned, non-owned, & hired)	\$ 1,000,000 single limits
Worker's Compensation Including employer's liability insurance	\$ statutory limits \$ 500,000 per occurrence

The commercial general liability and excess liability policies will name the City as an additional insured and proof of all insurance coverage shall be furnished to the City by way of an endorsement to same or certificate of insurance prior to the provision of services. The certificates shall clearly indicate that the Consultant has obtained insurance of the type, amount, and classification as required for strict compliance with this section. Failure to comply with the foregoing requirements shall not relieve Consultant of its liability and obligations under this Agreement.

SECTION 12: SUCCESSORS AND ASSIGNS. The City and the Consultant each binds itself and its partners, successors, executors, administrators, and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement. Except as agreed in writing by all parties, this Agreement is not assignable.

SECTION 13: DISPUTE RESOLUTION, LAW, VENUE AND REMEDIES. All claims arising out of this Agreement or its breach shall be submitted first to mediation. The parties shall share the mediator's fee equally. The mediation shall be held in Palm Beach County. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. This Agreement shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce the 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 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.

SECTION 14: WAIVER OF JURY TRIAL. TO ENCOURAGE PROMPT AND EQUITABLE RESOLUTION OF ANY LITIGATION, EACH PARTY HEREBY WAIVES ITS RIGHTS TO A TRIAL BY JURY IN ANY LITIGATION RELATED TO THIS AGREEMENT.

SECTION 15: ACCESS AND AUDITS. The Consultant shall maintain adequate records to justify all payments made by the City under this Agreement for at least three (3) years after completion of this Agreement and longer if required by applicable federal or state law. The City

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 Consultant's place of business. In no circumstances will Consultant be required to disclose any confidential or proprietary information regarding its products and service costs.

SECTION 16: 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, marital status, or sexual orientation.

SECTION 17: AUTHORITY TO PRACTICE. The Consultant hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business and provide the services required under this Agreement, and that it will at all times conduct its business and provide the services under this Agreement in a reputable manner. Proof of such licenses and approvals shall be submitted to the City upon request.

SECTION 18: SEVERABILITY. If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, to remainder of this 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 Agreement shall be deemed valid and enforceable to the extent permitted by law.

SECTION 19: PUBLIC ENTITY CRIMES. Consultant acknowledges and agrees that a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier or sub-contractor under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list. The Consultant will advise the City immediately if it becomes aware of any violation of this statute.

SECTION 20: NOTICE. All notices required in this Agreement shall be sent by hand-delivery, certified mail (RRR), or by nationally recognized overnight courier, and if sent to the CITY shall be sent to:

William Waters, AIA, NCARB, LEED AP BD+C
Director for Community Sustainability
City of Lake Worth
1900 2nd Avenue North
Lake Worth, FL 33461

and if sent to the CONSULTANT, shall be sent to:

HY-BYRD, INC.
Attn: Michael Crisafulle, Vice President
511 South East Coast Street
Lake Worth, FL 33460

The foregoing names and addresses may be changed if such change is provided in writing to the other party.

SECTION 21: ENTIRETY OF AGREEMENT. The City and the Consultant agree that this 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 Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.

SECTION 22: WAIVER. Failure of a party to enforce or exercise any of its right(s) under this Agreement shall not be deemed a waiver of that parties' right to enforce or exercise said right(s) at any time thereafter.

SECTION 23: PREPARATION. This Agreement shall not be construed more strongly against either party regardless of who was more responsible for its preparation.

SECTION 24: MATERIALITY. All provisions of the Agreement shall be deemed material. In the event Consultant fails to comply with any of the provisions contained in this Agreement or exhibits, amendments and addenda attached hereto, said failure shall be deemed a material breach of this Agreement and City may at its option provide notice to the Consultant to terminate for cause.

SECTION 25: LEGAL EFFECT. This Agreement shall not become binding and effective until approved by the City. The Effective Date is the date this Agreement is executed by the City.

SECTION 26: NOTICE OF COMPLAINTS, SUITS AND REGULATORY VIOLATIONS. Each party will promptly notify the other of any complaint, claim, suit or cause of action threatened or commenced against it which arises out of or relates, in any manner, to the performance of this Agreement. Each party agrees to cooperate with the other in any investigation either may conduct, the defense of any claim or suit in which either party is named, and shall do nothing to impair or invalidate any applicable insurance coverage.

SECTION 27: SURVIVABILITY. Any provision of this Agreement which is of a continuing nature or imposes an obligation which extends beyond the term of this Agreement shall survive its expiration or earlier termination.

SECTION 28: COUNTERPARTS. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and will become effective and binding upon the parties as of the effective date at such time as all the signatories hereto have signed a

counterpart of this Agreement.

SECTION 29: PALM BEACH COUNTY IG. 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.

SECTION 30: AGREEMENT DOCUMENTS AND CONTROLLING PROVISIONS. This Agreement consists of this Agreement and its Exhibit "A". The parties agree to be bound by all the terms and conditions set forth in the aforementioned documents. 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. Wherever possible, the provisions of such documents shall be construed in such a manner as to avoid conflicts between provisions of the various documents.

SECTION 32: REPRESENTATIONS and BINDING AUTHORITY. By signing this Agreement, Michael Crisafulle hereby represents to the City that he 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 Consultant for whom he is signing and to bind and obligate such party with respect to all provisions contained in this Agreement.

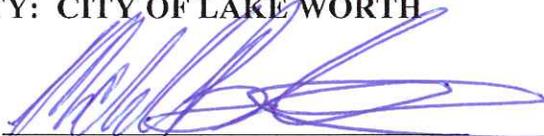
IN WITNESS WHEREOF, the parties hereto have made and executed this Professional Services Agreement as of the day and year set forth below by the City.

CONSULTANT: HY-BYRD, INC.

By: 
Michael Crisafulle, Vice President

[Corporate Seal]

CITY: CITY OF LAKE WORTH

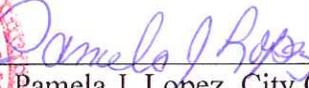
By: 
Michael Bornstein, City Manager

Date: 8/28/12

Approved as to form and legal sufficiency:

ATTEST:

By:  FR
Glen J. Torcivia, Interim City Attorney

By: 
Pamela J. Lopez, City Clerk

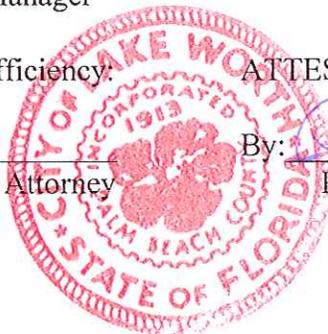


EXHIBIT "A"

RE: Fee Schedule for Building Official, Plan Review, Inspection Services
Period October 1, 2012 – December 31, 2012 –FY 2013

Building Official Duties -will be performed at the rate of \$60.00 per hour with a two hour minimum per day for requested services. This fee covers daily duties and telephone calls. Services likely will not be required every day.

Inspections will be at \$60.00 per hour with a two hour minimum per day for requested services.

Plan Reviews – will be performed at the rate of \$60.00 per hour with a two (2) hour minimum per day for requested services.

When possible, multi-certified persons will be utilized to perform the above listed duties.



HY-BYRD, INC.

INSPECTION SERVICES

511 South East Coast Street

Lake Worth, FL 33460

Office (561) 547-5701

Fax (561) 547-5726

E-mail hybyrd@bellsouth.net

Web Site [www..hybyrd.com](http://www.hybyrd.com)

Michael Crisafulle, Vice-President

BN-0000102, PX-0001050, BU-001220, SFP 000064, CBC 053661

August 6, 2012

Mr. William Waters, AIA, NCARB, LEED AP BD+C
Director for Community Sustainability
City of Lake Worth
1900 2nd Avenue North
Lake Worth, FL 33461

RE: Fee Schedule for Building Official, Plan Review, Inspection Services

Dear Mr. Waters:

Hy-Byrd is pleased to submit this fee schedule for the subject services.

Building Official Duties -will be performed at the rate of \$60.00 per hour with a two hour minimum. This fee covers daily duties and telephone calls.

Inspections will be at \$60.00 per hour with a two hour minimum.

Plan Reviews – will be performed at the rate of \$60.00 per hour with a two hour minimum.

When possible we will send a multi-certified person to perform the above listed duties.

Please feel free to call and discuss this matter.

Thank you,

Mike Crisafulle

Michael Crisafulle
Vice - President

FIRST AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT
(Inspection Services)

THIS FIRST AMENDMENT ("Amendment") is entered into by and between the City of Lake Worth, a Florida municipal corporation ("City") and HY-BYRD, INC., a Florida corporation ("Consultant").

RECITALS

WHEREAS, the City was in need of certain building official, inspection and plan review services for the period of October 1, 2012 to December 31, 2012; and,

WHEREAS, the Consultant was willing to provide appropriately licensed personnel to provide the City with the building official, inspection and plan review services for the required period; and,

WHEREAS, the City Manager approved an agreement with the Consultant for the provision of such services in an amount not to exceed \$15,000 (the "Agreement"); and,

WHEREAS, the Consultant has provided the City with building official, inspection and plan review services as required; however, the City's need for such services will exceed the \$15,000 limitation due to an unforeseen increase in the services; and,

WHEREAS, the City now desires to increase the amount of the Agreement to \$45,000; and,

WHEREAS, an increase to \$45,000 exceeds the City Manager's approval authority; and,

WHEREAS, the purpose of this Amendment is to set forth certain terms and conditions for the continued provision of services by the Consultant to the City through December 31, 2012.

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained, the sufficiency of which is hereby acknowledged by the parties, the City and the Consultant agree to amend the Agreement as follows:

1: INCORPORATION OF RECITALS. The foregoing Recitals are incorporated into this Amendment as true and correct statements.

2: AMENDMENT TO AGREEMENT. The following amendments are made to the Agreement:

SECTION 5: COMPENSATION, is amended as follows:

a. **Payments.** The City agrees to compensate the Consultant in accordance with the fee schedule set forth in Exhibit "A"; **provided that, the total amount to be paid the Consultant under this Agreement shall not exceed Forty-five Thousand Dollars (\$45,000.00) for the Term.** The City shall not reimburse the Consultant for any additional costs incurred as a direct

or indirect result of the Consultant providing service to the City under this Agreement and not set forth in **Exhibit “A”**.

SECTION 21: ENTIRETY OF AGREEMENT, is amended as follows: The City and the Consultant agree that the Agreement including this Amendment set 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 the Agreement including this Amendment may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.

3: LEGAL EFFECT. This Amendment shall not become binding and effective until approved by the City Commission. The Effective Date is the date this Agreement is executed by the Mayor.

4: COUNTERPARTS. This Amendment may be executed in one or more counterparts, each of which shall be deemed an original, and will become effective and binding upon the parties as of the effective date at such time as all the signatories hereto have signed a counterpart of this Agreement.

5: AGREEMENT DOCUMENTS AND CONTROLLING PROVISIONS. This Agreement consists of the Agreement and its Exhibit “A” and this Amendment. The parties agree to be bound by all the terms and conditions set forth in the aforementioned documents. To the extent that there exists a conflict between this Amendment and the remaining documents, the terms, conditions, covenants, and/or provisions of this Amendment shall prevail. Wherever possible, the provisions of such documents shall be construed in such a manner as to avoid conflicts between provisions of the various documents.

6: AMENDMENT. Except for the provisions of the Agreement specifically modified by this Amendment, all other terms and conditions of the Agreement shall remain in full force and effect.

THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK
SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the parties hereto have made and executed this First Amendment to Professional Services Agreement as of the day and year set forth below by the City.

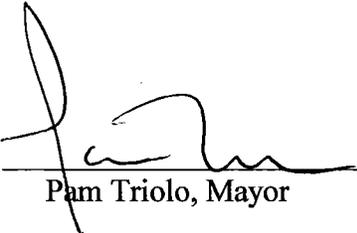
CONSULTANT: HY-BYRD, INC.

By: 
Michael Crisafulle, Vice President

[Corporate Seal]

CITY: CITY OF LAKE WORTH

December 6, 2012
Date

By: 
Pam Triolo, Mayor

ATTEST

Reviewed and Approved for Execution:


Pamela J. Lopez, City Clerk


Michael Bornstein, City Manager

Approved as to form and legal sufficiency

 FOR
Glen J. Torcivia, Interim City Attorney

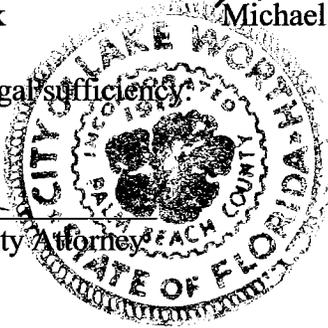


EXHIBIT "A"

RE: Fee Schedule for Building Official, Plan Review, Inspection Services
Period October 1, 2012 – December 31, 2012 –FY 2013

Building Official Duties -will be performed at the rate of \$60.00 per hour with a two hour minimum per day for requested services. This fee covers daily duties and telephone calls. Services likely will not be required every day.

Inspections will be at \$60.00 per hour with a two hour minimum per day for requested services.

Plan Reviews – will be performed at the rate of \$60.00 per hour with a two (2) hour minimum per day for requested services.

When possible, multi-certified persons will be utilized to perform the above listed duties.

SECOND AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT
(Inspection Services)

THIS SECOND AMENDMENT ("Amendment") is entered into by and between the City of Lake Worth, a Florida municipal corporation ("City") and HY-BYRD, INC., a Florida corporation ("Consultant").

RECITALS

WHEREAS, the City was in need inspection and plan review services for the period of October 1, 2012 to December 31, 2012 and,

WHEREAS, the Consultant was willing to provide appropriately licensed personnel to provide the City with the inspection and plan review services for the required period; and,

WHEREAS, the City Manager approved an agreement with the Consultant for the provision of such services in an amount not to exceed \$15,000 (the "Agreement"); and,

WHEREAS, the Consultant has provided the City with inspection and plan review services as required; however, the City's need for such services will exceed the \$45,000 limitation due to an unforeseen, continued need for the services; and,

WHEREAS, the City now desires to increase the amount of the Agreement to \$70,000; and,

WHEREAS, an increase to \$70,000 exceeds the City Manager's approval authority; and,

WHEREAS, the purpose of this Amendment is to set forth certain terms and conditions for the continued provision of services by the Consultant to the City through September 30, 2013.

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained, the sufficiency of which is hereby acknowledged by the parties, the City and the Consultant agree to amend the Agreement as follows:

1: INCORPORATION OF RECITALS. The foregoing Recitals are incorporated into this Amendment as true and correct statements.

2: AMENDMENT TO AGREEMENT. The following amendments are made to the Agreement:

SECTION 5: COMPENSATION, is amended as follows:

a. **Payments.** The City agrees to compensate the Consultant in accordance with the fee schedule set forth in Exhibit "A"; **provided that, the total amount to be paid the Consultant under this Agreement shall not exceed Seventy Thousand Dollars (\$70,000.00) for the Term.** The scope of services shall be limited to inspection and plan review services. The City shall not reimburse the Consultant for any additional costs incurred as a direct or indirect result of the Consultant providing service to the City under this Agreement and not set forth in **Exhibit**

“A”.

SECTION 21: ENTIRETY OF AGREEMENT, is amended as follows: The City and the Consultant agree that the Agreement including this Amendment and any prior amendments set 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 the Agreement including this Amendment and any prior amendments may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.

3: LEGAL EFFECT. This Amendment shall not become binding and effective until approved by the City Commission. The Effective Date is the date this Agreement is executed by the Mayor.

4: COUNTERPARTS. This Amendment may be executed in one or more counterparts, each of which shall be deemed an original, and will become effective and binding upon the parties as of the effective date at such time as all the signatories hereto have signed a counterpart of this Agreement.

5: AGREEMENT DOCUMENTS AND CONTROLLING PROVISIONS. This Agreement consists of the Agreement and its Exhibit “A”, any prior amendments and this Amendment. The parties agree to be bound by all the terms and conditions set forth in the aforementioned documents. To the extent that there exists a conflict between this Amendment and the remaining documents, the terms, conditions, covenants, and/or provisions of this Amendment shall prevail. Wherever possible, the provisions of such documents shall be construed in such a manner as to avoid conflicts between provisions of the various documents.

6: AMENDMENT. Except for the provisions of the Agreement specifically modified by this Amendment, all other terms and conditions of the Agreement shall remain in full force and effect.

THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK
SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the parties hereto have made and executed this Second Amendment to Professional Services Agreement as of the day and year set forth below by the City.

CONSULTANT: HY-BYRD, INC.

By: 
Michael Crisafulle, Vice President
[Corporate Seal]

CITY: CITY OF LAKE WORTH

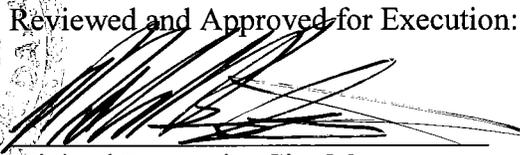
1/18/13
Date

By: 
Pam Triolo, Mayor

ATTEST


Pamela J. Lopez, City Clerk



Reviewed and Approved for Execution:

Michael Bornstein, City Manager

Approved as to form and legal sufficiency:


Glen J. Torcivia, Interim City Attorney

EXHIBIT "A"

RE: Fee Schedule for Building Official, Plans Review and Inspection Services
Period September 1, 2012 – September 30, 2013 –FY 2013

Building Official Duties - will be performed at the rate of \$60.00 per hour with a two hour minimum per day for requested services. This fee covers daily duties and telephone calls. Services likely will not be required every day (if needed).

Inspections will be at \$60.00 per hour with a two hour minimum per day for requested services.

Plan Reviews – will be performed at the rate of \$60.00 per hour with a two (2) hour minimum per day for requested services.

When possible, multi-certified persons will be utilized to perform the above listed duties.

THIRD AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT
(Inspection Services)

THIS THIRD AMENDMENT (“Third Amendment”) is entered into by and between the City of Lake Worth, a Florida municipal corporation (“City”) and HY-BYRD, INC., a Florida corporation (“Consultant”).

RECITALS

WHEREAS, the City was initially in need of building official, inspection and plan review services for the period of October 1, 2012 to December 31, 2012; and,

WHEREAS, the Consultant was willing to provide appropriately licensed personnel to provide the services to the City for the required period; and,

WHEREAS, the City Manager approved an agreement with the Consultant for the provision of such services in an amount not to exceed \$15,000 (the “Agreement”); and,

WHEREAS, the City’s needs for the Consultant’s services increased and the City Commission approved two amendments to the Agreement to increase the not to exceed amount of the Agreement to \$45,000 (the “First Amendment”) and then to increase the not to exceed amount to \$70,000 (the “Second Amendment”);

WHEREAS, in the Second Amendment the City also extended the timeframe for services to September 30, 2013;

WHEREAS, the City now desires to increase the not to exceed amount of the Agreement to \$120,000 due to a continued increase in the City’s needs for the Consultant’s services; and,

WHEREAS, the City Commission is authorized to contract directly with the Consultant and increase the not to exceed amount without a competitive solicitation process under the City’s existing procurement code; and,

WHEREAS, the purpose of this Third Amendment is to set forth certain terms and conditions for the continued provision of services by the Consultant to the City through September 30, 2013.

WHEREAS, the purpose of this Agreement is to set forth certain terms and conditions for the continued provision of services by the Consultant to the City through September 30, 2013.

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained, the sufficiency of which is hereby acknowledged by the parties, the City and the Consultant agree as follows:

1: INCORPORATION OF RECITALS. The foregoing Recitals are incorporated into this Third Amendment as true and correct statements.

2: AMENDMENT TO AGREEMENT. The following amendments are made to the Agreement:

SECTION 5: COMPENSATION, is amended as follows:

- a. Payments. The City agrees to compensate the Consultant in accordance with the fee schedule set forth in **Exhibit "A"**; **provided that, the total amount to paid the Consultant under this Agreement shall not exceed One Hundred Twenty Thousand Dollars (\$120,000) for the Term**. The scope of services shall be limited to inspection and plan review services. The City shall not reimburse the Consultant for any additional costs incurred as a direct or indirect result of the consultant providing service to the City under this Agreement and not set forth in **Exhibit "A"**;

SECTION 21: ENTIRETY OF AGREEMENT is amended as follows: The City and the Consultant agree that the Agreement including this Third Amendment and any prior amendments set 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 the Agreement including this Third Amendment and prior amendments may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.

3: LEGAL EFFECT. This Third Amendment shall not become binding and effective until approved by the City Commission. The Effective Date is the date this Third Amendment is executed by the Mayor.

4: COUNTERPARTS. This Third Amendment may be executed in one or more counterparts, each of which shall be deemed an original, and will become effective and binding upon the parties as of the effective date at such time as all the signatories hereto have signed a counterpart of this Agreement.

5: AGREEMENT DOCUMENTS AND CONTROLLING PROVISIONS. The Agreement consists of the Agreement and its **Exhibit "A"**, and prior amendment and this Third Amendment. The parties agree to be bound by all the terms and conditions set forth in the aforementioned documents. To the extent that there exists a conflict between this Third Amendment and the remaining documents, the terms, conditions, covenants, and/or provisions of this Third Amendment shall prevail. Wherever, possible, the provisions of such documents shall be construed in such a manner as to avoid conflicts between provisions of the various documents.

6: AMENDMENT. Except for the provisions of the Agreement specifically modified by this Third Amendment, all other terms and conditions of the Agreement shall remain in full force and effect.

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SIGNATURE PAGE FOLLOWS

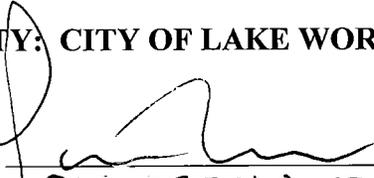
IN WITNESS WHEREOF, the parties hereto have made and executed this Professional Services Agreement as of the day and year set forth below by the City.

CONSULTANT: HY-BYRD, INC.

By: 
Michael Crisafulle, Vice President

[Corporate Seal]

CITY: CITY OF LAKE WORTH

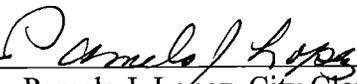
By: 
PAM TRIOLO, Mayor

Date: June 5, 2013

Approved as to form and legal sufficiency:

By: 
Glen J. Torcivia, Interim City Attorney

ATTEST:

By: 
Pamela J. Lopez, City Clerk

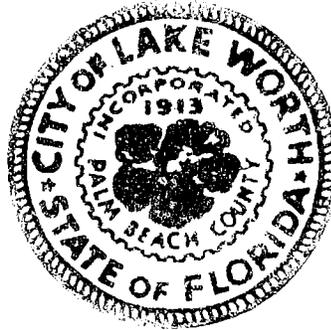


EXHIBIT "A"

RE: Fee Schedule for Building Official, Plan Review, Inspection Services
Period October 1, 2012 – December 31, 2012 –FY 2013

Building Official Duties -will be performed at the rate of \$60.00 per hour with a two hour minimum per day for requested services. This fee covers daily duties and telephone calls. Services likely will not be required every day.

Inspections will be at \$60.00 per hour with a two hour minimum per day for requested services.

Plan Reviews – will be performed at the rate of \$60.00 per hour with a two (2) hour minimum per day for requested services.

When possible, multi-certified persons will be utilized to perform the above listed duties.

FOURTH AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT
(Inspection Services)

THIS FOURTH AMENDMENT (“Fourth Amendment”) is entered into by and between the City of Lake Worth, a Florida municipal corporation (“City”) and HY-BYRD, INC., a Florida corporation (“Consultant”).

RECITALS

WHEREAS, the City was initially in need of building official, inspection and plan review services for the period of October 1, 2012 to December 31, 2012; and,

WHEREAS, the Consultant was willing to provide appropriately licensed personnel to provide the services to the City for the required period; and,

WHEREAS, the City Manager approved an agreement with the Consultant for the provision of such services in an amount not to exceed \$15,000 (the “Agreement”); and,

WHEREAS, the City’s needs for the Consultant’s services increased and the City Commission approved two amendments to the Agreement to increase the not to exceed amount of the Agreement to \$45,000 (the “First Amendment”) and then to increase the not to exceed amount to \$70,000 (the “Second Amendment”);

WHEREAS, in the Second Amendment the City also extended the timeframe for services to September 30, 2013;

WHEREAS, in the Third Amendment the City increased the not to exceed amount of the Agreement to \$120,000 due to a continued increase in the City’s needs for the Consultant’s services; and,

WHEREAS, the City has experienced further increases in the needs for the Consultant’s services; and,

WHEREAS, the City needs to extend the term of the Agreement and increase the amount of the Agreement in order to meet the increased need for the Consultant’s services; and,

WHEREAS, the Consultant has provided a proposal to the City with the hourly rates for Consultant’s services which are consistent with the hourly rates under the original Agreement and which City staff have determined are fair and reasonable; and,

WHEREAS, the City Commission is authorized to contract directly with the Consultant pursuant to section 2-112(c)(6) of the City’s code and increase the not to exceed amount without a competitive solicitation process; and,

WHEREAS, the purpose of this Fourth Amendment is to set forth certain terms and conditions for the continued provision of services by the Consultant to the City through September 30, 2014.

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained, the sufficiency of which is hereby acknowledged by the parties, the City and the Consultant agree as follows:

1: INCORPORATION OF RECITALS. The foregoing Recitals are incorporated into this Fourth Amendment as true and correct statements.

2: AMENDMENT TO AGREEMENT. The following amendments are made to the Agreement:

SECTION 4: TERM AND TERMINATION.

- a. Term. The term of this Agreement is now extended from October 1, 2013 to September 30, 2014 (“Term” hereafter in this Fourth Amendment).

SECTION 5: COMPENSATION, is amended as follows:

- a. Payments. They City agrees to compensate the Consultant in accordance with the fee schedule set forth in **Exhibit “A”**; **provided that, the total amount to paid the Consultant under this Agreement shall not exceed Sixty-Five Thousand Dollars (\$65,000) for the Term of October 1, 2013 to September 30, 2014.** The scope of services shall be limited to building official, inspection and plan review services. The City shall not reimburse the Consultant for any additional costs incurred as a direct or indirect result of the consultant providing service to the City under this Agreement and not set forth in **Exhibit “A”**;

SECTION 21: ENTIRETY OF AGREEMENT is amended as follows: The City and the Consultant agree that the Agreement including this Fourth Amendment and any prior amendments set 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 the Agreement including this Fourth Amendment and prior amendments may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.

3: LEGAL EFFECT. This Fourth Amendment shall not become binding and effective until approved by the City Commission. The Effective Date is the date this Fourth Amendment is executed by the Mayor.

4: COUNTERPARTS. This Fourth Amendment may be executed in one or more counterparts, each of which shall be deemed an original, and will become effective and binding upon the parties as of the effective date at such time as all the signatories hereto have signed a counterpart of this Fourth Amendment.

5: AGREEMENT DOCUMENTS AND CONTROLLING PROVISIONS. The Agreement consists of the Agreement and its **Exhibit “A”**, and prior amendment and this Fourth Amendment. The parties agree to

be bound by all the terms and conditions set forth in the aforementioned documents. To the extent that there exists a conflict between this Fourth Amendment and the remaining documents, the terms, conditions, covenants, and/or provisions of this Fourth Amendment shall prevail. Wherever, possible, the provisions of such documents shall be construed in such a manner as to avoid conflicts between provisions of the various documents.

6: AMENDMENT. Except for the provisions of the Agreement specifically modified by this Fourth Amendment, all other terms and conditions of the Agreement shall remain in full force and effect.

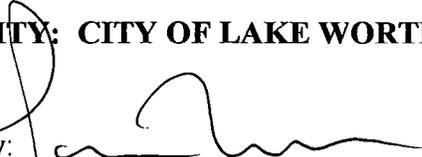
IN WITNESS WHEREOF, the parties hereto have made and executed this Fourth Amendment as of the day and year set forth below by the City.

CONSULTANT: HY-BYRD, INC.

By: 
Michael Crisafulli, Vice President

[Corporate Seal]

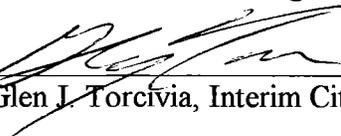
CITY: CITY OF LAKE WORTH

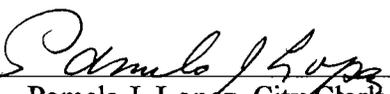
By: 
~~Michael Bornstein, City Manager~~
PAM TRIOLO, Mayor

Date: Sept. 17, 2013

Approved as to form and legal sufficiency:

ATTEST:

By: 
Glen J. Torcivia, Interim City Attorney

By: 
Pamela J. Lopez, City Clerk

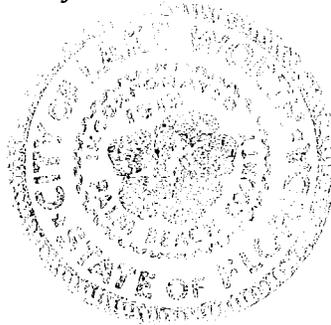


EXHIBIT "A"

Inspections - will be performed at the rate of \$60.00 per hour with a minimum of two hours.

Plan Reviews – will be performed at the rate of \$60.00 per hour with a minimum of two hours.

Building Official Duties - will be performed at the rate of \$60.00 per hour with a minimum of two hours
on
an as needed basis.

FIFTH AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT
(Inspection Services)

THIS FIFTH AMENDMENT (“Fifth Amendment”) is entered into by and between the City of Lake Worth, a Florida municipal corporation (“City”) and HY-BYRD, INC., a Florida corporation (“Consultant”).

RECITALS

WHEREAS, the City was initially in need of building official, inspection and plan review services for the period of October 1, 2012 to December 31, 2012; and,

WHEREAS, the Consultant was willing to provide appropriately licensed personnel to provide the services to the City for the required period; and,

WHEREAS, the City Manager approved an agreement with the Consultant for the provision of such services in an amount not to exceed \$15,000 (the “Agreement”); and,

WHEREAS, the City’s needs for the Consultant’s services increased and the City Commission approved four amendments to the Agreement to increase the not to exceed amount of the Agreement to \$45,000 (the “First Amendment”), then to increase the not to exceed amount to \$70,000 (the “Second Amendment”), another to increase the not to exceed amount to \$120,000 (the “Third Amendment”) and the last to increase the not to exceed amount to \$70,000 (the “Fourth Amendment”); and,

WHEREAS, in the Second Amendment the City also extended the timeframe for services to September 30, 2013; and,

WHEREAS, in the Fourth Amendment the City further extended the timeframe for services to September 30, 2014; and,

WHEREAS, the City has experienced further increases in the needs for the Consultant’s services; and,

WHEREAS, the City needs to increase the amount of the Agreement in order to meet the increased need for the Consultant’s services through September 30, 2014; and,

WHEREAS, the Consultant has provided a proposal to the City with the hourly rates for Consultant’s services which are consistent with the hourly rates under the original Agreement and which City staff have determined are fair and reasonable; and,

WHEREAS, the City Commission is authorized to contract directly with the Consultant pursuant to section 2-112(c)(6) of the City’s code and increase the not to exceed amount without a competitive solicitation process; and,

WHEREAS, the purpose of this Fifth Amendment is to set forth certain terms and conditions for the continued provision of services by the Consultant to the City through September 30, 2014.

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained, the sufficiency of which is hereby acknowledged by the parties, the City and the Consultant agree as follows:

1: INCORPORATION OF RECITALS. The foregoing Recitals are incorporated into this Fifth Amendment as true and correct statements.

2: AMENDMENT TO AGREEMENT. The following amendments are made to the Agreement:

SECTION 5: COMPENSATION, is amended as follows:

- a. Payments. They City agrees to compensate the Consultant in accordance with the fee schedule set forth in **Exhibit "A"**; **provided that, the total amount to paid the Consultant under this Agreement shall not exceed One Hundred and Fifteen Thousand Dollars (\$115,000) for the Term of October 1, 2013 to September 30, 2014.** The scope of services shall be limited to building official, inspection and plan review services. The City shall not reimburse the Consultant for any additional costs incurred as a direct or indirect result of the consultant providing service to the City under this Agreement and not set forth in **Exhibit "A"**;

SECTION 21: ENTIRETY OF AGREEMENT is amended as follows: The City and the Consultant agree that the Agreement including this Fifth Amendment and any prior amendments set 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 the Agreement including this Fifth Amendment and prior amendments may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.

3: LEGAL EFFECT. This Fifth Amendment shall not become binding and effective until approved by the City Commission. The Effective Date is the date this Fifth Amendment is executed by the Mayor.

4: COUNTERPARTS. This Fifth Amendment may be executed in one or more counterparts, each of which shall be deemed an original, and will become effective and binding upon the parties as of the effective date at such time as all the signatories hereto have signed a counterpart of this Fifth Amendment.

5: AGREEMENT DOCUMENTS AND CONTROLLING PROVISIONS. The Agreement consists of the Agreement and its **Exhibit "A"**, and prior amendment and this Fifth Amendment. The parties agree to be bound by all the terms and conditions set forth in the aforementioned documents. To the extent that there exists a conflict between this Fifth Amendment and the remaining documents, the terms, conditions, covenants, and/or provisions of this Fifth Amendment shall prevail. Wherever, possible, the provisions of such documents shall be construed in such a manner as to avoid conflicts between provisions of the various documents.

6: AMENDMENT. Except for the provisions of the Agreement specifically modified by this Fifth Amendment, all other terms and conditions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have made and executed this Fifth Amendment as of the day and year set forth below by the City.

CONSULTANT: HY-BYRD, INC.

By: 
Michael Crisafulle, Vice President

[Corporate Seal]

CITY: CITY OF LAKE WORTH

By: _____
Pam Triolo, Mayor

Date: _____

Approved as to form and legal sufficiency:

ATTEST:

By:  FOR
Glen J. Torcivia, City Attorney

By: _____
Pamela J. Lopez, City Clerk

EXHIBIT "A"

Inspections - will be performed at the rate of \$60.00 per hour with a minimum of two hours.

Plan Reviews – will be performed at the rate of \$60.00 per hour with a minimum of two hours.

Building Official Duties - will be performed at the rate of \$60.00 per hour with a minimum of two hours on an as needed basis.



CITY OF LAKE WORTH

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

AGENDA DATE: June 17, 2014, Regular Meeting

DEPARTMENT: Public Services

EXECUTIVE BRIEF

TITLE:

Variance Agreement with Luis and Magling Gonzalez to allow brick pavers on a driveway and City right-of-way at 1837 Terrace Drive East

SUMMARY:

The Agreement will allow for the encroachment of brick pavers into the City right-of-way and protect the City from any future liability.

BACKGROUND AND JUSTIFICATION:

Per the City Code, Section 19-26(d), all driveway approaches and walkways are to be constructed of six inch concrete unless a variance stating otherwise is allowed by the Building Official. Based on the requirements, Public Services Staff does not recommend approval of pavers because it is not financially beneficial to the City due to the required maintenance over the life of the paver section.

On May 27, 2014, the Building Official authorized the variance; however, in order to protect the City from any liability (or if the City needs to remove the pavers for future work or any other reason), a variance agreement will hold the City harmless and not require replacement of the pavers in the right-of-way. Upon completion of any improvements in the right-of-way, the City would then perform a repair with concrete or the pavers could be reinstalled at the owner's expense.

MOTION:

I move to approve/disapprove a Variance Agreement with Luis Gonzalez and Magling Gonzalez on property located at 1837 Terrace Drive East.

ATTACHMENT(S):

Fiscal Impact Analysis – not applicable
Agreement

Prepared by: City Attorney
Return to: City of Lake Worth
7 North Dixie Highway
Lake Worth, FL 33460-3787

VARIANCE AGREEMENT

THIS VARIANCE AGREEMENT (hereafter "Agreement") is made and entered into this _____ day of _____, 2014, by and between Property Owners Luis Gonzalez and Magling Gonzalez, (hereafter collectively the "OWNERS") and the CITY OF LAKE WORTH, a municipal corporation under the laws of the State of Florida (hereafter "CITY").

WITNESSETH:

WHEREAS, the OWNERS are the fee simple owners of the property legally described as follows:

Lot 26 Block 5, Lake Clarke Terrace, according to the Plat thereof, as recorded in Plat Book 26, Page 217, of the Public Records of Palm Beach County, Florida (P.C.N. 38-43-44-16-15-005-0260)

more commonly known as 1837 Terrace Drive East., Lake Worth, Florida (the "Property" hereafter); and

WHEREAS, the OWNERS are seeking to remodel their existing driveway and to construct a driveway consisting of interlocking brick pavers, a portion of which encroaches on the CITY's public right of way (hereinafter referred to as the "Driveway"); and

WHEREAS, the Driveway proposed by the OWNERS is such that part of the Driveway is to be constructed on OWNERS' property and part of the Driveway is to be constructed upon or located in the CITY's right of way; and

WHEREAS, a copy of the Right of Way/Utility Permit Application for the Property with a survey of the existing and proposed driveway and explanation of the construction of the Driveway is attached hereto as Exhibit A and incorporated by reference; and

WHEREAS, a portion the OWNERS' Driveway is located in the CITY's right of way and does not meet the minimum requirements of Section 19-26(d) of the CITY's

Code of Ordinances which require all driveway approaches and walkways to be constructed of 6-inch thick concrete; and

WHEREAS, the OWNERS are seeking a variance to allow the use of brick pavers with compacted base rock as paving material for the portion of the Driveway which is located in the CITY's right of way rather than the 6-inch thick concrete required by the City Code; and

WHEREAS, OWNERS' Driveway encroaches upon part of a CITY right of way on Terrace Drive East, which consists of a fifteen (15) foot setback, as depicted in Exhibit A.

WHEREAS, the OWNERS and CITY desire to enter into this Agreement in order to memorialize and document the CITY'S authorization of a variance from Section 19-26(d) of the Code, as well as to set parameters for the removal, relocation and/or restoration of the Driveway if reasonably necessary and set forth indemnification and insurance requirements for said Driveway; and

WHEREAS, the CITY finds that the OWNERS Driveway is not unduly injurious to contiguous property or the surrounding neighborhood or otherwise detrimental to the public welfare; and

NOW THEREFORE, for and in consideration of the mutual covenants and promises hereinafter contained, the sufficiency of which is acknowledged by the CITY and OWNERS, the CITY and OWNERS agree to the granting of a variance based on the following:

1. The above "Whereas" clauses are true and correct and incorporated into this Agreement as if set forth herein.

2. The CITY hereby grants approval for the OWNER to construct and maintain the Driveway at the Property as set forth in Exhibit A, which consists of a brick paver driveway with base rock installed by a licensed contractor, but expressly reserves the right to require the OWNERS to remove and/or reconstruct the Driveway, or restore the portion of the Driveway located within the CITY's right of way to its original condition for any reasonable purpose, which the reasonableness of such purpose shall be determined in the CITY's sole discretion.

3. The OWNERS acknowledges and agrees that they will act entirely at their own peril in constructing the Driveway and the OWNERS shall have no claim, recourse

or other grounds for relief against CITY as a result of any damages arising out of, or related to, the Driveway and/or its removal, reconstruction or restoration.

4. The OWNERS agree that they shall maintain that portion of the Driveway encroaching on CITY's right of way and abate all hazards associated with the Driveway in a manner satisfactory to the CITY and, if they fail to do so, the CITY shall have the right to: (a) terminate this Agreement and have the Driveway located in the CITY's right of way removed; and/or (b) maintain that portion of the Driveway in the CITY's right of way and the cost for such maintenance shall be assessed against the OWNERS and shall become a lien on the Property if not paid within thirty (30) days after such assessment.

5. The OWNERS further agree that they shall remove and/or reconstruct, at their own expense, the Driveway from the CITY's right of way within thirty (30) days written notice from the CITY to remove, reconstruct and/or restore the Driveway.

6. The OWNERS shall indemnify, defend and hold harmless, to the maximum extent permitted by law, the CITY and its officers, agents, employees and representatives, from and against any and all liability, suit, actions, proceedings, judgments, claims, losses, liens, damages, injuries (whether in contract or in tort, including personal injury, accidental death or property damage, and regardless, of whether the allegations are false, fraudulent or groundless), costs and expenses (including attorney's fees in all litigation, arbitration, mediation and appeals) to the extent arising out of or related to the Driveway and this Agreement including without limitation the CITY's grant or revocation of the variance for the Driveway, the use of alternative construction materials and any negligence in the construction or maintenance of the Driveway. This indemnification is separate and apart from, and in no way limited by, any insurance provided by OWNERS pursuant to this Agreement or otherwise. This section shall survive the termination of this Agreement with respect to any damage, injury or death occurring prior to such termination.

7. The OWNERS and the CITY mutually agree that this Agreement so materially touches and concerns the Property that this Agreement is intended to and does run with the land and shall bind the OWNERS, the OWNERS' heirs, successors and assigns and anyone with any interest whatsoever in the Property and that this Agreement shall be recorded in the Public Records of Palm Beach County, Florida.

8. The CITY shall provide all notices required under this Agreement to the OWNERS via hand-delivery or certified mail (return receipt requested) to the Property's physical address as set forth above. Said notice shall be effective on the date of delivery.

9. 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.

10. 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.

11. 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. 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.

12. This Agreement shall not be construed more strongly against either party regardless of who was more responsible for its preparation.

13. Except as may be required in paragraph 6 above, 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 Agreement's execution, validity, the obligations provided therein, or performance of this Agreement, or because of an alleged breach, default or misrepresentation in connection with any provisions of this Agreement.

REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK
SIGNATURE PAGE FOLLOWS

VARIANCE AGREEMENT
1837 Terrace Drive East, LAKE WORTH, FLORIDA
PAGE 5 of 7

EXHIBIT A – COPY OF SURVEY (ATTACHED)

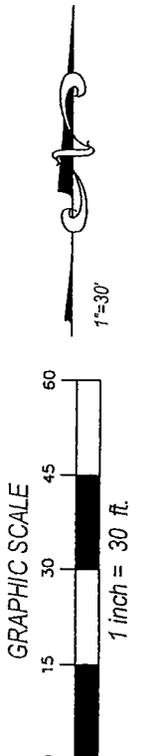
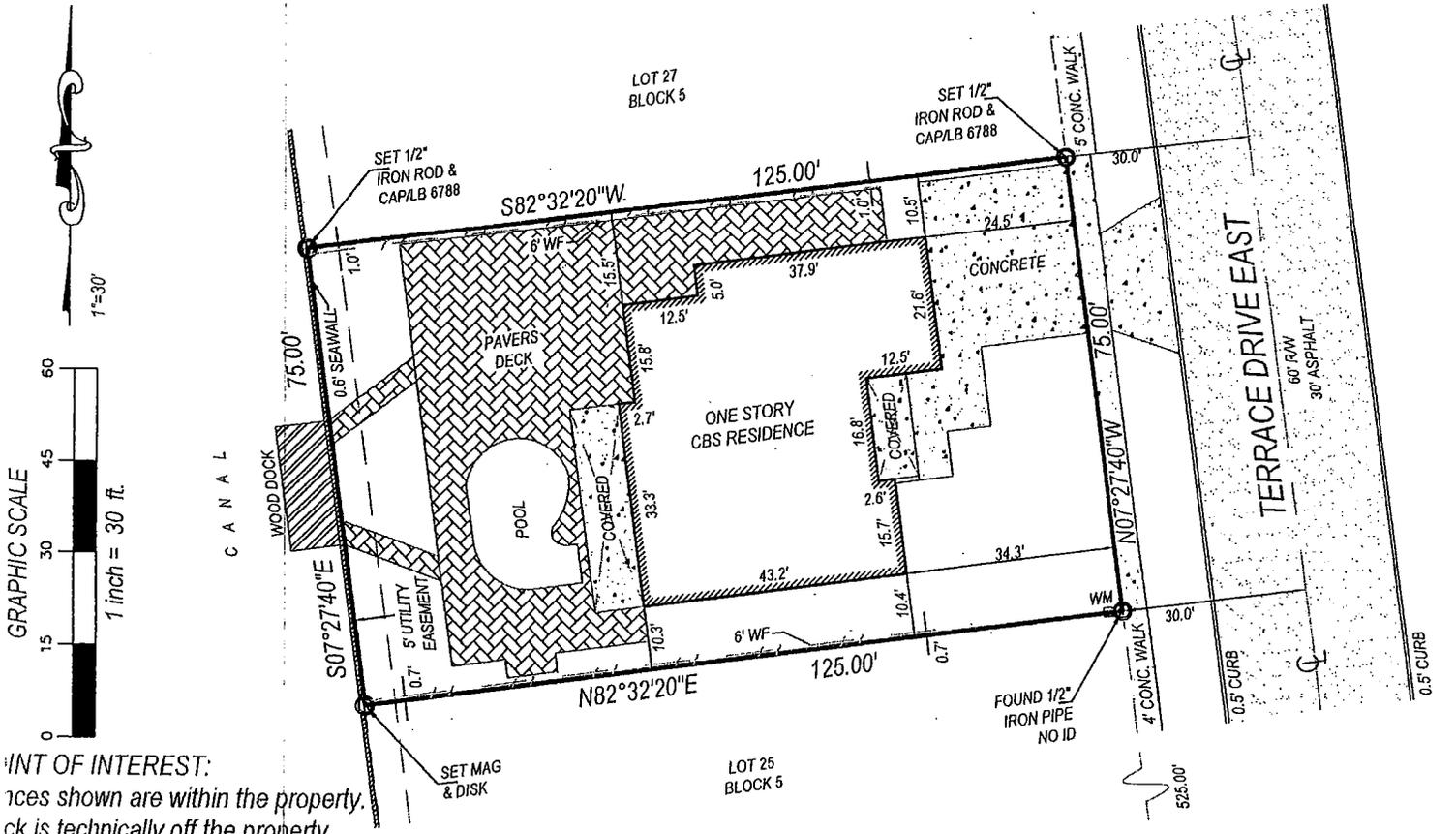
PROPERTY ADDRESS:
183rd TERRACE DRIVE EAST
LAKE WORTH, FL 33460

FLOOD ZONE: "A7 AND B"
PANEL: 120213 0001C
DATE: 9-30-1982

CERTIFIED TO:
LUIS AND MAGLING GONZALEZ

LEGAL DESCRIPTION:
LOT 26, BLOCK 5, LAKE CLARKE TERRACE, ACCORDING TO THE PLAT THEREOF ON FILE IN THE OFFICE OF THE CLERK OF THE CIRCUIT COURT IN AND FOR PALM BEACH COUNTY, FLORIDA, RECORDED IN PLAT BOOK 26, PAGE 217. SAID LANDS SITUATE, LYING AND BEING IN PALM BEACH COUNTY, FLORIDA.

FIELD DATE: 10-16-13



POINTS OF INTEREST:
(Distances shown are within the property.
Wood dock is technically off the property.
Point of curvature is outside of the deeded property.)

ABBREVIATIONS

- CL CENTERLINE
- R/W RIGHT-OF-WAY
- WF WOOD FENCE
- CONC CONCRETE
- COV COVERED
- WM WATER METER
- CBS CONCRETE BLOCK STRUCTURE

Boundary Survey

3100767	BOUNDARY SURVEY	JPM	CD	10-16-13
008	PURPOSE	FIELD	DRAFT	DATE

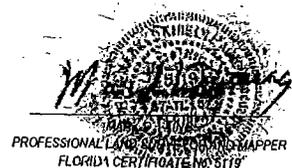
SURVEYOR'S NOTES:
I HEREBY CERTIFY this survey meets Minimum Technical Standards pursuant to Section 472.027, Florida Statutes.
The survey map and report and the copies thereof are not valid without the signature and the original raised seal of a Florida licensed surveyor and mapper.
Underground or obscured improvements were not located.
Dimensions are record and field unless otherwise noted.
Scaled dimensions take precedence over scaled dimensions.
This firm's Certificate of Authorization Number is LB 6788.
Additions or deletions to survey maps or reports by other than the signing party or parties is prohibited without written consent of the signing party or parties.
Survey subject to reservations, restrictions, easements and rights-of-way record. (This survey has been completed in the absence of a title insurance policy).
Location map is gleaned from online mapping sites and is only approximate.

10% OFF
POOL - FENCE - ADDITION
ANY FUTURE
SURVEYING
SERVICES
ON THIS PROPERTY
FOR ABOVE
NAMED CLIENT

10-16-13
DATE



POINT OF CURVATURE

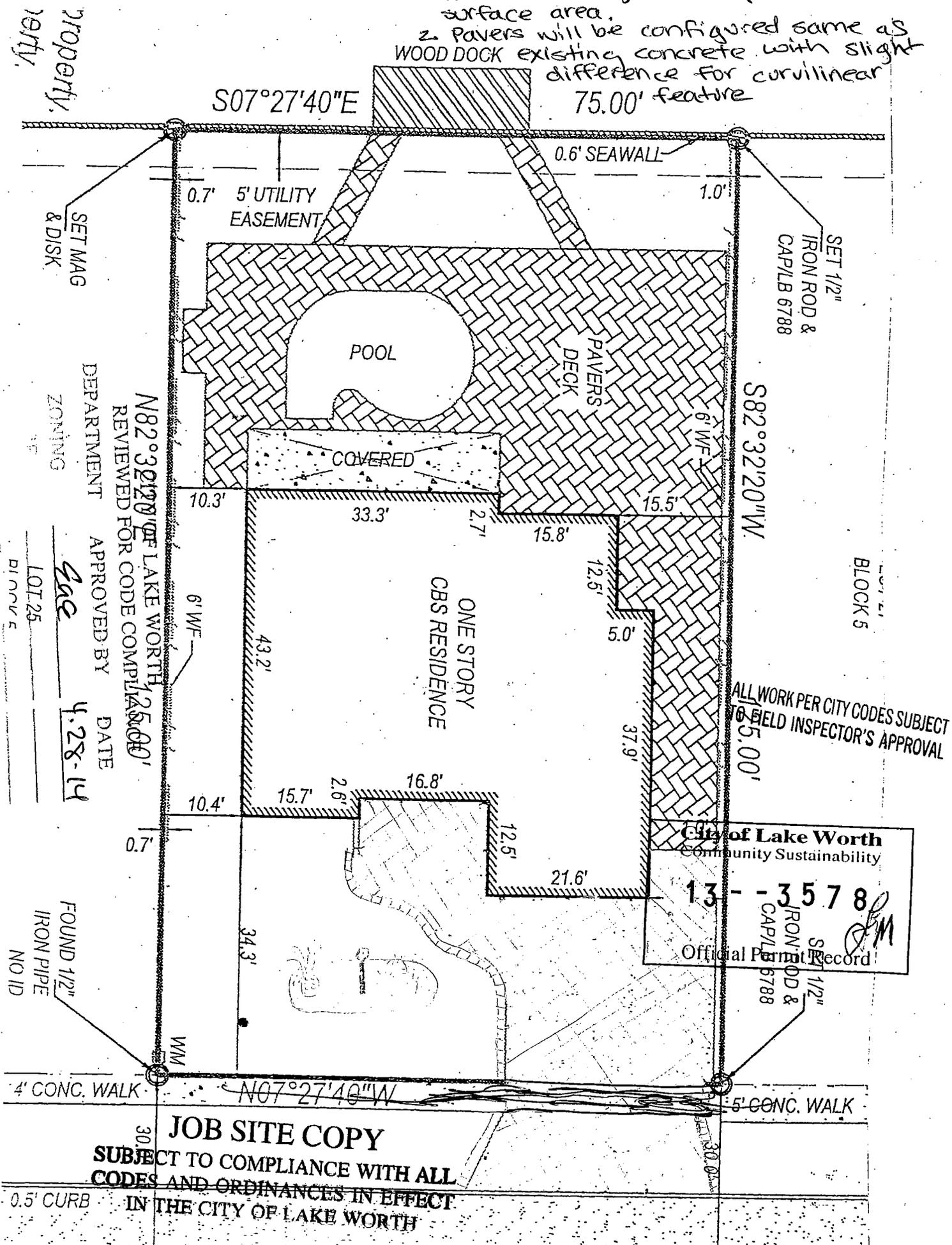


PM SURVEYING
4546 CAMBRIDGE STREET
WEST PALM BEACH, FL 33415
OFFICE 561-478-7764
FAX 561-478-1094

Please visit us on the web @ www.pmsurveying.net

NOTES:

1. Proposed pavers will be sand set, thus reducing the impermeable surface area.
2. Pavers will be configured same as WOOD DOCK existing concrete with slight difference for curvilinear 75.00' feature



SET MAG & DISK

SET 1/2" IRON ROD & CAP/PLB 6788

DEPARTMENT ZONING
 N82°32'20"W OF LAKE WORTH
 REVIEWED FOR CODE COMPLIANCE
 APPROVED BY gac DATE 4-28-14

S82°32'20"W

BLOCK 5

ALL WORK PER CITY CODES SUBJECT TO FIELD INSPECTOR'S APPROVAL

City of Lake Worth
 Community Sustainability
13-3578
 Official Permit Record

SET 1/2" IRON ROD & CAP/PLB 6788

FOUND 1/2" IRON PIPE NO ID

4' CONC. WALK

5' CONC. WALK

JOB SITE COPY
 SUBJECT TO COMPLIANCE WITH ALL CODES AND ORDINANCES IN EFFECT IN THE CITY OF LAKE WORTH

IN WITNESS WHEREOF the parties hereto have made and executed this Variance Agreement on the day and year first above written.

CITY OF LAKE WORTH

Reviewed and approved for execution:

By: *Luis Martinez*
Luis Martinez, Building Official

Approved as to form and legal sufficiency:

By: *Glen Torcivia*
Glen Torcivia, City Attorney

PROPERTY OWNERS

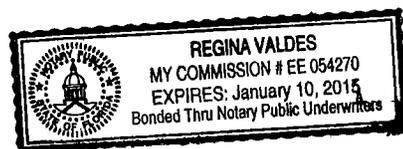
Luis Gonzalez
Luis Gonzalez, Owner

Hugo Pimentel
Signature of Witness
Printed Name: Hugo Pimentel

Misael River
Signature of Witness
Printed Name: Misael River
STATE OF FLORIDA)
COUNTY OF PALM BEACH)

The foregoing instrument was acknowledged before me this 20th day of May, 2014 by Luis Gonzalez, who is [personally known to me] or who has produced [as identification.

Notary Regina Valdes
Printed Name of Notary



Hugo Pimentel
Signature of Witness
Printed Name: Hugo Pimentel

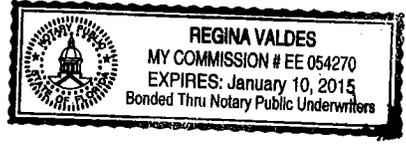
Magling Gonzalez
Magling Gonzalez, Owner

Miguel
Signature of Witness
Printed Name: Miguel

STATE OF FLORIDA)
COUNTY OF PALM BEACH)

The foregoing instrument was acknowledged before me this 20th day of May, 2014 by Magling Gonzalez, who is personally known to me] or who has produced [as identification.

Notary Regina Valdes
Printed Name of Notary





CITY OF LAKE WORTH

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

AGENDA DATE: June 17, 2014, Regular Meeting

DEPARTMENT: Public Services

EXECUTIVE BRIEF

TITLE SUMMARY:

Annual contracts to four companies for paving, concrete, and striping services:

BACKGROUND AND JUSTIFICATION:

The City's Public Services and Water/Sewer Utilities Departments have coordinated a city-wide paving, concrete, and striping work unit price contract to provide better restoration response time, a more efficient process to award work to contractors, and a more cost effective process to perform the work. In Fiscal Year 2014, the combined total the City has allocated for this contract work is \$60,000, based on remaining funds. In the following years, this combined amount will be \$85,000.

Due to the quantity of pavement, concrete, striping and other miscellaneous surface repairs needed in the City due to utility repairs, poor roadway condition, and other infrastructural deficiencies, it became necessary to adopt an annual contract that would achieve greater staff efficiency, lower overall costs, and a quicker contractor response time.

There were a total of 5 proposals received for the Invitation For Bid (IFB). One proposal was considered non-responsive and therefore eliminated from award potential. The four remaining firms all specialize in different areas of the IFB, therefore work will be distributed to those firms that possess the greatest skills and capabilities in that particular area, with total work order cost in consideration. If that contractor cannot achieve the desired schedule, the second contractor will be selected for the work.

MOTION:

I move to approve/disapprove annual unit price contracts to Rosso Site Development, Inc.; M&M Asphalt Maintenance, Inc.; WM Adeimy, Jr., Inc.; and Asphalt Paving Systems, Inc.

ATTACHMENT(S):

Fiscal Impact Analysis
Contract for WM Adeimy Jr., Inc.
Contract for Asphalt Paving Systems, Inc.
Contract for M&M Asphalt Maintenance, Inc.
Contract for Rosso Site Development, Inc.
Bid Tabulation

FISCAL IMPACT ANALYSIS

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

Fiscal Years	2014	2015	2016	2017	2018
Capital Expenditures	0	0	0	0	0
Operating Expenditures (PS)	16,000	25,000	25,000	25,000	25,000
Operating Expenditures (Util)	44,000	60,000	60,000	60,000	60,000
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	60,000	85,000	85,000	85,000	85,000
No. of Addn'l Full-Time Employee Positions	0	0	0	0	0

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

Public Services						
Account Number	Account Description	FY2014 Budget	Project #	Pre Exp; Balance	Expenditure for this item	Post Exp; Balance
001-5020-519.34-50	Contractual Services / Other Contractual Services	28,318.00		19,655.00	16,000.00	3,655.00

Water/Sewer Utilities						
Account Number	Account Description	FY2014 Budget	Project #	Pre Exp; Balance	Expenditure for this item	Post Exp; Balance
403-7231-535.34-50	Contractual Services	91,800.00		56,681.72	44,000.00	12,681.72

C. Department Fiscal Review: _____

**CONSTRUCTION CONTRACT FOR
Pavement, Concrete and Striping
IFB # PS-ST-13-14-116**

THIS CONSTRUCTION CONTRACT ("Contract") is entered on May 30th, 2014, by and between the **City of Lake Worth**, a Florida municipal corporation ("City") and **WM. D. Adeimy Jr., Inc.**, with its principal address at 1201 Omar Road, West Palm Beach Florida 33405 ("Contractor").

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 #PS-ST-13-14-116** (including, but not limited to, the addenda, Plans & Drawings, Special Terms and General Conditions and Terms issued therewith) ("IFB") for the maintenance and construction of roadways, sidewalks and driveways, concrete curbing, green area grading and sodding, ADA concrete ramps, thermoplastic striping and signage.

WHEREAS, the Contractor submitted a unit price bid to perform the work generally 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 tasks hereunder in a professional and competent manner;

WHEREAS, the City finds awarding the 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:

Article 1. RECITALS & DEFINITIONS.

1.1 The foregoing recitals are incorporated into this Contract as true and correct statements.

1.2 **Contract Documents.** The Contract Documents are incorporated herein by reference as if originally set forth in this Contract, and comprise the entire agreement between the City and Contractor. The Contract Documents consist of this Contract, the IFB, the bid submitted by the Contractor and any duly executed and issued Change Orders, Work Directive Changes, Field Orders and amendments relating thereto and all Work Orders, for each specific project. If, during the performance of the work, the Contractor finds an ambiguity, error or discrepancy in the Contract Documents, the Contractor shall so notify the City, in writing, at once and before proceeding shall obtain a written interpretation or clarification. In resolving conflicts in any of the Contract Documents, the order of precedence shall be as follows:

First Priority:	Duly executed Change Orders;
Second Priority:	Work Order (for each project)
Third Priority:	Drawings/Specifications
Fourth Priority:	This Contract

Fifth Priority:	Special Terms (in the IFB)
Sixth Priority:	General Conditions and Terms (in the IFB)
Seventh Priority	Remainder of the IFB
Eighth Priority	Contractor's Bid

The City will not be responsible for any oral instructions, clarifications, or other communications except those provided in writing in response to Contractor's request for clarification of an ambiguity, discrepancy or error.

1.3 Contract Administrator. Whenever the term Contract Administrator is used herein, it is intended to mean Hirut Darge, Purchasing Agent. In the administration of this Contract, as contrasted with matters of policy, all parties may rely upon written instructions or written determinations made by the Contract Administrator. However, any amendment to this Contract or the Contract Documents shall require a written amendment signed by the City and the Contractor.

1.4 Contract Price. The Contract Price shall be based upon the unit prices attached in the Contractor's Bid and then multiplied by the units as set forth in each Work Order, which shall be payable in accordance with paragraph 3 of this Contract.

1.5 Scope of Services/Work. The Scope of Services/Work under this Contract shall be as specifically described in the Contract Documents.

Article 2. CONTRACT TIME; LIQUIDATED DAMAGES.

2.1 Contract Time. Final completion of the work and all punch-list items (if any) shall be within the time frame as set forth in each Work Order for each project.

2.2 Liquidated Damages. **The City and Contractor recognize that time is of the essence of this Contract and that the City will suffer financial loss if the work described in the Contract Documents not completed within the times specified in paragraph 2.1 above. The City and Contractor recognize, agree and acknowledge that it would be impractical and extremely difficult to ascertain and fix the actual damages that the City would suffer in the event Contractor neglects, refuses, or otherwise fails to complete the work within the time specified. Accordingly, instead of requiring any such proof, the City and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay the City Five Hundred Dollars (\$500.00) for each day that expires after the time specified in paragraphs 2.1.**

Article 3. PAYMENT PROCEDURES & DOCUMENTATION

3.1 The Contractor shall submit an itemized bill to the Contract Administrator for approval prior to receiving compensation. Billing shall include an itemized summary of total costs billed and shall be made at such intervals as agreed to by the parties. All billings shall include a description of the status of efforts, a brief itemization of costs associated with each task or project phase and the total task or project costs to date. Upon final completion and acceptance of the services/work in accordance with the Contract Documents, the City shall pay any and all remainder of the Contract Price.

3.2 The Contractor shall be paid within thirty (30) days receipt of approved invoice for services.

3.3 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 Contract including, but not limited to, expenses

for sub-contractors, agents or assistants, direct and indirect charges for work performed and detailed documentation for all such work performed or to be performed under this Contract.

3.4 Copies or original documents prepared by the Contractor in relation to work associated with this Contract 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.

3.5 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 Contract shall be the exclusive property of the City.

Article 4. SUBCONTRACTORS

To the extent reasonably necessary to enable the Contractor to perform its duties hereunder, the Contractor shall be authorized to engage the services of any subcontractors, 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 under this Contract. All costs of the services of, or expenses incurred by, such subcontractors, agents or assistance shall be paid by the CONTRACTOR.

Article 5. CONTRACTOR'S REPRESENTATIONS

In order to induce the City to enter into this Contract, the Contractor makes the following representations:

5.1 Contractor has familiarized itself with the nature and extent of the Contract Documents, work, site, locality, and all local conditions and Laws and Regulations that in any manner may affect cost, progress, performance or furnishing of the work.

5.2 Contractor has obtained at his/her own expense and carefully studied, or assumes responsibility for obtaining and carefully studying, soil investigations, explorations, and test reports which pertain to the subsurface conditions at or contiguous to the site or otherwise may affect the cost, progress, performance or furnishing of the work as Contractor considers necessary for the performance or furnishing of the work at the Contract Price, within the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of the IFB; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or is deemed necessary by Contractor for such purposes.

5.3 Contractor has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports, studies or similar information or data in respect of said Underground Facilities are or is deemed necessary by the Contractor in order to perform and furnish the work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents.

5.4 Contractor has correlated the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.

5.5 Contractor has given Contract Administrator written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the resolution thereof is

acceptable to the Contractor.

5.6 The Contractor represents to the City that the services to be performed under this Contract 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 services shall conform to the highest standards and in accordance with this Contract.

5.7 The Contractor represents that it is licensed to do business in the State of Florida and further warrants its capability and experience to perform the tasks and services provided for herein in a professional and competent manner.

5.8 The Contractor shall not make changes to the scope of services/work or perform any additional work or provide any additional material except as agreed to in writing with the City prior to any change or additional services/work being commenced. Additional services/work, labor or materials provided without written authorization shall be done at the Contractor's sole risk and without payment.

Article 6. INDEMNITY & INSURANCE.

6.1 The parties recognize that the Contractor is an independent contractor. The Contractor 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, 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 Contractor, its agents, officers, subcontractors, employees, or anyone else utilized by the Contractor in the performance of this Contract. The Contractor's liability hereunder shall include all attorney's fees and costs incurred by the City in the enforcement of this indemnification provision (at all levels of trial, appeal and mediation). This includes claims made by the employees of the Contractor against the City and the Contractor 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 Contract and shall not be limited by the amount of any insurance required to be obtained or maintained under this Contract.

6.2 Subject to the limitations set forth in this Section, Contractor 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 Contractor's expense. The City shall have the right, at its option, to participate in the defense of any third party claim, without relieving Contractor of any of its obligations hereunder. If the Contractor assumes control of the defense of any third party claim in accordance with this paragraph, the Contractor shall obtain the prior written consent of the City before entering into any settlement of such claim. Notwithstanding anything to the contrary in this Section, the Contractor 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 Contractor 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.

6.3 It is the specific intent of the parties hereto that the foregoing indemnification complies with

Section 725.06, Florida Statutes, as amended. Contractor expressly agrees that it will not claim, and waives any claim, that this indemnification violates Section 725.06, Florida Statutes. 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.

6.4 The Contractor shall, at its own expense, procure and maintain throughout the term of this Contract, with insurers acceptable to the City, the types and amounts of insurance set forth below. The Contractor shall not commence services 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 and shall name the City as an additional insured for all insurance except Workers' Compensation. 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. The Contractor shall maintain during the life of this Contract the following types of insurance:

Commercial general liability, including public and contractual liability insurance in the amount of \$1,000,000.00 per occurrence (\$2,000,000.00 aggregate) to protect the Contractor from claims for damages for bodily and personal injury, including wrongful death, as well as from claims of property damages which may arise from any operations under this Contract, whether such operations be by the Contractor or by anyone directly or indirectly employed by or contracting with the Contractor.

Workers' Compensation Insurance and Employer's Liability Insurance for all employees as required by Florida Statutes

Comprehensive automobile liability in the amount of \$1,000,000 per occurrence to protect the Contractor from claims for damage for bodily or personal injury, including wrongful death, as well as claims of property damages which may arise from any operations under this Contract, whether such operations be by the Contractor or by anyone directly or indirectly employed by or contracting with the Contractor.

6.5 The insurance provided by the Contractor shall apply on a primary basis. Any insurance, or self-insurance, maintained by the City 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.

6.6 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 Contract or otherwise.

6.7 Neither approval nor failure to disapprove insurance furnished by the Contractor shall relieve the Contractor from responsibility to provide insurance as required by this Contract.

6.8 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 Contract. 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.

Article 7. REIMBURSEMENT OF ENGINEER EXPENSES.

Should the completion of this Contract be delayed beyond the specified or adjusted time limit, Contractor shall reimburse the City for all expenses of engineering and inspection incurred by the City during the period between said specified or adjusted time and the actual date of final completion. All such expenses for engineering and inspection incurred by the City will be charged to Contractor be deducted from payments due Contractor as provided by this Contract. Said expenses shall be further defined as engineer charges associated with the construction contract administration, including resident project representative costs. All such expenses shall be separate from and in addition to any Liquidated Damages as provided for herein.

Article 8. TERMINATION.

8.1 If the City's Contract Administrator deems that the Contractor is in default for failure to supply an adequate working force, or service of proper quality, or has failed in any other respect to satisfactorily perform the services specified in this Contract, the Contract Administrator may give written notice to the CONTRACTOR specifying defaults to be remedied within five (5) days. Such notice shall set forth the basis for any dissatisfaction and suggest corrective measures. If the Contractor does not remedy defaults within five (5) days or commence steps to remedy default to the reasonable satisfaction of the Contract Administrator, the City may secure such services from another Contractor and the City may withhold any money due or which may become due to the Contractor for such task related to the claimed default; or, the City may elect to immediately terminate this Contract.

8.2 Notwithstanding paragraph 8.1, the City reserves the right and may elect to terminate this Contract at any time. At such time, the Contractor shall be compensated only for those services/work which has been satisfactorily completed to the date of termination. No compensation shall be paid for de-mobilization, take-down, disengagement wind-down or other costs incurred due to termination of this Contract under Article 8.

Article 9. MISCELLANEOUS.

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

9.2 Additional work, changes to the Contract Price, or Contract Time, is subject to the City's prior written approval. The Contract Administrator has no authority to approve such changes and has no authority to waive the requirement of prior written authorization for extra work, changes in the Contract Time, or change orders, unless allowed by the City's purchasing code as it relates to each Work Order.

9.3 Headings and References & Exhibits: The headings contained in this Contract are inserted or convenience of reference only and shall not be a part or control or affect the meaning hereof. All references herein to Articles are to the Articles of this Contract. All references herein to Exhibits are to the exhibits hereto, each of which shall be incorporated into and deemed to be a part of this Contract.

9.4 Counterparts: This Contract may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which shall be deemed to be an original, but each of which together shall constitute one and the same instrument.

9.5 Entire Contract; Amendment and Waiver: This Contract (together with the Exhibits hereto) supersedes any and all prior negotiations and oral or written agreements heretofore made relating to

the subject matter hereof and, except for written agreements, if any, executed and delivered simultaneously with or subsequent to the date of this Contract, constitutes the entire agreement of the parties relating to the subject matter hereof. This Contract may not be altered or amended except by a writing signed by the parties hereto. No waiver of any of the terms or conditions of this Contract 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 Contract.

9.6 Successors and Assigns: This Contract shall be binding upon, and shall inure to the benefit of the parties hereto and their respective successors and assigns.

9.7 Governing Law; Consent to Jurisdiction: This Contract 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 submit itself to the exclusive jurisdiction of the Fifteenth Judicial Circuit Court in and for Palm Beach County, Florida for state actions and jurisdiction of the United States District Court for the Southern District of Florida, Palm Beach Division, for the purposes of any suit, action or other proceeding arising out of, or relating to, this Contract; (b) waives and agrees not to assert against any party hereto, by way of motion, as a defense of otherwise, in any suit, action or other proceeding, 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 part hereto is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper or that this Contract or the subject matter hereof may not be enforced in or by such courts.

9.8 Third Party Beneficiary rights: This Contract shall create no rights or claims whatsoever in any person other than a party herein.

9.9 Severability: If any one or more of the provisions of the Contract shall be held to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

9.10 Effective date: The effective date of this Contract is the date the Contract is approved by the City Commission.

9.11 Public Records: The Contractor 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 Contract.
- 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 this Contract 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.

9.12 Preparation: This Contract shall not be construed more strongly against either party regardless of who was more responsible for its preparation.

9.13 PALM BEACH COUNTY IG: 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.

9.14 All notices hereunder must be in writing and, unless otherwise provided herein, shall be deemed validly given on the date personally delivered to the address indicated below or delivered by nationally recognized overnight courier 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 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 to the CITY shall be given to the City address as follows:

Michael Bornstein, City Manager
City of Lake Worth
7 North Dixie Hwy
Lake Worth, Florida 33460

All notices, demands or requests from the City to the Contractor shall be given to the Contractor address as follows:

WM. D. Adeimy Jr., Inc.,
1201 Omar Road
West Palm Beach Florida 33405

9.15 The Contractor shall not be entitled to an increase in the agreed to sum or payment or compensation of any kind from the City, as set forth, in each Work Order, for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency, arising because of periods of suspension or delay, disruption, interference or hindrance from any circumstances beyond the Contractor's control. The Contractor's sole remedy in the event of a delay arising out of or related to circumstances beyond the Contractor's control shall be an extension of the Contract Time as reasonably determined by the City.

9.16 Except as provided in Article 6 regarding Indemnification, all parties shall be responsible for their own attorney's 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. Further, 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

9.17 All work and services provided by the Contractor under this Contract shall be in accordance with all applicable laws including without limitation all federal, state, and local laws, ordinances, rules and regulations.

9.18 In the event the City has executed or executes an Interlocal Agreement with Palm Beach County regarding open cuts on County controlled/maintained roads the Contractor agrees to be bound by all of the terms of and conditions of that Agreement, including but not limited to, the requirement to obtain certain insurance and name the County as an additional insured.

IN WITNESS WHEREOF, the City and Contractor have caused this Construction Contract for the maintenance and construction of roadways, sidewalks and driveways, concrete curbing, green area grading and sodding, ADA concrete ramps, thermoplastic striping and signage to be executed as of the day and year shown above.

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
Glen J. Torcivia, City Attorney

CONTRACTOR: WM. D. ADEIMY JR., INC.

By: Wm. D. Adeimy Jr.

Print Name: Wm. D. Adeimy Jr.

Title: President

[Corporate Seal]

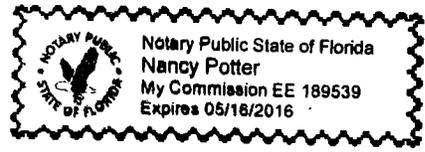
STATE OF FLORIDA)
COUNTY OF PALM BEACH)

The foregoing instrument was acknowledged before me this 30th day of May, 2014 by Wm. D. Adeimy, Jr., as President of WM. D. Adeimy Jr., 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

Genny Totten

Print Name: Nancy Potter
My commission expires: _____





CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
3/25/2014

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 Collinsworth, Alter, Lambert, LLC 23 Eganfuskee Street Suite 102 Jupiter, FL 33477	CONTACT NAME: Dianthe Charron PHONE (A/C, No, Ext): (561) 776-9001 E-MAIL ADDRESS: dcharron@callc.com FAX (A/C, No): (561) 427-6730													
	<table border="1"> <tr> <th>INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> <tr> <td>INSURER A : Amerisure Mutual Ins Co</td> <td>23396</td> </tr> <tr> <td>INSURER B : Amerisure Insurance Co</td> <td>19488</td> </tr> <tr> <td>INSURER C :</td> <td></td> </tr> <tr> <td>INSURER D :</td> <td></td> </tr> <tr> <td>INSURER E :</td> <td></td> </tr> <tr> <td>INSURER F :</td> <td></td> </tr> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A : Amerisure Mutual Ins Co	23396	INSURER B : Amerisure Insurance Co	19488	INSURER C :		INSURER D :		INSURER E :		INSURER F :
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INSURED Wm. D. Adeimy Jr., Inc. 1201 Omar Road West Palm Beach, FL 33405														

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 SUBR INSR	WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC	X		CPP200855610	3/24/2014	3/24/2015	EACH OCCURRENCE \$ 1,000,000
	DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000						
							MED EXP (Any one person) \$ 5,000
							PERSONAL & ADV INJURY \$ 1,000,000
							GENERAL AGGREGATE \$ 2,000,000
							PRODUCTS - COMP/OP AGG \$ 2,000,000
B	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS			CA20085551001	3/24/2014	3/24/2015	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
							BODILY INJURY (Per person) \$
							BODILY INJURY (Per accident) \$
							PROPERTY DAMAGE (Per accident) \$
							\$
	UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$						EACH OCCURRENCE \$
							AGGREGATE \$
							\$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	N/A		WC203578007	3/24/2014	3/24/2015	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER
	E.L. EACH ACCIDENT \$ 1,000,000						
							E.L. DISEASE - EA EMPLOYEE \$ 1,000,000
							E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
Certificate holder is named as additional insured including products and completed operations for general liability per CG7048, and auto liability when required by written contract. General Liability is primary and non-contributory when required by written contract. Waiver of subrogation applies to general liability, auto liability, and workers' compensation for certificate holders when required by written contract. Cancellation applies as per policy terms, conditions and exclusions.

CERTIFICATE HOLDER City of Lake Worth 1900 2nd Avenue North Lake Worth, FL 33461	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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**CONSTRUCTION CONTRACT FOR
Pavement, Concrete and Striping
IFB # PS-ST-13-14-116**

THIS CONSTRUCTION CONTRACT ("Contract") is entered on _____, 2014, by and between the **City of Lake Worth**, a Florida municipal corporation ("City") and **Asphalt Paving Systems, Inc.**, with its principal address at 9021 Wire Road, Zephyrhills, FL 33540 ("Contractor").

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 #PS-ST-13-14-116** (including, but not limited to, the addenda, Plans & Drawings, Special Terms and General Conditions and Terms issued therewith) ("IFB") for the maintenance and construction of roadways, sidewalks and driveways, concrete curbing, green area grading and sodding, ADA concrete ramps, thermoplastic striping and signage.

WHEREAS, the Contractor submitted a unit price bid to perform the work generally 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 tasks hereunder in a professional and competent manner;

WHEREAS, the City finds awarding the 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:

Article 1. RECITALS & DEFINITIONS.

1.1 The foregoing recitals are incorporated into this Contract as true and correct statements.

1.2 Contract Documents. The Contract Documents are incorporated herein by reference as if originally set forth in this Contract, and comprise the entire agreement between the City and Contractor. The Contract Documents consist of this Contract, the IFB, the bid submitted by the Contractor and any duly executed and issued Change Orders, Work Directive Changes, Field Orders and amendments relating thereto and all Work Orders, for each specific project. If, during the performance of the work, the Contractor finds an ambiguity, error or discrepancy in the Contract Documents, the Contractor shall so notify the City, in writing, at once and before proceeding shall obtain a written interpretation or clarification. In resolving conflicts in any of the Contract Documents, the order of precedence shall be as follows:

First Priority:	Duly executed Change Orders;
Second Priority:	Work Order (for each project)
Third Priority:	Drawings/Specifications
Fourth Priority:	This Contract
Fifth Priority:	Special Terms (in the IFB)

Sixth Priority:	General Conditions and Terms (in the IFB)
Seventh Priority	Remainder of the IFB
Eighth Priority	Contractor's Bid

The City will not be responsible for any oral instructions, clarifications, or other communications except those provided in writing in response to Contractor's request for clarification of an ambiguity, discrepancy or error.

1.3 Contract Administrator. Whenever the term Contract Administrator is used herein, it is intended to mean Hirut Darge, Purchasing Agent. In the administration of this Contract, as contrasted with matters of policy, all parties may rely upon written instructions or written determinations made by the Contract Administrator. However, any amendment to this Contract or the Contract Documents shall require a written amendment signed by the City and the Contractor.

1.4 Contract Price. The Contract Price shall be based upon the unit prices attached in the Contractor's Bid and then multiplied by the units as set forth in each Work Order, which shall be payable in accordance with paragraph 3 of this Contract.

1.5 Scope of Services/Work. The Scope of Services/Work under this Contract shall be as specifically described in the Contract Documents.

Article 2. CONTRACT TIME; LIQUIDATED DAMAGES.

2.1 Contract Time. Final completion of the work and all punch-list items (if any) shall be within the time frame as set forth in each Work Order for each project.

2.2 Liquidated Damages. The City and Contractor recognize that time is of the essence of this Contract and that the City will suffer financial loss if the work described in the Contract Documents not completed within the times specified in paragraph 2.1 above. The City and Contractor recognize, agree and acknowledge that it would be impractical and extremely difficult to ascertain and fix the actual damages that the City would suffer in the event Contractor neglects, refuses, or otherwise fails to complete the work within the time specified. Accordingly, instead of requiring any such proof, the City and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay the City Five Hundred Dollars (\$500.00) for each day that expires after the time specified in paragraphs 2.1.

Article 3. PAYMENT PROCEDURES & DOCUMENTATION

3.1 The Contractor shall submit an itemized bill to the Contract Administrator for approval prior to receiving compensation. Billing shall include an itemized summary of total costs billed and shall be made at such intervals as agreed to by the parties. All billings shall include a description of the status of efforts, a brief itemization of costs associated with each task or project phase and the total task or project costs to date. Upon final completion and acceptance of the services/work in accordance with the Contract Documents, the City shall pay any and all remainder of the Contract Price.

3.2 The Contractor shall be paid within thirty (30) days receipt of approved invoice for services.

3.3 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 Contract including, but not limited to, expenses for sub-contractors, agents or assistants, direct and indirect charges for work performed and detailed

documentation for all such work performed or to be performed under this Contract.

3.4 Copies or original documents prepared by the Contractor in relation to work associated with this Contract 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.

3.5 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 Contract shall be the exclusive property of the City.

Article 4. SUBCONTRACTORS

To the extent reasonably necessary to enable the Contractor to perform its duties hereunder, the Contractor shall be authorized to engage the services of any subcontractors, 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 under this Contract. All costs of the services of, or expenses incurred by, such subcontractors, agents or assistance shall be paid by the CONTRACTOR.

Article 5. CONTRACTOR'S REPRESENTATIONS

In order to induce the City to enter into this Contract, the Contractor makes the following representations:

5.1 Contractor has familiarized itself with the nature and extent of the Contract Documents, work, site, locality, and all local conditions and Laws and Regulations that in any manner may affect cost, progress, performance or furnishing of the work.

5.2 Contractor has obtained at his/her own expense and carefully studied, or assumes responsibility for obtaining and carefully studying, soil investigations, explorations, and test reports which pertain to the subsurface conditions at or contiguous to the site or otherwise may affect the cost, progress, performance or furnishing of the work as Contractor considers necessary for the performance or furnishing of the work at the Contract Price, within the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of the IFB; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or is deemed necessary by Contractor for such purposes.

5.3 Contractor has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports, studies or similar information or data in respect of said Underground Facilities are or is deemed necessary by the Contractor in order to perform and furnish the work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents.

5.4 Contractor has correlated the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.

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

5.6 The Contractor represents to the City that the services to be performed under this Contract 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 services shall conform to the highest standards and in accordance with this Contract.

5.7 The Contractor represents that it is licensed to do business in the State of Florida and further warrants its capability and experience to perform the tasks and services provided for herein in a professional and competent manner.

5.8 The Contractor shall not make changes to the scope of services/work or perform any additional work or provide any additional material except as agreed to in writing with the City prior to any change or additional services/work being commenced. Additional services/work, labor or materials provided without written authorization shall be done at the Contractor's sole risk and without payment.

Article 6. INDEMNITY & INSURANCE.

6.1 The parties recognize that the Contractor is an independent contractor. The Contractor 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, 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 Contractor, its agents, officers, subcontractors, employees, or anyone else utilized by the Contractor in the performance of this Contract. The Contractor's liability hereunder shall include all attorney's fees and costs incurred by the City in the enforcement of this indemnification provision (at all levels of trial, appeal and mediation). This includes claims made by the employees of the Contractor against the City and the Contractor 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 Contract and shall not be limited by the amount of any insurance required to be obtained or maintained under this Contract.

6.2 Subject to the limitations set forth in this Section, Contractor 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 Contractor's expense. The City shall have the right, at its option, to participate in the defense of any third party claim, without relieving Contractor of any of its obligations hereunder. If the Contractor assumes control of the defense of any third party claim in accordance with this paragraph, the Contractor shall obtain the prior written consent of the City before entering into any settlement of such claim. Notwithstanding anything to the contrary in this Section, the Contractor 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 Contractor 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.

6.3 It is the specific intent of the parties hereto that the foregoing indemnification complies with Section 725.06, Florida Statutes, as amended. Contractor expressly agrees that it will not claim,

and waives any claim, that this indemnification violates Section 725.06, Florida Statutes. 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.

6.4 The Contractor shall, at its own expense, procure and maintain throughout the term of this Contract, with insurers acceptable to the City, the types and amounts of insurance set forth below. The Contractor shall not commence services 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 and shall name the City as an additional insured for all insurance except Workers' Compensation. 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. The Contractor shall maintain during the life of this Contract the following types of insurance:

Commercial general liability, including public and contractual liability insurance in the amount of \$1,000,000.00 per occurrence (\$2,000,000.00 aggregate) to protect the Contractor from claims for damages for bodily and personal injury, including wrongful death, as well as from claims of property damages which may arise from any operations under this Contract, whether such operations be by the Contractor or by anyone directly or indirectly employed by or contracting with the Contractor.

Workers' Compensation Insurance and Employer's Liability Insurance for all employees as required by Florida Statutes

Comprehensive automobile liability in the amount of \$1,000,000 per occurrence to protect the Contractor from claims for damage for bodily or personal injury, including wrongful death, as well as claims of property damages which may arise from any operations under this Contract, whether such operations be by the Contractor or by anyone directly or indirectly employed by or contracting with the Contractor.

6.5 The insurance provided by the Contractor shall apply on a primary basis. Any insurance, or self-insurance, maintained by the City 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.

6.6 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 Contract or otherwise.

6.7 Neither approval nor failure to disapprove insurance furnished by the Contractor shall relieve the Contractor from responsibility to provide insurance as required by this Contract.

6.8 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 Contract. 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.

Article 7. REIMBURSEMENT OF ENGINEER EXPENSES.

Should the completion of this Contract be delayed beyond the specified or adjusted time limit,

Contractor shall reimburse the City for all expenses of engineering and inspection incurred by the City during the period between said specified or adjusted time and the actual date of final completion. All such expenses for engineering and inspection incurred by the City will be charged to Contractor be deducted from payments due Contractor as provided by this Contract. Said expenses shall be further defined as engineer charges associated with the construction contract administration, including resident project representative costs. All such expenses shall be separate from and in addition to any Liquidated Damages as provided for herein.

Article 8. TERMINATION.

8.1 If the City's Contract Administrator deems that the Contractor is in default for failure to supply an adequate working force, or service of proper quality, or has failed in any other respect to satisfactorily perform the services specified in this Contract, the Contract Administrator may give written notice to the CONTRACTOR specifying defaults to be remedied within five (5) days. Such notice shall set forth the basis for any dissatisfaction and suggest corrective measures. If the Contractor does not remedy defaults within five (5) days or commence steps to remedy default to the reasonable satisfaction of the Contract Administrator, the City may secure such services from another Contractor and the City may withhold any money due or which may become due to the Contractor for such task related to the claimed default; or, the City may elect to immediately terminate this Contract.

8.2 Notwithstanding paragraph 8.1, the City reserves the right and may elect to terminate this Contract at any time. At such time, the Contractor shall be compensated only for those services/work which has been satisfactorily completed to the date of termination. No compensation shall be paid for de-mobilization, take-down, disengagement wind-down or other costs incurred due to termination of this Contract under Article 8.

Article 9. MISCELLANEOUS.

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

9.2 Additional work, changes to the Contract Price, or Contract Time, is subject to the City's prior written approval. The Contract Administrator has no authority to approve such changes and has no authority to waive the requirement of prior written authorization for extra work, changes in the Contract Time, or change orders, unless allowed by the City's purchasing code as it relates to each Work Order.

9.3 Headings and References & Exhibits: The headings contained in this Contract are inserted or convenience of reference only and shall not be a part or control or affect the meaning hereof. All references herein to Articles are to the Articles of this Contract. All references herein to Exhibits are to the exhibits hereto, each of which shall be incorporated into and deemed to be a part of this Contract.

9.4 Counterparts: This Contract may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which shall be deemed to be an original, but each of which together shall constitute one and the same instrument.

9.5 Entire Contract; Amendment and Waiver: This Contract (together with the Exhibits hereto) supersedes any and all prior negotiations and oral or written agreements heretofore made relating to the subject matter hereof and, except for written agreements, if any, executed and delivered

simultaneously with or subsequent to the date of this Contract, constitutes the entire agreement of the parties relating to the subject matter hereof. This Contract may not be altered or amended except by a writing signed by the parties hereto. No waiver of any of the terms or conditions of this Contract 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 Contract.

9.6 Successors and Assigns: This Contract shall be binding upon, and shall inure to the benefit of the parties hereto and their respective successors and assigns.

9.7 Governing Law; Consent to Jurisdiction: This Contract 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 submit itself to the exclusive jurisdiction of the Fifteenth Judicial Circuit Court in and for Palm Beach County, Florida for state actions and jurisdiction of the United States District Court for the Southern District of Florida, Palm Beach Division, for the purposes of any suit, action or other proceeding arising out of, or relating to, this Contract; (b) waives and agrees not to assert against any party hereto, by way of motion, as a defense of otherwise, in any suit, action or other proceeding, 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 part hereto is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper or that this Contract or the subject matter hereof may not be enforced in or by such courts.

9.8 Third Party Beneficiary rights: This Contract shall create no rights or claims whatsoever in any person other than a party herein.

9.9 Severability: If any one or more of the provisions of the Contract shall be held to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

9.10 Effective date: The effective date of this Contract is the date the Contract is approved by the City Commission.

9.11 Public Records: The Contractor 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 Contract.

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 this Contract 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.

9.12 Preparation: This Contract shall not be construed more strongly against either party regardless of who was more responsible for its preparation.

9.13 PALM BEACH COUNTY IG: 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.

9.14 All notices hereunder must be in writing and, unless otherwise provided herein, shall be deemed validly given on the date personally delivered to the address indicated below or delivered by nationally recognized overnight courier 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 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 to the CITY shall be given to the City address as follows:

Michael Bornstein, City Manager
City of Lake Worth
7 North Dixie Hwy
Lake Worth, Florida 33460

All notices, demands or requests from the City to the Contractor shall be given to the Contractor address as follows:

Asphalt Paving Systems, Inc.,
9021 Wire Road
Zephyrhills Florida 33540

9.15 The Contractor shall not be entitled to an increase in the agreed to sum or payment or compensation of any kind from the City, as set forth, in each Work Order, for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency, arising because of periods of suspension or delay, disruption, interference or hindrance from any circumstances beyond the Contractor's control. The Contractor's sole remedy in the event of a delay arising out of or related to circumstances beyond the Contractor's control shall be an extension of the Contract Time as reasonably determined by the City.

9.16 Except as provided in Article 6 regarding Indemnification, all parties shall be responsible for their own attorney's 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. Further, 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

9.17 All work and services provided by the Contractor under this Contract shall be in accordance with all applicable laws including without limitation all federal, state, and local laws, ordinances, rules and regulations.

9.18 In the event the City has executed or executes an Interlocal Agreement with Palm Beach County regarding open cuts on County controlled/maintained roads the Contractor agrees to be bound by all of the terms of and conditions of that Agreement, including but not limited to, the requirement to obtain certain insurance and name the County as an additional insured.

IN WITNESS WHEREOF, the City and Contractor have caused this Construction Contract for the maintenance and construction of roadways, sidewalks and driveways, concrete curbing, green area grading and sodding, ADA concrete ramps, thermoplastic striping and signage to be executed as of the day and year shown above.

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
Glen J. Torcivia, City Attorney

CONTRACTOR: **ASPHALT PAVING SYSTEMS, INC.**

By: _____
Print Name: ROBERT CAPOFERRI
Title: PRESIDENT

[Corporate Seal]

STATE OF FLORIDA)
COUNTY OF PASCO)

The foregoing instrument was acknowledged before me this 29TH day of MAY, 2014 by ROBERT CAPOFERRI, as PRESIDENT of Asphalt Paving Systems, 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 DRIVER'S LICENSE as identification.

Notary Public

Mark S. Rohr



Print Name: MARK S ROTHBACH
My commission expires: 10/17/2015

Client#: 37227

ASHPAV1

ACORDTM

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

5/30/2014

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 J. Byrne Agency, Inc. 5200 New Jersey Avenue PO Box 1409 Wildwood, NJ 08260	CONTACT NAME: Joseph J. Meola, CIC, CRM PHONE (A/C, No, Ext): 609 522-3406 FAX (A/C, No): 609 522-2844 E-MAIL ADDRESS: jmeola@jbyrneagency.com PRODUCER CUSTOMER ID #: ASPHPAV1																				
	<table border="1"> <tr> <th colspan="2">INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> <tr> <td>INSURER A :</td> <td>Nova Casualty</td> <td>42552</td> </tr> <tr> <td>INSURER B :</td> <td>Travelers Insurance Company</td> <td>36137</td> </tr> <tr> <td>INSURER C :</td> <td>Houston Casualty</td> <td>42374</td> </tr> <tr> <td>INSURER D :</td> <td>Continental Indemnity</td> <td>28258</td> </tr> <tr> <td>INSURER E :</td> <td></td> <td></td> </tr> <tr> <td>INSURER F :</td> <td></td> <td></td> </tr> </table>	INSURER(S) AFFORDING COVERAGE		NAIC #	INSURER A :	Nova Casualty	42552	INSURER B :	Travelers Insurance Company	36137	INSURER C :	Houston Casualty	42374	INSURER D :	Continental Indemnity	28258	INSURER E :			INSURER F :	
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INSURER F :																					
INSURED Asphalt Paving Systems Inc 500 N Egg Harbor Road P.O. Box 530 Hammonton, NJ 08037																					

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		MCKCL00100070	04/01/2014	04/01/2015	EACH OCCURRENCE	\$1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence)	\$100,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						MED EXP (Any one person)	\$5,000
							PERSONAL & ADV INJURY	\$1,000,000
							GENERAL AGGREGATE	\$2,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						PRODUCTS - COMP/OP AGG	\$2,000,000
	<input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC							\$
B	AUTOMOBILE LIABILITY			8103E651535COF14	04/01/2014	04/01/2015	COMBINED SINGLE LIMIT (Ea accident)	\$1,000,000
	<input checked="" type="checkbox"/> ANY AUTO						BODILY INJURY (Per person)	\$
	<input type="checkbox"/> ALL OWNED AUTOS						BODILY INJURY (Per accident)	\$
	<input type="checkbox"/> SCHEDULED AUTOS						PROPERTY DAMAGE (Per accident)	\$
	<input checked="" type="checkbox"/> HIRED AUTOS							\$
<input checked="" type="checkbox"/> NON-OWNED AUTOS				\$				
<input checked="" type="checkbox"/> Drive Other Car				\$				
C	UMBRELLA LIAB	<input checked="" type="checkbox"/>	OCCUR	H14XC5010502	04/01/2014	04/01/2015	EACH OCCURRENCE	\$10,000,000
	<input checked="" type="checkbox"/> EXCESS LIAB		CLAIMS-MADE				AGGREGATE	\$10,000,000
								\$
	DEDUCTIBLE							\$
	RETENTION \$							\$
D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY			738674220102	04/01/2014	04/01/2015	<input checked="" type="checkbox"/> WC STATU-TORY LIMITS	OTH-ER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	Y/N	N/A				E.L. EACH ACCIDENT	\$500,000
	If yes, describe under DESCRIPTION OF OPERATIONS below						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: Annual Contract for Pavement, Concrete and Striping; City of Lake Worth is included as additional insured with respects to the operations performed by the named insured as required by contract.

CERTIFICATE HOLDER 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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**CONSTRUCTION CONTRACT FOR
Pavement, Concrete and Striping
IFB # PS-ST-13-14-116**

THIS CONSTRUCTION CONTRACT ("Contract") is entered on _____, 2014, by and between the **City of Lake Worth**, a Florida municipal corporation ("City") and **M & M Asphalt Maintenance, Inc.**, with its principal address at 1302 South J Street, Lake Worth Florida 33460 ("Contractor").

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 #PS-ST-13-14-116** (including, but not limited to, the addenda, Plans & Drawings, Special Terms and General Conditions and Terms issued therewith) ("IFB") for the maintenance and construction of roadways, sidewalks and driveways, concrete curbing, green area grading and sodding, ADA concrete ramps, thermoplastic striping and signage.

WHEREAS, the Contractor submitted a unit price bid to perform the work generally 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 tasks hereunder in a professional and competent manner;

WHEREAS, the City finds awarding the 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:

Article 1. RECITALS & DEFINITIONS.

1.1 The foregoing recitals are incorporated into this Contract as true and correct statements.

1.2 **Contract Documents.** The Contract Documents are incorporated herein by reference as if originally set forth in this Contract, and comprise the entire agreement between the City and Contractor. The Contract Documents consist of this Contract, the IFB, the bid submitted by the Contractor and any duly executed and issued Change Orders, Work Directive Changes, Field Orders and amendments relating thereto and all Work Orders, for each specific project. If, during the performance of the work, the Contractor finds an ambiguity, error or discrepancy in the Contract Documents, the Contractor shall so notify the City, in writing, at once and before proceeding shall obtain a written interpretation or clarification. In resolving conflicts in any of the Contract Documents, the order of precedence shall be as follows:

First Priority:	Duly executed Change Orders;
Second Priority:	Work Order (for each project)
Third Priority:	Drawings/Specifications
Fourth Priority:	This Contract

Fifth Priority:	Special Terms (in the IFB)
Sixth Priority:	General Conditions and Terms (in the IFB)
Seventh Priority	Remainder of the IFB
Eighth Priority	Contractor's Bid

The City will not be responsible for any oral instructions, clarifications, or other communications except those provided in writing in response to Contractor's request for clarification of an ambiguity, discrepancy or error.

1.3 Contract Administrator. Whenever the term Contract Administrator is used herein, it is intended to mean Hirut Darge, Purchasing Agent. In the administration of this Contract, as contrasted with matters of policy, all parties may rely upon written instructions or written determinations made by the Contract Administrator. However, any amendment to this Contract or the Contract Documents shall require a written amendment signed by the City and the Contractor.

1.4 Contract Price. The Contract Price shall be based upon the unit prices attached in the Contractor's Bid and then multiplied by the units as set forth in each Work Order, which shall be payable in accordance with paragraph 3 of this Contract.

1.5 Scope of Services/Work. The Scope of Services/Work under this Contract shall be as specifically described in the Contract Documents.

Article 2. CONTRACT TIME; LIQUIDATED DAMAGES.

2.1 Contract Time. Final completion of the work and all punch-list items (if any) shall be within the time frame as set forth in each Work Order for each project.

2.2 Liquidated Damages. The City and Contractor recognize that time is of the essence of this Contract and that the City will suffer financial loss if the work described in the Contract Documents not completed within the times specified in paragraph 2.1 above. The City and Contractor recognize, agree and acknowledge that it would be impractical and extremely difficult to ascertain and fix the actual damages that the City would suffer in the event Contractor neglects, refuses, or otherwise fails to complete the work within the time specified. Accordingly, instead of requiring any such proof, the City and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay the City Five Hundred Dollars (\$500.00) for each day that expires after the time specified in paragraphs 2.1.

Article 3. PAYMENT PROCEDURES & DOCUMENTATION

3.1 The Contractor shall submit an itemized bill to the Contract Administrator for approval prior to receiving compensation. Billing shall include an itemized summary of total costs billed and shall be made at such intervals as agreed to by the parties. All billings shall include a description of the status of efforts, a brief itemization of costs associated with each task or project phase and the total task or project costs to date. Upon final completion and acceptance of the services/work in accordance with the Contract Documents, the City shall pay any and all remainder of the Contract Price.

3.2 The Contractor shall be paid within thirty (30) days receipt of approved invoice for services.

3.3 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 Contract including, but not limited to, expenses

for sub-contractors, agents or assistants, direct and indirect charges for work performed and detailed documentation for all such work performed or to be performed under this Contract.

3.4 Copies or original documents prepared by the Contractor in relation to work associated with this Contract 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.

3.5 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 Contract shall be the exclusive property of the City.

Article 4. SUBCONTRACTORS

To the extent reasonably necessary to enable the Contractor to perform its duties hereunder, the Contractor shall be authorized to engage the services of any subcontractors, 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 under this Contract. All costs of the services of, or expenses incurred by, such subcontractors, agents or assistance shall be paid by the CONTRACTOR.

Article 5. CONTRACTOR'S REPRESENTATIONS

In order to induce the City to enter into this Contract, the Contractor makes the following representations:

5.1 Contractor has familiarized itself with the nature and extent of the Contract Documents, work, site, locality, and all local conditions and Laws and Regulations that in any manner may affect cost, progress, performance or furnishing of the work.

5.2 Contractor has obtained at his/her own expense and carefully studied, or assumes responsibility for obtaining and carefully studying, soil investigations, explorations, and test reports which pertain to the subsurface conditions at or contiguous to the site or otherwise may affect the cost, progress, performance or furnishing of the work as Contractor considers necessary for the performance or furnishing of the work at the Contract Price, within the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of the IFB; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or is deemed necessary by Contractor for such purposes.

5.3 Contractor has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports, studies or similar information or data in respect of said Underground Facilities are or is deemed necessary by the Contractor in order to perform and furnish the work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents.

5.4 Contractor has correlated the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.

5.5 Contractor has given Contract Administrator written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the resolution thereof is

acceptable to the Contractor.

5.6 The Contractor represents to the City that the services to be performed under this Contract 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 services shall conform to the highest standards and in accordance with this Contract.

5.7 The Contractor represents that it is licensed to do business in the State of Florida and further warrants its capability and experience to perform the tasks and services provided for herein in a professional and competent manner.

5.8 The Contractor shall not make changes to the scope of services/work or perform any additional work or provide any additional material except as agreed to in writing with the City prior to any change or additional services/work being commenced. Additional services/work, labor or materials provided without written authorization shall be done at the Contractor's sole risk and without payment.

Article 6. INDEMNITY & INSURANCE.

6.1 The parties recognize that the Contractor is an independent contractor. The Contractor 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, 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 Contractor, its agents, officers, subcontractors, employees, or anyone else utilized by the Contractor in the performance of this Contract. The Contractor's liability hereunder shall include all attorney's fees and costs incurred by the City in the enforcement of this indemnification provision (at all levels of trial, appeal and mediation). This includes claims made by the employees of the Contractor against the City and the Contractor 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 Contract and shall not be limited by the amount of any insurance required to be obtained or maintained under this Contract.

6.2 Subject to the limitations set forth in this Section, Contractor 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 Contractor's expense. The City shall have the right, at its option, to participate in the defense of any third party claim, without relieving Contractor of any of its obligations hereunder. If the Contractor assumes control of the defense of any third party claim in accordance with this paragraph, the Contractor shall obtain the prior written consent of the City before entering into any settlement of such claim. Notwithstanding anything to the contrary in this Section, the Contractor 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 Contractor 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.

6.3 It is the specific intent of the parties hereto that the foregoing indemnification complies with

Section 725.06, Florida Statutes, as amended. Contractor expressly agrees that it will not claim, and waives any claim, that this indemnification violates Section 725.06, Florida Statutes. 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.

6.4 The Contractor shall, at its own expense, procure and maintain throughout the term of this Contract, with insurers acceptable to the City, the types and amounts of insurance set forth below. The Contractor shall not commence services 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 and shall name the City as an additional insured for all insurance except Workers' Compensation. 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. The Contractor shall maintain during the life of this Contract the following types of insurance:

Commercial general liability, including public and contractual liability insurance in the amount of \$1,000,000.00 per occurrence (\$2,000,000.00 aggregate) to protect the Contractor from claims for damages for bodily and personal injury, including wrongful death, as well as from claims of property damages which may arise from any operations under this Contract, whether such operations be by the Contractor or by anyone directly or indirectly employed by or contracting with the Contractor.

Workers' Compensation Insurance and Employer's Liability Insurance for all employees as required by Florida Statutes

Comprehensive automobile liability in the amount of \$1,000,000 per occurrence to protect the Contractor from claims for damage for bodily or personal injury, including wrongful death, as well as claims of property damages which may arise from any operations under this Contract, whether such operations be by the Contractor or by anyone directly or indirectly employed by or contracting with the Contractor.

6.5 The insurance provided by the Contractor shall apply on a primary basis. Any insurance, or self-insurance, maintained by the City 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.

6.6 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 Contract or otherwise.

6.7 Neither approval nor failure to disapprove insurance furnished by the Contractor shall relieve the Contractor from responsibility to provide insurance as required by this Contract.

6.8 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 Contract. 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.

Article 7. REIMBURSEMENT OF ENGINEER EXPENSES.

Should the completion of this Contract be delayed beyond the specified or adjusted time limit, Contractor shall reimburse the City for all expenses of engineering and inspection incurred by the City during the period between said specified or adjusted time and the actual date of final completion. All such expenses for engineering and inspection incurred by the City will be charged to Contractor be deducted from payments due Contractor as provided by this Contract. Said expenses shall be further defined as engineer charges associated with the construction contract administration, including resident project representative costs. All such expenses shall be separate from and in addition to any Liquidated Damages as provided for herein.

Article 8. TERMINATION.

8.1 If the City's Contract Administrator deems that the Contractor is in default for failure to supply an adequate working force, or service of proper quality, or has failed in any other respect to satisfactorily perform the services specified in this Contract, the Contract Administrator may give written notice to the CONTRACTOR specifying defaults to be remedied within five (5) days. Such notice shall set forth the basis for any dissatisfaction and suggest corrective measures. If the Contractor does not remedy defaults within five (5) days or commence steps to remedy default to the reasonable satisfaction of the Contract Administrator, the City may secure such services from another Contractor and the City may withhold any money due or which may become due to the Contractor for such task related to the claimed default; or, the City may elect to immediately terminate this Contract.

8.2 Notwithstanding paragraph 8.1, the City reserves the right and may elect to terminate this Contract at any time. At such time, the Contractor shall be compensated only for those services/work which has been satisfactorily completed to the date of termination. No compensation shall be paid for de-mobilization, take-down, disengagement wind-down or other costs incurred due to termination of this Contract under Article 8.

Article 9. MISCELLANEOUS.

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

9.2 Additional work, changes to the Contract Price, or Contract Time, is subject to the City's prior written approval. The Contract Administrator has no authority to approve such changes and has no authority to waive the requirement of prior written authorization for extra work, changes in the Contract Time, or change orders, unless allowed by the City's purchasing code as it relates to each Work Order.

9.3 Headings and References & Exhibits: The headings contained in this Contract are inserted or convenience of reference only and shall not be a part or control or affect the meaning hereof. All references herein to Articles are to the Articles of this Contract. All references herein to Exhibits are to the exhibits hereto, each of which shall be incorporated into and deemed to be a part of this Contract.

9.4 Counterparts: This Contract may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which shall be deemed to be an original, but each of which together shall constitute one and the same instrument.

9.5 Entire Contract; Amendment and Waiver: This Contract (together with the Exhibits hereto) supersedes any and all prior negotiations and oral or written agreements heretofore made relating to

the subject matter hereof and, except for written agreements, if any, executed and delivered simultaneously with or subsequent to the date of this Contract, constitutes the entire agreement of the parties relating to the subject matter hereof. This Contract may not be altered or amended except by a writing signed by the parties hereto. No waiver of any of the terms or conditions of this Contract 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 Contract.

9.6 Successors and Assigns: This Contract shall be binding upon, and shall inure to the benefit of the parties hereto and their respective successors and assigns.

9.7 Governing Law; Consent to Jurisdiction: This Contract 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 submit itself to the exclusive jurisdiction of the Fifteenth Judicial Circuit Court in and for Palm Beach County, Florida for state actions and jurisdiction of the United States District Court for the Southern District of Florida, Palm Beach Division, for the purposes of any suit, action or other proceeding arising out of, or relating to, this Contract; (b) waives and agrees not to assert against any party hereto, by way of motion, as a defense of otherwise, in any suit, action or other proceeding, 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 part hereto is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper or that this Contract or the subject matter hereof may not be enforced in or by such courts.

9.8 Third Party Beneficiary rights: This Contract shall create no rights or claims whatsoever in any person other than a party herein.

9.9 Severability: If any one or more of the provisions of the Contract shall be held to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

9.10 Effective date: The effective date of this Contract is the date the Contract is approved by the City Commission.

9.11 Public Records: The Contractor 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 Contract.

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 this Contract 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.

9.12 Preparation: This Contract shall not be construed more strongly against either party regardless of who was more responsible for its preparation.

9.13 PALM BEACH COUNTY IG: 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.

9.14 All notices hereunder must be in writing and, unless otherwise provided herein, shall be deemed validly given on the date personally delivered to the address indicated below or delivered by nationally recognized overnight courier 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 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 to the CITY shall be given to the City address as follows:

Michael Bornstein, City Manager
City of Lake Worth
7 North Dixie Hwy
Lake Worth, Florida 33460

All notices, demands or requests from the City to the Contractor shall be given to the Contractor address as follows:

M & M Asphalt Maintenance, Inc.,
1302 South J Street
Lake Worth Florida 33460

9.15 The Contractor shall not be entitled to an increase in the agreed to sum or payment or compensation of any kind from the City, as set forth, in each Work Order, for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency, arising because of periods of suspension or delay, disruption, interference or hindrance from any circumstances beyond the Contractor's control. The Contractor's sole remedy in the event of a delay arising out of or related to circumstances beyond the Contractor's control shall be an extension of the Contract Time as reasonably determined by the City.

9.16 Except as provided in Article 6 regarding Indemnification, all parties shall be responsible for their own attorney's 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. Further, 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

Print Name: Amy DeMa
My commission expires: 9/23/15



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
5/1/2014

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 Mack, Mack & Waltz Insurance Group, Inc. 1211 S Military Trail Suite 100 Deerfield Beach FL 33442	CONTACT NAME: Erika Pfeiffer PHONE (A/C, No, Ext): (954) 640-6225 FAX (A/C, No): (954) 640-6226 E-MAIL ADDRESS: epfeiffer@mackinsurance.com	
	INSURER(S) AFFORDING COVERAGE INSURER A: FCCI Insurance Group	NAIC #
INSURED M & M Asphalt Maintenance, Inc. DBA: All County Paving 1302 South J Street Lake Worth FL 33460	INSURER B:	
	INSURER C:	
	INSURER D:	
	INSURER E:	
	INSURER F:	
	INSURER G:	

COVERAGES	CERTIFICATE NUMBER: CL145130534	REVISION NUMBER:
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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 <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC						EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ \$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ Underinsured motorist \$
	<input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE						EACH OCCURRENCE \$ AGGREGATE \$ \$
	<input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$						<input checked="" type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N/A	WC61850	5/1/2014	5/1/2015	E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
A	Inland Marine			CM0008145	5/1/2014	5/1/2015	Pers Prop 20,500
A	Property			CP0010372	5/1/2014	5/1/2015	Ded 1,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

CERTIFICATE HOLDER

(561) 533-7383

City of Lake Worth
1900 2nd Avenue North
Lake Worth, FL 33461
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

Paul Mack/MARIA

**CONSTRUCTION CONTRACT FOR
Pavement, Concrete and Striping
IFB # PS-ST-13-14-116**

THIS CONSTRUCTION CONTRACT ("Contract") is entered on _____, 2014, by and between the **City of Lake Worth**, a Florida municipal corporation ("City") and **Rosso Site Development, Inc.**, a Florida corporation, with its principal address at 111 Vassar Drive, Lake Worth Florida 33460 ("Contractor").

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 #PS-ST-13-14-116** (including, but not limited to, the addenda, Plans & Drawings, Special Terms and General Conditions and Terms issued therewith) ("IFB") for the maintenance and construction of roadways, sidewalks and driveways, concrete curbing, green area grading and sodding, ADA concrete ramps, thermoplastic striping and signage.

WHEREAS, the Contractor submitted a unit price bid to perform the work generally 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 tasks hereunder in a professional and competent manner;

WHEREAS, the City finds awarding the 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:

Article 1. RECITALS & DEFINITIONS.

1.1 The foregoing recitals are incorporated into this Contract as true and correct statements.

1.2 Contract Documents. The Contract Documents are incorporated herein by reference as if originally set forth in this Contract, and comprise the entire agreement between the City and Contractor. The Contract Documents consist of this Contract, the IFB, the bid submitted by the Contractor and any duly executed and issued Change Orders, Work Directive Changes, Field Orders and amendments relating thereto and all Work Orders, for each specific project. If, during the performance of the work, the Contractor finds an ambiguity, error or discrepancy in the Contract Documents, the Contractor shall so notify the City, in writing, at once and before proceeding shall obtain a written interpretation or clarification. In resolving conflicts in any of the Contract Documents, the order of precedence shall be as follows:

- | | |
|------------------|-------------------------------|
| First Priority: | Duly executed Change Orders; |
| Second Priority: | Work Order (for each project) |
| Third Priority: | Drawings/Specifications |
| Fourth Priority: | This Contract |

Fifth Priority:	Special Terms (in the IFB)
Sixth Priority:	General Conditions and Terms (in the IFB)
Seventh Priority	Remainder of the IFB
Eighth Priority	Contractor's Bid

The City will not be responsible for any oral instructions, clarifications, or other communications except those provided in writing in response to Contractor's request for clarification of an ambiguity, discrepancy or error.

1.3 Contract Administrator. Whenever the term Contract Administrator is used herein, it is intended to mean Hirut Darge, Purchasing Agent. In the administration of this Contract, as contrasted with matters of policy, all parties may rely upon written instructions or written determinations made by the Contract Administrator. However, any amendment to this Contract or the Contract Documents shall require a written amendment signed by the City and the Contractor.

1.4 Contract Price. The Contract Price shall be based upon the unit prices attached in the Contractor's Bid and then multiplied by the units as set forth in each Work Order, which shall be payable in accordance with paragraph 3 of this Contract.

1.5 Scope of Services/Work. The Scope of Services/Work under this Contract shall be as specifically described in the Contract Documents.

Article 2. CONTRACT TIME; LIQUIDATED DAMAGES.

2.1 Contract Time. Final completion of the work and all punch-list items (if any) shall be within the time frame as set forth in each Work Order for each project.

2.2 Liquidated Damages. The City and Contractor recognize that time is of the essence of this Contract and that the City will suffer financial loss if the work described in the Contract Documents not completed within the times specified in paragraph 2.1 above. The City and Contractor recognize, agree and acknowledge that it would be impractical and extremely difficult to ascertain and fix the actual damages that the City would suffer in the event Contractor neglects, refuses, or otherwise fails to complete the work within the time specified. Accordingly, instead of requiring any such proof, the City and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay the City Five Hundred Dollars (\$500.00) for each day that expires after the time specified in paragraphs 2.1.

Article 3. PAYMENT PROCEDURES & DOCUMENTATION

3.1 The Contractor shall submit an itemized bill to the Contract Administrator for approval prior to receiving compensation. Billing shall include an itemized summary of total costs billed and shall be made at such intervals as agreed to by the parties. All billings shall include a description of the status of efforts, a brief itemization of costs associated with each task or project phase and the total task or project costs to date. Upon final completion and acceptance of the services/work in accordance with the Contract Documents, the City shall pay any and all remainder of the Contract Price.

3.2 The Contractor shall be paid within thirty (30) days receipt of approved invoice for services.

3.3 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 Contract including, but not limited to, expenses

for sub-contractors, agents or assistants, direct and indirect charges for work performed and detailed documentation for all such work performed or to be performed under this Contract.

3.4 Copies or original documents prepared by the Contractor in relation to work associated with this Contract 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.

3.5 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 Contract shall be the exclusive property of the City.

Article 4. SUBCONTRACTORS

To the extent reasonably necessary to enable the Contractor to perform its duties hereunder, the Contractor shall be authorized to engage the services of any subcontractors, 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 under this Contract. All costs of the services of, or expenses incurred by, such subcontractors, agents or assistance shall be paid by the CONTRACTOR.

Article 5. CONTRACTOR'S REPRESENTATIONS

In order to induce the City to enter into this Contract, the Contractor makes the following representations:

5.1 Contractor has familiarized itself with the nature and extent of the Contract Documents, work, site, locality, and all local conditions and Laws and Regulations that in any manner may affect cost, progress, performance or furnishing of the work.

5.2 Contractor has obtained at his/her own expense and carefully studied, or assumes responsibility for obtaining and carefully studying, soil investigations, explorations, and test reports which pertain to the subsurface conditions at or contiguous to the site or otherwise may affect the cost, progress, performance or furnishing of the work as Contractor considers necessary for the performance or furnishing of the work at the Contract Price, within the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of the IFB; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or is deemed necessary by Contractor for such purposes.

5.3 Contractor has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports, studies or similar information or data in respect of said Underground Facilities are or is deemed necessary by the Contractor in order to perform and furnish the work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents.

5.4 Contractor has correlated the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.

5.5 Contractor has given Contract Administrator written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the resolution thereof is

acceptable to the Contractor.

5.6 The Contractor represents to the City that the services to be performed under this Contract 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 services shall conform to the highest standards and in accordance with this Contract.

5.7 The Contractor represents that it is licensed to do business in the State of Florida and further warrants its capability and experience to perform the tasks and services provided for herein in a professional and competent manner.

5.8 The Contractor shall not make changes to the scope of services/work or perform any additional work or provide any additional material except as agreed to in writing with the City prior to any change or additional services/work being commenced. Additional services/work, labor or materials provided without written authorization shall be done at the Contractor's sole risk and without payment.

Article 6. INDEMNITY & INSURANCE.

6.1 The parties recognize that the Contractor is an independent contractor. The Contractor 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, 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 Contractor, its agents, officers, subcontractors, employees, or anyone else utilized by the Contractor in the performance of this Contract. The Contractor's liability hereunder shall include all attorney's fees and costs incurred by the City in the enforcement of this indemnification provision (at all levels of trial, appeal and mediation). This includes claims made by the employees of the Contractor against the City and the Contractor 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 Contract and shall not be limited by the amount of any insurance required to be obtained or maintained under this Contract.

6.2 Subject to the limitations set forth in this Section, Contractor 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 Contractor's expense. The City shall have the right, at its option, to participate in the defense of any third party claim, without relieving Contractor of any of its obligations hereunder. If the Contractor assumes control of the defense of any third party claim in accordance with this paragraph, the Contractor shall obtain the prior written consent of the City before entering into any settlement of such claim. Notwithstanding anything to the contrary in this Section, the Contractor 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 Contractor 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.

6.3 It is the specific intent of the parties hereto that the foregoing indemnification complies with

Section 725.06, Florida Statutes, as amended. Contractor expressly agrees that it will not claim, and waives any claim, that this indemnification violates Section 725.06, Florida Statutes. 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.

6.4 The Contractor shall, at its own expense, procure and maintain throughout the term of this Contract, with insurers acceptable to the City, the types and amounts of insurance set forth below. The Contractor shall not commence services 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 and shall name the City as an additional insured for all insurance except Workers' Compensation. 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. The Contractor shall maintain during the life of this Contract the following types of insurance:

Commercial general liability, including public and contractual liability insurance in the amount of \$1,000,000.00 per occurrence (\$2,000,000.00 aggregate) to protect the Contractor from claims for damages for bodily and personal injury, including wrongful death, as well as from claims of property damages which may arise from any operations under this Contract, whether such operations be by the Contractor or by anyone directly or indirectly employed by or contracting with the Contractor.

Workers' Compensation Insurance and Employer's Liability Insurance for all employees as required by Florida Statutes

Comprehensive automobile liability in the amount of \$1,000,000 per occurrence to protect the Contractor from claims for damage for bodily or personal injury, including wrongful death, as well as claims of property damages which may arise from any operations under this Contract, whether such operations be by the Contractor or by anyone directly or indirectly employed by or contracting with the Contractor.

6.5 The insurance provided by the Contractor shall apply on a primary basis. Any insurance, or self-insurance, maintained by the City 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.

6.6 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 Contract or otherwise.

6.7 Neither approval nor failure to disapprove insurance furnished by the Contractor shall relieve the Contractor from responsibility to provide insurance as required by this Contract.

6.8 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 Contract. 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.

Article 7. REIMBURSEMENT OF ENGINEER EXPENSES.

Should the completion of this Contract be delayed beyond the specified or adjusted time limit, Contractor shall reimburse the City for all expenses of engineering and inspection incurred by the City during the period between said specified or adjusted time and the actual date of final completion. All such expenses for engineering and inspection incurred by the City will be charged to Contractor be deducted from payments due Contractor as provided by this Contract. Said expenses shall be further defined as engineer charges associated with the construction contract administration, including resident project representative costs. All such expenses shall be separate from and in addition to any Liquidated Damages as provided for herein.

Article 8. TERMINATION.

8.1 If the City's Contract Administrator deems that the Contractor is in default for failure to supply an adequate working force, or service of proper quality, or has failed in any other respect to satisfactorily perform the services specified in this Contract, the Contract Administrator may give written notice to the CONTRACTOR specifying defaults to be remedied within five (5) days. Such notice shall set forth the basis for any dissatisfaction and suggest corrective measures. If the Contractor does not remedy defaults within five (5) days or commence steps to remedy default to the reasonable satisfaction of the Contract Administrator, the City may secure such services from another Contractor and the City may withhold any money due or which may become due to the Contractor for such task related to the claimed default; or, the City may elect to immediately terminate this Contract.

8.2 Notwithstanding paragraph 8.1, the City reserves the right and may elect to terminate this Contract at any time. At such time, the Contractor shall be compensated only for those services/work which has been satisfactorily completed to the date of termination. No compensation shall be paid for de-mobilization, take-down, disengagement wind-down or other costs incurred due to termination of this Contract under Article 8.

Article 9. MISCELLANEOUS.

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

9.2 Additional work, changes to the Contract Price, or Contract Time, is subject to the City's prior written approval. The Contract Administrator has no authority to approve such changes and has no authority to waive the requirement of prior written authorization for extra work, changes in the Contract Time, or change orders, unless allowed by the City's purchasing code as it relates to each Work Order.

9.3 Headings and References & Exhibits: The headings contained in this Contract are inserted or convenience of reference only and shall not be a part or control or affect the meaning hereof. All references herein to Articles are to the Articles of this Contract. All references herein to Exhibits are to the exhibits hereto, each of which shall be incorporated into and deemed to be a part of this Contract.

9.4 Counterparts: This Contract may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which shall be deemed to be an original, but each of which together shall constitute one and the same instrument.

9.5 Entire Contract; Amendment and Waiver: This Contract (together with the Exhibits hereto) supersedes any and all prior negotiations and oral or written agreements heretofore made relating to

the subject matter hereof and, except for written agreements, if any, executed and delivered simultaneously with or subsequent to the date of this Contract, constitutes the entire agreement of the parties relating to the subject matter hereof. This Contract may not be altered or amended except by a writing signed by the parties hereto. No waiver of any of the terms or conditions of this Contract 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 Contract.

9.6 Successors and Assigns: This Contract shall be binding upon, and shall inure to the benefit of the parties hereto and their respective successors and assigns.

9.7 Governing Law; Consent to Jurisdiction: This Contract 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 submit itself to the exclusive jurisdiction of the Fifteenth Judicial Circuit Court in and for Palm Beach County, Florida for state actions and jurisdiction of the United States District Court for the Southern District of Florida, Palm Beach Division, for the purposes of any suit, action or other proceeding arising out of, or relating to, this Contract; (b) waives and agrees not to assert against any party hereto, by way of motion, as a defense of otherwise, in any suit, action or other proceeding, 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 part hereto is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper or that this Contract or the subject matter hereof may not be enforced in or by such courts.

9.8 Third Party Beneficiary rights: This Contract shall create no rights or claims whatsoever in any person other than a party herein.

9.9 Severability: If any one or more of the provisions of the Contract shall be held to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

9.10 Effective date: The effective date of this Contract is the date the Contract is approved by the City Commission.

9.11 Public Records: The Contractor 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 Contract.

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 this Contract 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.

9.12 Preparation: This Contract shall not be construed more strongly against either party regardless of who was more responsible for its preparation.

9.13 PALM BEACH COUNTY IG: 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.

9.14 All notices hereunder must be in writing and, unless otherwise provided herein, shall be deemed validly given on the date personally delivered to the address indicated below or delivered by nationally recognized overnight courier 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 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 to the CITY shall be given to the City address as follows:

Michael Bornstein, City Manager
City of Lake Worth
7 North Dixie Hwy
Lake Worth, Florida 33460

All notices, demands or requests from the City to the Contractor shall be given to the Contractor address as follows:

Rosso Site Development, Inc.,
111 Vassar Drive
Lake Worth Florida 33460

9.15 The Contractor shall not be entitled to an increase in the agreed to sum or payment or compensation of any kind from the City, as set forth, in each Work Order, for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency, arising because of periods of suspension or delay, disruption, interference or hindrance from any circumstances beyond the Contractor's control. The Contractor's sole remedy in the event of a delay arising out of or related to circumstances beyond the Contractor's control shall be an extension of the Contract Time as reasonably determined by the City.

9.16 Except as provided in Article 6 regarding Indemnification, all parties shall be responsible for their own attorney's 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. Further, 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

9.17 All work and services provided by the Contractor under this Contract shall be in accordance with all applicable laws including without limitation all federal, state, and local laws, ordinances, rules and regulations.

9.18 In the event the City has executed or executes an Interlocal Agreement with Palm Beach County regarding open cuts on County controlled/maintained roads the Contractor agrees to be bound by all of the terms of and conditions of that Agreement, including but not limited to, the requirement to obtain certain insurance and name the County as an additional insured.

IN WITNESS WHEREOF, the City and Contractor have caused this Construction Contract for the maintenance and construction of roadways, sidewalks and driveways, concrete curbing, green area grading and sodding, ADA concrete ramps, thermoplastic striping and signage to be executed as of the day and year shown above.

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
Glen J. Torcivia, City Attorney

CONTRACTOR: **ROSSO SITE DEVELOPMENT, INC.**

By: Joseph Rosso II

Print Name: Joseph Rosso II

Title: President

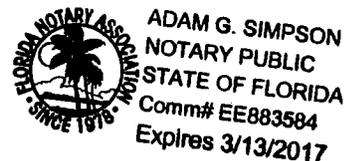
[Corporate Seal]

STATE OF FLORIDA)
COUNTY OF Palm Beach)

The foregoing instrument was acknowledged before me this 29th day of May, 2014 by Joseph Rosso II, as President of Rosso Site Development, 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

Adam G. Simpson
9



Print Name: Adam Simpson
My commission expires: 3-13-17

NOTICE OF AWARD

**CERTIFICATE OF LIABILITY INSURANCE**DATE (MM/DD/YYYY)
05/29/2014

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 Gateway Insurance Agency Surety Corp 2430 W. Oakland Park Blvd. Ft. Lauderdale, FL 33311	CONTACT NAME: Lawrence T Dwyer	
	PHONE (A/C No, Ext): 954-735-5500	FAX (A/C No): 954-735-2852
E-MAIL ADDRESS:		
INSURER(S) AFFORDING COVERAGE		NAIC #
INSURER A : Wesco Ins Company		25011
INSURER B : Liberty Mutual Group		
INSURER C :		
INSURER D :		
INSURER E :		
INSURER F :		

INSURED Rosso Site Development, Inc.
Attn: Blair Simpson
111 Vassar Drive
Lake Worth, FL 33460

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 SUBR INSR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	GENERAL LIABILITY		WPP1124632 01	11/08/2013	11/08/2014	EACH OCCURRENCE	\$ 1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY					DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 300,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR					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
							\$
B	AUTOMOBILE LIABILITY		BAS55968330	11/08/2013	11/08/2014	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
	<input checked="" type="checkbox"/> ANY AUTO					BODILY INJURY (Per person)	\$
	<input checked="" type="checkbox"/> ALL OWNED AUTOS	<input checked="" type="checkbox"/> SCHEDULED AUTOS				BODILY INJURY (Per accident)	\$
	<input checked="" type="checkbox"/> HIRED AUTOS	<input checked="" type="checkbox"/> NON-OWNED AUTOS				PROPERTY DAMAGE (PER ACCIDENT)	\$
							\$
	UMBRELLA LIAB	<input type="checkbox"/> OCCUR				EACH OCCURRENCE	\$
	EXCESS LIAB	<input type="checkbox"/> CLAIMS-MADE				AGGREGATE	\$
	DED	RETENTION \$					\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY					WC STATUTORY LIMITS	OTHER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	<input type="checkbox"/> Y/N	N/A			E.L. EACH ACCIDENT	\$
	If yes, describe under DESCRIPTION OF OPERATIONS below					E.L. DISEASE - EA EMPLOYEE	\$
						E.L. DISEASE - POLICY LIMIT	\$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Street & Road Construction

CERTIFICATE HOLDER

CITLA06

CITY OF LAKE WORTH
7 N. 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



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

12/10/2013

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.

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 Wells Fargo Ins Services USA, Inc. (WPB) 2054 Vista Parkway, Suite 400 West Palm Beach FL 33411-2718	CONTACT NAME: Brian Cronin	
	PHONE (A/C, No, Ext): (561) 655-5500	FAX (A/C, No): (855) 420-6662
E-MAIL ADDRESS:		
INSURER(S) AFFORDING COVERAGE		NAIC #
INSURER A: Star Insurance Company		18023
INSURER B: Federal Insurance Company		20281
INSURER C:		
INSURER D:		
INSURER E:		
INSURER F:		

INSURED
Rosso Site Development, Inc.

111 Vassar Dr.

Lake Worth FL 33460
(561) 718-4457

COVERAGES **CERTIFICATE NUMBER:** Cert ID 414686 **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 <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC						EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ \$	
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$	
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$	
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below			WC0770653	11/8/2013	11/8/2014	<input checked="" type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 500,000 E.L. DISEASE - EA EMPLOYEE \$ 500,000 E.L. DISEASE - POLICY LIMIT \$ 500,000	
B	Equipment Floater			45467433	12/3/2013	12/3/2014	Rented/Leased Equipment \$ 292,000	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

CERTIFICATE HOLDER

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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City of Lake Worth

BID TABULATION - Annual Maint Contract Pavement Concrete Striping

IFB-PS-ST-13-14-116				M & M ASPHALT MAINTENANCE INC.	ROSSO SITE DEVELOPMENT, INC	ASPHALT PAVING SYSTEMS, INC	WM.D. ADEIMY JR. INC.
OPENED: MAY 8, 2014 AT 2:00 PM							
No.	ITEM DESCRIPTION	EST QTY	UNIT	UNIT PRICE	UNIT PRICE	UNIT PRICE	UNIT PRICE
PAVEMENT							
1	MOBILIZATION (LESS THAN 100 SY)	1	EA	\$3,500.00	\$7,500.00	\$10,000.00	\$3,500.00
2	MOBILIZATION (OVER 100 SY)	1	EA	\$2,500.00	\$2,500.00	\$7,500.00	\$2,500.00
3	MOT - TYPE 2 BARRICADES OR CONES (PER DAY)	1	EA	\$350.00	\$0.44	\$0.55	\$350.00
4	MOT - SIGNAGE (PER DAY)	1	EA	\$100.00	\$2.20	\$75.00	\$106.00
5	MOT - CERTIFIED FLAGMAN (PER EA)	1	DAY	\$385.00	\$225.00	\$250.00	\$408.00
6	REMOVE/HAULOFF EX. PAVEMENT AND BASE (UP TO 14" DEEP)	1	SY	\$27.00	\$7.00	\$30.00	\$28.62
7	8" BASEROCK (LIMEROCK OR CR. CONC.) (PRIMED)	1	SY	\$16.50	\$13.50	\$15.00	\$17.49
8	12" BASEROCK (LIMEROCK OR CR. CONC.) (PRIMED)	1	SY	\$22.50	\$15.75	\$20.00	\$23.32
9	1.5" TYPE S-I ASPHALTIC CONCRETE	1	SY	\$10.00	\$13.00	\$18.50	\$10.60
10	1" TYPE S-III ASPHALTIC CONCRETE	1	SY	\$8.00	\$11.00	\$14.00	\$8.48
11	1.5" TYPE S-III ASPHALTIC CONCRETE	1	SY	\$10.00	\$13.00	\$18.50	\$10.60
12	1" MILL AND OVERLAY (S-III)	1	SY	\$10.50	\$20.00	\$20.50	\$11.13
13	1.5" MILL AND OVERLAY (S-III)	1	SY	\$13.50	\$25.00	\$25.00	\$14.31
14	ASPHALT MILLING AND HAULOFF (1")	1	SY	\$3.50	\$10.00	\$6.50	\$3.71
15	COLD IN-PLACE RECYCLING (4"-6") W/ 1.5" TYPE S-3	1	SY	\$65.00	\$32.00	\$29.00	\$68.90
16	COLD IN-PLACE RECYCLING (6"-9") W/ 1.5" TYPE S-3	1	SY	\$75.00	\$36.50	\$33.00	\$79.50
17	MICROSURFACE DOUBLE COURSE (30-34 LB/SY)	1	SY	\$5.50	\$4.00	\$3.50	\$5.83
18	ASPHALT SPEED HUMP COMPLETE W/ STRIPING (PER CITY DETAIL)	1	EA	\$3,500.00	\$4,000.00	\$1,500.00	\$3,710.00
19	MISC. ASPHALT (TYPE S-III)	1	TN	\$125.00	\$130.00	\$350.00	\$132.50
20	HOT IN-PLACE ASPHALT RECYCLING - HEATING AND REPAVING TREATMENT	1	SY	\$90.00	\$65.00	\$35.00	\$95.40
21	HOT IN-PLACE ASPHALT RECYCLING - ASPHALT RECYCLING AGENT	1	GAL	\$20.50	\$35.00	\$5.00	\$21.73
				\$10,837.50	\$14,658.39	\$19,949.05	\$11,106.12
CONCRETE							
22	MOBILIZATION (LESS THAN 100 LF)	1	EA	\$450.00	\$2,500.00	\$5,000.00	\$477.00
23	MOBILIZATION (OVER 100 LF)	1	EA	\$250.00	\$1,500.00	\$2,000.00	\$265.00
24	REMOVE EX. 4" CONCRETE	1	SF	\$1.50	\$4.00	\$4.00	\$1.59
25	REMOVE EX. 6" CONCRETE	1	SF	\$1.75	\$4.00	\$6.00	\$1.86
26	4" CONCRETE SIDEWALK (3,000 PSI)	1	SF	\$4.50	\$3.30	\$5.00	\$4.77
27	6" CONCRETE SIDEWALK / DRIVEWAY (3,000 PSI)	1	SF	\$4.88	\$4.84	\$6.50	\$5.17
28	MONOLITHIC CURB AND SIDEWALK	1	SF	\$5.98	\$3.85	\$8.50	\$6.31
29	REMOVE EX. CONCRETE CURBING (ALL TYPES)	1	LF	\$8.50	\$7.80	\$20.00	\$9.00
30	TYPE F CURB AND GUTTER	1	LF	\$24.00	\$19.80	\$30.00	\$25.44
31	VALLEY GUTTER	1	LF	\$25.00	\$19.80	\$29.00	\$26.50
32	TYPE D CURBING	1	LF	\$17.00	\$19.80	\$28.00	\$18.02
33	ADA CURB RAMPS W/ TACTILE DOME SURFACE	1	EA	\$750.00	\$715.00	\$2,500.00	\$795.00
				\$1,543.11	\$4,802.19	\$9,637.00	\$1,635.66
STRIPING							
34	MOBILIZATION (LESS THAN 50 LF)	1	EA	\$750.00	\$1,320.00	\$2,000.00	\$795.00
35	MOBILIZATION (OVER 50 LF)	1	EA	\$250.00	\$1,100.00	\$1,500.00	\$265.00
36	REMOVAL OF EX. STRIPING (GRIND OR WATERBLAST)	1	LF	\$0.85	\$1.93	\$0.95	\$0.90
37	4" DOUBLE YELLOW THERMO	1	LF	\$1.95	\$1.54	\$2.25	\$2.07
38	4" SINGLE YELLOW THERMO	1	LF	\$0.90	\$0.77	\$1.25	\$0.95
39	4" SINGLE WHITE THERMO	1	LF	\$0.90	\$0.77	\$1.25	\$0.95
40	6" DOUBLE YELLOW THERMO	1	LF	\$1.90	\$0.88	\$3.75	\$2.00
41	6" SINGLE YELLOW THERMO	1	LF	\$0.95	\$0.88	\$2.00	\$1.00
42	6" SINGLE WHITE THERMO	1	LF	\$0.95	\$0.88	\$2.00	\$1.00
43	12" SINGLE WHITE THERMO	1	LF	\$2.40	\$1.76	\$2.50	\$2.54
44	18" SINGLE WHITE THERMO	1	LF	\$2.95	\$2.64	\$3.25	\$3.13
45	24" STOP BAR WHITE THERMO	1	LF	\$85.00	\$4.40	\$5.00	\$90.10
46	RPM'S	1	EA	\$6.00	\$4.40	\$6.00	\$6.36
47	BIKE LANE SYMBOL STRIPING (THERMO)	1	EA	\$275.00	\$291.50	\$75.00	\$291.50
48	HANDICAP PARKING STALL COMPLETE W/ SIGN (PAINT)	1	EA	\$275.00	\$313.50	\$750.00	\$291.50
49	REMOVE / RELOCATE EXISTING SIGN W/ POST	1	EA	\$95.00	\$159.50	\$500.00	\$100.70
				\$1,749.75	\$3,205.35	\$4,855.20	\$1,854.70
MISC. WORK							
50	BAHIA SODDING (INCL. GRADING WORK)	1	SY	\$5.00	\$5.00	\$5.00	\$5.30
51	FLORATAM SODDING (INCL. GRADING WORK)	1	SY	\$7.00	\$6.00	\$7.00	\$7.42
52	ADJUST EX. MANHOLE RING AND COVER	1	EA	\$225.00	\$400.00	\$750.00	\$238.50
53	ADJUST EX. VALVE BOX	1	EA	\$175.00	\$200.00	\$450.00	\$185.50
54	ADJUST EX. CURB INLET / DRAINAGE INLET	1	EA	\$175.00	\$800.00	\$700.00	\$185.50
55	6' WOOD FENCE REPLACEMENT	1	LF	\$22.00	\$20.00	\$85.00	\$23.32
56	4' CHAIN LINK FENCE REPLACEMENT	1	LF	\$18.00	\$20.00	\$100.00	\$19.08
57	PAVER BRICK SIDEWALK REPAIR (EXIST. BRICKS)	1	SY	\$36.00	\$50.00	\$150.00	\$38.16
				\$663.00	\$1,501.00	\$2,247.00	\$702.78
				\$14,793.36	\$24,166.93	\$36,688.25	\$15,299.26



CITY OF LAKE WORTH

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

AGENDA DATE: June 17, 2014, Regular Meeting

DEPARTMENT: Public Services

EXECUTIVE BRIEF

TITLE:

Purchase Agreement with Trekker Tractor, LLC to replace a backhoe

SUMMARY:

The Agreement authorizes the purchase of one Case 4x4 Backhoe with canopy from Trekker Tractor, LLC For use by the Water Systems Department at a cost of \$69,405.40.

BACKGROUND AND JUSTIFICATION:

The Sewer Collection section of the Water Utilities Department currently has one vehicle scheduled for replacement in Fiscal Year 2014. Because of its age, condition, safety concerns due to being under sized, and cost of maintainance, Truck #260 a 2005 Case 580 4x4 backhoe is being replaced. The price also includes a 5 year, 7500 hour full protection warranty and a \$16,750.00 trade in allowance.

This vehicle was quoted by Trekker Tractor, LLC under vehicle specification #30 for the Case 580N Backhoe. This dealer won the bid award on the Florida Sheriffs Association contract (Bid# 13.11.0904) and this Agreement is a cooperative purchase and authorized without solicitation under the City's Purchasing Code. The Sheriffs Association Bid award is valid through September 30, 2014.

For more information on the 1,237 page Sheriffs Association Bid award/contract, please refer to: http://www.flsheriffs.org/our_program/purchasing_programs/cooperative-fleet-bid-awards/.

MOTION:

I move to approve/disapprove a purchase agreement with Trekker Tractor, LLC under a cooperative purchase use of the entire Sheriff's vehicle contract for a price of \$69,405.40.

ATTACHMENT(S):

Fiscal Impact Analysis

Trekker Contract

FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2014	2015	2016	2017	2018
Capital Expenditures	69,405.40	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	69,405.40	0	0	0	0
No. of Addn'l Full-Time Employee Positions	0	0	0	0	0

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

Utilities Water/Sewer		FY2014 Budget	Project #	Pre Exp; Balance	Expenditure for this item	Post Exp; Balance
403-7221-535.64-40	MACHINERY & EQUIPMENT/MISC EQUIPMENT	85,000.00	N/A	85,000	\$69,405.40	\$15,594.60

B. Department Fiscal Review: _L. Johnson, J. Brown_



WITH SEVERAL LOCATIONS SERVING THE STATE OF FLORIDA!

JACKSONVILLE	9235 Busch Dr. N, Jacksonville, FL 32218	(904) 696-0649
ORLANDO	9481 Bogey Creek Road, Orlando, FL 32824	(407) 888-0024
MIAMI	12601 W. Okeechobee road, Miami FL 33018	(305) 821-2273
TAMPA	1504 Tampa East Blvd, Tampa, FL 33619	(813) 341-4646
LAKE WORTH	1150 Barnett Drive, Lake Worth, FL 33461	(561) 296-9712
FT. MYERS	5701 Country Lakes Dr. Unit #7, Ft Myers, FL 33905	(239) 660-0663

THURSDAY, JUNE 12, 2014

ATTN: JUDY LOVE, CHRIS WALKER
CITY OF LAKE WORTH UTILITY DEPARTMENT

WE ARE PLEASED TO PRESENT THE FOLLOWING CASE INDUSTRIAL PRODUCT AS BID TO AND AWARDED BY THE FLORIDA SHERIFFS CONTRACT #13-11-0904, SPECIFICATION #30 CASE 4x4 BACKHOE WITH CANOPY.

BASE UNIT

DESCRIPTION	MSRP	DISC %	CONTRACT PRICE	PAGE #
Case 580N	103341		\$ 59,600.00	812
TOTAL	103341		\$ 59,600.00	

STATED CONTRACT OPTIONS

DESCRIPTION	MSRP	DISC %	CONTRACT PRICE	PAGE #
442085 Additional lights			\$ 245.00	812
442085 Strobe light			\$ 175.00	812
442085 Strobe light			\$ 175.00	812
423077 Radio			\$ 200.00	813
747875 Tool Box			\$ 180.00	813
warranty 5 yr - 7500 hour full protection			\$ 10,327.00	813
** (excludes travel & pick up - delivery)**				
423076 Extendable Stick*includes 700lb front weight			\$ 4,500.00	812
423090 Auto Ride Control			\$ 900.00	812
747669 Pilot controls			\$ 1,550.00	813
Sub total from section 1			\$ 59,600.00	
TOTAL	0		\$ 77,852.00	

PLEASE SEE PAGE 2

NON CONTRACT STATED OPTIONS SUBJECT TO 40% OFF MSRP

DESCRIPTION	MSRP	DISC %	CONTRACT PRICE	PAGE #
423082 mechanical coupler retro fit kit BH	\$ 148.00	40%	\$ 88.80	
423068 18 inch universal bucket no teeth	\$ 1,304.00	40%	\$ 782.40	
747657 - 82 inch bucket with cutting edge	\$ 2,205.00	40%	\$ 1,323.00	
747855 cab one Left hand door AC- Heat	\$ 9,482.00	40%	\$ 5,689.20	
423061 4wdr powershift s type transmission	\$ 1,961.00	40%	\$ 1,176.60	
Sub total from section 2			\$ 77,852.00	
	\$ 15,100.00		\$ 86,912.00	

CASE AND MANUFACTURE APPROVED ATTACHMENTS SUBJECT TO 20% OFF MSRP

DESCRIPTION	MSRP	DISC %	CONTRACT PRICE	PAGE #
Sub Total from section 3			86155.4	
TRADE IN ALLOWANCE CASE 58	0		-16750	
TOTAL CONTRACT SELLING PRICE			69405.4	

ON BEHALF OF MYSELF AND TREKKER TRACTOR, THANK YOU FOR THE OPPORTUNITY TO EARN YOUR BUSINESS.

RANDY SHEARIN
GOVERNMENTAL ACCOUNT MANAGER
CELL 813-525-0795
RANDY.SHEARIN@TREKKERGROUP.NET



CITY OF LAKE WORTH

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

AGENDA DATE: June 17, 2014 Regular Meeting

DEPARTMENT: Water Utilities

EXECUTIVE BRIEF

TITLE:

Contractor Agreement with Shannon Chemical Corp. for purchase of SNC-N2 Phosphate for the Water Treatment Plant

SUMMARY:

The Agreement authorizes the purchase of phosphate for an amount not to exceed \$18,508 for the remainder of Fiscal Year 2014; \$41,282 for Fiscal Year 2015; and \$45,410 for Fiscal Year 2016.

BACKGROUND AND JUSTIFICATION:

The National Primary Drinking Water Regulations requires all community water systems to monitor for lead and copper and establishes corrosion control treatment requirements. Phosphate is a necessary chemical at the City of Lake Worth Water Treatment Plant (LW WTP) to control corrosion, thereby limiting lead and copper in the drinking water. Since the LW WTP began dosing SNC-N2 Phosphate, it has proven to be a successful method of corrosion control.

This product also meets the no zinc requirement of the City of Lake Worth Power Plant, which uses the LW WTP water in its cooling towers. The maximum contaminant level (MCL) for zinc cannot exceed 0.49 mg/L as zinc discharged off the cooling towers into sanitary sewers. The requirement to meet this zinc discharge is part of the permit C95103113 of the City of West Palm Beach Sewer Use Ordinance 4414-12.

Shannon Chemical Corporation specifically formulated SNC-N2 Phosphate to meet the LW WTP no zinc requirements and has been the single source provider of this product for the past 20 years. It is the City's intent to enter into the single source Contractor Agreement for the purchase of SNC-N2 Phosphate, and the procurement division concurs with this single source purchase.

Section 2-112(f) of the code single source procurement. Upon receipt of justification from the user department and/or the proposed single source, the procurement division may select a single source without competition if, after conducting a search for available sources, the procurement division determines that only a single source is practicable or for other reasons single source is in the best interest of the city. Upon determination of single source, contract negotiations shall commence with the single source. If contract terms are agreed upon and the single source procurement is anticipated to have a total value of twenty-five thousand dollars (\$25,000.00) or less, a contract between the city and the single source may be approved and executed by the city manager. If contract terms are agreed upon and the single source procurement is anticipated to have a total value of more than twenty-five thousand dollars (\$25,000.00), the city commission must approve the contract between the city and the single source.

MOTION:

I move to approve/disapprove a multi-year single source Contractor Agreement for purchase of SNC-N2 Phosphate for the Water Treatment Plant with Shannon Chemical Corp, for an amount not to exceed \$18,508.00 for the remainder of Fiscal Year 2014; \$41,282 for Fiscal Year 2015; and \$45,410 for Fiscal Year 2016.

Attachments

- 1) Fiscal Analysis
- 2) Sole Source Letter
- 3) Agreement

FISCAL IMPACT ANALYSIS

A. Three Year Summary of Fiscal Impact

Fiscal Years	2014	2015	2016
Capital Expenditures	0	0	0
Operating Expenditures	\$18,508	\$41,282	\$45,410
External Revenues	0	0	0
Program Income	0	0	0
In-Kind Match	0	0	0
Net Fiscal Impact	\$18,508	\$41,282	\$45,410

Our estimated annual usage is 19,345 pounds per year, with an expected increase of ten percent for fiscal year 2015 and each year after. Shannon Chemical Corporation has quoted a price of \$1.94 per pound through December 31 2016. Staff is therefore requesting a sole source Not-to-Exceed purchase order in the amount of \$18,508.00 for the remainder of fiscal year 2014, \$41,282 for FY-2015 and \$45,410 for FY-2016. Average rate per pound is \$1.94.

Remainder of FY-2014	\$18,508.00
Fiscal Year 2015	\$41,282.00
Fiscal Year 2016	\$45,410.00

Estimated Daily Flow to Distribution System in Million Gallons

4.00	4.40	4.84
------	------	------

	FY 2014	FY 2015	FY 2016	
Pounds of Phosphate per Day	53	58.3	64.13	Total
Pounds of Phosphate per year	9,540.00	21,279.50	23,407.45	54,226.95
Phosphate Cost per year	18,507.60	41,282.23	45,410.45	105,200.28

Estimated 10 % Increase Each Year

B. Recommended Source of Funds/Summary of Fiscal Impact

The purchase of the SNC-N2 Phosphate is included as part of the annual budget for the Water Fund. If approved, this purchase will be made from the Water Treatment - chemical account #402-7022-533.52-30.

Utilities/Water Production							
Account Number	Account Description	Project #	FY 2014 Proposed Budget	Amended Budget	Current Balance	Agenda Item Expenditures	Remaining Balance
402-7022-533.52-30	Water Treatment Chemicals	N/A	\$719,580.00	\$719,580.00	\$286,624.00	\$18,508.00	\$268,116.00

C. Fiscal Review:

Larry Johnson – Director
 Monica Morandi –Engineer



Shannon Chemical Corp.

P.O. Box 376 Malvern, PA 19355 • Phone: (610) 363-9090 • Fax: (610) 524-6050

February 18, 2014

City of Lake Worth
301 College Street
Lake Worth, FL 33460

Attention: Timothy Sloan
Subject: Updated Pricing

Dear Tim,

I want to thank you and the City of Lake Worth for the trust and commitment that you have placed with **SHANNON CHEMICAL CORPORATION** and our product, **SNC-N2**.

SNC-N2 is a unique proprietary blend of phosphates specifically designed to minimize distribution system corrosion. **SNC-N2** is the best lead and copper corrosion inhibitor available to the waterworks industry. **SNC-N2** is a non-zinc blend of three different polyphosphates. **SHANNON CHEMICAL CORPORATION** looks forward to continuing to supply Lake Worth with our outstanding proprietary blend, **SNC-N2**.

Tim, **SNC-N2** was designed 20 years ago to assist you and Lake Worth with the development of a better product that produced smooth calcium carbonate deposition throughout your service area. At that time you were using a generic phosphate product that was not providing desired results. **SNC-N2** was introduced as an effective stabilizing agent which produced a protective thin egg like deposit throughout the entire surface area. The product has been very successful over the past 20 years.

SNC-N2 is a sole source product that was designed specifically for the City of Lake Worth. No other companies have a product that is identical to **SNC-N2**. Current pricing of \$1.97/# which is firm through 04.30.14 will be reduced to \$1.94/# and extended through the end of the calendar year, 12.31.16. **SHANNON CHEMICAL CORPORATION** will make every effort to work with our suppliers so that we can provide you with a firm one year price.

Thank you for your continued interest and support of **SHANNON CHEMICAL CORPORATION'S** products and services.

Respectfully,
SHANNON CHEMICAL CORPORATION

Daniel C. Flynn
President

**CONTRACTOR AGREEMENT
(Purchase of SNC-N2 Phosphate)**

THIS AGREEMENT is made this _____ day of _____, 2014 between the **City of Lake Worth**, Florida, a municipal corporation ("CITY"), with its principle office located at 7 North Dixie Highway, Lake Worth, Florida 33460, and, **Shannon Chemical Corporation**, a corporation authorized to do business in the State of Florida, with its principal office located at 602 Jeffers Circle, Exton, PA 19341, hereinafter referred to as the "CONTRACTOR".

RECITALS

WHEREAS, phosphate is a necessary chemical at the City of Lake Worth Water Treatment Plant for the treatment of potable water to control corrosion thereby limiting lead and copper in the drinking water; and

WHEREAS, the CONTRACTOR has specifically formulated SNC-N2, a unique proprietary blend of phosphates specifically designed to minimize distribution system corrosion; and

WHEREAS, the CITY has used SNC-N2 for over the past 20 years to effectively minimize corrosion; and

WHEREAS, the CITY desires to enter this agreement with the CONTRACTOR as the sole provider of SNC-N2 and the procurement division concurs with this sole source purchase; and

NOW THEREFORE, the CITY hereby engages 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 shall be for three (3) years from the date this Agreement is approved by the City. The CITY, however, may terminate this Agreement subject to the provisions of this Agreement.

II. Scope of Work:

2.1 The scope of work is for the CONTRACTOR to provide SNC-N2 to the City as set forth in Exhibit "A" attached hereto and incorporated herein.

2.2 The CONTRACTOR represents to the CITY that the services 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 services shall conform to the highest standards and in accordance with this Agreement and all applicable laws.

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 services to be completed under this Agreement. The CONTRACTOR further warrants its capability and experience to perform the services provided for herein in a professional and competent manner.

III. USE OF AGENTS OR ASSISTANTS: To the extent reasonably necessary to enable the CONTRACTOR to perform its services hereunder, the CONTRACTOR shall be authorized to engage the services of any agents or assistants which it may deem proper, and may further employ, engage, or retain the services of such other persons or corporations to aid or assist in the proper performance 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 services to be performed by the CONTRACTOR under this Agreement but is not authorized to modify this Agreement.

V. EQUIPMENT: The CONTRACTOR shall provide all equipment necessary to complete the services to be performed hereunder. In the event CONTRACTOR requires equipment from the CITY, the CONTRACTOR shall meet and confer with the CITY before services commences. 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 services.

VI. FEE AND ORDERING MECHANISM

6.1 For all services (including the SNC-N2) to be provided under this Agreement, the CONTRACTOR shall be entitled to a fee as set forth in Exhibit "A".

6.2 Should the CITY require additional services not included in this Agreement, fees and payment for such work will be set forth in a separate Addendum, as authorized by the CITY's governing body or CITY manager (depending on the amount) prior to any such additional work being performed by the CONTRACTOR.

6.3 The City's ordering mechanism for all services to commence 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 services which are out of scope. The CITY's Fiscal Year ends on September 30th of each calendar year. The CITY cannot authorize services beyond September 30th of each calendar year, prior to the annual budget being approved by the City Commission.

VII. MAXIMUM COSTS: The CONTRACTOR expressly acknowledges and agrees that the total cost to complete all services is as specified herein and no additional costs shall be authorized without prior written approval from CITY.

VIII. INVOICE: The CONTRACTOR shall submit an itemized invoice to the Project Manager for approval prior to receiving compensation. The invoice shall include an itemized summary of total costs billed and shall be made at such intervals as agreed to with the Project Manager, but no more frequently than once per month. All invoices shall include a description of the status of the services, a brief itemization of costs associated with each task or project phase and the total task or project costs to date. The CONTRACTOR shall be paid within thirty (30) days receipt of an approved invoice for the services.

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 services performed and detailed documentation for all such services performed or to be performed under this Agreement.

X. COPIES OF DATA/DOCUMENTS: Copies or original documents prepared by the CONTRACTOR in relation to services 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.

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 that 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 below. The CONTRACTOR shall not commence services 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.

A. The CONTRACTOR shall maintain, during the life of this Agreement, commercial general liability, including contractual liability insurance in the amount of \$1,000,000 per occurrence and \$2,000,000 aggregate, to protect the CONTRACTOR from claims for damages for bodily and personal injury, including wrongful death, as well as from claims of property damages which may arise from any operations under this Agreement, whether such operations be by the CONTRACTOR or by anyone directly employed by or contracting with the CONTRACTOR.

B. The CONTRACTOR shall maintain, during the life of this Agreement, comprehensive automobile liability insurance in the minimum amount of \$1,000,000 combined single limit for bodily injury and property damages liability to protect the CONTRACTOR from claims for damages for bodily and personal injury, including death, as well as from claims for property damage, which may arise from the ownership, use, or maintenance of owned and non-owned automobiles, including rented automobiles whether such operations be by the

CONTRACTOR or by anyone directly or indirectly employed by the CONTRACTOR.

C. The CONTRACTOR shall maintain, during the life of this Agreement, Workers' Compensation Insurance and Employer's Liability Insurance for all employees as required by Florida Statutes.

All insurance, other than Worker's Compensation, to be maintained by the CONTRACTOR shall specifically include the CITY as an "Additional Insured".

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 and hold harmless, to the maximum extent permitted by law, the CITY and its officers, agents, employees and representatives, from and against any and all liability, suite, actions, proceedings, judgments, claims, losses, liens, damages, injuries (whether in contract or in tort,

including personal injury, accidental death or property damage, and regardless, of whether the allegations are false, fraudulent or groundless), costs and expenses (including attorney's fees, litigation, arbitration, mediation, appeal expenses) to the extent arising out of or alleged to have arisen out of the acts or neglect of its agents, employees, subcontractors or by anyone the CONTRACTOR directly or indirectly employed.

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: 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 of 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: Time is of the essence in the completion of tasks and services as specified herein.

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 address as follows:

Michael Bornstein, City Manager
City of Lake Worth
7 North Dixie Hwy
Lake Worth, Florida 33460

All notices, demands or requests from the CITY to the CONTRACTOR shall be given to the CONTRACTOR address as follows:

Shannon Chemical Corporation
602 Jeffers Circle
Exton, PA 19341

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 seven (7) 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.

XXV. 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.

XXVI. 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.

XXVII. 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

Statutes, for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list. CONTRACTOR will advise the CITY immediately if it becomes aware of any violation of this statute.

XXVIII PREPARATION: This Agreement shall not be construed more strongly against either party regardless of who was more responsible for its preparation.

XXVIX PALM BEACH COUNTY IG: 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.

XXX 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.

XXXI PUBLIC RECORDS REQUIREMENT: CONTRACTOR shall comply with all public records laws in accordance with Chapter 119, Florida Statutes. In accordance with state law, CONTRACTOR agrees to:

a) Keep and maintain all records that ordinarily and necessarily would be required by the City.

b) Provide the public with access to public records on the same terms and conditions that the CITY would provide for the records and at a cost that does not exceed the costs provided in Chapter 119, Florida Statutes or as otherwise provided by law.

c) Ensure that public records that are exempt or confidential and exempt from public records disclosure 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 records in possession of the CONTRACTOR at the termination of the contract and destroy any 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. All records shall be transferred to the CITY prior to final payment being made to the CONTRACTOR.

e) If CONTRACTOR does not comply with this section, the CITY shall enforce the contract provisions in accordance with the contract and may unilaterally cancel this contract in accordance with state law.

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.

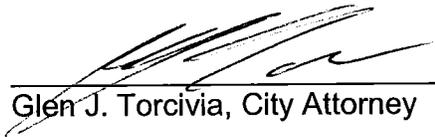
CITY OF LAKE WORTH, FLORIDA

By: _____
Pam Triolo, Mayor

ATTEST:

Approved as to form and legal sufficiency:

Pamela J. Lopez, City Clerk



Glen J. Torcivia, City Attorney

CONTRACTOR: **SHANNON CHEMICAL CORPORATION**

By:  _____

[Corporate Seal]

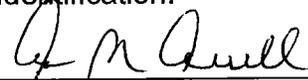
Print Name: Daniel C. Flynn

Title: PRESIDENT

Pennsylvania
STATE OF FLORIDA)
COUNTY OF CHESTER)

The foregoing instrument was acknowledged before me this 14th day of April, 2014 by Daniel C. Flynn as PRESIDENT (title), of Shannon Chemical Corporation, 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: Ann M. Arrell
My commission expires: _____

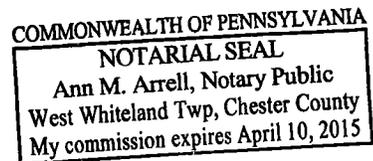


EXHIBIT "A"
Scope of Services / Fees

The estimated annual usage by the City of Lake Worth of SNC-N2 Phosphate is 19,345 pounds per year, with an expected increase of ten percent for fiscal year 2015 and each year thereafter.

Shannon Chemical Corporation shall provide SNC-N2 Phosphate to the City of Lake Worth for \$1.94 per pound through December 31, 2016. This includes delivery of the SNC-N2 Phosphate to the City.

The foregoing is regardless of the actual usage by the City of Lake Worth and the City of Lake Worth shall not be required to use a minimum amount at any time.



CITY OF LAKE WORTH

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

AGENDA DATE: June 17, 2014, Regular Meeting

DEPARTMENT: Finance

EXECUTIVE BRIEF

TITLE:

Ordinance No 2014-19 - First Reading - update the Police Retirement System to comply with the Internal Revenue Service Code and favorable ruling on the Police Retirement System and schedule the public hearing date for July 1, 2014

SUMMARY:

The Ordinance for the City's pension systems are reviewed and updated periodically.

BACKGROUND AND JUSTIFICATION:

The attorney for the General Employees and Police Retirement Systems provides a review of the governing ordinances to ensure compliance with the IRS and Florida State Statutes. Changes in either result in an update to these ordinances.

MOTION:

I move to approve/not approve Ordinance No. 2013-19 on first reading and schedule the public hearing date for July 1, 2014.

ATTACHMENT(S):

Fiscal Impact Analysis – Not Applicable
Ordinance

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ORDINANCE No. 2014-19 OF THE CITY OF LAKE WORTH, FLORIDA, AMENDING CHAPTER 16 PENSION AND RETIREMENT, ARTICLE IV, DIVISION 1, POLICE RETIREMENT SYSTEM, OF THE CODE OF ORDINANCES, TO PROVIDE FOR COMPLIANCE WITH THE INTERNAL REVENUE CODE; TO PROVIDE FOR THE REPEAL OF ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; TO PROVIDE FOR SEVERABILITY AND TO PROVIDE FOR AN EFFECTIVE DATE.

WHEREAS, on January 4, 2011 an application was filed with the Internal Revenue Service for a Favorable Determination Letter regarding the qualified status of the Plan under Section 401(a) of the Internal Revenue Code; and

WHEREAS, on February 22, 2013, the Internal Revenue Service issued a Favorable Determination Letter, finding that the Plan complies with all qualification requirements; and

WHEREAS, the Favorable Determination Letter is subject to the timely adoption of the amendments provided herein, and

WHEREAS, the trustees of the City of Lake Worth Police Retirement System have requested and approved such amendments as being in the best interests of the participants and beneficiaries as well as improving the administration of the plan, and

WHEREAS, the City Commission has received, reviewed and considered an actuarial impact statement describing the actual impact of the amendments provided for herein.

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

Section 1. The foregoing WHEREAS clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Ordinance upon adoption hereof.

Section 2. CHAPTER 16 PENSION AND RETIREMENT, ARTICLE IV, DIVISION 1, POLICE RETIREMENT SYSTEM, Subsection 16-136(f), of the Code of Ordinances of the City of Lake Worth, is hereby amended by deleting the ~~stricken-through~~ words and adding the underlined words:

...

(f) *Compensation.* The term "compensation" shall mean all salary paid to a police officer within the meaning of IRC section 415(c)(3). For persons who first became participants of the retirement system on or after October 1, 1979, "compensation" shall exclude payments for all accumulated leave, compensatory

49 time and overtime. ~~For the purpose of applying the limitations set~~
50 ~~forth in Sections 401(a)(17) and 415 of the Internal Revenue~~
51 ~~Code, Compensation shall include any elective deferral (as~~
52 ~~defined in Code Section 402(g)(3) of the Internal Revenue Code),~~
53 ~~and any amount which is contributed or deferred by the employer~~
54 ~~at the election of the Member and which is not includible in the~~
55 ~~gross income of the Member by reason of Section 125 or 457 of~~
56 ~~the Internal Revenue Code. For limitation years beginning on and~~
57 ~~after January 1, 2001, for the purposes of applying the limitations~~
58 ~~described in Section 16-153 hereof, Compensation paid or made~~
59 ~~available during such limitation years shall include elective~~
60 ~~amounts that are not includible in the gross income of the Member~~
61 ~~by reason of Section 132(f)(4) of the Internal Revenue Code.~~

62
63 Section 3. CHAPTER 16 PENSION AND RETIREMENT, ARTICLE IV,
64 DIVISION 1, POLICE RETIREMENT SYSTEM, Section 16-143, of the Code of
65 Ordinances of the City of Lake Worth, is hereby amended by adding a
66 subsection (e) as follows:
67

68 ...

69 (e) *Death while performing USERRA-qualified active military*
70 *service.* In the case of a Member who dies on or after January 1,
71 2007 while performing "Qualified Military Service" under Title 38,
72 United States Code, Chapter 43, Uniformed Services Employment
73 and Reemployment Rights Act ("USERRA") within the meaning of
74 Section 414(u) of the Internal Revenue Code, any "additional
75 benefits" (as defined by Section 401(a)(37) of the Internal
76 Revenue Code) provided under the Plan that are contingent upon
77 a Member's termination of employment due to death shall be
78 determined as though the Member had resumed employment
79 immediately prior to his death. With respect to any such
80 "additional benefits," for vesting purposes only, credit shall be
81 given for the period of the Member's absence from covered
82 employment during "Qualified Military Service".
83

84 Section 4. CHAPTER 16 PENSION AND RETIREMENT, ARTICLE IV,
85 DIVISION 1, POLICE RETIREMENT SYSTEM, Section 16-153(a), of the Code
86 of Ordinances of the City of Lake Worth, is hereby amended by deleting the
87 ~~stricken through~~ words and adding the underlined words:
88

89 ~~(a) *Maximum pension.* Notwithstanding any provision of this~~
90 ~~plan to the contrary, the annual pension that is accrued by or paid~~
91 ~~to a participant shall not exceed the dollar limitation set forth~~

92 ~~below. If the benefit the participant would otherwise accrue in a~~
93 ~~limitation year would produce an annual pension in excess of the~~
94 ~~dollar limitation, the benefit shall be limited to a benefit that does~~
95 ~~not exceed the dollar limitation.~~

96
97 (1) ~~Definitions used in this section.~~

98
99 (A) ~~"Annual Pension" means the benefits~~
100 ~~received by a participant under this Plan expressed~~
101 ~~in the form of a straight life annuity. In determining~~
102 ~~whether benefits payable exceed the dollar limitation~~
103 ~~set forth below, benefits payable in any form other~~
104 ~~than a straight life annuity shall be adjusted to the~~
105 ~~larger of:~~

106
107 (i) ~~The annual amount of the straight life~~
108 ~~annuity (if any) payable to the participant~~
109 ~~under the plan commencing at the same~~
110 ~~annuity starting date as the form of benefit~~
111 ~~payable to the participant; or~~

112
113 (ii) ~~The annual amount of the straight life~~
114 ~~annuity commencing at the same annuity~~
115 ~~starting date that has the same actuarial~~
116 ~~present value as the form of benefit payable~~
117 ~~to the participant, computed using a 5 percent~~
118 ~~interest assumption and the applicable~~
119 ~~mortality table described in § 1.417(e)-1(d)(2)~~
120 ~~for that annuity starting date.~~

121
122 ~~No actuarial adjustment to the benefit shall be made~~
123 ~~for benefits that are not directly related to retirement~~
124 ~~benefits (such as a qualified disability benefit,~~
125 ~~preretirement incidental death benefits, and~~
126 ~~postretirement medical benefits); or the inclusion in~~
127 ~~the form of benefit of an automatic benefit increase~~
128 ~~feature, provided the form of benefit is not subject to~~
129 ~~§ 417(e)(3) of the Internal Revenue Code and would~~
130 ~~otherwise satisfy the limitations of this subsection~~
131 ~~(a), and the amount payable under the form of~~
132 ~~benefit in any limitation year shall not exceed the~~
133 ~~limits of this subsection (a) applicable at the annuity~~
134 ~~starting date, as increased in subsequent years~~
135 ~~pursuant to § 415(d) of the Code. For this purpose,~~

136 an automatic benefit increase feature is included in a
137 form of benefit if the form of benefit provides for
138 automatic, periodic increases to the benefits paid in
139 that form.

140
141 (B) — "Dollar Limitation" means one hundred sixty
142 thousand dollars (\$160,000.00) (subject to the
143 annual adjustments provided under Section 415(d)
144 of the IRC). Said amount shall be adjusted based on
145 the age of the participant when benefits begin, as
146 follows:

147
148 (i) — Except with respect to a participant
149 who is a "qualified participant" as defined in
150 Section 415(b)(2)(H) of the Code, for benefits
151 (except survivor and disability benefits as
152 defined in Section 415(b)(2)(I) of the Code)
153 beginning before age sixty-two (62) the age-
154 adjusted dollar limitation is equal to the lesser
155 of—

156
157 (I) — The actuarial equivalent of the
158 annual amount of a straight life annuity
159 commencing at the annuity starting
160 date that has the same actuarial
161 present value as a deferred straight life
162 annuity commencing at age sixty-two
163 (62), where annual payments under
164 the straight life annuity commencing at
165 age sixty-two (62) are equal to the
166 dollar limitation (as adjusted pursuant
167 to section 415(d) for the limitation
168 year), and where the actuarially
169 equivalent straight life annuity is
170 computed using a five (5) percent
171 interest rate and the applicable
172 mortality table under §1.417(e)-1(d)(2)
173 that is effective for that annuity starting
174 date (and expressing the participant's
175 age based on completed calendar
176 months as of the annuity starting date);
177 and

178
179 (II) — The dollar limitation (as adjusted
180 pursuant to section 415(d)) multiplied
181 by the ratio of the annual amount of

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~~the straight life annuity under the plan to the annual amount of the straight life annuity under the plan commencing at age sixty-two (62), with both annual amounts determined without applying the rules of section 415.~~

~~(ii) For benefits beginning after the age of sixty-five (65), the age-adjusted dollar limitation is equal to the lesser of:~~

~~(I) The actuarial equivalent of the annual amount of a straight life annuity commencing at the annuity starting date that has the same actuarial present value as a straight life annuity commencing at age sixty-five (65), where annual payments under the straight life annuity commencing at age sixty-five (65) are equal to the dollar limitation of section 415(b)(1)(A) (as adjusted pursuant to section 415(d) for the limitation year), and where the actuarially equivalent straight life annuity is computed using a five (5) percent interest rate and the applicable mortality table under § 1.417(e)-1(d)(2) that is effective for that annuity starting date (and expressing the participant's age based on completed calendar months as of the annuity starting date); and~~

~~(II) The section 415(b)(1)(A) Dollar limitation (as adjusted pursuant to section 415(d) and § 1.415(d)-1 for the limitation year) multiplied by the ratio of the annual amount of the adjusted immediately commencing straight life annuity under the plan to the adjusted age sixty-five (65) straight life annuity. The adjusted immediately commencing straight life annuity means the annual amount of the immediately~~

226 ~~commencing straight life annuity~~
227 ~~payable to the participant, computed~~
228 ~~disregarding the participant's accruals~~
229 ~~after age sixty-five (65) but including~~
230 ~~actuarial adjustments even if those~~
231 ~~actuarial adjustments are applied to~~
232 ~~offset accruals. For this purpose, the~~
233 ~~annual amount of the immediately~~
234 ~~commencing straight life annuity is~~
235 ~~determined without applying the rules~~
236 ~~of section 415. The adjusted age sixty-~~
237 ~~five (65) straight life annuity means the~~
238 ~~annual amount of the straight life~~
239 ~~annuity that would be payable under~~
240 ~~the plan to a hypothetical participant~~
241 ~~who is sixty five (65) years old and has~~
242 ~~the same accrued benefit (with no~~
243 ~~actuarial increases for commencement~~
244 ~~after age sixty-five (65)) as the~~
245 ~~participant receiving the distribution~~
246 ~~(determined disregarding the~~
247 ~~participant's accruals after age sixty-~~
248 ~~five (65) and without applying the rules~~
249 ~~of section 415).~~

250
251 ~~(iii) There shall be no age adjustment of~~
252 ~~the dollar limitation with respect to benefits~~
253 ~~beginning between the ages of sixty-two (62)~~
254 ~~and sixty-five (65).~~

255
256 ~~(2) The limitations set forth in this subsection (a) shall~~
257 ~~not apply if the annual pension does not exceed ten~~
258 ~~thousand dollars (\$10,000.00) provided the participant has~~
259 ~~never participated in a defined contribution plan maintained~~
260 ~~by the city.~~

261
262 ~~(3) Cost-of-living adjustments in the dollar limitation for~~
263 ~~benefits shall be limited to scheduled annual increases~~
264 ~~determined by the Secretary of the Treasury under~~
265 ~~subsection 415(d) of the Code.~~

266
267 ~~(4) In the case of a participant who has fewer than 10~~
268 ~~years of participation in the plan, the dollar limitation set~~
269 ~~forth in paragraph (1)(B) of this subsection (a) shall be~~
270 ~~multiplied by a fraction - (i) the numerator of which is the~~

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~~number of years (or part thereof) of participation in the plan, and (ii) the denominator of which is 10.~~

~~(5) Any portion of a participant's benefit that is attributable to mandatory employee contributions (unless picked up by the city) or rollover contributions, shall be taken into account in the manner prescribed in the regulations under Section 415 of the Code.~~

~~(6) Should any participant participate in more than one (1) defined benefit plan maintained by the city, in any case in which the participant's benefits under all such defined benefit plans (determined as of the same age) would exceed the dollar limitation applicable at that age, the accrual of the participant's benefit under this plan shall be reduced so that the participant's combined benefits will equal the dollar limitation.~~

~~(7) For a participant who has or will have distributions commencing at more than one (1) annuity starting date, the annual benefit shall be determined as of each such annuity starting date (and shall satisfy the limitations of this section as of each such date), actuarially adjusting for past and future distributions of benefits commencing at the other annuity starting dates. For this purpose, the determination of whether a new starting date has occurred shall be made without regard to § 1.401(a)-20, Q&A 10(d), and with regard to § 1.415(b)1(b)(1)(iii)(B) and (C) of the Income Tax Regulations.~~

~~(8) The determination of the annual pension under paragraph (a)(1) of this subsection (a) shall take into account (in the manner prescribed by the regulations under Section 415 of the Code) social security supplements described in § 411(a)(9) of the Internal Revenue Code and benefits transferred from another defined benefit plan, other than transfers of distributable benefits pursuant § 1.411(d)-4, Q&A-3(c) of the Income Tax Regulations.~~

~~(9) The above limitations are intended to comply with the provisions of Section 415 of the Code, as amended, so that the maximum benefits provided by plans of the City shall be exactly equal to the maximum amounts allowed under Section 415 of the Code and regulations thereunder.~~

315 ~~If there is any discrepancy between the provisions of this~~
316 ~~subsection (a) and the provisions of Section 415 of the~~
317 ~~Code and regulations thereunder, such discrepancy shall~~
318 ~~be resolved in such a way as to give full effect to the~~
319 ~~provisions of Section 415 of the Code. The value of any~~
320 ~~benefits forfeited as a result of the application of this~~
321 ~~subsection (a) shall be used to decrease future employer~~
322 ~~contributions.~~

323
324 ~~(10) For the purpose of applying the limitations set forth~~
325 ~~in Sections 401(a)(17) and 415 of the Internal Revenue~~
326 ~~Code, earnings shall include any elective deferral (as~~
327 ~~defined in Code Section 402(g)(3) of the Internal Revenue~~
328 ~~Code), and any amount which is contributed or deferred by~~
329 ~~the employer at the election of the member and which is~~
330 ~~not includible in the gross income of the member by reason~~
331 ~~of Section 125 or 457 of the Internal Revenue Code. For~~
332 ~~limitation years beginning on and after January 1, 2001, for~~
333 ~~the purposes of applying the limitations described in this~~
334 ~~subsection (a), compensation paid or made available~~
335 ~~during such limitation years shall include elective amounts~~
336 ~~that are not includible in the gross income of the Member~~
337 ~~by reason of Section 132(f)(4) of the Internal Revenue~~
338 ~~Code.~~

339
340 (a) Maximum amount of retirement income.

341
342 (1) The limitations of this Subsection (a) shall apply in
343 limitation years beginning on or after July 1, 2007,
344 except as otherwise provided herein, and are
345 intended to comply with the requirements of the
346 Pension Protection Act of 2006 and shall be
347 construed in accordance with said Act and guidance
348 issued thereunder. The provisions of this
349 Subsection (a) shall supersede any provision of the
350 Plan to the extent such provision is inconsistent with
351 this Subsection.

352
353 The Annual Pension as defined in Paragraph (2)
354 below otherwise payable to a Member at any time
355 shall not exceed the Dollar Limitation for the
356 Member multiplied by a fraction whose value cannot
357 exceed one, the numerator of which is the Member's
358 number of years (or part thereof, but not less than
359 one year) of service with the City and the
360 denominator of which is 10. For this purpose, no

361 more than one year of service may be credited for
362 any Plan Year. If the benefit the Member would
363 otherwise accrue in a limitation year would produce
364 an Annual Pension in excess of the Dollar Limitation,
365 the benefit shall be limited (or the rate of accrual
366 reduced) to a benefit that does not exceed the Dollar
367 Limitation.
368

369 (2) “Annual Pension” means the sum of all annual
370 benefits, payable in the form of a straight life
371 annuity. Benefits payable in any other form shall be
372 adjusted to the larger of:
373

374 a. For limitation years beginning on or after July
375 1, 2007
376

377 1. the straight life annuity (if any) payable
378 to the Member under the Plan
379 commencing at the same Annuity
380 Starting Date as the Member’s form of
381 benefit, or
382

383 2. the actuarially equivalent straight life
384 annuity commencing at the same
385 Annuity Starting Date, computed using
386 a 5.00% interest rate and the mortality
387 basis prescribed in Code Section
388 415(b)(2)(E)(v).
389

390 b. For limitation years beginning before July 1,
391 2007
392

393 1. the actuarially equivalent straight life
394 annuity commencing at the same
395 Annuity Starting Date, computed using
396 the interest rate and mortality basis
397 specified by the Board of Trustees for
398 determining Actuarial Equivalence
399 under the Plan for the particular form of
400 payment, or
401

402 2. the actuarially equivalent straight life
403 annuity commencing at the same
404 Annuity Starting Date, computed using

405 a 5.00% interest rate and the mortality
406 basis prescribed in Code Section
407 415(b)(2)(E)(v).
408

409 No actuarial adjustment to the benefit shall be made
410 for benefits that are not directly related to retirement
411 benefits (such as a qualified disability benefit,
412 preretirement incidental death benefits, and
413 postretirement medical benefits); or the inclusion in
414 the form of benefit of an automatic benefit increase
415 feature, provided the form of benefit is not subject to
416 §417(e)(3) of the Internal Revenue Code and would
417 otherwise satisfy the limitations of this Subsection
418 (a), and the amount payable under the form of
419 benefit in any Limitation Year shall not exceed the
420 limits of this Subsection (a) applicable at the annuity
421 starting date, as increased in subsequent years
422 pursuant to § 415(d) of the Code. For this purpose,
423 an automatic benefit increase feature is included in a
424 form of benefit if the form of benefit provides for
425 automatic, periodic increases to the benefits paid in
426 that form.
427

428 (3) "Dollar Limitation" means, effective for the first
429 limitation year beginning after January 1, 2001,
430 \$160,000, automatically adjusted under Code
431 Section 415(d), effective January 1 of each year, as
432 published in the Internal Revenue Bulletin, and
433 payable in the form of a straight life annuity. The
434 new limitation shall apply to limitation years ending
435 with or within the calendar year of the date of the
436 adjustment, but a Member's benefits shall not reflect
437 the adjusted limit prior to January 1 of that calendar
438 year. The Dollar Limitation shall be further adjusted
439 based on the age of the Member when the benefit
440 begins as follows:

441
442 a. For Annuity Starting Dates in limitation years
443 beginning on or after July 1, 2007
444

445 1. If the Annuity Starting Date for the
446 Member's benefit is after age 65
447

448 (i) If the Plan does not have an
449 immediately commencing
450 straight life annuity payable at

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both age 65 and the age of benefit commencement

The Dollar Limitation at the Member's Annuity Starting Date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the Member's Annuity Starting Date that is the actuarial equivalent of the Dollar Limitation with actuarial equivalence computed using a 5.00% interest rate assumption and the mortality basis prescribed in Code Section 415(b)(2)(E)(v) for that Annuity Starting Date (and expressing the Member's age based on completed calendar months as of the Annuity Starting Date).

- (ii) If the Plan does have an immediately commencing straight life annuity payable at both age 65 and the age of benefit commencement

The Dollar Limitation at the Member's Annuity Starting Date is the lesser of (aa) the Dollar Limitation multiplied by the ratio of the annual amount of the adjusted immediately commencing straight life annuity under the Plan at the Member's Annuity Starting Date to the annual amount of the adjusted immediately commencing straight life annuity under the Plan at age 65, both determined without applying the limitations of this Subsection (a), and (bb) the limitation determined under

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Subclause (3)a.1.(i) of this Subsection(a). For this purpose, the adjusted immediately commencing straight life annuity under the Plan at the Member's Annuity Starting Date is the annual amount of such annuity payable to the Member, computed disregarding the Member's accruals after age 65 but including actuarial adjustments even if those actuarial adjustments are used to offset accruals; and the adjusted immediately commencing straight life annuity under the Plan at age 65 is the annual amount of such annuity that would be payable under the Plan to a hypothetical Member who is age 65 and has the same Accrued Benefit as the Member.

2. Except with respect to a Member who is a "Qualified Member" as defined in Section 415(b)(2)(H) of the Code, for benefits (except survivor and disability benefits as defined in Section 415(b)(2)(I) of the Code), if the Annuity Starting Date for the Member's benefit is before age 62

(i) If the Plan does not have an immediately commencing straight life annuity payable at both age 62 and the age of benefit commencement

The Dollar Limitation at the Member's Annuity Starting Date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the Member's Annuity Starting Date that is the

541 actuarial equivalent of the Dollar
542 Limitation with actuarial
543 equivalence computed using a
544 5.00% interest rate assumption
545 and the mortality basis
546 prescribed in Code Section
547 415(b)(2)(E)(v) for that Annuity
548 Starting Date (and expressing
549 the Member's age based on
550 completed calendar months as
551 of the Annuity Starting Date).

552
553 (ii) If the Plan does have an
554 immediately commencing
555 straight life annuity payable at
556 both age 62 and the age of
557 benefit commencement

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559 The Dollar Limitation at the
560 Member's Annuity Starting Date
561 is the lesser of (aa) the Dollar
562 Limitation multiplied by the ratio
563 of the annual amount of the
564 adjusted immediately
565 commencing straight life annuity
566 under the Plan at the Member's
567 Annuity Starting Date to the
568 annual amount of the adjusted
569 immediately commencing
570 straight life annuity under the
571 Plan at age 62, both determined
572 without applying the limitations
573 of this Subsection (a), and (bb)
574 the limitation determined under
575 Subclause (3)a.2.(i) of this
576 Subsection (a).

577
578 b. For Annuity Starting Dates in limitation years
579 beginning before July 1, 2007
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Age as of Annuity Starting Date:	Adjustment of Dollar Limitation:
Over 65	<p>The smaller of: (a) the actuarial equivalent of the limitation for age 65, computed using the interest rate and mortality basis specified by the Board of Trustees for determining actuarial equivalence under the Plan, or</p> <p>(b) the actuarial equivalent of the limitation for age 65, computed using a 5.00% interest rate and the mortality basis prescribed in Code Section 415(b)(2)(E)(v).</p> <p>Any increase in the Dollar Limitation determined in accordance with this paragraph shall not reflect a mortality decrement between age 65 and the age at which benefits commence if benefits are not forfeited upon the death of the Member. If any benefits are forfeited upon death, the full mortality decrement is taken into account.</p>
62 to 65	No adjustment.
Less than 62	<p>The smaller of: (a) the actuarial equivalent of the limitation for age 62, computed using the interest rate and mortality basis specified by the Board of Trustees for determining actuarial equivalence under the Plan, or</p> <p>(b) the actuarial equivalent of the limitation for age 62, computed using a 5.00% interest rate and the mortality basis prescribed in Code Section 415(b)(2)(E)(v).</p> <p>This adjustment shall not apply to any "Qualified Member" as defined in Section 415(b)(2)(H), nor to survivor and disability benefits as defined in Section 415(b)(2)(I) of the Code.</p>

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(4) With respect to Subclause (3)a.1.(i), Subclause (3)a.2.(i) and Subparagraph (3)(B) above, no adjustment shall be made to the Dollar Limitation to reflect the probability of a Member's death between the Annuity Starting Date and age 62, or between age 65 and the Annuity Starting Date, as applicable, if benefits are not forfeited upon the death of the Member prior to the Annuity Starting Date. To the extent benefits are forfeited upon death before the Annuity Starting Date, such an adjustment shall be made. For this purpose, no forfeiture shall be treated as occurring upon the Member's death if the Plan does not charge Members for providing a qualified preretirement survivor annuity, as

- 596 defined in Code Section 417(c), upon the Member's death.
597
598 (5) The term "limitation year" is the 12 month period which is
599 used for application of the limitations under Code Section
600 415 and shall be the calendar year.
601
602 (6) The limitations set forth in this Subsection (a) shall not
603 apply if the Annual Pension does not exceed \$10,000
604 provided the Member has never participated in a Defined
605 Contribution Plan maintained by the City.
606
607 (7) Cost-of-living adjustments in the Dollar Limitation for
608 benefits shall be limited to scheduled annual increases
609 determined by the Secretary of the Treasury under Section
610 Subsection 415(d) of the Code.
611
612 (8) In the case of a Member who has fewer than 10 years of
613 participation in the Plan, the Dollar Limitation set forth in
614 Paragraph (3) of this Subsection (a) shall be multiplied by a
615 fraction - (i) the numerator of which is the number of years
616 (or part thereof) of participation in the Plan, and (ii) the
617 denominator of which is 10.
618
619 (9) Any portion of a Member's benefit that is attributable to
620 mandatory Member contributions (unless picked-up by the
621 City) or rollover contributions, shall be taken into account in
622 the manner prescribed in the regulations under Section 415
623 of the Code.
624
625 (10) Should any Member participate in more than one defined
626 benefit plan maintained by the City, in any case in which
627 the Member's benefits under all such defined benefit plans
628 (determined as of the same age) would exceed the Dollar
629 Limitation applicable at that age, the accrual of the
630 Member's benefit under this Plan shall be reduced so that
631 the Member's combined benefits will equal the Dollar
632 Limitation.
633
634 (11) For a Member who has or will have distributions commencing
635 at more than one annuity starting date, the Annual Benefit
636 shall be determined as of each such annuity starting date
637 (and shall satisfy the limitations of this Section as of each
638 such date), actuarially adjusting for past and future
639 distributions of benefits commencing at the other annuity

640 starting dates. For this purpose, the determination of whether
641 a new starting date has occurred shall be made without
642 regard to § 1.401(a)-20, Q&A 10(d), and with regard to §
643 1.415(b)1(b)(1)(iii)(B) and (C) of the Income Tax Regulations.
644

645 (12) The determination of the Annual Pension under Paragraph
646 (A)(1) of this Subsection (a) shall take into account (in the
647 manner prescribed by the regulations under Section 415 of
648 the Code) social security supplements described in §
649 411(a)(9) of the Internal Revenue Code and benefits
650 transferred from another defined benefit plan, other than
651 transfers of distributable benefits pursuant § 1.411(d)-4,
652 Q&A-3(c) of the Income Tax Regulations.
653

654 (13) The above limitations are intended to comply with the
655 provisions of Section 415 of the Code, as amended, so that
656 the maximum benefits provided by plans of the City shall be
657 exactly equal to the maximum amounts allowed under
658 Section 415 of the Code and regulations thereunder. If there
659 is any discrepancy between the provisions of this Subsection
660 (a) and the provisions of Section 415 of the Code and
661 regulations thereunder, such discrepancy shall be resolved in
662 such a way as to give full effect to the provisions of Section
663 415 of the Code. The value of any benefits forfeited as a
664 result of the application of this Subsection (a) shall be used
665 to decrease future employer contributions.
666

667 (14) For the purpose of applying the limitations set forth in
668 Sections 401(a)(17) and 415 of the Internal Revenue Code,
669 Compensation shall include any elective deferral (as
670 defined in Code Section 402(g)(3) of the Internal Revenue
671 Code), and any amount which is contributed or deferred by
672 the employer at the election of the Member and which is
673 not includible in the gross income of the Member by reason
674 of Section 125 or 457 of the Internal Revenue Code. For
675 limitation years beginning on and after January 1, 2001, for
676 the purposes of applying the limitations described in this
677 Subsection (a), compensation paid or made available
678 during such limitation years shall include elective amounts
679 that are not includible in the gross income of the Member
680 by reason of Section 132(f)(4) of the Internal Revenue
681 Code. For limitation years on or after July 1, 2007,
682 compensation shall include payments that otherwise qualify
683 as compensation and that are made by the later of: (a) 2
684 and ½ (two and one-half) months after severance from

685 employment with the employer, and (b) the end of the
686 limitation year that includes the date of severance.
687

688
689 Section 5. CHAPTER 16 PENSION AND RETIREMENT, ARTICLE IV,
690 DIVISION 1, POLICE RETIREMENT SYSTEM, Section 16-153(c), of the Code
691 of Ordinances of the City of Lake Worth, is hereby amended by deleting the
692 ~~stricken-through~~ words and adding the underlined words:
693

694 (c) Required Minimum Distributions.

695
696 (1) *Required Beginning Date.* The Member's entire
697 interest will be distributed, or begin to be distributed, to the
698 Member no later than the Member's Required Beginning
699 Date as defined in Subsection (b) of this Section 16-153.

700
701 (2) *Death of Member Before Distributions Begin.*

702
703 ~~(A)~~a. If the Member dies before distributions begin,
704 the Member's entire interest will be distributed, or
705 begin to be distributed, no later than as follows:

706
707 ~~(i)~~1. If the Member's surviving spouse is the
708 Member's sole designated beneficiary, then
709 distributions to the surviving spouse will begin
710 by December 31 of the calendar year
711 immediately following the calendar year in
712 which the Member died, or by December 31
713 of the calendar year in which the Member
714 would have attained age 70½, if later.

715 ~~(ii)~~2. If the Member's surviving spouse is not
716 the Member's sole designated beneficiary,
717 then distributions to the designated
718 beneficiary will begin by December 31 of the
719 calendar year immediately following the
720 calendar year in which the Member died.

721
722 ~~(iii)~~3. If there is no designated beneficiary as
723 of September 30 of the year following the
724 year of the Member's death, the Member's
725 entire interest will be distributed by December
726 31 of the calendar year containing the fifth
727 anniversary of the Member's death.

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~~(B)~~b. The Member's entire interest shall be distributed as follows:

~~(i)~~1. *Member Survived by Designated Beneficiary.* If the Member dies before the date distribution of his or her interest begins and there is a designated beneficiary, the Member's entire interest will be distributed, beginning no later than the time described in Subparagraph ~~(2)(A)~~(2)a. above, over the life of the designated beneficiary or over a period certain not exceeding:

~~(i)~~(i) unless the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year immediately following the calendar year of the Member's death; or

~~(i)~~(ii) if the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year that contains the annuity starting date.

~~(ii)~~2. *No Designated Beneficiary.* If the Member dies before the date distributions begin and there is no designated beneficiary as of September 30 of the year following the year of the Member's death, distribution of the Member's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Member's death.

~~(C)~~c. *Death of Surviving Spouse Before Distributions to Surviving Spouse Begin.* In any case in which: (i) the Member dies before the date distribution of his or her interest begins; (ii) the

774 Member's surviving spouse is the Member's sole
775 designated beneficiary; and (iii) the surviving spouse
776 dies before distributions to the surviving spouse
777 begin, Subparagraphs ~~(2)(A)~~ (2)a. and ~~2(B)(2)b.~~
778 above shall apply as though the surviving spouse
779 were the Member.
780

781 (3) *Requirements For Annuity Distributions That*
782 *Commence During Member's Lifetime.*
783

784 ~~(A)a.~~ *Joint Life Annuities Where the Beneficiary Is*
785 *Not the Member's Spouse.* If the Member's interest
786 is being distributed in the form of a joint and survivor
787 annuity for the joint lives of the Member and a
788 nonspousal beneficiary, annuity payments to be
789 made on or after the Member's Required Beginning
790 Date to the designated beneficiary after the
791 Member's death must not at any time exceed the
792 applicable percentage of the annuity payment for
793 such period that would have been payable to the
794 Member using the table set forth in Q&A-2 of
795 Section ~~1.401(a)(9)-6~~ 1.401(a)(9) 6 of the Treasury
796 regulations. If the form of distribution combines a
797 joint and survivor annuity for the joint lives of the
798 Member and a nonspousal beneficiary and a period
799 certain annuity, the requirement in the preceding
800 sentence will apply to annuity payments to be made
801 to the designated beneficiary after the expiration of
802 the period certain.
803

804 ~~(B)b.~~ *Period Certain Annuities.* Unless the
805 Member's spouse is the sole designated beneficiary
806 and the form of distribution is a period certain and no
807 life annuity, the period certain for an annuity
808 distribution commencing during the Member's
809 lifetime may not exceed the applicable distribution
810 period for the Member under the Uniform Lifetime
811 Table set forth in Section 1.401(a)(9)-9 of the
812 Treasury regulations for the calendar year that
813 contains the annuity starting date. If the annuity
814 starting date precedes the year in which the Member
815 reaches age 70, the applicable distribution period for
816 the Member is the distribution period for age 70
817 under the Uniform Lifetime Table set forth in Section

818 1.401(a)(9)-9 of the Treasury regulations plus the
819 excess of 70 over the age of the Member as of the
820 Member's birthday in the year that contains the
821 annuity starting date. If the Member's spouse is the
822 Member's sole designated beneficiary and the form
823 of distribution is a period certain and no life annuity,
824 the period certain may not exceed the longer of the
825 Member's applicable distribution period, as
826 determined under this Subparagraph ~~(3)(B)(3)b.~~, or
827 the joint life and last survivor expectancy of the
828 Member and the Member's spouse as determined
829 under the Joint and Last Survivor Table set forth in
830 Section 1.401(a)(9)-9 of the Treasury regulations,
831 using the Member's and spouse's attained ages as
832 of the Member's and spouse's birthdays in the
833 calendar year that contains the annuity starting date.

834
835 (4) *Form of Distribution.* Unless the Member's interest is
836 distributed in the form of an annuity purchased from an
837 insurance company or in a single sum on or before the
838 Required Beginning Date, as of the first distribution
839 calendar year distributions will be made in accordance with
840 Subparagraphs ~~(4)(A)(4)a.~~, ~~(4)(B)(4)b.~~ and ~~(4)(C)(4)c.~~
841 below. If the Member's interest is distributed in the form of
842 an annuity purchased from an insurance company,
843 distributions thereunder will be made in accordance with
844 the requirements of Section 401(a)(9) of the Code and the
845 Treasury regulations. Any part of the Member's interest
846 which is in the form of an individual account described in
847 Section 414(k) of the Code will be distributed in a manner
848 satisfying the requirements of Section 401(a)(9) of the
849 Code and the Treasury regulations that apply to individual
850 accounts.

851
852 ~~(A)a.~~ *General Annuity Requirements.* If the
853 Member's interest is paid in the form of annuity
854 distributions under the Plan, payments under the
855 annuity will satisfy the following requirements:

856
857 ~~(i)1.~~ The annuity distributions will be paid in
858 periodic payments made at intervals not
859 longer than one year;

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861 ~~(ii)2.~~ The distribution period will be over a
862 life (or lives) or over a period certain, not
863 longer than the distribution period described

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in Paragraphs (2) or (3) above, whichever is applicable, of this Subsection (c);

~~(iii)~~3. Once payments have begun over a period certain, the period certain will not be changed even if the period certain is shorter than the maximum permitted;

~~(iv)~~4. Payments will either be non-increasing or increase only as follows:

~~(H)~~(i) By an annual percentage increase that does not exceed the annual percentage increase in a cost-of-living index that is based on prices of all items and issued by the Bureau of Labor Statistics;

~~(H)~~(ii) To the extent of the reduction in the amount of the Member's payments to provide for a survivor benefit upon death, but only if the beneficiary whose life was being used to determine the distribution period dies or is no longer the Member's beneficiary pursuant to a qualified domestic relations order within the meaning of Section 414(p) of the Code;

~~(H)~~(iii) To provide cash refunds of employee contributions upon the Member's death; or

~~(IV)~~(iv) To pay increased benefits that result from a Plan amendment.

~~(B)~~b. *Amount Required to be Distributed by Required Beginning Date.* The amount that must be distributed on or before the Member's Required Beginning Date (or, if the Member dies before distributions begin, the date distributions are required to begin under ~~Subparagraphs~~Clauses ~~(2)(A)(i)~~(2)a.1. or ~~(2)(A)(ii)~~ (2)a.2., whichever is applicable) is the payment that is required for one

908 payment interval. The second payment need not be
909 made until the end of the next payment interval even
910 if that payment interval ends in the next calendar
911 year. Payment intervals are the periods for which
912 payments are received, e.g., bi-monthly, monthly,
913 semi-annually, or annually. All of the Member's
914 benefit accruals as of the last day of the first
915 distribution calendar year will be included in the
916 calculation of the amount of the annuity payments
917 for payment intervals ending on or after the
918 Member's Required Beginning Date.

919
920 ~~(C)~~c. *Additional Accruals After First Distribution*
921 *Calendar Year.* Any additional benefits accruing to
922 the Member in a calendar year after the first
923 distribution calendar year will be distributed
924 beginning with the first payment interval ending in
925 the calendar year immediately following the calendar
926 year in which such amount accrues.

927
928 (5) For purposes of this Subsection (c), distributions are
929 considered to begin on the Member's Required Beginning
930 Date. If annuity payments irrevocably commence to the
931 Member (or to the Member's Surviving Spouse) before the
932 Member's Required Beginning Date (or, if to the Member's
933 Surviving Spouse, before the date distributions are required
934 to begin in accordance with Subparagraph ~~(2)(A)~~ (2)a
935 above), the date distributions are considered to begin is the
936 date distributions actually commence.

937
938 (6) *Definitions.*

939
940 ~~(A)~~a. *Designated beneficiary.* The individual who is
941 designated as the beneficiary under the Plan and is
942 the designated beneficiary under Section 401(a)(9)
943 of the Code and Section ~~1.401(a)(9)-1, Q&A-4,~~
944 1.401(a)(9)-4 the Treasury regulations.

945
946 ~~(B)~~b. *Distribution calendar year.* A calendar year for
947 which a minimum distribution is required. For
948 distributions beginning before the Member's death,
949 the first distribution calendar year is the calendar
950 year immediately preceding the calendar year which
951 contains the Member's Required Beginning Date.
952 For distributions beginning after the Member's death,
953 the first distribution calendar year is the calendar

954 year in which distributions are required to begin
955 pursuant to Paragraph (2) of this Subsection (c).

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957 ~~(C)c.~~ *Life expectancy.* Life expectancy as
958 computed by use of the Single Life Table in Section
959 1.401(a)(9)-9 of the Treasury regulations.

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962 Section 6. CHAPTER 16 PENSION AND RETIREMENT, ARTICLE IV,
963 DIVISION 1, POLICE RETIREMENT SYSTEM, Section 16-153(d), of the Code
964 of Ordinances of the City of Lake Worth, is hereby amended by deleting the
965 ~~stricken through~~ words and adding the underlined words:
966

967 (d) Rollover Distributions

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970 (2) Definitions

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The following definitions apply to this Section:

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975 ~~(A)a.~~ Eligible rollover distribution: An eligible
976 rollover distribution is any distribution of all or any
977 portion of the balance to the credit of the distributee,
978 except that an eligible rollover distribution does not
979 include:

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981

982 ~~(i)1.~~ Any distribution that is one (1) of a
983 series of substantially equal periodic
984 payments (not less frequently than annually)
985 made for the life (or life expectancy) of the
986 distributee or the joint lives (or joint life
987 expectancies) of the distributee and the
988 distributee's designated beneficiary, or for a
989 specified period of ten (10) years or more;

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990 ~~(ii)2.~~ Any distribution to the extent such
991 distribution is required under Section
992 401(a)(9) of the Code;

992
993

994 ~~(iii)3.~~ the portion of any distribution ~~that is a~~
995 ~~hardship distribution described in Section~~
996 ~~401(k)(2)(B)(i)(IV) of the Code~~ which is made
upon hardship of the Member; and

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~~(iv)~~4. The portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities), provided that a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax Employee contributions which are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in Section 408(a) or (b) of the Code, or to a qualified defined contribution plan described in Section 401(a) or 403(a) of the Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

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Section 7. CHAPTER 16 PENSION AND RETIREMENT, ARTICLE IV, DIVISION 1, POLICE RETIREMENT SYSTEM, Section 16-153, of the Code of Ordinances of the City of Lake Worth, is hereby amended by adding a subsection (h) as follows:

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(h) Vesting of benefits upon Normal Retirement Date

Any provision of this plan to the contrary notwithstanding, a Member's accrued benefit shall become 100% vested upon the attainment of the Normal Retirement Date

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Section 8. CHAPTER 16 PENSION AND RETIREMENT, ARTICLE IV, DIVISION 1, POLICE RETIREMENT SYSTEM, Section 16-153, of the Code of Ordinances of the City of Lake Worth, is hereby amended by adding a subsection (i) as follows:

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(i) Benefits nonforfeitable upon termination of the plan

Notwithstanding any other provision of this plan to the contrary, all accrued benefits shall become 100% nonforfeitable upon the date of termination of this plan.

1041

1042 Section 9. If any provision of this Ordinance or the application thereof
1043 to any person or circumstances is held invalid, such invalidity shall not affect
1044 other provisions or applications of this Ordinance which can be given effect
1045 without the invalid provision or application, and to this end the provisions of this
1046 Ordinance are declared to be severable.

1047 Section 10. All ordinances or parts of ordinances in conflict herewith
1048 are hereby repealed.

1049 Section 11. Sections 2 through 9 of this Ordinance shall be codified.

1050 Section 12. This Ordinance shall become effective on ten (10) days
1051 after passage.

1052

1053 The passage of this Ordinance on first reading was moved by
1054 Commissioner _____, seconded by Commissioner _____, and upon being
1055 put to a vote, the vote was as follows:

1056

1057

1058 Mayor Pam Triolo
1059 Vice Mayor Scott Maxwell
1060 Commissioner Christopher McVoy
1061 Commissioner Andy Amoroso
1062 Commissioner John Szerdi

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1065 The Mayor thereupon declared this Ordinance duly passed on first
1066 reading on the 17th day of June, 2014.

1067

1068 The passage of this Ordinance on second reading was moved by
1069 Commissioner _____, seconded by Commissioner _____, and upon being put
1070 to a vote, the vote was as follows:

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1073 Mayor Pam Triolo
1074 Vice Mayor Scott Maxwell
1075 Commissioner Christopher McVoy
1076 Commissioner Andy Amoroso
1077 Commissioner John Szerdi

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The Mayor thereupon declared this Ordinance duly passed and enacted
on the 1st day of July, 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: June 17, 2014, Regular Meeting

DEPARTMENT: Finance

EXECUTIVE BRIEF

TITLE:

Ordinance No. 2014-20 - First Reading - update the General Employees Retirement System to comply with the Internal Revenue Service Code and favorable ruling on the Employees Retirement System and schedule the public hearing date for July 1, 2014

SUMMARY:

The Ordinance for the City's pension system is reviewed and updated periodically.

BACKGROUND AND JUSTIFICATION:

The attorney for the Employees and Police Retirement Systems provides a review of the governing ordinances to ensure compliance with the IRS and Florida State Statues. Changes in either result in an update to these ordinances.

MOTION:

I move to approve/not approve Ordinance No. 2013-20 on first reading and schedule the public hearing date for July 1, 2014.

ATTACHMENT(S):

Fiscal Impact Analysis – Not Applicable
Ordinance

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4 ORDINANCE No. 2014-20 OF THE CITY OF LAKE WORTH, FLORIDA,
5 AMENDING CHAPTER 16, ARTICLE II, DIVISION 2 OF THE CODE OF
6 ORDINANCES, AMENDING SECTION 16-29, PENSION BENEFITS;
7 AMENDING SECTION 16-32, DEATH BENEFITS; AMENDING SECTION 16-
8 42, INTERNAL REVENUE CODE COMPLIANCE; AND AMENDING SECTION
9 16-43, DEFERRED RETIREMENT OPTION PLAN; TO PROVIDE FOR
10 COMPLIANCE WITH THE INTERNAL REVENUE CODE; TO PROVIDE FOR
11 THE REPEAL OF ALL ORDINANCES OR PARTS OF ORDINANCES IN
12 CONFLICT HERewith; TO PROVIDE FOR SEVERABILITY AND TO
13 PROVIDE FOR AN EFFECTIVE DATE.
14

15
16 WHEREAS, on January 4, 2011 an application was filed with the Internal
17 Revenue Service for a Favorable Determination Letter regarding the qualified
18 status of the Plan under Section 401(a) of the Internal Revenue Code; and
19

20 WHEREAS, on January 24, 2013, the Internal Revenue Service issued a
21 Favorable Determination Letter, finding that the Plan complies with all
22 qualification requirements; and
23

24 WHEREAS, the Favorable Determination Letter is subject to the timely
25 adoption of the amendments provided herein, and
26

27 WHEREAS, the trustees of the City of Lake Worth General Employees'
28 Retirement System have requested and approved such amendments as being
29 in the best interests of the participants and beneficiaries as well as improving
30 the administration of the plan, and
31

32 WHEREAS, the City Commission has received, reviewed and
33 considered an actuarial impact statement describing the actual impact of the
34 amendments provided for herein.
35

36 BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF LAKE
37 WORTH, FLORIDA, that:
38

39 Section 1. The foregoing WHEREAS clauses are hereby ratified and
40 confirmed as being true and correct and are hereby made a specific part of this
41 Ordinance upon adoption hereof.

42 Section 2. CHAPTER 16 PENSION AND RETIREMENT, ARTICLE II,
43 EMPLOYEES' RETIREMENT SYSTEM, Subsection 16-25(f), of the Code of
44 Ordinances of the City of Lake Worth, is hereby amended by deleting the
45 ~~stricken through~~ words and adding the underlined words:
46

47 (f) *Compensation.* The term "compensation" shall mean all
48 salary paid to an employee within the meaning of IRC section
49 415(c)(3). For persons who first became participants of the
50 retirement system on or after October 1, 1979, "compensation" shall
51 exclude payments for all accumulated leave, compensatory time
52 and overtime. ~~For the purpose of applying the limitations set forth in~~
53 ~~Sections 401(a)(17) and 415 of the Internal Revenue Code,~~
54 ~~Compensation shall include any elective deferral (as defined in~~
55 ~~Code Section 402(g)(3) of the Internal Revenue Code), and any~~
56 ~~amount which is contributed or deferred by the employer at the~~
57 ~~election of the Member and which is not includible in the gross~~
58 ~~income of the Member by reason of Section 125 or 457 of the~~
59 ~~Internal Revenue Code. For limitation years beginning on and after~~
60 ~~January 1, 2001, for the purposes of applying the limitations~~
61 ~~described in Subsection (a) of Section 16-42 hereof, compensation~~
62 ~~paid or made available during such limitation years shall include~~
63 ~~elective amounts that are not includible in the gross income of the~~
64 ~~Member by reason of Section 132(f)(4) of the Internal Revenue~~
65 ~~Code.~~

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67
68 Section 3. CHAPTER 16 PENSION AND RETIREMENT, ARTICLE II,
69 EMPLOYEES' RETIREMENT SYSTEM, Subsection 16-29(b), of the Code of
70 Ordinances of the City of Lake Worth, is hereby amended by adding the
71 underlined subparagraph (3) as follows:
72

73 ...

74
75 (b) *Normal retirement age.*

76
77 (1) The normal retirement age for participants retiring
78 before October 1, 2015, shall be the first day of the
79 month on which or after the participant attains:

- 80
81 A. Twenty (20) vesting credits; or
82 B. Vesting credits and years of age totaling
83 seventy-five (75) or more; provided the
84 participant has at least ten (10) vesting
85 credits.

86
87 (2) The normal retirement age for participants retiring on
88 or after October 1, 2015, shall be the first day of the
89 month on which or after the participant attains:

- 90
91 A. Fifty-five (55) years of age and thirty (30)
92 vesting credits; or

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B. Age sixty-five (65) and ten (10) vesting credits.

(3) Notwithstanding any other provision of this plan to the contrary, a Member's accrued benefits shall become 100% nonforfeitable upon the attainment of Normal Retirement Age.

...

Section 4. CHAPTER 16 PENSION AND RETIREMENT, ARTICLE II, EMPLOYEES' RETIREMENT SYSTEM, Section 16-32, of the Code of Ordinances of the City of Lake Worth, is hereby amended by adding the following underlined Subsection (e):

...

(e) Death while performing USERRA-qualified active military service. In the case of a Member who dies on or after January 1, 2007 while performing "Qualified Military Service" under Title 38, United States Code, Chapter 43, Uniformed Services Employment and Reemployment Rights Act ("USERRA") within the meaning of Section 414(u) of the Internal Revenue Code, any "additional benefits" (as defined by Section 401(a)(37) of the Internal Revenue Code) provided under the Plan that are contingent upon a Member's termination of employment due to death shall be determined as though the Member had resumed employment immediately prior to his death. With respect to any such "additional benefits," for vesting purposes only, credit shall be given for the period of the Member's absence from covered employment during "Qualified Military Service".

Section 5. CHAPTER 16 PENSION AND RETIREMENT, ARTICLE II, EMPLOYEES' RETIREMENT SYSTEM, Subsection 16-42(a), of the Code of Ordinances of the City of Lake Worth, is hereby amended (repealed) by replacing it with the following underlined language:

Sec. 16-42. Internal Revenue Code Compliance.

~~(a) Maximum Pension~~

137
138 Notwithstanding any provision of this Plan to the contrary, the
139 Annual Pension that is accrued by or paid to a participant shall not
140 exceed the Dollar Limitation set forth below. If the benefit the
141 participant would otherwise accrue in a Limitation Year would
142 produce an Annual Pension in excess of the Dollar Limitation, the
143 benefit shall be limited to a benefit that does not exceed the Dollar
144 Limitation.

145
146 (1) — Definitions Used in this Section

147
148 (A) — “Annual Pension” means the benefits
149 received by a participant under this Plan expressed
150 in the form of a straight life annuity. In determining
151 whether benefits payable exceed the Dollar
152 Limitation set forth below, benefits payable in any
153 form other than a straight life annuity shall be
154 adjusted to the larger of:

155
156 (i) The annual amount of the straight life
157 annuity (if any) payable to the participant
158 under the plan commencing at the same
159 annuity starting date as the form of benefit
160 payable to the participant; or

161
162 (ii) The annual amount of the straight life
163 annuity commencing at the same annuity
164 starting date that has the same actuarial
165 present value as the form of benefit payable
166 to the participant, computed using a 5 percent
167 interest assumption and the applicable
168 mortality table described in §1.417(e)-1(d)(2)
169 for that annuity starting date.

170
171 No actuarial adjustment to the benefit shall be made
172 for benefits that are not directly related to retirement
173 benefits (such as a qualified disability benefit,
174 preretirement incidental death benefits, and
175 postretirement medical benefits); or the inclusion in
176 the form of benefit of an automatic benefit increase
177 feature, provided the form of benefit is not subject to
178 §417(e)(3) of the Internal Revenue Code and would
179 otherwise satisfy the limitations of this Subsection
180 (a), and the amount payable under the form of
181 benefit in any Limitation Year shall not exceed the
182 limits of this Subsection (a) applicable at the annuity

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~~starting date, as increased in subsequent years pursuant to § 415(d) of the Code. For this purpose, an automatic benefit increase feature is included in a form of benefit if the form of benefit provides for automatic, periodic increases to the benefits paid in that form.~~

~~(B) —“Dollar Limitation” means \$160,000 (subject to the annual adjustments provided under Section 415(d) of the IRC). Said amount shall be adjusted based on the age of the participant when benefits begin, as follows:~~

~~(i) — Except with respect to a participant who is a “Qualified Participant” as defined in Section 415(b)(2)(H) of the Code, for benefits (except survivor and disability benefits as defined in Section 415(b)(2)(I) of the Code) beginning before age 62 the Age-Adjusted Dollar Limitation is equal to the lesser of--~~

~~(I) the actuarial equivalent of the annual amount of a straight life annuity commencing at the annuity starting date that has the same actuarial present value as a deferred straight life annuity commencing at age 62, where annual payments under the straight life annuity commencing at age 62 are equal to the Dollar Limitation (as adjusted pursuant to section 415(d) for the limitation year), and where the actuarially equivalent straight life annuity is computed using a 5 percent interest rate and the applicable mortality table under §1.417(e)-1(d)(2) that is effective for that annuity starting date (and expressing the participant’s age based on completed calendar months as of the annuity starting date); and~~

~~(II) the Dollar Limitation (as adjusted pursuant to section 415(d)) multiplied~~

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~~by the ratio of the annual amount of the straight life annuity under the plan to the annual amount of the straight life annuity under the plan commencing at age 62, with both annual amounts determined without applying the rules of section 415.~~

~~(ii) For benefits beginning after the age of 65, the age-adjusted Dollar Limitation is equal to the lesser of:~~

~~(I) the actuarial equivalent of the annual amount of a straight life annuity commencing at the annuity starting date that has the same actuarial present value as a straight life annuity commencing at age 65, where annual payments under the straight life annuity commencing at age 65 are equal to the dollar limitation of section 415(b)(1)(A) (as adjusted pursuant to section 415(d) for the limitation year), and where the actuarially equivalent straight life annuity is computed using a 5 percent interest rate and the applicable mortality table under §1.417(e)-1(d)(2) that is effective for that annuity starting date (and expressing the participant's age based on completed calendar months as of the annuity starting date); and~~

~~(II) the section 415(b)(1)(A) Dollar limitation (as adjusted pursuant to section 415(d) and §1.415(d)-1 for the limitation year) multiplied by the ratio of the annual amount of the adjusted immediately commencing straight life annuity under the plan to the adjusted age 65 straight life annuity. The adjusted immediately commencing straight life annuity means the annual amount of the immediately commencing straight life annuity payable to the participant, computed~~

273 ~~disregarding the participant's accruals~~
274 ~~after age 65 but including actuarial~~
275 ~~adjustments even if those actuarial~~
276 ~~adjustments are applied to offset~~
277 ~~accruals. For this purpose, the annual~~
278 ~~amount of the immediately~~
279 ~~commencing straight life annuity is~~
280 ~~determined without applying the rules~~
281 ~~of section 415. The adjusted age 65~~
282 ~~straight life annuity means the annual~~
283 ~~amount of the straight life annuity that~~
284 ~~would be payable under the plan to a~~
285 ~~hypothetical participant who is 65~~
286 ~~years old and has the same accrued~~
287 ~~benefit (with no actuarial increases for~~
288 ~~commencement after age 65) as the~~
289 ~~participant receiving the distribution~~
290 ~~(determined disregarding the~~
291 ~~participant's accruals after age 65 and~~
292 ~~without applying the rules of section~~
293 ~~415).~~

294
295 ~~(iii) There shall be no age adjustment of~~
296 ~~the Dollar Limitation with respect to benefits~~
297 ~~beginning between the ages of 62 and 65.~~
298

299 ~~(2) The limitations set forth in this Subsection (a) shall not~~
300 ~~apply if the Annual Pension does not exceed \$10,000~~
301 ~~provided the participant has never participated in a Defined~~
302 ~~Contribution Plan maintained by the City.~~
303

304 ~~(3) Cost-of-living adjustments in the Dollar Limitation for~~
305 ~~benefits shall be limited to scheduled annual increases~~
306 ~~determined by the Secretary of the Treasury under Section~~
307 ~~Subsection 415(d) of the Code.~~
308

309 ~~(4) In the case of a participant who has fewer than 10 years of~~
310 ~~participation in the Plan, the Dollar Limitation set forth in~~
311 ~~Paragraph (1)(B) of this Subsection (a) shall be multiplied~~
312 ~~by a fraction - (i) the numerator of which is the number of~~
313 ~~years (or part thereof) of participation in the Plan, and (ii)~~
314 ~~the denominator of which is 10.~~
315

316 ~~(5) Any portion of a participant's benefit that is attributable to~~

317 ~~mandatory employee contributions (unless picked up by~~
318 ~~the City) or rollover contributions, shall be taken into~~
319 ~~account in the manner prescribed in the regulations under~~
320 ~~Section 415 of the Code.~~

321
322 ~~(6) Should any participant participate in more than one defined~~
323 ~~benefit plan maintained by the City, in any case in which~~
324 ~~the participant's benefits under all such defined benefit~~
325 ~~plans (determined as of the same age) would exceed the~~
326 ~~Dollar Limitation applicable at that age, the accrual of the~~
327 ~~participant's benefit under this Plan shall be reduced so~~
328 ~~that the participant's combined benefits will equal the Dollar~~
329 ~~Limitation.~~

330
331 ~~(7) For a participant who has or will have distributions~~
332 ~~commencing at more than one annuity starting date, the~~
333 ~~Annual Benefit shall be determined as of each such annuity~~
334 ~~starting date (and shall satisfy the limitations of this Section~~
335 ~~as of each such date), actuarially adjusting for past and~~
336 ~~future distributions of benefits commencing at the other~~
337 ~~annuity starting dates. For this purpose, the determination~~
338 ~~of whether a new starting date has occurred shall be made~~
339 ~~without regard to § 1.401(a)-20, Q&A 10(d), and with~~
340 ~~regard to § 1.415(b)1(b)(1)(iii)(B) and (C) of the Income Tax~~
341 ~~Regulations.~~

342
343 ~~(8) The determination of the Annual Pension under Paragraph~~
344 ~~(a)(1) of this Subsection (a) shall take into account (in the~~
345 ~~manner prescribed by the regulations under Section 415 of~~
346 ~~the Code) social security supplements described in §~~
347 ~~411(a)(9) of the Internal Revenue Code and benefits~~
348 ~~transferred from another defined benefit plan, other than~~
349 ~~transfers of distributable benefits pursuant § 1.411(d)-4,~~
350 ~~Q&A-3(c) of the Income Tax Regulations.~~

351
352 ~~(9) The above limitations are intended to comply with the~~
353 ~~provisions of Section 415 of the Code, as amended, so that~~
354 ~~the maximum benefits provided by plans of the City shall~~
355 ~~be exactly equal to the maximum amounts allowed under~~
356 ~~Section 415 of the Code and regulations thereunder. If~~
357 ~~there is any discrepancy between the provisions of this~~
358 ~~Subsection (a) and the provisions of Section 415 of the~~
359 ~~Code and regulations thereunder, such discrepancy shall~~
360 ~~be resolved in such a way as to give full effect to the~~
361 ~~provisions of Section 415 of the Code. The value of any~~
362 ~~benefits forfeited as a result of the application of this~~

363 ~~Subsection (a) shall be used to decrease future employer~~
364 ~~contributions.~~

365
366 (a) MAXIMUM AMOUNT OF RETIREMENT INCOME

367
368 (1) The limitations of this Subsection (a) shall apply in
369 limitation years beginning on or after July 1, 2007,
370 except as otherwise provided herein, and are
371 intended to comply with the requirements of the
372 Pension Protection Act of 2006 and shall be
373 construed in accordance with said Act and guidance
374 issued thereunder. The provisions of this
375 Subsection (a) shall supersede any provision of the
376 Plan to the extent such provision is inconsistent with
377 this Subsection.

378
379 The Annual Pension as defined in Paragraph (2)
380 below otherwise payable to a Member at any time
381 shall not exceed the Dollar Limitation for the
382 Member multiplied by a fraction whose value cannot
383 exceed one, the numerator of which is the Member's
384 number of years (or part thereof, but not less than
385 one year) of service with the City and the
386 denominator of which is 10. For this purpose, no
387 more than one year of service may be credited for
388 any Plan Year. If the benefit the Member would
389 otherwise accrue in a limitation year would produce
390 an Annual Pension in excess of the Dollar Limitation,
391 the benefit shall be limited (or the rate of accrual
392 reduced) to a benefit that does not exceed the Dollar
393 Limitation.

394
395 (2) "Annual Pension" means the sum of all annual
396 benefits, payable in the form of a straight life
397 annuity. Benefits payable in any other form shall be
398 adjusted to the larger of:

399
400 a. For limitation years beginning on or after July
401 1, 2007

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403 1. the straight life annuity (if any) payable
404 to the Member under the Plan
405 commencing at the same Annuity
406 Starting Date as the Member's form of

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benefit, or

2. the actuarially equivalent straight life annuity commencing at the same Annuity Starting Date, computed using a 5.00% interest rate and the mortality basis prescribed in Code Section 415(b)(2)(E)(v).

b. For limitation years beginning before July 1, 2007

1. the actuarially equivalent straight life annuity commencing at the same Annuity Starting Date, computed using the interest rate and mortality basis specified by the Board of Trustees for determining Actuarial Equivalence under the Plan for the particular form of payment, or

2. the actuarially equivalent straight life annuity commencing at the same Annuity Starting Date, computed using a 5.00% interest rate and the mortality basis prescribed in Code Section 415(b)(2)(E)(v).

No actuarial adjustment to the benefit shall be made for benefits that are not directly related to retirement benefits (such as a qualified disability benefit, preretirement incidental death benefits, and postretirement medical benefits); or the inclusion in the form of benefit of an automatic benefit increase feature, provided the form of benefit is not subject to §417(e)(3) of the Internal Revenue Code and would otherwise satisfy the limitations of this Subsection (a), and the amount payable under the form of benefit in any Limitation Year shall not exceed the limits of this Subsection (a) applicable at the annuity starting date, as increased in subsequent years pursuant to § 415(d) of the Code. For this purpose, an automatic benefit increase feature is included in a form of benefit if the form of benefit provides for automatic, periodic increases to the benefits paid in that form.

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(3) “Dollar Limitation” means, effective for the first limitation year beginning after January 1, 2001, \$160,000, automatically adjusted under Code Section 415(d), effective January 1 of each year, as published in the Internal Revenue Bulletin, and payable in the form of a straight life annuity. The new limitation shall apply to limitation years ending with or within the calendar year of the date of the adjustment, but a Member’s benefits shall not reflect the adjusted limit prior to January 1 of that calendar year. The Dollar Limitation shall be further adjusted based on the age of the Member when the benefit begins as follows:

a. For Annuity Starting Dates in limitation years beginning on or after July 1, 2007

1. If the Annuity Starting Date for the Member’s benefit is after age 65

(i) If the Plan does not have an immediately commencing straight life annuity payable at both age 65 and the age of benefit commencement

The Dollar Limitation at the Member’s Annuity Starting Date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the Member’s Annuity Starting Date that is the actuarial equivalent of the Dollar Limitation with actuarial equivalence computed using a 5.00% interest rate assumption and the mortality basis prescribed in Code Section 415(b)(2)(E)(v) for that Annuity Starting Date (and expressing the Member’s age based on completed calendar months as

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of the Annuity Starting Date).

- (ii) If the Plan does have an immediately commencing straight life annuity payable at both age 65 and the age of benefit commencement.

The Dollar Limitation at the Member's Annuity Starting Date is the lesser of (aa) the Dollar Limitation multiplied by the ratio of the annual amount of the adjusted immediately commencing straight life annuity under the Plan at the Member's Annuity Starting Date to the annual amount of the adjusted immediately commencing straight life annuity under the Plan at age 65, both determined without applying the limitations of this Subsection (a), and (bb) the limitation determined under Subclause (3)a.1.(i) of this Subsection(a). For this purpose, the adjusted immediately commencing straight life annuity under the Plan at the Member's Annuity Starting Date is the annual amount of such annuity payable to the Member, computed disregarding the Member's accruals after age 65 but including actuarial adjustments even if those actuarial adjustments are used to offset accruals; and the adjusted immediately commencing straight life annuity under the Plan at age 65 is the annual amount of such annuity that would be payable under the Plan to a hypothetical Member who is age 65 and has the same

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Accrued Benefit as the Member.

2. Except with respect to a Member who is a "Qualified Member" as defined in Section 415(b)(2)(H) of the Code, for benefits (except survivor and disability benefits as defined in Section 415(b)(2)(I) of the Code), if the Annuity Starting Date for the Member's benefit is before age 62.

(i) If the Plan does not have an immediately commencing straight life annuity payable at both age 62 and the age of benefit commencement.

The Dollar Limitation at the Member's Annuity Starting Date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the Member's Annuity Starting Date that is the actuarial equivalent of the Dollar Limitation with actuarial equivalence computed using a 5.00% interest rate assumption and the mortality basis prescribed in Code Section 415(b)(2)(v) for that Annuity Starting Date (and expressing the Member's age based on completed calendar months as of the Annuity Starting Date).

(ii) If the Plan does have an immediately commencing straight life annuity payable at both age 62 and the age of benefit commencement.

The Dollar Limitation at the Member's Annuity Starting Date

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is the lesser of (aa) the Dollar Limitation multiplied by the ratio of the annual amount of the adjusted immediately commencing straight life annuity under the Plan at the Member's Annuity Starting Date to the annual amount of the adjusted immediately commencing straight life annuity under the Plan at age 62, both determined without applying the limitations of this Subsection (a), and (bb) the limitation determined under Subclause (3)a.2.(i) of this Subsection (a).

b. For Annuity Starting Dates in limitation years beginning before July 1, 2007.

Age as of Annuity Starting Date:	Adjustment of Dollar Limitation:
Over 65	The smaller of: (a) the actuarial equivalent of the limitation for age 65, computed using the interest rate and mortality basis specified by the Board of Trustees for determining actuarial equivalence under the Plan, or (b) the actuarial equivalent of the limitation for age 65, computed using a 5.00% interest rate and the mortality basis prescribed in Code Section 415(b)(2)(E)(v). Any increase in the Dollar Limitation determined in accordance with this paragraph shall not reflect a mortality decrement between age 65 and the age at which benefits commence if benefits are not forfeited upon the death of the Member. If any benefits are forfeited upon death, the full mortality decrement is taken into account.
62 to 65	No adjustment.
Less than 62	The smaller of: (a) the actuarial equivalent of the limitation for age 62, computed using the interest rate and mortality basis specified by the Board of Trustees for determining actuarial equivalence under the Plan, or (b) the actuarial equivalent of the limitation

	<p>for age 62, computed using a 5.00% interest rate and the mortality basis prescribed in Code Section 415(b)(2)(E)(v).</p> <p>This adjustment shall not apply to any "Qualified Member" as defined in Section 415(b)(2)(H), nor to survivor and disability benefits as defined in Section 415(b)(2)(I) of the Code.</p>
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- (4) With respect to Subclause (3)a.1.(i), Subclause (3)a.2.(i) and Subparagraph (3)(B) above, no adjustment shall be made to the Dollar Limitation to reflect the probability of a Member's death between the Annuity Starting Date and age 62, or between age 65 and the Annuity Starting Date, as applicable, if benefits are not forfeited upon the death of the Member prior to the Annuity Starting Date. To the extent benefits are forfeited upon death before the Annuity Starting Date, such an adjustment shall be made. For this purpose, no forfeiture shall be treated as occurring upon the Member's death if the Plan does not charge Members for providing a qualified preretirement survivor annuity, as defined in Code Section 417(c), upon the Member's death.
- (5) The term "limitation year" is the 12 month period which is used for application of the limitations under Code Section 415 and shall be the calendar year.
- (6) The limitations set forth in this Subsection (a) shall not apply if the Annual Pension does not exceed \$10,000 provided the Member has never participated in a Defined Contribution Plan maintained by the City.
- (7) Cost-of-living adjustments in the Dollar Limitation for benefits shall be limited to scheduled annual increases determined by the Secretary of the Treasury under Section Subsection 415(d) of the Code.
- (8) In the case of a Member who has fewer than 10 years of participation in the Plan, the Dollar Limitation set forth in Paragraph (3) of this Subsection (a) shall be multiplied by a fraction - (i)

644 the numerator of which is the number of years (or
645 part thereof) of participation in the Plan, and (ii) the
646 denominator of which is 10.

647
648 (9) Any portion of a Member's benefit that is attributable
649 to mandatory Member contributions (unless picked-
650 up by the City) or rollover contributions, shall be
651 taken into account in the manner prescribed in the
652 regulations under Section 415 of the Code.

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654 (10) Should any Member participate in more than one
655 defined benefit plan maintained by the City, in any
656 case in which the Member's benefits under all such
657 defined benefit plans (determined as of the same
658 age) would exceed the Dollar Limitation applicable
659 at that age, the accrual of the Member's benefit
660 under this Plan shall be reduced so that the
661 Member's combined benefits will equal the Dollar
662 Limitation.

663
664 (11) For a Member who has or will have distributions
665 commencing at more than one annuity starting date,
666 the Annual Benefit shall be determined as of each
667 such annuity starting date (and shall satisfy the
668 limitations of this Section as of each such date),
669 actuarially adjusting for past and future distributions of
670 benefits commencing at the other annuity starting
671 dates. For this purpose, the determination of whether
672 a new starting date has occurred shall be made
673 without regard to § 1.401(a)-20, Q&A 10(d), and with
674 regard to § 1.415(b)1(b)(1)(iii)(B) and (C) of the
675 Income Tax Regulations.

676
677 (12) The determination of the Annual Pension under
678 Paragraph (A)(1) of this Subsection (a) shall take into
679 account (in the manner prescribed by the regulations
680 under Section 415 of the Code) social security
681 supplements described in § 411(a)(9) of the Internal
682 Revenue Code and benefits transferred from another
683 defined benefit plan, other than transfers of
684 distributable benefits pursuant § 1.411(d)-4, Q&A-3(c)
685 of the Income Tax Regulations.

686
687 (13) The above limitations are intended to comply with the
688 provisions of Section 415 of the Code, as amended,
689 so that the maximum benefits provided by plans of the

690 City shall be exactly equal to the maximum amounts
691 allowed under Section 415 of the Code and
692 regulations thereunder. If there is any discrepancy
693 between the provisions of this Subsection (a) and the
694 provisions of Section 415 of the Code and regulations
695 thereunder, such discrepancy shall be resolved in
696 such a way as to give full effect to the provisions of
697 Section 415 of the Code. The value of any benefits
698 forfeited as a result of the application of this
699 Subsection (a) shall be used to decrease future
700 employer contributions.

701
702 (14) For the purpose of applying the limitations set forth
703 in Sections 401(a)(17) and 415 of the Internal
704 Revenue Code, Compensation shall include any
705 elective deferral (as defined in Code Section
706 402(g)(3) of the Internal Revenue Code), and any
707 amount which is contributed or deferred by the
708 employer at the election of the Member and which is
709 not includible in the gross income of the Member by
710 reason of Section 125 or 457 of the Internal
711 Revenue Code. For limitation years beginning on
712 and after January 1, 2001, for the purposes of
713 applying the limitations described in this Subsection
714 (a), compensation paid or made available during
715 such limitation years shall include elective amounts
716 that are not includible in the gross income of the
717 Member by reason of Section 132(f)(4) of the
718 Internal Revenue Code. For limitation years on or
719 after July 1, 2007, compensation shall include
720 payments that otherwise qualify as compensation
721 and that are made by the later of: (a) 2 and ½ (two
722 and one-half) months after severance from
723 employment with the employer, and (b) the end of
724 the limitation year that includes the date of
725 severance.

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727
728 Section 6. CHAPTER 16 PENSION AND RETIREMENT, ARTICLE II,
729 EMPLOYEES' RETIREMENT SYSTEM, Subsection(c) of Section 16-42, of the
730 Code of Ordinances of the City of Lake Worth, is hereby amended by adding
731 the underlined language and deleting the ~~stricken~~ language as follows:

732
733 (c) Required Minimum Distributions.

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(1) *Required Beginning Date.* The Member's entire interest will be distributed, or begin to be distributed, to the Member no later than the Member's Required Beginning Date as defined in Subsection (b) of this Section 16-42.

(2) *Death of Member Before Distributions Begin.*

~~(A)~~a. If the Member dies before distributions begin, the Member's entire interest will be distributed, or begin to be distributed, no later than as follows:

~~(i)~~1. If the Member's surviving spouse is the Member's sole designated beneficiary, then distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Member died, or by December 31 of the calendar year in which the Member would have attained age 70½, if later.

~~(ii)~~2. If the Member's surviving spouse is not the Member's sole designated beneficiary, then distributions to the designated beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Member died.

~~(iii)~~3. If there is no designated beneficiary as of September 30 of the year following the year of the Member's death, the Member's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Member's death.

~~(B)~~b. The Member's entire interest shall be distributed as follows:

~~(i)~~1. *Member Survived by Designated Beneficiary.* If the Member dies before the date distribution of his or her interest begins and there is a designated beneficiary, the Member's entire interest will be distributed, beginning no later than the time described in Subparagraph ~~(2)~~~~(A)~~~~(2)~~a. above, over the life

780 of the designated beneficiary or over a period
781 certain not exceeding:
782

783 ~~(I)~~(i) unless the annuity starting date
784 is before the first distribution calendar
785 year, the life expectancy of the
786 designated beneficiary determined
787 using the beneficiary's age as of the
788 beneficiary's birthday in the calendar
789 year immediately following the
790 calendar year of the Member's death;
791 or

792
793 ~~(II)~~(ii) if the annuity starting date is
794 before the first distribution calendar
795 year, the life expectancy of the
796 designated beneficiary determined
797 using the beneficiary's age as of the
798 beneficiary's birthday in the calendar
799 year that contains the annuity starting
800 date.

801
802 ~~(iii)~~2. *No Designated Beneficiary.* If the
803 Member dies before the date distributions
804 begin and there is no designated beneficiary
805 as of September 30 of the year following the
806 year of the Member's death, distribution of the
807 Member's entire interest will be completed by
808 December 31 of the calendar year containing
809 the fifth anniversary of the Member's death.

810
811 ~~(C)~~c. *Death of Surviving Spouse Before*
812 *Distributions to Surviving Spouse Begin.* In any case
813 in which: (i) the Member dies before the date
814 distribution of his or her interest begins; (ii) the
815 Member's surviving spouse is the Member's sole
816 designated beneficiary; and (iii) the surviving spouse
817 dies before distributions to the surviving spouse
818 begin, Subparagraphs ~~(2)(A)~~ (2)a. and ~~2(B)~~(2)b.
819 above shall apply as though the surviving spouse
820 were the Member.

821
822 (3) *Requirements For Annuity Distributions That*
823 *Commence During Member's Lifetime.*

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~~(A)~~a. *Joint Life Annuities Where the Beneficiary Is Not the Member's Spouse.* If the Member's interest is being distributed in the form of a joint and survivor annuity for the joint lives of the Member and a nonspousal beneficiary, annuity payments to be made on or after the Member's Required Beginning Date to the designated beneficiary after the Member's death must not at any time exceed the applicable percentage of the annuity payment for such period that would have been payable to the Member using the table set forth in Q&A-2 of Section ~~1.401(a)(9)-6~~ 1.401(a)(9) 6 of the Treasury regulations. If the form of distribution combines a joint and survivor annuity for the joint lives of the Member and a nonspousal beneficiary and a period certain annuity, the requirement in the preceding sentence will apply to annuity payments to be made to the designated beneficiary after the expiration of the period certain.

~~(B)~~b. *Period Certain Annuities.* Unless the Member's spouse is the sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain for an annuity distribution commencing during the Member's lifetime may not exceed the applicable distribution period for the Member under the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations for the calendar year that contains the annuity starting date. If the annuity starting date precedes the year in which the Member reaches age 70, the applicable distribution period for the Member is the distribution period for age 70 under the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations plus the excess of 70 over the age of the Member as of the Member's birthday in the year that contains the annuity starting date. If the Member's spouse is the Member's sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain may not exceed the longer of the Member's applicable distribution period, as determined under this Subparagraph ~~(3)(B)~~(3)b., or the joint life and last survivor expectancy of the Member and the Member's spouse as determined

870 under the Joint and Last Survivor Table set forth in
871 Section 1.401(a)(9)-9 of the Treasury regulations,
872 using the Member's and spouse's attained ages as
873 of the Member's and spouse's birthdays in the
874 calendar year that contains the annuity starting date.
875

- 876 (4) *Form of Distribution.* Unless the Member's interest is
877 distributed in the form of an annuity purchased from
878 an insurance company or in a single sum on or
879 before the Required Beginning Date, as of the first
880 distribution calendar year distributions will be made
881 in accordance with Subparagraphs ~~(4)(A)~~(4)a.,
882 ~~(4)(B)~~(4)b. and ~~(4)(C)~~(4)c. below. If the Member's
883 interest is distributed in the form of an annuity
884 purchased from an insurance company, distributions
885 thereunder will be made in accordance with the
886 requirements of Section 401(a)(9) of the Code and
887 the Treasury regulations. Any part of the Member's
888 interest which is in the form of an individual account
889 described in Section 414(k) of the Code will be
890 distributed in a manner satisfying the requirements
891 of Section 401(a)(9) of the Code and the Treasury
892 regulations that apply to individual accounts.
893

894 ~~(A)~~a. *General Annuity Requirements.* If the
895 Member's interest is paid in the form of annuity
896 distributions under the Plan, payments under the
897 annuity will satisfy the following requirements:
898

899 ~~(i)~~1. The annuity distributions will be paid in
900 periodic payments made at intervals not
901 longer than one year;
902

903 ~~(ii)~~2. The distribution period will be over a
904 life (or lives) or over a period certain, not
905 longer than the distribution period described
906 in Paragraphs (2) or (3) above, whichever is
907 applicable, of this Subsection (c);
908

909 ~~(iii)~~3. Once payments have begun over a
910 period certain, the period certain will not be
911 changed even if the period certain is shorter
912 than the maximum permitted;
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~~(iv)~~4. Payments will either be non-increasing or increase only as follows:

~~(I)~~(i) By an annual percentage increase that does not exceed the annual percentage increase in a cost-of-living index that is based on prices of all items and issued by the Bureau of Labor Statistics;

~~(H)~~(ii) To the extent of the reduction in the amount of the Member's payments to provide for a survivor benefit upon death, but only if the beneficiary whose life was being used to determine the distribution period dies or is no longer the Member's beneficiary pursuant to a qualified domestic relations order within the meaning of Section 414(p) of the Code;

~~(HH)~~(iii) To provide cash refunds of employee contributions upon the Member's death; or

~~(IV)~~(iv) To pay increased benefits that result from a Plan amendment.

~~(B)~~b. *Amount Required to be Distributed by Required Beginning Date.* The amount that must be distributed on or before the Member's Required Beginning Date (or, if the Member dies before distributions begin, the date distributions are required to begin under ~~Subparagraphs~~Clauses ~~(2)(A)(i)~~(2)a.1. or ~~(2)(A)(ii)~~ (2)a.2., whichever is applicable) is the payment that is required for one payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. Payment intervals are the periods for which payments are received, e.g., bi-monthly, monthly, semi-annually, or annually. All of the Member's benefit accruals as of the last day of the first distribution calendar year will be included in the calculation of the amount of the annuity payments

959 for payment intervals ending on or after the
960 Member's Required Beginning Date.

961
962 ~~(C)~~c. *Additional Accruals After First Distribution*
963 *Calendar Year.* Any additional benefits accruing to
964 the Member in a calendar year after the first
965 distribution calendar year will be distributed
966 beginning with the first payment interval ending in
967 the calendar year immediately following the calendar
968 year in which such amount accrues.

969
970 (5) For purposes of this Subsection (c), distributions are
971 considered to begin on the Member's Required
972 Beginning Date. If annuity payments irrevocably
973 commence to the Member (or to the Member's
974 Surviving Spouse) before the Member's Required
975 Beginning Date (or, if to the Member's Surviving
976 Spouse, before the date distributions are required to
977 begin in accordance with Subparagraph ~~(2)(A)~~ (2)a.
978 above), the date distributions are considered to
979 begin is the date distributions actually commence.

980
981 (6) *Definitions.*

982
983 ~~(A)~~a. *Designated beneficiary.* The individual who is
984 designated as the beneficiary under the Plan and is
985 the designated beneficiary under Section 401(a)(9)
986 of the Code and Section ~~1.401(a)(9)-1, Q&A-4,~~
987 1.401(a)(9)-4 the Treasury regulations.

988
989 ~~(B)~~b. *Distribution calendar year.* A calendar year for
990 which a minimum distribution is required. For
991 distributions beginning before the Member's death,
992 the first distribution calendar year is the calendar
993 year immediately preceding the calendar year which
994 contains the Member's Required Beginning Date.
995 For distributions beginning after the Member's death,
996 the first distribution calendar year is the calendar
997 year in which distributions are required to begin
998 pursuant to Paragraph (2) of this Subsection (c).

999
1000 ~~(C)~~c. *Life expectancy.* Life expectancy as
1001 computed by use of the Single Life Table in Section
1002 1.401(a)(9)-9 of the Treasury regulations.

1003
1004 Section 7. CHAPTER 16 PENSION AND RETIREMENT, ARTICLE II,
1005 EMPLOYEES' RETIREMENT SYSTEM, Section 16-42(d), of the Code of
1006 Ordinances of the City of Lake Worth, is hereby amended by adding the
1007 underlined language and deleting the ~~stricken~~ language as follows:
1008

1009 (d) Eligible rollover distributions:

1010
1011 ~~(1) Notwithstanding any provision of the plan to the~~
1012 ~~contrary that would otherwise limit a distributee's election~~
1013 ~~under this subsection, a distributee may elect, at the time~~
1014 ~~and in the manner prescribed by the board of trustees, to~~
1015 ~~have any portion of an eligible rollover distribution paid~~
1016 ~~directly to an eligible retirement plan specified by the~~
1017 ~~distributee in a direct rollover.~~

1018
1019 ~~(2) — Definitions:~~

1020
1021 ~~(A) — Eligible rollover distribution: An eligible~~
1022 ~~rollover distribution is any distribution of all or any~~
1023 ~~portion of the balance to the credit of the distributee,~~
1024 ~~except that an eligible rollover distribution does not~~
1025 ~~include: any distribution that is one (1) of a series of~~
1026 ~~substantially equal periodic payments (not less~~
1027 ~~frequently than annually) made for the life (or life~~
1028 ~~expectancy) of the distributee or the joint lives (or~~
1029 ~~joint life expectancies) of the distributee and the~~
1030 ~~distributee's designated beneficiary, or for a~~
1031 ~~specified period often (10) years or more; any~~
1032 ~~distribution to the extent such distribution is required~~
1033 ~~under section 401(a)(9) of the Code; and the portion~~
1034 ~~of any distribution that is not includable in gross~~
1035 ~~income (determined without regard to the exclusion~~
1036 ~~for net unrealized appreciation with respect to~~
1037 ~~employer securities).~~

1038
1039 ~~(B) — Eligible retirement plan: An eligible retirement~~
1040 ~~plan is an individual retirement account described in~~
1041 ~~section 408(a) of the Internal Revenue Code, an~~
1042 ~~individual retirement annuity described in section~~
1043 ~~408(b) of the Code, an annuity plan described in~~
1044 ~~section 403(a) of the Code or a qualified trust~~
1045 ~~described in section 401(a) of the Code, that~~
1046 ~~accepts the distributee's eligible rollover distribution.~~
1047 ~~However, in the case of an eligible rollover~~
1048 ~~distribution to the surviving spouse, an eligible~~

1049 retirement plan is an individual retirement account or
1050 individual retirement annuity. An eligible retirement
1051 plan shall also mean, with respect to distributions
1052 made after December 31, 2001, an annuity contract
1053 described in Section 403(b) of the Code and an
1054 eligible plan under Section 457(b) of the Code which
1055 is maintained by a state, political subdivision of a
1056 state, or any agency or instrumentality of a state or
1057 political subdivision of a state and which agrees to
1058 separately account for amounts transferred into such
1059 plan from this plan. The definition of eligible
1060 retirement plan shall also apply in the case of a
1061 distribution to a surviving spouse, or to a spouse or
1062 former spouse who is the alternate payee under a
1063 domestic relation order, as defined in Section 414(p)
1064 of the Code.

1065
1066 (C) — Distributee: A distributee includes a participant
1067 or former participant.

1068
1069 (D) — Direct rollover: A direct rollover is a payment
1070 by the Plan to the eligible retirement plan specified by
1071 the distributee.

1072
1073 (1) Notwithstanding any provision of the Plan to the
1074 contrary that would otherwise limit a distributee's
1075 election under this Section, a distributee may elect,
1076 at the time and in the manner prescribed by the
1077 Administrator, to have any portion of an eligible
1078 rollover distribution paid directly to an eligible
1079 retirement plan specified by the distributee in a
1080 direct rollover.

1081
1082 (2) Definitions

1083
1084 The following definitions apply to this Section:

1085
1086 a. Eligible rollover distribution: An eligible
1087 rollover distribution is any distribution of all or any
1088 portion of the balance to the credit of the distributee,
1089 except that an eligible rollover distribution does not
1090 include:

1091
1092 1. any distribution that is one of a series

1093 of substantially equal periodic payments (not
1094 less frequently than annually) made for the
1095 life (or life expectancy) of the distributee or
1096 the joint lives (or joint life expectancies) of the
1097 distributee and the distributee's designated
1098 beneficiary, or for a specified period of 10
1099 years or more;

1100
1101 2. any distribution to the extent such
1102 distribution is required under Section
1103 401(a)(9) of the Code;

1104
1105 3. the portion of any distribution which is
1106 made upon hardship of the member; and

1107
1108 4. the portion of any distribution that is
1109 not includible in gross income (determined
1110 without regard to the exclusion for net
1111 unrealized appreciation with respect to
1112 employer securities), provided that a portion
1113 of a distribution shall not fail to be an eligible
1114 rollover distribution merely because the
1115 portion consists of after-tax Employee
1116 contributions which are not includible in gross
1117 income. However, such portion may be
1118 transferred only to an individual retirement
1119 account or annuity described in Section
1120 408(a) or (b) of the Code, or to a qualified
1121 defined contribution plan described in Section
1122 401(a) or 403(a) of the Code that agrees to
1123 separately account for amounts so
1124 transferred, including separately accounting
1125 for the portion of such distribution which is
1126 includible in gross income and the portion of
1127 such distribution which is not so includible.

1128
1129 (3) Eligible retirement plan: An eligible retirement plan
1130 is an individual retirement account described in
1131 Section 408(a) of the Code, an individual retirement
1132 annuity described in Section 408(b) of the Code, an
1133 annuity plan described in Section 403(a) of the
1134 Code, an annuity contract described in Section
1135 403(b) of the Code, a qualified trust described in
1136 Section 401 (a) of the Code, an eligible plan under
1137 Section 457(b) of the Code which is maintained by a
1138 state, political subdivision of a state, or any agency

1139 or instrumentality of a state or political subdivision of
1140 a state and which agrees to separately account for
1141 amounts transferred into such plan from this Plan,
1142 or, with respect to distributions on or after January 1,
1143 2008, a Roth IRA (subject to the limitations of Code
1144 Section 408A(c)(3)) that accepts the distributee's
1145 eligible rollover distribution.
1146

1147 (4) Distributee: A distributee includes an Employee or
1148 former Employee. In addition, the Employee's or
1149 former Employee's surviving spouse and the
1150 Employee's or former Employee's spouse or former
1151 spouse who is the alternate payee under a qualified
1152 domestic relations order, as defined in Section
1153 414(p) of the Code, are distributees with regard to
1154 the interest of the spouse or former spouse.
1155 Furthermore, effective January 1, 2007, a surviving
1156 designated beneficiary as defined in Section
1157 401(a)(9)(E) of the Code who is not the surviving
1158 spouse and who elects a direct rollover to an
1159 individual retirement account described in Section
1160 408(a) of the Code or an individual retirement
1161 annuity described in Section 408(b) of the Code
1162 shall be considered a distributee.
1163

1164 (5) Direct rollover: A direct rollover is a payment by the
1165 Plan to the eligible retirement plan specified by the
1166 distributee.
1167

1168
1169 Section 8. CHAPTER 16 PENSION AND RETIREMENT, ARTICLE II,
1170 EMPLOYEES' RETIREMENT SYSTEM, Section 16-42, of the Code of
1171 Ordinances of the City of Lake Worth, is hereby amended by adding a new
1172 subsection (h) as follows:
1173

1174 ...

1175
1176 (h) Uniformed Services Employment and Reemployment
1177 Rights Act.
1178

1179 The Plan shall at all times be administered in accordance
1180 with the provisions of the Uniformed Services Employment
1181 and Reemployment Rights Act, which Act is hereby
1182 incorporated by reference.

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Section 9. CHAPTER 16 PENSION AND RETIREMENT, ARTICLE II, EMPLOYEES' RETIREMENT SYSTEM, Section 16-42, of the Code of Ordinances of the City of Lake Worth, is hereby amended by adding a new subsection (i) as follows:

...

(i) Benefits nonforfeitable upon termination of the plan

Notwithstanding any other provision of this plan to the contrary, all accrued benefits shall become 100% nonforfeitable upon the date of termination of this plan.

Section 10. CHAPTER 16 PENSION AND RETIREMENT, ARTICLE II, EMPLOYEES' RETIREMENT SYSTEM, Section 16-43, of the Code of Ordinances of the City of Lake Worth, is hereby amended by adding a new subsection (d) as follows:

...

(d) 415 Limitations. All benefit payments and accruals under the DROP shall be in accordance with Subsection 415(c) of the Internal Revenue Code and all regulations thereunder, to the extent applicable, which Subsections and regulations are incorporated herein by reference.

Section 11. 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 12. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 13. Sections 2 through 10 of this Ordinance shall be codified.

Section 14. This Ordinance shall become effective on ten (10) days after passage.

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

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

The Mayor thereupon declared this Ordinance duly passed on first reading on the 17th day of June, 2014.

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 1st day of July, 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: June 17, 2014, Regular Meeting

DEPARTMENT: Finance

EXECUTIVE BRIEF

TITLE:

Ordinance No. 2014-21 - First Reading - provide for the annual payment from Division II to Division I of the Police Pension System and schedule the public hearing date for July 1, 2014

SUMMARY:

The Ordinance provides for the annual transfer of funds to be a recurring event without further action by the City Commission and addresses when all Division II employees have retired.

BACKGROUND AND JUSTIFICATION:

The City Commission has approved the annual transfer of \$202,000 from the Division II to Division I Pension System to offset some of the costs of the Police Pension System. Additionally, Chapter 185 monies will be applied to the Division I Plan in order to fund any remaining unfunded liabilities of the Plan.

MOTION:

I move to approve/not approve Ordinance 2014-21 on first reading and schedule the public hearing date for July 1, 2014.

ATTACHMENT(S):

Fiscal Impact Analysis – Not Applicable
Ordinance

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2
3 ORDINANCE NO. 2014-21 OF THE CITY OF LAKE WORTH, FLORIDA,
4 AMENDING CHAPTER 16 OF THE CODE OF ORDINANCES; REGARDING
5 PENSIONS AND RETIREMENT, DIVISIONS 1 AND 2 OF THE POLICE
6 RELIEF AND PENSION FUND; PROVIDING FOR RECOGNIZING THE
7 TRANSFER OF CHAPTER 185 PREMIUM TAX REVENUE FROM DIVISION
8 2 TO DIVISION 1; PROVIDING FOR A SEVERABILITY CLAUSE; FOR THE
9 REPEAL OF CONFLICTING ORDINANCES; A CODIFICATION CLAUSE; AND
10 EFFECTIVE DATE.
11
12

13 WHEREAS, the City of Lake Worth (the "City") and the Police Officers
14 remaining in the City Police Pension Plans, through their bargaining agent the
15 Palm Beach County Police Benevolent Association, have agreed to make
16 changes to the Lake Worth Police Relief and Pension Funds; and
17

18 WHEREAS, the City Commission has determined it is in the best interest
19 of the City to adopt certain changes to the City of Lake Worth Police Retirement
20 System, Division 2 Plan, in order to provide funding utilizing additional premium
21 tax revenues to be transferred from the Division 1 Plan; and
22

23 WHEREAS, the City Commission has determined it is in the best interest
24 of the City to adopt certain changes to the City of Lake Worth Police Retirement
25 System, Division 1 Plan, in order to utilize the additional premium tax revenues
26 transferred from the Division 2 Plan.
27

28 NOW THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION
29 OF THE CITY OF LAKE WORTH, FLORIDA, that:
30

31 Section 1. The foregoing WHEREAS clauses are hereby ratified and
32 confirmed as being true and correct and are hereby made a specific part of this
33 Ordinance upon adoption hereof.
34

35 Section 2. CHAPTER 16, "PENSIONS AND RETIREMENT," ARTICLE IV,
36 "POLICE RETIREMENT PROGRAMS," DIVISION 1, "POLICE RETIREMENT
37 SYSTEM," Subdivision 2, "Pension Plan," Section 16-151, "Funding," and
38 Section 16-180 Credits to individual accounts; of the Code of Ordinances of the
39 City of Lake Worth, is hereby amended by deleting the ~~stricken through~~ words
40 and adding the underlined words:
41

42 **Section 16-151. Funding**
43

44 (b) *Participant contributions.* All participants shall make regular
45 contributions at the rate of six and six-tenths (6.6) percent of
46 compensation for all service prior to October 1, 1997, and seven and
47 six-hundredths (7.06) percent of compensation for all service thereafter
48 which shall be deposited in the system each pay period. For persons
49 who first became participants of the retirement system on or after

50 October 1, 1979, "compensation" shall exclude payments for all
51 accumulated leave, compensatory time and overtime. The City of Lake
52 Worth shall assume and pay participant contributions in lieu of payroll
53 deductions from participants' earnings. No participant shall have the
54 option of choosing to receive the contributed amounts directly instead of
55 having them paid by the city directly to the plan. All such contributions
56 by the city shall be deemed and considered as a part of the participant's
57 accumulated contributions and subject to all provisions of this plan
58 pertaining to accumulated contributions of members. This city "pick up"
59 of contributions is the result of a five (5) percent reduction of each
60 participant's base pay and of base pay levels which occurred on
61 October 1, 1991 and is intended to comply with section 414(h)(~~l~~) (2) of
62 the Internal Revenue Code.

63
64 ~~Notwithstanding the foregoing provisions of subsection (b), effective~~
65 ~~upon receipt of \$202,000 to be transferred from the Police Relief and~~
66 ~~Pension Fund during calendar year 2011, the participant contribution~~
67 ~~shall be increased to fourteen and six-hundredths (14.06) percent of~~
68 ~~compensation, and then immediately reduced to seven and six-~~
69 ~~hundredths (7.06) percent of compensation using the \$202,000 to offset~~
70 ~~the cost of the reduction, and effective upon receipt of \$202,000 to be~~
71 ~~transferred from the Police Relief and Pension Fund during calendar~~
72 ~~year 2012, the participant contribution shall be increased to twenty and~~
73 ~~six-hundredths (20.06) percent of compensation, and then immediately~~
74 ~~reduced to seven and six-hundredths (7.06) percent of compensation~~
75 ~~using the \$202,000 to offset the cost of the reduction.~~

76
77 Notwithstanding the foregoing provisions of subsection (b), effective
78 upon receipt of \$202,000 to be transferred from the Police Relief and
79 Pension Fund during calendar year 2014 and beyond the participant
80 contribution shall be held to seven and six-hundredths (7.06) percent of
81 compensation using the \$202,000 to offset the cost of holding the
82 contribution constant,

83
84 Section 16-180. - Credits to individual accounts

85
86 (c) Effective for the Chapter 185 money received in calendar years 2011, and
87 2012, and 2013, and all years thereafter, two hundred two thousand dollars
88 (\$202,000.00) will be transferred to the Division 1 fund each year to reduce
89 hold the employee contributions to seven and six-hundredths (7.06) percent.

90
91 D. After all active members of Division 2 have retired and are no longer eligible
92 for the share plan monies all Chapter 185 monies received from the state will be
93 applied to the Division 1 plan in order to fund any remaining unfunded liabilities
94 of the plan

96

97 Section 3. If any provision of this Ordinance or the application thereof to any
98 person or circumstances is held invalid, such invalidity shall not affect other
99 provisions or applications of this Ordinance which can be given effect without
100 the invalid provision or application, and to this end the provisions of this
101 Ordinance are declared to be severable.

102 Section 4. All ordinances or parts of ordinances in conflict herewith are
103 hereby repealed.

104 Section 5. Section 2 of this Ordinance shall be codified.

105 Section 6. This Ordinance shall become effective ten (10) days after
106 passage.

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

110

- 111 Mayor Pam Triolo
- 112 Vice Mayor Scott Maxwell
- 113 Commissioner Christopher McVoy
- 114 Commissioner Andy Amoroso
- 115 Commissioner John Szerdi

116

117 The Mayor thereupon declared this Ordinance duly passed on first
118 reading on the 17th day of June, 2014

119

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

123

- 124 Mayor Pam Triolo
- 125 Vice Mayor Scott Maxwell
- 126 Commissioner Christopher McVoy
- 127 Commissioner Andy Amoroso
- 128 Commissioner John Szerdi

129

130 The Mayor thereupon declared this Ordinance duly passed and enacted
131 on the 1st day of July, 2014.

132

CITY OF LAKE WORTH, FLORIDA

133

134

Pam Triolo, Mayor

135

136 ATTEST:

137

138

Pamela J. Lopez, City Clerk

139



CITY OF LAKE WORTH

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

AGENDA DATE: June 17, 2014

DEPARTMENT: Internal Auditor

EXECUTIVE BRIEF

TITLE:

Report from Internal Auditor

SUMMARY:

All final reports and memos issued to the Commission on the activities of the City's Internal Audit Department for the period August 6, 2013 through June 17, 2014 will be presented. These documents are presented to the public, and highlights from these projects will be discussed. In-process audits and projects for fiscal 2015 will be noted.

BACKGROUND AND JUSTIFICATION:

This is the second presentation by Internal Audit at a full Commission meeting.

MOTION:

Not Applicable

ATTACHMENTS:

Fiscal Impact Analysis: Not Applicable

Follow-up Report: Customer Service and Cash Handling

Follow-up Report: Common Area Maintenance and Ballroom Operations

Follow-up Report: Purchase Card Process Audit

Follow-up Report: Fleet Maintenance

Cell Phone Review

Human Resources Audit

Barter Memo

Employee Promotion Memo

Cash Received by the Leisure Department Memo

Casino Security Memo

Audit Plan for Fiscal 2015



OFFICE OF THE INTERNAL AUDITOR
7 North Dixie Highway · Lake Worth, Florida 33460 · Phone: 561-586-1749 · Fax: 561-586-1750

TO: Mayor P. Triolo
Commissioner S. Maxwell
Commissioner A. Amoroso
Commissioner C. McVoy
Commissioner J. Szerdi

FROM: City Internal Auditor K. Oakes

CC: City Manager M. Bornstein
Finance Director S. Carr
Leisure Services Director Juan Ruiz
Electric Utilities Director Clay Lindstrom
City Attorney G. Torcivia

DATE: October 30, 2013

SUBJECT: Follow-Up Report: Customer Service and Cash Handling

The report titled Audit of Customer Service and Cash Handling was issued April 2, 2013. Internal Audit performed follow-up procedures in August and September for all of the Findings included in that report. This follow-up report discusses the progress made addressing those Findings and what further steps should be undertaken to ensure that controls in these areas are strong.

This report will not include the sections labeled Discussion, Overall Conclusions or Audit Approach that were included in the original report. Included here will be the status of remediation activities for the original Findings (labeled "Follow-up Status") and comments on what has not yet been addressed. Note also that the individual Finding descriptions may have been condensed or otherwise edited.

Findings:

Cash

1. Change is not delivered to the customer service department in the annex building by the armored carrier, despite their daily trips to the annex to pick up the previous day's cash and checks. Change is purchased from the Bank of America branch across the street. It is paid for in cash, and the change is hand carried back to the annex. The handling of cash by our employees exposes them to physical risks and the City to potential liability should a robbery attempt be made.

Recommendation: Change should be purchased from Loomis (the armored carrier) at least once per week. The practice of carrying cash and change across the street to the bank should stop.

Finance Department Response: When brought to our attention, Customer Service was instructed to use the method recommended above. The process has been set up with Loomis and is awaiting implementation by Customer Service.

Follow-up Status:

Ø **Internal Audit Comment:** Change is now ordered from and delivered by armored carrier Loomis.

2. Loomis's pickup times should be more varied, and must not occur at or near 8:00 a.m. each day or the checks from the preceding day will not be ready for deposit. Depositing checks one day late effects the City's cash flow and makes the reconciliation process more cumbersome.

Recommendation: Loomis should come at staggered times without informing the customer service operation precisely when. No pickup should occur prior to 10:00 a.m. to allow sufficient time for the preparation of the previous day's check deposit.

Finance Department Response: The log produced by Loomis indicates that they do vary pick-up times.

Follow-up Status:

Ø **Internal Audit Comment:** Pickup times are more varied, and no longer occur before the customer service department is ready for them.

3. Cash is carried by employees from the golf course and the utilities area to the Annex for inclusion in the Loomis deposit.

Recommendation: The City should explore having Loomis pick up directly at the golf course no more than once or twice per week, depending on volume.

Finance Department Response: Arrangements have been made with the bank to provide a key to the night deposit drawer for use by City departments. However, due to the location of the night drop box (next to the ATM and only accessible by getting out of a vehicle and approaching it on foot) we are recommending that the departments use the business lane drive-up teller. It should be noted that the cost per transaction will increase by using this alternative over taking the deposit to Utility Customer Service in the Annex for pick up by the armored car.

Follow-up Status:

Ø **Finance:** Cash is now deposited by golf course personnel directly with the bank's drive up teller.

4. The cashier drawers are counted and reconciled by supervisors, not the cashier (though the cashier observes the process). Responsibility for the cash in the drawer is therefore split between these two positions. In the event of a cash shortage, responsibility is not clearly assigned.

Recommendation: The cash drawer ("bank") should be counted by the cashier at the beginning and end of the shift and recounted by a Supervisor. All money in excess of the cash bank should then be counted by the cashier before the cashier knows how much should be in the drawer (called a "blind close"). The Supervisor should then confirm the cashier's count and prepare the deposit.

Finance Department Response: A Blind Close is already being done in the Golf department. The deposit is completed by the cashier and the bag is closed. The supervisor ties out the end of day report and sends it to Finance. Finance verifies that the cash that posts to the bank matches the end of day report.

Follow-up Status:

Ø **Customer Service:** The cashiers are doing their own blind close, which is then checked by a supervisor.

5. Pulls are made by the supervisor or the cashier when she/he believes the money is not physically able to fit in the drawer. Per annex staff, pulls are infrequent. On the day of closing procedure observation by Internal Audit, approximately \$34k was in the drawers at the end of the day, and no pulls had been performed.

Recommendation: A set dollar amount should be established that, when reached, triggers a cash pull. The cashier should be required to count out a cash pull at this point and request that it be removed by the supervisor from the drawer. The cash should be counted by the supervisor doing the pull and a receipt signed by the supervisor should be given to the cashier. This money should be placed in the safe.

Follow-up Status:

Ø **Internal Audit Comment:** Pulls are not being done at regular intervals or when cash in the drawer reaches a certain level.

Ø **Customer Service:** There is no possible way to set an amount as previously stated. The day Finance was here the Supervisor would have had to make seven pulls by 1:30pm to accommodate the (verbally) recommended \$2,000 amount. We now have the cashiers strap their bills when they see they have a lot. The cashier calls the Supervisor to verify, gives the cashier a slip to again verify and the money is locked up in a locked bank bag designated for each cashier. The slip is left in their drawer for balancing at the end of the day. We are looking to purchase safes (with deposit slots) that will be bolted to the floor under the cashier drawer for drops throughout the day.

Ø **Additional Internal Audit Comment:** The critical risk here is that money is in the cashier's drawers where it is vulnerable. The cashiers should be held responsible for safeguarding that cash. While the addition of the under-the-counter-safes noted above is commendable (though realistically, it would be many months away until this might happen), dollar amounts should nonetheless be established to trigger pulls. The \$2,000 was a suggestion, but Audit maintains that a reasonable amount should not be significantly higher.

6. The supervisors in the cashier area must MICR-encode all checks taken with the dollar amount of the check. The bank requires this, per the CSO Manager. This exercise is time consuming and is customarily performed by the bank receiving the checks.

Recommendation: This function should be assumed by the bank.

Finance Department Response: This issue will be resolved when the Customer Service staff starts to utilize the "Remote Deposit" machines that will read checks and electronically transmit them for deposit. The machines are on-site and training will be occurring within the next few weeks.

Follow-up Status:

- Ø **Finance:** The entire check procedure has changed, enabling checks to be recorded without being physically deposited in the bank. This new process eliminates the issue in this Finding.

Physical Security

7. The cashier windows are physically vulnerable. The window between the customer and the cashier is plain glass, and it doesn't go all the way up to the ceiling.

Recommendation: Consideration should be given to fortifying the cashier area to better protect the cashiers and secure City assets. Possibilities include extending the wall between the customers and the cashiers to reach the ceiling, replacing the glass with bullet proof glass, and strengthening the door that leads to the cashier's area.

Follow-up Status:

- Ø **Internal Audit Comment:** New thicker glass has been installed, and there are now cameras watching the customer area in front of the cashier's windows. However, access to the back area is still not secured, and there are still no alarms or panic buttons for the cashiers.
- Ø **Customer Service:** The cashiers and Intake area now have an IM function to alert the Supervisors and Manger they may need help with a situation.
- Ø **Additional Internal Audit Comment:** While an IM function is a welcome addition, it does not take the place of an alarm system with a panic button, as noted in 9. below.

8. There are no cameras recording in the customer service areas. One camera is used in the intake area, and is fed live to the CSO Manager's computer, but no recording takes place. There are no cameras in the cashier area. Other cameras are anticipated, but none will be recording activity.

Recommendation: Cameras should be considered for the cashier area. They should be recording the entire payment area, and an on-line feed should be available to management employees to monitor. The feed from the intake area should be recorded as well.

Follow-up Status:

- Ø **Internal Audit Comment:** There is a new camera system in place. However, the initial installation did not include motion detection cameras. Internal Audit was told that motion detection capability will be added. This will be confirmed when completed. The recording hardware should be better secured and locked.
9. The annex has no alarms or panic buttons. This coupled with the lack of cameras places city assets and employees at risk.

Recommendation: An alarm system with panic buttons for both cashiers should be considered.

Follow-up Status:

- Ø **Customer Service:** An IM System has been installed as stated above.
- Ø **Internal Audit Comment:** As noted above, the IM system does not take the place of an alarm system with a panic button. Audit recognizes the camera system as a positive addition.

10. Cash collected at the annex building is significant and may easily exceed \$100k on a regular basis. Employees have direct access to any cash collected throughout the day, as well as access to cash from the previous day in the safe. This safe is not alarmed or video monitored. There are reportedly two employees with the combination (this may be too few). Current conditions may put city employees and assets at risk.

Recommendations:

- A “Smart Safe” should be considered. This device allows cash to be fed into it by anyone with the proper access. It can be read remotely, produces a receipt and record of all cash fed into it, identifies all transactions by individual and time and date, can only be accessed by the armored carrier and has the capability of crediting the City with cash upon feeding, not upon physical deposit in the bank, potentially saving several days of float. It also eliminates the act of preparing a deposit, reduces errors, detects potential counterfeit bills and significantly lessens the actual handling of cash. Cash pulls from the drawer (see Finding 5 above) are also greatly facilitated by this type of safe. (“Smart Safe” is a brand name. All similar types of safe should be explored.)
- Absent a Smart Safe, a standard “drop safe” should be considered. Such a safe allows bags of cash to be placed into the safe without opening it, and prevents further access. Two keys, one of which would be in the armored carrier’s possession, would be necessary to retrieve the bags. This, in conjunction with regular pulls (see 5. above), removes cash from direct employee access. This process would require that cash pulls are treated as a deposit, with a separate deposit slip accompanying each one.

Finance Department Response: Finance is researching the cost/risk/benefit of the “Smart Safe” device. Our initial research is that this device and the additional bank charges that will be generated are high enough to warrant a detailed analysis of this suggestion before implementing. Although this may be ideal, it appears that it may be costly. The “drop safe” is also being evaluated.

Follow-up Status:

- Ø **Finance:** All changes in safes were deemed cost-prohibitive and will not be effected.
- Ø **Customer Service:** The daily cash reports indicate that it is rare that the \$100k amount is reached.

11. The City uses a Parkeon parking meter system to charge for parking at the boat ramp, the parking lot downtown and the beach. The parking meter itself has the following features, among others:

- It takes nickels, dimes, quarters, dollar coins (standard dollars and Sacagawea dollars) but no Kennedy halves and no pennies. It also takes most charge cards (no Amex), though card approval is not instantaneous. This audit is concerned only with cash.
- The stub printed out by the meter when money is collected lists the totals in both dollars and the number of each coin type.
- The stub lists the last time the machine was collected.
- Readings are accessible on a web site.

- There is a non-resettable feature that can be elected by the user to print a non-resettable total on the printout stub. This feature is apparently not in operation presently.

There are many other features of the Parkeon system, but the most important item for the purposes of the current audit is that there is adequate control and physical security available for the individuals emptying these meters. The following describes the collection procedure as observed by Internal Audit during a collection run:

- The website is used to read each meter's take in coins. The Parking Enforcement Supervisor then decides which meters to collect from, and he travels to the meter in a city vehicle.
- Another parking employee meets the Supervisor there (always two people), and he contacts the Sheriff's office for an escort.
- The meter is opened only when all three people are on site.
- Money is emptied into a box designed for collections, after which the meter resets itself to zero.
- Money is transported to the maintenance building near the garage, accompanied by a Sheriff's Deputy.
- Money still in the boxes is placed on an employee lunch break table, where the coins are transferred into plastic bags, one bag per meter. The collection observed by IAD included three meters from the beach, holding about \$1,000 in total.
- Bag numbers are assigned, and the money is placed in a safe in the next room. The safe combination had not been changed recently, even though an employee who had the combination had been very recently let go. This should be done immediately, and the Supervisor represented it would be.
- The building is locked during off hours and the safe is locked. However, there are no surveillance cameras and no alarm.
- When the safe is full enough to justify a pick-up by Loomis, the Parking Supervisor calls for a pickup if Loomis hasn't already contacted the Supervisor.
- The afternoon or evening before the pickup, all bags are carried by dolly from the maintenance building to the office of the Public Services Director in the trailer across the parking lot from the maintenance building, where paperwork is filled out for the next morning's collection. The money is then "covered" with plastic bags and left out on a wooden bench overnight. It was represented that the trailer is alarmed, and there are cameras noting ingress and egress.
- On the date of the observation, there were three bags collected totaling approximately \$1,000 in addition to another 20 already in the safe with about \$7,000 in them. Per the Supervisor, this was an especially large deposit (\$8k) and it was particularly difficult to physically transport on the dolly.
- Loomis is scheduled to pick up cash at the trailer (Public Services area) Tuesdays and Fridays. They always confirm by phone that they should come. On occasion, they are told not to come due to a relatively small cash collection. They then wait for a call. Their last collection was on January 15, or 17 days prior to the February 1 collection scheduled for the day after the observation
- Money is not counted by the collection people. It used to be done using a coin counting machine, but when the machine broke, the practice was discontinued.

Totals per the meters are included on the deposit slip, and the bank counts each bag and reports any discrepancies. Finance reported that differences are virtually non-existent.

Finance Department Comment: It should be noted that the decision to change the counting of the coins was not based on the machine breaking. The procedure was switched after the accuracy of the new parking meters was confirmed via testing by the Finance department. A new procedure was put into place that no longer required labor-intensive coin counting, as the meter information was proven to be reliable. We have continued to monitor this and any differences have remained very small.

Three red flags arose from the audit:

- The Supervisor informed Internal Audit that he had problems with three particular meters, and he would have to do a “function 90 diagnostic” on each. Audit had already learned directly from Parkeon that this function effectively resets the meters’ “non-resettable” totals back to zero. The Supervisor also knew this, which is why he was calling Audit.

Follow-up Status:

- Ø **Leisure Services:** Function 90 is only done when parking meters go down and the technical assistance technician from Parkeon requires it. The parking supervisor will inform the Leisure Services Director each time in writing when a Function 90 is performed. The Leisure Services Director now has the ability to look up through the Parkfolio website when and how many times a Function 90 is done to any of the City’s pay stations.
- Ø **Finance:** The parking division’s access in Parkeon has been changed to maintenance inquiry only. This will enable the Parking Division to see if the meters are working and if they need to be emptied. It does not give access to see how much money is in the meter. In addition, the Finance Department has included running the function 90 report as a part of the weekly reconciliation that is performed.

- The Supervisor allowed the safe to build up the number of bags, as Loomis went for 17 days without a collection. (Note that Loomis charges the City for two collections per week. No adjustment had been made for this lapse.)

Follow-up Status:

- Ø **Leisure Services:** Our armored carrier (Loomis) pick-up book shows regular, twice per week pick-ups at different times of the day.

- The Supervisor has virtually complete control of the parking meter process, from administrator access to the Parkeon on-line system, access to all parking meters, access to the storage safe and physical custody of the money between the two buildings in the public services area. Though he doesn’t reconcile the parking meter deposit to bank records, which is done in Finance, duties are still not adequately segregated.

Follow-up Status:

- Ø **Leisure Services:** The Parking Division will be working closely with Finance personnel and will be able to segregate duties once a Parking Operations Manager is hired in Fiscal Year 2014.
- Ø **Finance:** The Parking Division's access in Parkeon has been changed to maintenance inquiry only. This will enable the Parking Division to see if the meters are working and if they need to be empty. It does not give access to see how much money is in the meter. In addition, the Finance Department has included running the Function 90 report as part of the weekly reconciliation that is performed.

Recommendations:

- Each parking meter should be emptied at least twice per week. Loomis should have set days (though staggered times) for pickup.

Finance Department Response: The parking division was never authorized to change or defer the schedule for emptying the meters or alter the Loomis pick-up schedule. This situation is a direct violation of the established procedure. Since it was brought to our attention, Loomis has been directed to only change schedules given a directive from Finance rather than the division themselves.

Update Status:

- Ø **Leisure Services:** Please have finance provide the Parking Division a copy of established procedures. Corrective action: Loomis picks up twice per week at staggered times.
 - Ø **Finance:** Procedures have been sent.
- Coins should be prepared for deposit in the building that houses the warehouse. The safe from the maintenance building should be installed in that building in a location that would permit easy access by Loomis and be under video surveillance 24/7. At least two pick-ups by Loomis from that facility per week should be arranged. Current deposit preparation procedures should be used.

Update Status:

- Ø **Leisure Services:** As agreed with Internal Audit, the safe that stores the parking meter coins has been moved from the Facilities Garage to the Public Services Director's trailer which has an empty office with a keyed access. This location will be a one-stop location for storing, sorting and collecting of coins by Loomis. The trailer is equipped with an alarm system and cameras. Additional dead bolts have been installed and the garage complex electronic gate is being repaired to give after-hours access to authorized personnel only and provide added security for all concerned.
- The non-resettable component of the Parkeon system should be used. Accounting should be reconciling weekly cash deposits that arrived at the bank to the difference between ending and beginning non-resettable totals. Finance must also confirm through the Parkeon website that no resets of this total, via the function 90 diagnostic, occurred during the week. If the Supervisor must perform this

diagnostic, Finance must be notified and provided the ending non-resettable total amount prior to the re-set.

Finance Department Response: Finance will become more involved in the Parkeon system and create monitoring reports for this issue.

Update Status:

- Ø **Leisure Services:** The parking Division collects from the meter in order to get a receipt with total collected prior to a Function 90 reset. Leisure Services will be advised in writing by the Parking Supervisor when a Function 90 is done to any of the City's pay stations.
- Ø **Finance:** Finance is currently running the Function 90 report as a part of the reconciliation process. If the Function is used and has not been communicated by the Leisure Service Director, then the Finance Accountant I reports the incident to the Controller.

- Segregation of duties must be strengthened. The Parking Supervisor must not have the current levels of access to the Parkeon system. The Supervisor should be on a regular collection schedule for all meters, and should not be able to pick and choose which meter he visits and when. Better would be for Finance to have access to determine how much cash is in the meters, and use this information to inform the Supervisor if an off-schedule collection is warranted. The "function 90 diagnostic" capability should be removed from the Supervisor's access level.

Finance Department Response: Finance will become more involved in the Parkeon system and create monitoring reports for this issue.

Update Status:

- Ø **Leisure Services:** With the hiring of a Parking Operations Manager, segregation of duties will not be an issue with three levels of authority plus the Finance Accountant I.

- The safe combination change that took place as noted above should be confirmed by the Director to whom the Parking Supervisor reports.

Update Status:

- Ø **Leisure Services:** The Parking Supervisor has confirmed the combination change to the Leisure Services Director.

- The entire collection process as revised by the above recommendations should be documented in narrative form by the Parking Supervisor and then reviewed by Internal Audit.

Update Status:

- Ø **Leisure Services:** This narrative was provided to Internal Audit on September 24, 2013.

12. Checks are not restrictively endorsed when accepted from the customers, but are endorsed as part of the deposit procedure. Should a theft of checks occur, they may be more easily negotiated without the City's endorsement.

Recommendation: Checks should be restrictively endorsed immediately after they have been tendered by the customers.

Finance Department Response: Endorsement of checks occurs at the deposit preparation phase. If any checks were missing the cash drawer would be out of balance at the end of the day and the theft would be discovered then. However, this issue should be resolved when the Customer Service staff starts to utilize the “Remote Deposit” machines that will read checks and electronically transmit them for deposit. The machines are on site and training will occur within the next few weeks.

Update Status:

- Ø **Internal Audit Comment:** Remote deposit is in use. It would be preferable, however, for the cashier to endorse the checks immediately upon receipt from the customer, which would provide an additional safeguard between the point of receipt and remote processing.

Credit Cards

13. Credit card payments may be taken by phone, requiring the customer service people to place the customer on hold, walk to the single terminal in the administrative area or out of the “intake” area and across the hall to the cashier area, and enter the credit card number. This number is then printed on a slip of paper and may be retained for an indeterminate length of time. This process is time consuming, not customer friendly and may not be PCI compliant.

Recommendations:

- At least one more credit card terminal should be acquired for the intake area.
- Customer credit card numbers should not be retained. The slips must be destroyed, preferably the same day taken.

Finance Department Response: This issue should be resolved by the direct input of credit card numbers into the HTE system. The software has been installed and activated and implementation will occur as soon as training can be completed.

(Note: Payment Card Industry (PCI) compliant sellers follow certain rules, processes and restrictions regarding the acceptance of credit cards as payment for merchandise and services. Compliant vendors may have certain legal protections and enjoy lower charge card discounts than non-compliant vendors. Department heads have represented that the City is in substantial compliance with PCI requirements even with the potential minor lapse noted above.)

Update Status:

- Ø **Customer Service:** After speaking with other Naviline users using One Point to inquire and address our concerns, we are again using Naviline as our POS as these concerns have been addressed and resolved in that system.

Other Findings

14. Deposits taken on new electric accounts may not be adequate based on the City’s history of delinquent accounts.

Recommendation: The City has an excellent opportunity to better align deposits with delinquent account expectations. A service called “On-Line Utility Exchange” is

currently under consideration that will, among other functions, perform credit checks on our potential customers. City staff believes that a deposit of 2.5 times the average monthly bill, per the account's history, would be sufficient for the riskiest credit ratings. This rate appears reasonable, but the Utility Business Services Manager should be requested to obtain industry data to confirm that this would be an appropriate amount.

Update Status:

- Ø **Internal Audit Comment:** The issue is unchanged.
- Ø **Customer Service:** The proposed Deposit Resolution will be presented to the EUAB on November 13, 2013.

- 15.** Tag numbers on the tags used to “seal” the electric meters and evidence tampering should it occur are not recorded in the system. If a customer replaces a tag that he cut off with another tag, the technician would not know that the meter was possibly tampered with. **Recommendation:** Tag numbers should be recorded in the billing/servicing system. These numbers should be used to determine if the meter's security has been breached.

Update Status:

- Ø **Internal Audit Comment:** Practice is unchanged.

- 16.** Customer bills are stuffed and mailed from the Annex building each month (approximately 30k customers). One of our employees performs this task, which is labor intensive and time-consuming.

Recommendation: Management should consider outsourcing this as a means to improve efficiency and save on costs.

Update Status:

- Ø **Customer Service:** A bill print company has been selected and we are working on the contract.

- 17.** There are costs associated with both the disconnection and reconnection of customer accounts. Customers are charged \$35 for a first time reconnection, and \$90 for a second reconnection within one year. There is no fee for the truck roll when a disconnection is performed. These rates were arrived at over the years and approved by the City Commission as fair and equitable. Customer Service staff report that there has never been a cost study performed to determine whether this fee bears any relationship to the actual cost of rolling two trucks and physically disconnecting and reconnecting the power. The general perception is that this charge to the customer does not cover actual costs incurred by the City.

In addition, the City's many snowbirds routinely disconnect their power for the summer and reconnect for the winter months, guaranteeing two truck rolls for a \$35 fee. In the past, it may have been cheaper for the customer to keep their power on all summer and pay a relatively low minimum monthly charge. This charge, however, has been raised to \$34.50 per month, so the disconnection route has become significantly less expensive.

Recommendation: A cost study should be performed by Finance and the Customer Service Departments to determine actual costs for disconnections and reconnections. This cost should be compared to the amounts charged to our customers, and an adjustment

should be made if warranted. Reconnection fees for other electric and water providers in our area should be researched and compared to the fees we are charging or will charge our customers.

Consideration should also be given to formulating a “Snowbird Package” that would allow the power to remain on all summer (possible selling point: mold prevention) for a reduced fee, and allowing the City to save the cost of the two truck rolls which may not be covered by the authorized reconnection fee.

Update Status:

- Ø **Customer Service:** A complete study of Utility fees is being performed. Actual costs and neighboring utility fees are compared. A resolution for utility fees will be forthcoming after all fees are finalized.
- Ø **Finance:** The electric rate consultant can be tasked with developing the charge for fiscal year 2015.

Additional Audit Notes

Burton Study

A study was completed by the consulting firm Burton and Associates which indicated that our database should be audited to ensure that our customers are being charged the correct rates, and we are in fact billing all of our customers. This process is underway and should continue. Internal Audit will follow up periodically over the balance of calendar 2013 with the individual who is performing this audit and report to the Commission on any significant or unusual findings.

Accounts Receivable Reserve

All customer accounts receivable over 90 days old are reserved 100%. There is no reserve calculated on any of the other aging categories, an apparent departure from GAAP. A reserve should be considered on receivables in the current, 30 day and 90 categories going forward.

Finance Department Response: Although this is a desirable method from a practical basis the only time that such stratification of uncollectible information is really relevant is at fiscal year end. The City does not produce full accrual based statements on a monthly basis. The Finance department will take this under review and determine a course of action. The current process of using 90 days is from a practical standpoint adequate for statement purposes and any change will not produce a more meaningful amount or any additional help in the collections activity.

Update Status:

- Ø **Finance:** No additional response necessary.





eOFFICE OF THE INTERNAL AUDITOR
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TO: Mayor P. Triolo
Commissioner S. Maxwell
Commissioner A. Amoroso
Commissioner C. McVoy
Commissioner J. Szerdi

FROM: City Internal Auditor K. Oakes

CC: City Manager M. Bornstein
Finance Director Steve Carr
Leisure Services Director Juan Ruiz
City Attorney G. Torcivia

DATE: October 30, 2013

SUBJECT: Common Area Maintenance and Ballroom Operations Audit Follow-up

Discussion

The report titled Common Area Maintenance and Ballroom Operations Audits was issued June 28, 2013. Internal Audit performed follow-up procedures in September for all of the Findings included in that report. This follow-up report discusses the progress made addressing those Findings and what further steps should be undertaken to ensure that controls in these areas are strong.

Responses from the management of the audited areas to the original report as well as their responses to this follow-up report describing progress on remediation (labeled “Follow-up Status”), where appropriate, are included for each Finding.

This report will not include the sections labeled Introduction and Audit Approach that were included in the original report.

(Note that the original Findings included here may have been condensed or otherwise edited for brevity.)

Common Area Maintenance Charges

1. A true-up calculation for CAM charges will be completed after the first year of operations, and a revised monthly amount based on actual maintenance charges will be used going forward. This calculation has not been done, and is theoretically not due until near the end of this calendar year.

Recommendations: An individual in the Finance Department should be identified now as the owner of CAM responsibilities within the finance area. Duties should include the

accumulation of all charges that may be billed to tenants per the Casino space leases, the allocation of these charges also as specified in the leases, the billing of these charges and the maintenance of the receivable account for each tenant. (This individual must not also be responsible for receiving and depositing tenant remittances, journalizing those remittances or reconciling the City's bank account.)

The structure which will encompass controls to ensure that our tenants are billed correctly and timely should be created now and reviewed by Internal Audit prior to the required true-up at year's end.

Other specific duties to be considered for this CAM owner in the Finance area, subject to review by the Director of Finance and the Director of Leisure Services include but are not limited to the following:

- Estimate CAM charges for subsequent years and calculate the Allocated Share based on the formula (gross leasable area of the tenant divided by the gross leasable area of the project) in the lease;
- Confirm at least annually that the tenants' letters of credit, if applicable, are current;
- Ensure that the tenants are carrying the required amount of insurance as specified in the lease, and that the landlord and the landlord's managing agent, if any, are named in the tenants' insurance policies as "additional insureds;" and
- Recalculate the rent each year based on the escalation schedule included in the leases.

Finance Department Response: The Finance Office currently manages the monthly rental billings and maintains the account receivable accounts for all the tenants and has since the opening of the building. As a part of the annual budget development the Recreation Department along with the Assistant Finance Director will be responsible for Casino Building CAM calculations. In addition the Assistant Finance Director will monitor the lease requirements concerning letter of credit and insurance requirements. This office will also be responsible for rental changes when required under the terms of the leases.

Leisure Services Department Response: The Leisure Services Director and the Beach Complex Facility Supervisor will assist the Finance Department in calculating the annual CAM charges along with the remaining items identified as they relate to the CAM charges and Tenant Leases.

Follow-up Status:

- Ø **Leisure Services:** Cam calculations and the determination of the final amount was part of the City budget workshops and implemented through the budget adoption process.
- Ø **Finance:** CAM charges were calculated and tenants were informed of the increase to their respective CAM charges as well as other annual changes called for in their leases, at the beginning of the fiscal year.

Ballroom Operations

2. Current process for collecting money from clients booking the ballroom includes accepting cash for up to half of the bookings, per the Sales, Marketing and Event Manager for the Casino. This cash is kept in a safe in a storage closet on the second floor of the Casino building near the ballroom. This safe is a “hotel-type” combination/key unit on the floor of the closet. It was bolted to the floor immediately after the audit visit, but there are no cameras recording access into and out of the closet, and there are no alarms anywhere in the Casino building. The safe could be more secure.

The Marketing and Event Manager must hand-carry the cash to the bank at least once per week. Deposits normally made on Fridays which cannot be made because of scheduling issues may require the Manager to take cash home over the weekend, raising safety and liability issues. (Internal Audit understands that this practice was stopped after the audit visit.)

Recommendations: Any of the following actions would mitigate the risks of the current cash handling process:

- A secure safe should be installed in a location more easily accessible and better surveilled than the current storage closet.

Leisure Services Department Response:

The existing safe has been bolted to the floor, and the room where it is located has been better secured. Staff has also been given a key to the drop box at the bank and will be making nightly deposits of all monies collected.

Follow-up Status:

- Ø **Internal Audit Comment:** The safe is now bolted to the floor, and security cameras at strategic locations on the second floor of the Casino will record unauthorized access to the storage room where the safe is located.
- Finance should consider ordering a single weekly pickup from the armored carrier service to pick up these deposits. Absent this, access to the night deposit facility at the bank should be considered.

Finance Department Response: The Marketing and Event Manager has been furnished with a key for night deposit if necessary and has been instructed that no amounts should remain in the building overnight. Armored car services are not considered cost effective at this time.

Leisure Services Department Response: The Marketing and Event Manager has been utilizing the nightly drop box method for securing of the funds collected throughout the day of operation. A secured safe has been installed in the floor.

Follow-up Status:

- Ø **Leisure Services:** Cash is deposited regularly in the night deposit facility of the bank or at the drive-in window
- Ø **Finance:** All ballroom bookings are now being paid for at the recreation main office. The only funds currently being collected at the ballroom are for special events. Given that these amounts are relatively low and infrequent, we believe that the risk of loss is minimized. However, instructions remain in effect for immediate deposit.

- All checks should be endorsed with the City's account name and number at the point of acceptance from the client.

Finance Department Response: The Marketing and Event Manager has been furnished with an endorsement stamp and instructed to endorse all checks immediately upon receipt.

Leisure Services Department Response: The use of stamp to endorse all checks is currently being practiced on a daily basis.

Follow-up Status:

- Ø **Leisure Services:** An endorsement stamp is being used, and it will be used at the point of receipt going forward.

- A small (no more than \$50) fund should be established to facilitate making change for clients that pay in cash. This should be stored in the safe.

Finance Department Response: A change fund will be established to be kept in the facility safe.

Leisure Services Department Response: A \$50 change drawer is now being used.

Follow-up Status:

- Ø **Leisure Services:** This change drawer is now in use.

3. There may be no City representative at the catered affairs held in the ballroom. Many if not most evening events depend upon the caterers (who are not City employees) to secure the ballroom facility when the event is over. There are no formal procedures regarding the end of evening lock-up. Management may not be aware if the facility remained unsecured overnight.

Management has represented that our agreement with the Palm Beach Sheriff's Office requires an officer to ensure that the ballroom facility is locked after the last event of the day is completed. Their patrol of the facilities, however, may be at varying times, and in fact may not happen at all depending on the deputies' duties for that particular night. The Sheriff's office was questioned by Internal Audit. They stated that no formal agreement

exists for this service (confirmed by Internal Audit's review of the written agreement), and in fact the deputies on duty at night do not check that doors to the ballroom are locked.

Clean-up responsibilities for the ballroom the day after an event are assigned to the beach maintenance crew. These employees have maintenance duties throughout the entire complex and are not dedicated exclusively to the ballroom.

Recommendation: Post-event lock-up responsibility, as well as clean-up responsibility must be clearly assigned to Casino staff. This may require additional full or part-time hires.

Leisure Services Department Response: A City staff member will always be present to ensure that the Ballroom has been locked up and secured correctly at the end of all ballroom events. The Department has requested as part of the fiscal year 2014 budget the addition of a part-time Assistant Event Coordinator and a part-time Administrative Assistant.

The Leisure Services Department budget for fiscal year 2014 requests the addition of one full-time Lead Custodian and three part-time Custodians to be used to maintain the Beach Complex Facilities. By doing so, the Beach Fund will save \$4,000 from its current janitorial contract and receive the benefit of scheduling a cleaning crew that will be present around the clock. The custodial staff will enable the City to know that the building is secured properly by a City staff member.

Follow-up Status:

Ø **Leisure Services:** A City employee is now present in the ballroom facility up to the end of each and every event. City custodians have been hired and we are in the process of filling the Assistant Event Coordinator position.

4. Bookings are handled from a makeshift office in the ballroom just outside of a broom closet. All files, including client credit card numbers (see 7 below), contracts and other event-related documents are kept in the broom closet. (A new locking file cabinet to be used to store documents was just received. Its use will be confirmed by Internal Audit on a future visit.) This closet is accessible during the events held in the ballroom, and is not secure. In addition, this arrangement is not aligned with the image the City may wish to present to the public.

Recommendation: A secure office, presentable to the public and comfortable for clients who may wish to book an event in the City's Casino facilities, should be established. Locking files should be used, and a secure safe as noted in 3 above should be installed here.

Leisure Services Department Response: No credit card numbers are being stored as of the Internal Audit visit. A filing cabinet with a secure locking mechanism has been put in

place to secure files. Identifying permanent office space for the complex is still being investigated and all options are being considered.

The Event Manager and Facility Supervisor are being moved into a temporary office within the vacant space on the second floor of the Casino Building until a permanent solution can be found.

Follow-up Status:

- Ø **Finance Department:** Responsibility for the financial transactions related to ballroom rental has been shifted to the Recreation Department main office and is being handled through established procedures in the Rec-Trac system. Currently, the only financial transactions that are being handled at the Casino building are for special events.
- Ø **Internal Audit Comment:** A temporary office has been established in the space next to the ballroom. The construction of a permanent office in the future is uncertain at the present time.

5. There is no alarm and there are no cameras anywhere on the Casino premises. The following should be considered by City management:
 - City assets are exposed to the risk of theft or vandalism, particularly under the present conditions which allow the securing of the Ballroom after an event to be the responsibility of a third party (the caterers).
 - Cash and sensitive records (e.g. client charge card numbers) are exposed to possible theft.
 - Possible liability issues such as assault, slip-and-fall cases or accidental injury cases may be mitigated by video recordings.

Recommendation: The installation of an alarm and video monitoring should be considered by the City. An “owner” of these two functions must also be appointed and charged with maintaining and monitoring both for proper functioning.

Leisure Services Department Response: The Facility Supervisor has been instructed to investigate the purchase and installation of a surveillance system to be used for the Casino Building.

Follow-up Status:

- Ø **Leisure Department:** A camera system has been installed, and an alarm was in the process of installation when Internal Audit performed the follow-up inquiries.
- Ø **Internal Audit Comment:** These will be evaluated at a future date.

6. Current process requires a deposit from clients for their event, and payment in full at least several days prior to the event date. A credit card number may also be required for contingencies such as damage to the Ballroom or additional clean-up. The client’s charge card would be charged after the event by the Event Manager for an appropriate amount without requiring any action on the part of the client. The charge card number is retained

in the Ballroom files in violation of City policy. This practice also violates Payment Card Industry (PCI) requirements and exposes the City to possible damages should these charge numbers be used inappropriately.

Recommendation: A security deposit of between \$500 and \$1,000 should be taken for events either in cash or check (allowing enough time for a check to clear the bank), or via credit card. If a credit card is used, it should be processed immediately through normal channels, and signed by the client. This will be refunded to the client after the Event Manager has determined that no damage or additional clean-up of the facility is necessary.

Finance Department Response: The City's fee resolution for Ballroom rentals includes damage deposit fees. The Marketing and Event Manager has been instructed to collect these deposits (in the form of cash or check or charged to a credit card) prior to the event taking place. Unused portions of the deposit will be refunded after the event by either City check or refund to their credit card. This is the same methodology used by the City in other rental situations such as rental of park pavilions. In addition the Sales and Marketing and Event Manager has been instructed to destroy any credit card numbers immediately after the charge is processed in accordance with PCI requirements.

Follow-up Status:

- Ø **Leisure Services Department:** The process for collecting and refunding damage deposits has been updated and is now in place and being followed. This is part of the established procedures for facility rentals handled in the Recreation department main office along with the original booking transactions.





OFFICE OF THE INTERNAL AUDITOR
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TO: Mayor P. Triolo
Commissioner S. Maxwell
Commissioner A. Amoroso
Commissioner C. McVoy
Commissioner J. Szerdi

FROM: City Internal Auditor K. Oakes

CC: City Manager M. Bornstein
Finance Director Steve Carr

DATE: November 5, 2013

SUBJECT: Purchase Card Process Audit Update

Purpose

The original report on the audit of the City's Purchase Cards ("P-Cards") was issued to the Commission on April 8. Internal Audit performed follow-up procedures in October for all of the Findings included in that report. This follow-up report discusses the progress made addressing those Findings and what further steps, if any, could be undertaken to ensure that controls in these areas remain strong.

This report will not include the sections labeled Discussion and Overall Conclusions that were included in the original report. Included here will be the status of remediation activities for the original Findings (labeled "Follow-up Status"), as reported by the Director of Finance for the City, and any other appropriate comments from Internal Audit. Note also that the individual Finding descriptions may have been condensed or otherwise edited for brevity.

Findings

1. During the audit of the P-Card process, both users of the Cards and processors of the cards were aware that the limits on single Card purchases as well as monthly card maximums were occasionally violated by the Card users. These limit controls are designed as preventive in nature, and should not allow improper purchases to occur. While there are detective controls in place that are designed to identify improper purchases after the fact, a preventive control is inherently stronger.

Recommendation: Internal Audit is aware of the need for flexibility in the payment process, but transactions of this nature should be very rare and an approval process outside of the normal path must be carefully documented for the records.

Original Finance Response: The purchasing card procedures clearly state that there are dollar limits on each transaction (typically \$2,500) and total transactions per month (typically \$5,000). These limits are embedded in the BOA system. The Finance Director

and/or City Manager can authorize changes to that limit if exceptional conditions arise and a onetime change can be made in the BOA system. If there are abuses to this procedure such as splitting an invoice to circumvent this control, the card can be revoked and disciplinary action may be taken against the employee.

Follow-up Status: Written warnings have been issued starting with the September statements. More than one warning to a cardholder will result in the revocation of the card.

2. Purchases made by subordinates on behalf of their supervisor, such as a hotel room, may be signed by the supervisor without any additional approval. When this occurs, the supervisor is in effect approving his/her own purchase, bypassing the established review process. Improper purchases may be made and remain undetected.

Recommendation: Purchases for an employee must be placed on that employee's P-Card, not a subordinate's P-Card which the employee will be approving. If a supervisor must have a subordinate purchase something for him or her, the approval summary must be signed by another supervisor of comparable position to the employee. The policy governing P-Card use should be revised to reflect this requirement.

Original Finance Response: We will amend the procedures to address this issue.

Follow-up Status: We have amended the procedures to address this issue. The amended procedures were distributed on November 1, 2013.

3. Current policy does not specifically require that only original receipts may be submitted in support of P-Card purchases. Copies of receipts are routinely submitted now, possibly facilitating duplicate payments and fraud.

Recommendation: Only original receipts are acceptable. The P-Card policy should be changed to reflect this.

Original Finance Response: We will amend the procedures to address this issue.

Follow-up Status: We have amended the procedures to address this issue. The amended procedures were distributed on November 1, 2013.

4. The P-Card service administered by the Bank of America has a feature that allows the City to restrict the use of any given card in several ways. For example, only acceptable merchant codes ("Merchant Category Code Groups") may be allowed, thus forbidding entertainment venues, bars and stores such as Nordstrom or Neiman Marcus. This feature is not currently used by the City.

Recommendation: This feature should be reviewed by Finance and the appropriate codes selected for cardholder restrictions. Merchants such as entertainment venues, liquor and wine suppliers and others should lead the list of forbidden vendors.

Original Finance Response: We will work with BOA to tailor the acceptance of P-Cards to exclude merchants that do not meet the City's purchasing restrictions.

Follow-up Status: We will work with Bank of America to tailor the acceptance of P-Cards to exclude merchants that do not meet the City's purchasing restrictions. We expect this process to be completed within the next 60 days.

5. A "Decline Report" is available but not presently used. This report will give every instance where an employee cardholder has attempted to make a purchase that is outside of the pre-set limits for any reason (over the single-day limit, monthly limit, unauthorized merchant code, etc.).

Recommendation: This report should be requested by the P-Card administrator and reviewed on a monthly basis by the administrator and Internal Auditor. Employees appearing on this report should be queried by the P-Card administrator and/or Internal Audit as to why they attempted an out-of-policy purchase.

Original Finance Response: We have access to the "WORKS" Application and will request the report and review for issues.

Follow-up Status: We have access to the "WORKS" Application and began reviewing this monthly report with the month of September, 2013.

6. There is a "WORKS Application" available on-line that will be requested by Internal Audit. This will enable the auditor to run reports such as the Decline Report and descending dollar report by cardholder, two useful audit tools. Access to this application should also be requested by the P-Card administrator.

Original Finance Response: We will request that Internal Audit has access to this report.

Follow-up Status: We set up access for Internal Audit to all available reports in the "WORKS" application.

Other Comment

7. Airline tickets may be properly purchased via the P-Card, accompanied by the appropriate travel authorization, but they may also be purchased using an employee's personal credit card. The use of an employee credit card to purchase airline or train tickets may facilitate a common type of travel reimbursement fraud.

Recommendation: The travel policy should state that airline tickets must be purchased using a P-Card.

Original Finance Response: We will amend the procedures to address this issue.

Follow-up Status: We will amend the travel procedures to address this issue. This has been discussed with executive management.



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TO: Mayor P. Triolo
Commissioner S. Maxwell
Commissioner A. Amoroso
Commissioner C. McVoy
Commissioner J Szerdi

FROM: City Internal Auditor K. Oakes

CC: City Manager M. Bornstein

DATE: November 6, 2013

SUBJECT: Follow-up: Fleet Maintenance Comments

During the course of an audit of the City's inventory processes, inquiries were made regarding the maintenance of, and accounting for, the City's fleet of vehicles. The comments below were generated from these inquiries. They are not to be viewed as the result of a comprehensive audit but rather as incidental comments and recommendations offered that will improve the City's overall control structure.

This report was issued April 8, and included responses by the Director of Public Services to the findings. Approximately five months after issuance, Internal Audit held discussions with the Director of Public Services, the Garage Supervisor and Assistant Director of IT to determine what changes have been made in response to the Findings noted in the report, if any, and what initiatives are in progress to address the report issues brought to light. These follow-up responses, as well as the original responses from the April 8 report are included below.

Internal Audit will revisit this area in early 2014 to confirm that all items acted upon are still in practice.

The report below does not include the background material from the original report. It should be noted that some of the Findings have been edited for brevity.

Findings

- The Garage Supervisor stated that the mileage figures for each City car listed on the printout titled Fuel Transaction Report are inaccurate. He is not sure what is being measured.

Recommendation: Megatrak should be requested to activate this feature. This is a standard control tool on many fuel tracking systems, and allows management to spot vehicles in need of maintenance or replacing. Theft of fuel from the monitored vehicles or the pumps themselves may be more readily spotted using this feature.

Original Response from Public Services: Megatrak will be contacted to try and activate this feature.

Public Services Follow-up Status: This report is now available. The Fleet Supervisor reviews this monthly and sends the fuel report to the Finance Department

- The Fuel Transaction Report has a column labeled Odometer, but this column may have hours rather than miles listed. There is no way to tell from the Report; one has to “know” which it is by virtue of the number itself. For example, vehicle 596 lists an odometer reading of 84,403 and miles per gallon of 5.9. The vehicle directly before 596 on the report, vehicle 180, lists an odometer reading of 654 and miles per gallon of “.7”. The Garage Supervisor stated that this is an hours, not a mileage number because he “knows” that this is a road grader that has many miles on it. (The miles per gallon calculation is incorrect.)

Recommendation: The column titled “Odometer” should be miles only. An additional column for “Hours” should be requested from Megatrak.

Original Response from Public Services: Megatrak will be contracted to request this additional column.

Public Services Follow-up Status: The Assistant IT Director has revised our existing report to include this information. The “Fuel Transaction Report” form the Megatrak system was modified to include a column for the meter type of each vehicle, either odometer or hours.

- An “Employee Report” is produced by Megatrak that lists employee names and the last date that they received fuel. This report could be a useful report to track which employee is using which car/truck and when they used it last. There is no apparent order to the over 300 listings, and there are many former employees mixed in with current employees. Per the Garage Supervisor, there is no way for Megatrak to remove names from this report.

Recommendation: Old employee names should be purged, and the report should be updated and available for management to review on a regular basis. The Garage Supervisor together with the Public Services Director should request instructions from Megatrak as to how to clean up this database.

Original Response from Public Services: The Public Services Director will contact each City Director and request a list of everyone in their department who utilizes a City vehicle, as the Garage Supervisor is not contacted when employees leave the City. Upon compiling this list, the Garage Supervisor will update the system. Public Services will make this an annual practice.

Public Services Follow-up Status: Human Resources sent the Public Services Director a list of all current employees. The Fleet Maintenance Department will use this list to update the list within Megatrak.

- There are new tires (some are retreads) stored outside of the garage building in an unsecured location near the gas pumps. Internal Audit is aware that the yard is gated and certain security measures are in place. The relatively small City crew working in this location, however, and the admission of outside vehicles making deliveries or towing City Vehicles to and from the garage allows access to City property by numerous non-City people. City inventory such as tires may be subject to theft.

Recommendation: These tires should be secured, either inside of the garage or in a separate fenced and locked pen outside of the building.

Internal Audit Follow-up Status: These tires have been secured.



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TO: Mayor P. Triolo
Commissioner S. Maxwell
Commissioner A. Amoroso
Commissioner C. McVoy
Commissioner J. Szerdi

FROM: City Internal Auditor K. Oakes

CC: City Manager M. Bornstein
Human Resources Director Mark Farrington
Assistant IT Director Nelly Peralta

DATE: January 29, 2014

SUBJECT: Cell Phone Review

INTRODUCTION

The City currently provides 160 cell phones for approximately 40% of its employees. The phone carrier, Sprint, mails to the City's IT Department a printed invoice which includes a summary of charges for individual employees as well as detail on most individual employee telephone numbers. This invoice is reviewed by the IT Department for completeness and reasonableness only. The invoice or any portion thereof is only reviewed by department heads upon request. This review occasionally happens, but is not the general rule.

A complete Sprint invoice with individual account detail for most assigned phones may easily exceed 400 pages in length. Internal Audit discussions with the Sprint representative indicated that individual account detail may not have been provided in the past for some heavy using employees due to the volume of their call activity. The representative was not aware why this was the case with some employees but not other heavy users, and was unsure how Sprint was notified to block detail reporting on these heavy users.

The printed invoice is then forwarded to Accounts Payable, where it is scanned in its entirety and paid. There is no requirement for any review by Department Heads or any other management personnel.

Sprint invoices for calendar 2013 ran between \$4,500 and \$6,500 each month. Internal Audit chose four months and reviewed usage by City employees who each used more than 1,000 minutes for the month.

Below are comments generated from this review of the Sprint invoices from September, October, November and December. Most telephone numbers called or received could not be identified, as

they were cell phones and not subject to a free reverse search. Some numbers, however, were identified and are noted below.

As this report was concerned with process and policy and not specific instances of violation or inappropriate use by any individual employee or City department, all employee names have been excluded from the comments below. All names were given to the appropriate departments and/or Human Resources for follow-up with those individual employees, where appropriate.

COMMENTS FOR CONSIDERATION

1. There are currently no policies offering guidance regarding the following:
 - What the current criteria are that must be met to allow a City employee to have a City-paid cell phone; (Also absent are criteria that would allow or require the City to give an employee a monthly stipend towards a personal cell phone.)
 - What type of cell phone would be appropriate for a particular City job classification;
 - What position with the City is empowered to authorize assigning a city phone to an employee;
 - What type of phone plan is appropriate for specific City jobs;
 - What minute usage per month per position would be acceptable and what would require disciplinary action, if any;
 - What would be considered acceptable personal usage, if any, and what penalties on a progressive scale would be incurred should violations occur;
 - What the invoice review process consists of, including assigning responsibility for the review and how it should be conducted; and
 - Who bears the ultimate responsibility for lost or damaged phones.

Internal Audit's review of employee cell phone usage yielded the following examples of abuse that is occurring. These are not isolated incidences. Employee names, omitted here as noted above, were given to their department heads should they wish to counsel the employees. Internal Audit will follow up on those employees after their counseling and after changes have been made in the manner in which the City controls employee cell phone usage.

- Employee A's cell phone usage exceeded 1,000 minutes in December, 2013. More than 50% of this usage was for out of state calls about 900 miles away to numerous numbers. The majority of this activity was after normal business hours.
- Employee B's cell phone called B's spouse (as documented in the Demographic Information section of Naviline for this employee) over a three month period as follows:

October	440 minutes, or 17% of total air time
November	636 minutes, or 20%
December	842 minutes, or 29%

Virtually all of this time was during normal business hours.

- Phones were given to 13 employees who hold administrative or inventory control positions that would appear to restrict them to their own areas and not require them to be away from their desks (equipped with land lines) for any appreciable

amount of time. Internal Audit will follow up with all of these employees after the release of this report.

These employees are listed below. Included are the numbers of minutes charged to each phone on the December 27, 2013 Sprint phone invoice, the most recent invoice available as of the date of this memo. Also included is the dollar charge for each telephone from this invoice, net of all discounts, rounded to the nearest dollar.

Employee	December Minutes	Charges
Ø C	2	\$31
Ø D*	0	\$20
Ø E	0	\$61
Ø F	23	\$52
Ø G	38	\$31
Ø H	197	\$31
Ø I	1	\$35
Ø J	22	\$20
Ø K	18	\$20
Ø L	0	\$20
Ø M	3	\$20
Ø N	2	\$20
Ø O	0	\$20

* This employee was assigned a second cell phone, with a contract starting 1/9/2014. Internal Audit will follow up on this item.

- There are ten separated employees on the current phone list, five of which have phone contracts with beginning dates subsequent to the employees' separation dates. The ten employees are:

Employee	December Minutes	Charges
Ø P	None	\$57
Ø Q	None	\$57
Ø R	10	\$57
Ø S	None	\$20
Ø T	None	None
Ø U	None	\$25
Ø V	None	\$25
Ø W	None	\$20
Ø X	None	\$25
Ø Y**	316	\$20

** This employee is deceased, and last received a pay check in 2002.

Recommendations:

- Formal policies regarding all aspects of cell phone usage should be written and presented to all current cell phone holders and newly hired employees as part of their orientation upon joining the City. These policies should address the criteria

for obtaining a phone, how much personal usage is acceptable, who will monitor usage and what authority that person will be granted, penalties for policy violation, who or what department will “own” the cell phone program, what types of phones are to be distributed to the various employee levels, the method for disseminating the monthly invoices to the various department heads for their review and other possible issues regarding cell phone usage.

- The current list of cell phone users should be purged of all phones not assigned to an individual, current employee whose position requires that a phone be issued to them.
2. The IT Department receives the Sprint invoices, coordinates the issuance of the phones, and sends the invoice to Accounts Payable for payment. Most invoices are not reviewed by any supervisory persons. Such a review on a consistent basis may mitigate excessive personal use of phones by City employees, and may indicate an inappropriate use of City employees’ time during working hours.

Recommendations: The IT Department should sort (or have Sprint sort) each monthly invoice by department, and within each department, by individual employees’ summarized phone activity. These summaries should indicate total usage for each employee. The Department Head should select a sample of employees from his/her department and request and review detailed phone usage for the employees selected. For those employees with usage that may be excessive, or out of the norm for that particular department, discussions with those employees should be held to determine where the employees are calling and why the usage may appear heavy. The following should be topics of this discussion:

- Identify exceptionally high call numbers. A Department Head should have the opportunity to question this employee regarding this usage.
 - Does the employee’s position require a cell phone? Any usage for employees who are not required to leave their primary work area where there is a land line phone might be questioned. Internal Audit noted that some employees who are not required to travel around the City have been issued City phones.
3. Some employees with City phones have usage that is not documented in detail in the invoice package sent to the IT Department. The Sprint representative stated that this detail was apparently blocked intentionally at some point. No review of these employees’ call history has been possible.

Recommendation: The detailed usage for all City employees should be included in the monthly invoice package sent by Sprint to the IT Department.

4. There are no edit reports produced which will facilitate a meaningful review of the monthly phone invoice by Internal Audit and the heads of the various departments assigned City cell phones. Such reports would flag excessive usage, personal usage during normal business hours, and inappropriate calls. It would also enable department heads to make a determination as to whether the employee truly needs a City phone at all.

Recommendation: The following edit reports should be considered and produced either by the IT Department or Sprint:

- Usage within each department for each employee using more than 1,000 minutes (or some other designated amount) per month;
- Listing of each call by employee by department that exceeds 45 minutes (or some other designated amount) for the month;
- Listing all (or some other designated amount) employee usage on weekends, holidays and after hours during the week; and
- Other reports as desired by department heads.

5. Most telephone numbers called by employees were noted to be cell phones. These phone numbers are not easily identified using free reverse look-up services, which normally work only for published land lines. It would be helpful from an audit perspective if we had the capability to identify cell phone numbers.

Recommendation: Money should be made available for a subscription to one or more reverse phone look-up services to aid in the audit of City-issued cell phones.

6. The Sprint invoice lists telephone numbers for the following phones not associated with an employee. All have current minute usage, current charges or both on the December invoice.

Description on Invoice	Phone Number and Audit Notes	
• Unit Phones	12 phone numbers. None of these phones reflected any usage in December, but showed billings of \$187 in total.	
• CLW	5619512437	On City list, not on Sprint invoice
	5616703426	On City list, not on Sprint invoice
	5617070578	On City list, not on Sprint invoice
	5612314619	42 minutes of use; billed \$96
	5619514922	29 minutes; billed \$52
	5613520952	89 minutes; billed \$58
	5619516126	36 minutes; billed \$35
	5612609673	89 minutes; billed \$20
• Refuse Spare	5617195278	No usage; billed \$58
• Service Truck	5617195308	No usage; billed \$20
• Standby Power Unit	5617229931	No usage; billed \$9
• Overdrive	5612346577	No usage; billed \$43
• Dispatch	5617229623	No usage; billed \$20
	5617229938	No usage; billed \$20

Description on Invoice Phone Number and Audit Notes

- Water Control Room 5612481500 51 minutes; billed \$20
- Water Plant Field 5612481793 No usage; billed \$20
- Spare Phone 5615188024 No usage; billed \$9

There is no individual accountability for these telephones, which may make them more likely be used excessively and inappropriately.

Recommendation: All of the phones noted above should be located by the manager responsible for the areas noted. The need for an anonymous phone should be evaluated, and names should be associated with these phone numbers wherever possible



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TO: Mayor P. Triolo
Commissioner S. Maxwell
Commissioner A. Amoroso
Commissioner C. McVoy
Commissioner J. Szerdi

FROM: City Internal Auditor K. Oakes

CC: City Manager M. Bornstein
City Attorney G. Torcivia
Human Resources Director Mark Farrington

DATE: February 6, 2014, 2014

SUBJECT: Human Resources Department Audit

Introduction

The Human Resources Department (“HR”) for the City consists of a Director, a Benefits Specialist (currently vacant), a Risk Manager, an Analyst and a Receptionist. HR Departments are generally considered high risk areas in the hierarchy of municipal governments due in large part to the following:

- The potential risk for HR-related liabilities is high. A strong HR department mitigates risk in areas such as employment and safety related lawsuits, employee working conditions, record maintenance, disciplinary and performance practices and job satisfaction and compliance with laws.
- The HR Department controls, directly and indirectly, large amounts of money for training, insurance, legal fees and various employee services and initiatives.
- The public face of the City for potential City employees is the HR Department. Public exposure is always a significant risk to the City’s reputation and ability to hire the best staff possible.

Audit Objectives

Objectives include but are not limited to the following:

- Identify risks both within HR and in other areas of City operations where HR is involved;
- Identify and test key controls within the HR department;
- Test compliance with the City’s policies, procedures, regulations, ordinances and any other authoritative directives applicable to HR;
- Identify areas where the department’s operations can be improved and streamlined to better serve the needs of the department’s customers, which include the Commissioners, other departments and the public;
- Provide assurance where HR’s operations are at optimal levels and meet the objectives of the department and the City; and

- Protect the City where identified risks are not adequately mitigated, if any.

Areas to be Audited

This first audit will concentrate on some or all of the areas below:

- Hiring process
- New employee process
- Family and medical leave (FMLA) compliance
- Compensation process
- Employee relations and communication
- Non-discrimination, harassment, and retaliation safeguards
- Exit process
- Wage and hour compliance
- Workplace safety
- Department processes
- Immigration
- Recordkeeping, including file security

Areas to be Addressed on Future Audits

- Employee benefits
- Various compliance areas
- Labor relations
- Health, safety and security
- Compensation equity
- Other areas as deemed necessary

FINDINGS

Hiring Process

1. A document formalizing the hiring process should be developed.

The City follows a hiring process that requires certain steps in a prescribed order that occur when a new employee is brought on board. Various documents must be completed, activities such as drug tests and background checks must occur, and sign-off by appropriate individuals toward the end of the process are all necessary prior to a candidate's addition to the City payroll. This chain of events is not formalized, increasing the possibility that steps may be missed or completed out of the optimum order.

Recommendation: A formal document (narrative, checklist) should be developed that encompasses all of the required steps prior to a candidate becoming a City employee.

Response by Human Resources: The hiring process and "chain of events" is formalized and consistent for all new hires since fiscal 2011. HR engages in consistent process management and will update the New Hire Checklist to include the Personnel Vacancy Authorization Request (PVAR) document.

2. Pre-employment criteria should be documented by position.

Requirements and accompanying pre-employment confirmations and testing differ by position, title and responsibility of the job being filled. For example, the position of City Controller requires background and credit checks, but not necessarily a confirmation of a driver's license. A driver for the Public Services Department, however, requires confirmation of a valid license and no current DUI arrests.

The different checks necessary for each City job title are not part of a narrative or checklist that is position-specific. Without a formalization of these requirements, inconsistencies between identical or similar jobs may be more likely.

Recommendation: Formal steps for each job classification should be developed. Each job title or level should be covered by one list to ensure that no steps are missed.

Response by Human Resources:

- Relative to Driver's License checks, the city is looking into a process to periodically verify the driver's licenses of individuals who operate city vehicles on a full time or periodic basis. Even if implemented this will only be a valid document for the date the verification is provided. This may be offset by requiring employees to notify the city of changes in their license status.
- A noteworthy suggestion. However, internal job changes (promotions) are generally governed by collective bargaining agreements. When an employee requests reassignment to a role where the nature of the work (cash handling, commercial driver's license, etc) requires additional verification of background, we will continue to do so. The essential functions section of the job description will continue to dictate the nature and scope of the background check consistent with EEOC guidance materials.

3. Internal promotions do not consistently trigger the pre-employment checks that would be required if the candidate were hired from the outside.

An employee may be promoted to a higher level within his/her current department without undergoing checks and confirmations consistent with an external candidate. This increases the possibility that the internal candidate may not meet the position requirements and may expose the City to liability for discriminatory hiring practices.

Recommendation: An internal candidate should undergo the same rigorous background investigation (where applicable) that an external candidate must undergo, including but not limited to credit checks, prior employment confirmations, reference checks, criminal record checks, prior employment and education confirmations, and others.

Response by Human Resources: Job-specific relevance should continue to dictate the type and level of background checks performed on internal applicants consistent with EEOC guidance. Background checks for internal candidates may be more extensive where the selected candidate is, for example, moving from a non-cash handling role to

one requiring the handling of cash. However, if the transfer is from one role to a similarly situated role in the same or a different department, a full background check on items other than driver's license would appear to increase expenditures with little or no return on investment.

Prior employment confirmations, reference checks, criminal record checks, prior employment and education confirmations, and other relevant items will have been verified prior to the internal applicant's initial start date. We will take this recommendation under advisement and consult with the City Attorney's office for additional guidance.

4. Managers with interviewing responsibilities should be trained on which questions will likely produce the best possible candidates as well as what questions are not permitted in an interview.

Interviews are conducted by many different managers in the City possessing varied levels of training on proper interview techniques. There is no training program to help City managers find the best candidates possible for a given position. This lack of training also may increase the City's potential liability should an inappropriate question be asked by the interviewer.

Recommendation: Basic interview training should be offered by the Human Resources Department, with input from the City Attorney, to all City employees who have interview responsibilities.

Response by Human Resources: This item was included in the FY14 Human Resources Goals and Objectives as a strategic imperative. Human Resources fully supports this recommendation. The training will include conducting the legal employment interview, types of interviews and follow up questions. The HR Director is a Development Dimensions International (DDI) Certified Master Interviewer Trainer with the skills and experiences required to meet and exceed this recommendation. It is anticipated this item will be completed by the end of February 2014.

5. Human Resources should consider issuing a statement addressing the City's philosophy regarding recruitment and interviewing.

Such a statement would speak to the type of candidate the City seeks, and where and how recruitment of this ideal candidate will take place. Elements of the department's and the City's mission statement can be included.

Recommendation: This statement should be written by HR with input from the City Attorney and City Manager and could be included in written advertisements for new positions as the HR Director deems appropriate.

Response by Human Resources: This statement refers to Brand Building and needs to comprehend the current state of the City as well as the vision going forward. Ideally, it will be placed on the City's web site and applicants will be referred to it when they are

considering Lake Worth as a possible place of employment. This will be coordinated with the Public Information Officer and the City Manager.

6. A list of free and low-cost sites for posting City job opportunities should be established and used consistently for recruitment.

All open positions are currently posted on the City's website. Other sites may be used as well, depending on the position. Some professional organizations maintain free posting services for members, and others may offer reduced pricing for organizations employing people in that particular profession.

A comprehensive list of reduced- or no-cost websites is not maintained by HR, as the various departments are tasked with these postings themselves. Maximum coverage of the potential marketplace for recruits may not be achieved without the use of such a list.

Recommendation: Human Resources should consider creating and maintaining a list of such low-cost and free websites to be used for professional postings.

Response by Human Resources: Human Resources currently maintains a list of functionally oriented web sites previously used to identify potential candidates. Free sites are among those discussed with the Department Head when an opening occurs. Because pricing for web sites varies, with no guarantee of a suitable ROI, we are very judicious about where we post opportunities. The PVAR, completed by Department Heads when a vacancy occurs, solicits the names of web sites where the job can be publicly advertised after approval. Human Resources prefers utilizing Professional Association sites often used by qualified professional candidates as a sourcing tool.

Department Protocols

7. Exit interviews should be conducted routinely for all employees leaving the City team.

Properly conducted exit interviews performed by trained interviewers can be a rich source of information for the City's management group. Many employees are willing to be heard regarding facets of the City's operations that they felt were not as they should have been. Information on suspected frauds may also be given willingly.

While it is true that a certain number of employees will be unwilling to participate in the exit interview process, or be forthcoming with negative (or even positive) comments on the City's operations, they should still be afforded this opportunity.

Recommendation: All individuals leaving their employment with the City should be asked to participate in an exit interview. Notes from these interviews should be disseminated to managers in the former employee's department, the City Manager, Internal Audit and anyone else that the HR interviewer deems appropriate. Information conveyed regarding possible fraud should be brought to IA's attention only.

Response by Human Resources: The City has invested significant time, energy and talent into upgrading the talent pool to meet current and future challenges. Exit interviews

of all candidates is an interesting idea. However, resources and practicality may make it more meaningful to start completing such interviews for employees who have voluntarily resigned their position. In our experience, soliciting input from those employees who have voluntarily resigned, and planned for the separation, are generally more productive.

All Exit Interviews will be reviewed by Human Resources and aggregate data will be compiled quarterly for review by the Department Head and City Manager. Where the content dictates it appropriate, we will forward specific items to the Internal Auditor as well. In the future, we may consider the effectiveness of a limited questionnaire for involuntarily separated employees with guidance from the City Attorney's office.

8. A single source, comprehensive employee handbook for the City should be developed.

There is no document called "Employee Handbook" available to employees, either in hard copy or on the Lake Worth Intranet or the City's website.

What does exist is a document titled "Resolution No. 28-91 of the City of Lake Worth, Florida, Updating the 'City of Lake Worth Personnel Policy'". (Note that no "Personnel Policy" exists.) This Resolution was enacted in 1991, and has been updated (amended) five times over the next five years:

- Personnel Resolution 32-91, amending 16-90, an additional Resolution
- Personnel Resolutions 48-91 and 72-91, 35-92 and 20-95, all amending 28-91

No updates have been made since 1995. Upon Internal Audit review of the entire document as updated, the following items were noted and should be considered for revision. All references are to the master document, 28-91.

- The term "Personnel" is used throughout the document, even though the City has a Human Resources Department. This term is used in this audit report to refer to the Personnel or Human Resources Department, and is considered singular.
- "The applicant's name shall be removed from consideration if found to be addicted to the habitual use of alcoholic beverage(s) to excess." This implies that a person can be addicted to alcohol but not "to excess." It is also redundant. (Section 5. F. 3. c.)
- "The applicant's name shall be removed from consideration if found to be addicted to the use of any narcotic(s); or of any hallucinogenic drug(s)." This implies that the use of narcotics is permissible as long as the applicant is not addicted. In addition, hallucinogenic drugs are not normally included with drugs commonly believed to be addictive. (Section 5. F. 3. d.)
- "Where the validity of the basis for rejection, or of the accuracy of final earned rating in the examination process is questioned by an applicant, the applicant may, in writing, request a review; such request to be made within seven (7) calendar days after the notice of examination results was given." Unless this is a legal requirement, the City should consider removing this statement. (Section 5. G. 3.)

- “Where more than one (1) person has been laid off from a position within the same position class within a six (6) month period they shall be recalled in order of length of prior service, prior to layoff, other considerations being equal. In the event that two or more employees affected have the same exact amount of seniority, the date of employment application shall prevail. However, if the application date is the same, then the earliest birth date shall prevail.” Though the intent here was apparently to use the month and day only, the way this admittedly extremely unlikely scenario is currently written may be misconstrued as age discrimination. It also implies that performance in the job up to the point of the layoff does not enter into the decision. (Paraphrased Section 6. B. 2)
- The probationary period is one year. The City may wish to reevaluate this, as it may be considered excessive. (Section 7.)
- “No probationary employee shall be paid for work performed after the concluding date of his probationary period, unless Personnel shall have been notified as in "C-2" (referring to completing the paperwork process to transform the probationary employee into a permanent employee).” This implies that a probationary employee working past his or her probationary ending date (for whatever reason) would not get paid for work performed. Such an employee must and would, of course, be paid for actual work performed. (Section 7. C. 3.)
- An employee promotion requires a 10% pay increase (Section 8. B.). However, when an employee is demoted, there is a required 5% decrease (Section 8. D. 6.). This disparity should be reevaluated, as should the need for any such specification of pay adjustments in this policy, union considerations notwithstanding. (This requirement is in at least one of the union contracts, and it may not be possible to change this going forward.)
- The Personnel Department is required to notify employees of a pending layoff at least two weeks prior to the action. Unless this is a legal requirement in Florida (or a union requirement), the City may wish to evaluate this practice as posing unacceptable risks in certain key departments (such as IT). At the very least, a phrase such as “...or two weeks’ pay in lieu of such notification” should be considered. (Section 8. E. 4.)
- “Each department, in maintaining payroll records...” clearly implies that departments maintain payroll records of their own. This practice may be redundant and wasteful of administrative time at the department level. (Section 9. E.)
- The definition of overtime per Section 10 is as follows: “Overtime is the required performance of work in excess of the assigned work day such that the total hours actually worked in a work day are greater than the normally scheduled hours of work in said work day, as authorized and directed by the department head.” This would imply that if a part-time (or even full-time) worker was scheduled for six hours on any given day, and he/she works eight hours, then two hours overtime pay would have been earned. If this definition is union-driven, and must be adhered to because

of a union contract, then the City may wish to specify that requirement in the policy. This should be revisited for non-union hourly workers.

- Employees serving on juries receive full pay from the City. Absent from Section 11. B. is a statement that any money received by the employee from the jury municipality for jury duty (exclusive of travel pay) should be paid to the City.
- Section 12, travel:
 - The mileage reimbursement rate is listed at \$.26/mile. While there is no requirement to reimburse at any prescribed rate, the customary rate is often tied to the IRS rate for any given year. Rather than specifying an amount, the policy should contain a statement to the effect that the rate matches the IRS rate, and changes when that rate does, if that is what the City wishes to do. (The IRS reimbursement rate for 2014 is \$.56/mile for City business, and \$.235/mile for medical or moving purposes.)
 - The meal allowances are specific and appear to be outdated. Current meal per diems (for reference only) for this zip code range between \$46/day and \$71/day, including \$5/day for incidentals. Our current limit is \$21/day, which may be considered a challenge for an employee to stay within.
- Section 14 B., Vacation Leave Time, could be reconsidered, union requirements notwithstanding. For example, permitted in the current policy is a vacation carryover of seven weeks.
- The reference to Section 18 in Section 14.C.3. should be to Section 19 instead.
- Section 15 F. refers to a City Nurse. There is no such position.
- The “Presumption of Impairment” for an employee on duty is triggered by a blood alcohol level of .10 (Section 18.5.) The State of Florida, however, classifies .08 as the point at which a vehicle driver is legally impaired. The City may wish to re-visit this limit, as it currently appears that the City will allow more alcohol in the blood than the state. Rather than a specific numerical value, the City limit could be tied to the state limit instead.
- Under Types of Offenses, Section 24.B.:
 - Group III Offense, #14 specifies “Habitual abuse of alcoholic beverages” which would appear to allow some level of drinking on the job (“during work hours” is not noted in the offense).
 - Presumably, sleep during a 24 hour shift may have been “authorized” when the fire and police departments on 24 hour shifts were comprised of City employees, but that is no longer the case. The Group II Offense #2 permitting only “authorized sleep” should be changed.
 - Group III Offense #1 should be rephrased. The meaning of “wanton duties” may not be clear.

Recommendation: Internal Audit understands that the HR Director and City Attorney are in the process of amending the compendium of documents comprising the “employee manual.” This process should continue, and Internal Audit should be afforded the opportunity to review the new manual prior to release.

Response by Human Resources: All comments relative to Personnel Policies addressed in item eight that are covered under Resolution 28-91 and subsequent revisions are currently being reviewed and updated. More specifically, several of the items mentioned in this finding have already been modified either by negotiated contract changes (probationary periods, overtime, vacation carryover), by statutory guidelines (mileage reimbursement), or City Manager edict. The rescinding of Resolution 28-91 and replacement with a revised current Personnel Policy manual is a process in which the City Attorney’s office and Human Resources are actively engaged. Prior to taking this action to a Lake Worth City Commission meeting, the following steps will be implemented as sections are reviewed and put into a draft and/or final format:

- Internal Audit and Finance to meet with HR / City Attorney Representative(s) to review cost / controls and make recommendations.
- Department Heads and City Manager will then review the recommendations.
- HR Director and possibly the City Attorney Representative(s) will meet one on one with each Commission Member to explain the changes and rationale for the modifications.

9. The City should re-evaluate which employees should have access to make pay rate changes in Naviline.

Pay rate increases can be made to employees’ Naviline records by anyone in the Human Resources Department (except the Risk Manager). Unauthorized changes may be made and not detected in a timely manner.

Recommendation: The ability to change rates should be restricted to one or two employees. An edit report showing all pay rate changes should be generated weekly by Naviline and sent to the Director of Human Resources or some other designated individual to facilitate an authorization check on the change.

Response by Human Resources: Unauthorized changes are not likely to occur because even though HR may input changes to an employee’s compensation, no change can take effect without the sign-off by multiple levels of Finance review, and verification by the City Manager may also be required in certain circumstances. There are several redundant steps that make the likelihood of unauthorized changes minimal. Payroll also runs a change report to cross check entries against what the system had for the individual. We believe these safeguards and multi-step approval process adequately address the Internal Auditor’s concerns.

Document Reviews

10. Human Resource documentation available on the City Intranet is old, may have errors and may not reflect the City’s current philosophy regarding its employees.

A document titled City of Lake Worth Administrative Regulation Manual is available on the City's Intranet by clicking on "Human Resources." This manual was apparently created about eight years ago, and contains information that the City may wish to amend, expand upon or eliminate completely. The following comments came from a review of this document:

- The first section, "Gifts" (i.e. gifts to the City, not to employees) is confusing, repetitive, uses poor grammar and diction. It should be re-written.
- City of LW Drug and Alcohol Policy should be reviewed with the HR Director.
- The Technology Policy allows "term papers or charitable event notices" to be typed on a City employee's computer. This opens the door to improper use:
 - ✓ After hours is the only time allowed? How would this be monitored and enforced:
 - ✓ "Supervisor's permission" is necessary. This would require the supervisor to pass judgment on the employee's task, which may lead to issues.

Recommendation: This Administrative Regulation Manual should be revisited, and significant revisions should be considered. Internal Audit should be allowed to review the revised document prior to release.

Response by Human Resources: Upon completion of the Human Resources Policy Manual, the Administrative Regulation Manual will be addressed for consistency and applicability. HR and the City Manager have asked the Assistant IT Director to draft an updated Technology Policy as a result of other concerns. The City Attorney's office has provided sample policy drafts to assist in this process.

11. I-9 review.

I-9 Forms are properly filed apart from employee personnel files. Internal Audit randomly selected forty-four employees for an I-9 review. Some insignificant clerical-type errors were noted and specifics were brought to the attention of Human Resources for correction. Internal Audit will confirm that corrections were made.

Recommendations:

- All new I-9 forms should be reviewed by the Director of HR or his/her designee (as long as the designee was not involved in the I-9's completion by the new employee). This review should be evidenced by the reviewer's initials on the face of the I-9.
- Routine, periodic audits should be performed by the Director of HR to help ensure that the I-9s already on file are free of these clerical-type errors.

Response by Human Resources: A member of the HR team reviews all I-9 forms for thoroughness, accuracy and compliance with Federal standards. HR will annually conduct a department-based audit to ensure that all members of the HR team with I-9 responsibilities are properly executing the forms. In accordance with Federal guidelines, the reviewer signs the form in Section 2 before the file is recorded. An additional set of initials on the face of the form would not be appropriate.

12. Personnel File Review for Human Resources Department Employees

A review of all HR employee files reflected the following:

- No background check was noted in the files for two employees whose employment should have been contingent on successful background checks, nor was there any indication that a background check was in fact performed.
- The rate of pay for the last position held by a high-level City employee was missing from this person's application.
- Documentation of professional certifications and designations was not always included in the personnel files.

Comments by Human Resources:

- The information referenced here relates to files for employees hired prior to the current HR team. The current HR staff is well-versed and consistent in conducting the necessary and appropriate reference and background checks relating to the various positions within the City.
- Again, the information referenced here relates to files for an employee hired prior to the current HR team. The current HR staff is well-versed and consistent in gathering the required information from candidates who apply for open and vacant positions within the City.
- Professional Certifications have been added for the HR staff. It is the employees' responsibility to provide the HR Department with proof of certification if it is job-related or impacts the employee's pay rate.

13. Review of Personnel Files for City Employees

A random selection of employees (16) was chosen. The personnel files for these employees was obtained from Human Resources, and reviewed for proper content.

Results of that review:

- Half of the employee files reviewed generated no comments of note.
- One employee file reflected:
 - No evidence of background checks
 - No evidence of certificates held for this technical position, though they were claimed on the employee's application and resume
- One employee file reflected:
 - No evidence of previous employment checks, despite his disclosure of his convictions for possession of marijuana and cocaine and open carrying of a weapon
- One employee file reflected:
 - No apparent check on the employee's Associate's Degree. Though it was not a listed requirement for the employee's position, the employee did claim to have the AA on the application, and it should have been confirmed.
 - No apparent checks on previous employment.
- One employee file reflected:
 - There was no evidence of a background check or professional experience check for this technical IT position (such as confirming that the employee held an "A+" certification, had at least an Associate's Degree, or held the MCP

designation (Microsoft Certified Professional) all of which were claimed on the employee's application and the first two of which were job requirements).

- No apparent check on references
- One high-level employee file reflected:
 - No evidence of background check for initial hiring
 - No evidence of background check upon promotion
 - No evidence of drug test
 - No check on professional certification claim
- One employee file reflected:
 - Several emails apparently unrelated to this employee, but sent to or from this employee, were in the employee's personnel file.
 - No checks apparent on previous employment.
- One employee file reflected:
 - No evidence of previous employment check.
- One high-level employee file reflected:
 - File contained no evidence of background checks, employment checks or criminal checks for this high-level position.

Comments by Human Resources:

- Several of the discrepancies occurred prior to the arrival of the incumbent HR Director.
- Criminal background checks are conducted on all candidates to whom contingent employment offers have been extended in accordance with EEOC guidance.
- Degrees and/or Technical Certifications, unless they are relevant to the position applied for, were not routinely checked or requested of candidates prior to my arrival. When the degree is a prerequisite for a role, the candidate is required to provide documentation of completion of studies. In addition, the City also requests degree confirmation from the background check agency where the degree is required for the position.

Other Areas

14. Human Resources Mission Review

A detailed description of the Human Resources Department mission, structure, initiatives, performance, goals and objectives and other information is available on the City's website in the 2014 Budget section. This Mission is discussed below in light of enhancements aligned with the Mission that could be made immediately, as well as current department practices that may not be aligned with this Mission.

General Mission Statement: The HR Department strives to support the City in delivering exceptional services to our community through the acquisition, development and retention of qualified highly motivated employees. Human Resources will take a leadership role and provide service in support of the City of Lake Worth's Vision by promoting the concept that our employees are our most valuable resource and will be treated as such.

The HR Department will act as catalysts enabling the City employees to contribute at optimum levels toward the success of their Division and the City.

HR will do this by:

- Ensuring the women and men of the HR Department are given the tools, training and motivation to operate in the most efficient and effective manner.

Discussion: The HR Department is comprised of five employees, with total budgeted salaries of approximately \$380k, including benefits.

Training is budgeted at approximately \$1,500, or \$300 per employee. There are no funds available for travel, even though the budget line item, “Travel and Training” implies that there is travel money available. Aside from apparently limiting training to that which is only available locally, the amounts available would appear to be inadequate.

Comment by Human Resources: HR Budgets for staff are not a significant issue with applicants. I do agree the amounts are less than desired; however we manage to participate in local HR Associations to remain abreast of current trends and new legislation that will impact the City of Lake Worth.

- Promoting and recruiting the best qualified people, recognizing and encouraging the value of diversity in the work place.

Discussion: As noted in “4” above, there is no training program to help City managers find the best candidates possible for a given position. Training while recognizing the “value of diversity” is also apparently absent.

Comment by Human Resources: Although Diversity Training per se has not been conducted in Lake Worth, the city has been able to attract and retain a highly diverse workforce. Attention to Diversity will be given in the upcoming interviewer training as part of providing a realistic job preview.

- Providing a competitive wage and benefit package and developing the full potential of our work force by providing training and development for career enhancement and organizational success.

Discussion: While current budgetary constraints may limit the City’s ability to remain competitive in the marketplace for exceptional employees, Human Resources should be proactive in gathering salary information and presenting this to the Commission, City Manager and heads of the various departments.

Comment by Human Resources: Because of the City’s inability to address employee compensation beyond the collective bargaining agreements, participation in external surveys has been limited to the data gained through the PEPI Exchange, which includes many of the public employers in Palm Beach, Broward, Martin and Northern Miami Dade Counties. We are in the midst of examining the possibility of planning for a full compensation and classification study.

- Providing a work atmosphere that is safe, healthy and secure and also conscious of long-term family and community goals.

Discussion: The physical security and safety of some City buildings, as noted in other audit reports, could be strengthened. While this is not solely a Human Resources responsibility, the department could become more of an advocate for initiatives such as card access systems for City buildings, first aid and CPR training for employees and more camera surveillance in high risk areas (such as customer service in the Annex), to name a few.

Comment by Human Resources: Providing a safe work environment is critical to the retention of staff. The HR office is one of several work sites where security upgrades should be seriously considered. I would encourage the Internal Auditor to submit to the City Commission and City Manager a condensed summary of departments and/or divisions whose physical security places either employees and or critical records at risk.

As no single department has the resources to launch security upgrades, a capital expenditure is probably the best way to address all of these simultaneously.

- Establishing, administering and effectively communicating sound policies, rules and practices that treat employees with dignity and equality while maintaining organizational compliance with employment and labor laws, City commission resolutions and directives and labor agreements.

Discussion: As noted in the body of this report, documentation of HR policies in the form of a comprehensive employee manual is in process (see “8” above). Internal Audit will test the roll-out of this manual in the future.

Comment by Human Resources: To be addressed with the Employee Handbook and Administrative Policy modifications already suggested.

Response by Human Resources: The Human Resources Mission and Vision for the Fiscal Year 2014 budget overview will be tailored for web use.

Other Considerations

- Ø The use of “Honesty Tests” should be considered as a pre-employment tool.

Comment by Human Resources: Some problematic aspects of integrity testing state that it is possible for a person to admit to dishonesty, but not necessarily have committed theft or other counterproductive behaviors. Also, the predictability of the integrity test may suggest *potential* behaviors in the future, but are not necessarily answered truthfully by employees. Therefore, the actual predictability may be lower if an employee, unknown to employers, does not honestly answer the personality tied questions in a truthful manner.

On top of the fact the honesty test may not be an accurate reflection of behavior, personal privacy can become a legal problem. Critics also say that that integrity tests can violate legal and ethical privacy standards, because there could be some questions that are not related to specific duties of the job, and there is no protection for the illegal use of the data.

Finally, any such tests would be problematic in terms of implementation in that they would need to be validated in accordance with the uniform guidelines on Employee Selection Procedures pursuant to EEOC guidance. Failure to do so could result in potential liability exposure to the City.

- Ø The physical security of the Human Resources area was reviewed, and the following comments were generated:
- Personnel files are kept in unlocked file cabinets outside the offices of the Risk Manager and HR Director.
Comment by Human Resources: This issue has been addressed by the HR team, which has implemented locks.
 - There are building department files kept in the HR area. Certain employees from the Building Department have keys to the HR area enabling off-hour access, should they need any of their files.
Comment by Human Resources: An area of concern indeed, but there is no alternative space for these records.
 - Building maintenance employees have keys to the HR area as well.
Comment by Human Resources: Building maintenance staff have access to all areas and offices within the city.
 - HR files are vulnerable to unauthorized changes and removal.
Comment by Human Resources: Personnel files are now locked and removal opportunities are limited since the files are secured. Unauthorized changes cannot be performed on a hardcopy document. We have migrated to system-generated changes that go through a rigorous vetting process.
 - There is a walk-in “safe” in the HR area, though it is never locked. Inside this room are documents of possible historic significance to the City. (Example: There was a bound volume of minutes of City meetings from 1919.)
Comment by Human Resources: This area has been secured by adding a lock to the access door.
 - There is a single camera in this area, but it is trained on one of the rear entrances, with no view of any other areas in the HR footprint.
Comment by Human Resources: Because of the need for employees to have confidentiality when coming to Human Resources, this is not a supported recommendation for a front entry facing camera in the Department. This would do more harm than good.

- All documents in the HR Department should be considered at risk for theft or vandalism.

Comment by Human Resources: As mentioned above, the HR files are now locked. A keypad would help with overall security, but the identity and medical records are secured and locked at the end of each day.

Overall Recommendation: The City should consider the HR area for a card access security system. Such a system not only locks out those individuals who are not authorized to be in the HR area but it also records those people who are authorized to enter this area. An additional camera should be considered as well which could be placed to cover virtually all HR areas not covered by the current camera.

Overall Response by Human Resources: I wholeheartedly concur that HR security could and should be enhanced subject to budget considerations. However, we would be doing a disservice to the employees who seek out HR's services for confidential and sensitive issues by placing cameras in all of the HR areas. While being mindful of security issues, HR needs to be an area where employees feel comfortable and secure while discussing extremely personal issues. In my experience, cameras throughout the HR department would likely have the unintended consequence of deterring employees from utilizing the HR department in times of need.



OFFICE OF THE INTERNAL AUDITOR

7 North Dixie Highway · Lake Worth, Florida 33460 · Phone: 561-586-1749 · Fax: 561-586-1750

TO: **Finance Director Doug Wood**
 City Manager M. Bornstein
 Leisure Services Director Juan Ruiz

FROM: **City Internal Auditor K. Oakes**

CC: **Mayor P. Triolo**
 Commissioner S. Maxwell
 Commissioner A. Amoroso
 Commissioner C. McVoy
 Commissioner J. Szerdi
 Silvina Donaldson

DATE: **March 4, 2014**

SUBJECT: **Barter with TooJay's**

Purpose

I was informed by a City employee that a “trade” agreement exists or existed between the City and TooJays Deli, a Lake Worth restaurant. The term “Trade” used in this context usually refers to an “in-kind,” no-cash agreement between two parties to exchange goods or services of approximately equal value without the use of cash. This value is usually established using the retail values of the exchanged goods or services

After speaking to the Local Area Representative for TooJays (“TJ”), TJ’s Director of Catering, Lauren Bothe, Assistant Event Coordinator, Juan Ruiz, Leisure Services Director coupled with my own notes from past discussions with Terri Neil as well as a review of the available documentation, I believe I have a picture of how this agreement worked.

A summary:

- A verbal trade deal existed between the City and TooJays Deli. There is nothing in writing, though emails support the existence of such an agreement.
- TJ had “Preferred Status” along with, initially, five other vendors. This meant that they did not have to pay the City a \$500 fee for the use of the Casino kitchen, and did not have to leave a security deposit of \$1,000 to cover cleaning of the kitchen.
- Clients booking the Casino for an event would ask Terri who could cater the event.
- The Casino (Terri) would give them TooJays name (or any of the other “preferred vendors”), and they would Contact TJ and deal with them for the event’s food.
- In return, TJ would “donate” food to the City as an “in-kind” donation for the City’s own events such as meetings (e.g. League of Cities), parties or other City functions. There were no specific functions mentioned to me by TJ, though they promised to furnish me with a list of those events where they did in fact donate. The amount the City expected TJ to donate was \$5,000 at retail.

- This commitment was exceeded during the past year. There remains no “credit” left, to TJ’s knowledge. If, after creating the list of events referred to immediately above, a credit does in fact remain, TJ would be more than happy to work it off in the future in return for a reinstatement of the preferred vendor status (including a waiver of the \$500 kitchen fee).
- TJ was clear as to the flow of business: Clients go to the venue (the Casino) first, then to the caterer. The memo from Terri, dated January 21, 2014 cancelling this agreement reflects a flow that is exactly opposite TJ’s description. I believe this memo is inaccurate and does not reflect the agreement. I’m offering an opinion here because there is no carved-in-stone agreement to refer to.
- TJ stated that the cancellation of the plan by Terri was “a tremendous blow” to their business. TJ would like to have the City reconsider some agreement for the future, to be put into writing, which would enable TJ to be a preferred caterer again.

During the course of this inquiry, two additional companies (Resource Depot and Seaside Celebrations) were identified as participants with the City in barter arrangements. The City should decide whether it wants to continue barter arrangements with any parties, keeping in mind the following:

- Certain barter transactions may not be legal for a municipal government.
- Barter transactions in effect bypass the accounting, procurement and disbursement processes, and the internal controls governing those processes, established by the City.
- Barter may prove difficult to control and identify.
- There may be reporting issues with any barter transaction, as well as specific accounting rules that must be followed, that may increase the Finance Department’s workload.

The City may wish to establish a policy that either forbids barter, or establishes strict protocols ensuring transparency and proper accounting and reporting treatment for any barter agreements approved by City management.



OFFICE OF THE INTERNAL AUDITOR

7 North Dixie Highway · Lake Worth, Florida 33460 · Phone: 561-586-1749 · Fax: 561-586-1750

TO: Mayor P. Triolo
Commissioner S. Maxwell
Commissioner A. Amoroso
Commissioner C. McVoy
Commissioner J. Szerdi

FROM: City Internal Auditor K. Oakes

CC: Human Resources Director Mark Farrington
City Manager M. Bornstein
Finance Director Doug Wood

DATE: March 10, 2014

SUBJECT: Doris Ortiz Change of Job

Purpose

During a review of processes in the Leisure Services Department, an incident surfaced that relates to the City's processes and procedures regarding promotions, salary increase justifications, department reorganizations and involvement by the City's Human Resources function. This memo documents the incident and offers comments and suggestions for the City going forward.

This incident is to be viewed as an example of processes and procedures that should be changed. Suggestions will not be made to alter the results of the example. The reader should note that the subject of this example, Doris Ortiz, did nothing inappropriate or in violation of any City policies.

Discussion

The need for an individual to manage the parking function for the City was expressed by management of the Leisure Services Department during the budgeting process. Provision for this position was incorporated into the fiscal 2014 budget at approximately \$49k. The individual ultimately placed in this position, Doris Ortiz, receives a salary of \$61k and is currently working for the City in this capacity. She is also responsible for Public Services Administration, a position she had held on a full-time basis with the Public Services Department since she was hired on November 29, 2010.

She now reports to Jamie Brown as Manager of Public Services and Juan Ruiz as Manager of Parking, using an approximate 50-50 responsibility split. Her rate of pay has been assigned as \$15.15 to run the parking operation and \$14.13 to manage Public Services. Her office has not physically moved and is still in one of the Public Services Department trailers. There is currently no facility for her at the beach for her parking responsibilities.

Upon review of the process of reorganization as it pertains to Doris, several facts came to light that the Human Resources Director, Finance Director and City Manager may benefit from reviewing, as I believe they have value going forward. The Commission should also be apprised of these reorganization items.

Facts Regarding the Selection of Doris Ortiz for this Manager Position

The following relate specifically to the application of Doris Ortiz for the Manager position.

- The movement of Doris from Public Services Administrator to Operations Manager (a newly created position) was apparently viewed as an employee taking a new position, not a promotion. The salary for the position was compared to outside compensation information for a Manager level gathered by the Public Services and Leisure Department Directors, as represented to Internal Audit by Human Resources and Leisure Services. This comparison was apparently the most heavily weighted factor in determining the position's final compensation level. A comparison to Doris' current salary, which would have reflected a 63% increase, was apparently not given as much weight.
- The outside comparison from Marketrate.Payscale.com used Boca, Boynton and West Palm Beach as benchmarks. These municipalities were paying their Parking Managers between \$26k and \$49k, with an average of \$34k. Our HR Director also obtained the pay range for Delray's Parking Manager: \$62k to \$99k. Our management group then decided to set the pay for this position at \$61k, or 25% over the maximum rate and 79% over the average rate for the municipal trio noted above.
- No verification of previous employment was done when Doris was originally hired in 2010, other than contacting one reference at the US Census Bureau (see below), who was contacted but did not verify employment dates or salary.
- No verification of college attended or degree earned was completed when Doris was originally hired, even though at least an Associate's degree was "a plus" per the Job Description.
- No background, educational or reference checks were completed when Doris was offered the new Manager of Parking position.
- Doris' previous employment experience does not appear pertinent to the minimum requirements of the Manager's position as specified in the Job Description used by Human Resources. Her positions listed on her application are as follows:
 - US Census Bureau, 1/15/10 to 8/15/10, as "Census Admin/HR Clerk;" described as a clerical position; "Laid Off" per application; \$11.25/hr. Her immediate supervisor was listed as a reference, who stated he has known DO for two years, but she only worked for him for seven months. There was no verification of employment dates or rate of pay.
 - RGF Environmental Group, 1/26/06 to 9/15/09, as "Accounts Payable Associate; Payroll, RP Translator." Supervisor was not contacted; \$37k/yr.
 - DO Flooring, 6/30/00 to 12/13/08 as "Administrative Assistant;" DO is listed with the Florida Secretary of State as an officer of this company (the DO stands for Doris Ortiz), and DO's "Common Law Spouse" (as noted in the City's HR file for Doris) is listed as the manager of this company. No date or earnings verification was made for this company.
 - Jamaica Hospital (not on application, but on resume), 1995 to 2000; no employment dates or earnings verification was noted (salary does not appear on

the resume). She performed secretarial tasks, mostly paperwork for hospital patients who spoke only or mostly Spanish.

- Doris' resume (included in her HR file) states 20 years of administrative experience, which would have to include Jamaica hospital and DO's own company. Even with these jobs, the years appear to be short. This is an inconsistency on the resume.
- Doris' salary history with the City:
 - Hired 11/29/10 at: \$34k/yr.
 - Rate increase: \$36k/yr. 4/29/2012
 - Rate increase: \$37k/yr. 5/6/2012
 - Promotion: \$61k/yr. 11/18/13 (65% increase)
- No performance appraisals were found in the employee's personnel file.
- Internal Audit noted nowhere in the HR documentation where a decision was made to interview only internal candidates for this new position. Human Resources, Finance and Budget Departments indicated that such a decision was made. There were at least three other internal candidates interviewed, but none apparently fit the job description as well as Doris did, even with the lapses noted below.
- This position was originally listed externally, but as noted above, only internal candidates were considered. Internal Audit reviewed applications received during the brief period that the position was listed externally. What follows is a sampling of the external candidates who expressed an interest in this position:
 - A currently employed police officer in Stuart had two and one-half years experience enforcing local, state and county parking laws
 - A code compliance officer with eight years supervisory experience in code enforcement and parking enforcement
 - A technician with management experience and experience in all aspects of parking coin operated kiosks for another city (total of 24 years)
 - A candidate with 20 years experience in metered parking, including with the manufacturer of the City's equipment
- The job description contained several statements that would appear to require internal candidates exclusively, and particularly, only Doris. However, Doris may not have completely satisfied all of the requirements. The following direct quotes from the Job Description will serve as examples:
 - "Six to twelve months knowledge of the principles and practices of *the* parking operations (emphasis added)." This implies experience with the City's current parking program. Doris did in fact work in Public Services when Parking was in that department, and apparently had enough unofficial involvement to satisfy this requirement. The three other internal candidates also had such experience in the City's parking division.
 - "Ability to manage and prioritize routine, specialized and complex assignments and problems utilizing knowledge acquired through prior education, training and experience." Doris' prior education was an Associate's Degree in Accounting, and her training and work experience as noted above arguably would not appear to completely satisfy these requirements. Some of her work with the Public Services Department may have satisfied this requirement in part.
 - "Ability to develop, administer and monitor budget (sic) for operations of Parking Division and Public Services Administration Division." Only Doris could satisfy

these requirements, though only partially for the Parking Division. (Note that two other internal candidates had budget experience.)

- “At least six months of management, operation and maintenance of pay station equipment and parking lot experience is essential to success in this role.” As noted above, Doris did have unofficial experience in supervising the parking area, and this might have been perceived as closer to satisfying these requirements than the other three internal candidates.
- Doris’ reporting responsibility is split approximately in half: Leisure Department (parking management) and Public Services (operations management). This requires her to function in her former capacity, but she has given up some of her previous day-to-day work in the Public Services area, which has been assumed by another employee.

Comments and Suggestions

This memo describes one instance where hiring practice and procedure was not what it could have been. Implementing the suggestions below will make for a more objective, fair and efficient hiring process for the future.

- A comprehensive job description should be prepared based on the requirements of the position. Such a description should be prepared by the department head doing the hiring, with input from Human Resources, Legal and other departments that will interact significantly with the employee in the position.
- A job description should never be written to accommodate a particular candidate. This action would expose the City to possible liability, and may preclude hiring the best possible candidate.
- Salaries for new positions and promotions should be researched by HR independent from the interviewers and the departments where the new position will report. Human Resources should follow up on this salary information to ensure that it has been applied appropriately to the specific situation.
- Salary increases for promotions over a set amount (perhaps 20% or whatever City management believes is reasonable) should require extraordinary justification. External studies, surveys, literature and other sources should be obtained and documented in the employee’s file.
- Any decision to restrict the interview process to internal candidates only should be specified in writing, and justification should be included in the HR files for that position. The City Manager should sign off on this decision. Internal Audit’s inquiries indicated that the posting for the Manager position went back and forth between requiring internal or external candidates, though this could not be confirmed.
- The job description for this position used language to imply that the successful candidate had experience with the City’s parking operation. This should be avoided unless it is the intent to hire only individuals from within the City with specific knowledge of current workings. This situation will probably be required infrequently.
- Previous employment verifications for current City employees applying for a promotion or some other elevated position must be completed when the successor position requires information not previously required. However, a review of actions taken upon the candidate’s original employment should be performed as well, and judgment passed on the adequacy of the original actions.

- Educational credentials and certifications claimed anywhere on the candidate's paperwork (e.g. application, resume or college documents submitted when applying) must be confirmed directly with the educational institution. This should occur even when the position applied for does not require any specific degrees or certifications.
- References and previous supervisors must be contacted where possible, and the results documented in the HR file.
- Documentation should be included in the HR file matching candidate experience with job requirements.
- An attempt should be made and documented to verify all previous employment and pay levels.
- Performance appraisals must be completed in a timely manner for all employees.



OFFICE OF THE INTERNAL AUDITOR
7 North Dixie Highway · Lake Worth, Florida 33460 · Phone: 561-586-1749 · Fax: 561-586-1750

TO: **Finance Director Doug Wood**
 City Manager M. Bornstein
 Controller Corinne Elliott
 Leisure Services Director Juan Ruiz

FROM: **City Internal Auditor K. Oakes**

CC: **Mayor P. Triolo**
 Commissioner S. Maxwell
 Commissioner A. Amoroso
 Commissioner C. McVoy
 Commissioner J. Szerdi

DATE: **March 10, 2014**

SUBJECT: Cash Received by the Leisure Department

Introduction

Leisure Services runs programs such as basketball, baseball, dances and various others that require payments from participants. These payments are currently taken at the shuffleboard building at the reception area near the side (east) door during specific hours (primarily 11:00 a.m. to 5:00 p.m., Monday through Thursday). A part-time clerical assistant acts as a cashier, and records the payment receipt and program or event enrollment in RecTrac. There are two other people who may take payments, though they perform this function infrequently. Residents who show up at the shuffleboard building during off times are told they must return during posted hours.

Payments are also accepted at the Wimbley Gym. Only cash and checks are accepted there. They are stored overnight in a safe if necessary and brought to the shuffleboard building by Melissa Garvin or some other employee. If Melissa is working at the gym when payments are received, she will enter the receipt and registration information into RecTrac at the gym. Otherwise, this information is entered by the assistant (Nicola) at the shuffleboard building when the payment is received there. A handwritten receipt is given to program participants paying at the Gym.

Personnel working at the Gym stated that they were not aware when the safe combination or alarm code had last been changed, if ever. This was also true at the shuffleboard building.

Cash, charge cards and checks are accepted. Cash and checks are carried across the building after each transaction and placed into a drop safe inside the Recreation Supervisor's office. Daily, a bank deposit of this money is prepared by the assistant and hand carried to the bank by a single person, usually this assistant. The deposit is counted by a teller while the assistant waits.

A report based on information entered into RecTrac and the money physically deposited in the bank is completed by the assistant. The assistant ensures that the total cash, check and charge amounts agree to RecTrac. This report is sent to Finance along with a printout from RecTrac. Finance has no access to RecTrac and therefore cannot compare the bank deposit from bank documents to actual enrollment as recorded in RecTrac.

Comments and Recommendations

1. Finance should have the capability to confirm that the bank deposit and charges processed agree to the bank records obtained independently from the financial institution. This would require that Finance have access to RecTrac directly and independently of the Leisure Services Department. Such access should be “Read Only,” which would not allow Finance to make any edits to the RecTrac database.
2. The safe that holds cash and checks during the day prior to the daily deposit is in an inconvenient location in the shuffleboard building, **requiring the cashier to leave his or her post when on duty.** ~~The cashier must leave the resident service area and walk out of sight to drop money in the safe. Management has expressed unwillingness to move the safe to the resident service area, as it would then be in a room that is rented to the general public. Though the cash held overnight may be minimal, Internal Audit recognizes an increased risk to City assets should the safe be moved. On balance, however, Internal Audit believes that management should consider moving the safe~~ **to a location that would not require the cashier to leave his or her post.**
3. The combination to the safes at the Gym and the shuffleboard building should be changed as soon as possible, and changed whenever leisure employees who know the combination are no longer employed by the City. At a minimum, the combinations should be changed at least annually. The alarm codes should be changed at least annually as well, and each employee should have a unique code.
4. Central cashing for the City has been considered in the past, and is under consideration presently due primarily to current procedures involving building department receipts at the Second Avenue location. The City should also consider including the cash received from residents for leisure activities in any overall plan for consolidating the receipts of cash. Internal Audit recognizes that the central cashier would have to be trained on RecTrac, which may require additional personnel and time for the cashing function. However, time savings may be realized by eliminating this task from personnel at the current location.
5. Receiving payments at the Wimbley Gym should be reconsidered. The lack of RecTrac at this location, the need to issue a handwritten receipt, the additional transport of cash and checks and the lack of accountability over the funds (e.g. shared safe combination, different individuals carrying the receipts to the shuffleboard building, easy access to the receipt book) all serve to increase the risk to the City’s cash.



OFFICE OF THE INTERNAL AUDITOR

7 North Dixie Highway · Lake Worth, Florida 33460 · Phone: 561-586-1749 · Fax: 561-586-1750

TO: Mayor P. Triolo
Commissioner S. Maxwell
Commissioner A. Amoroso
Commissioner C. McVoy
Commissioner J. Szerdi

FROM: City Internal Auditor K. Oakes

CC: City Manager M. Bornstein
Finance Director Doug Wood
Human Resources Director Mark Farrington
Leisure Services Director Juan Ruiz
City Attorney Glen Torcivia

DATE: April 4, 2014

SUBJECT: Casino Security Topics

I stopped by the Ballroom and spoke briefly to Lauren Bothe, Assistant Event Coordinator on March 21st. I have also spoken to Juan recently on a variety of Leisure Department topics. My purpose was to check on several items from my previous memos regarding operations. My thoughts, comments and a few questions are below.

Also included is the dialog between me and Director of Leisure Services Juan Ruiz discussing the topics and action to be taken, if any. As this does not represent a formal review, it is being presented as an informal memo. I will, however, follow up on any action items discussed and report the results of that follow-up to you.

- 1. Internal Audit Comment** I understand all contracts for the Ballroom do not go to legal for review. Did the original contract template pass their review?
Leisure Services Response Our legal department is currently in possession of the contract which is being reviewed. Leisure Services and Finance reviewed the contract prior to the contract being put in place last year, but I can't recall if our previous Legal team reviewed the document.
- 2. Internal Audit Comment** The small combination lock box mounted on the wall near the restrooms is still there. The combination is reportedly unknown, though some employees may still know this combination. It is also not known if there are in fact keys still in this box. This box is not secure and may facilitate unauthorized access to the Ballroom. My suggestion is to remove this box.
Leisure Services Response The combination is known by a limited number of staff members and the Fire Department. The lock box is installed for the use of the Fire

Department in the case of an emergency. There are lock boxes on all City buildings. I do not suggest that the lock box be removed at this point in time.

Internal Audit Follow-up Comment The Fire Department will only use one type of lockbox, called a “Knoxbox” (a brand name), for which they have a key. They will never use any type of box that has a combination. There is a Knoxbox on the first floor, right outside Mamma Mia’s side entrance. There is also a small combination box about three feet away from this Knoxbox, and another small combination box mounted on the wall outside the upstairs restrooms as I initially indicated. The Fire Department has no record of these combination boxes, and both had ballroom keys in them. It is these combination boxes that I believe should be removed. I spoke to Phil this afternoon, and he indicated that they will be removed.

(My Knoxbox information is coming from a meeting I had yesterday with Captain Steve Appleby at the Fire Station across from City Hall.)

Leisure Services Follow-up Response The combination boxes, not the Knoxbox are being removed by April 4. The keys were removed yesterday.

3. **Internal Audit Comment** We do not know how many keys are in the hands of employees, and we do not know the extent of key distribution to employees and others under the prior event manager. There are approximately 38 keyed doors to the Ballroom and “office” facilities on the second floor, and they all open with the same key. I offer the following options to improve access security at the Ballroom:

- Remove the locks on most of the 38 doors. These doors should be set to be opened from the inside only using a push bar. When the door closes, it is always locked.
- An alternative, if possible, would be to disable most of the 38 locks, saving the cost of removing them.
- Several doors should be identified for a change of lock. The keys for these doors should be under management’s control, and should be distributed only to employees who have need for access (never to non-employees). The number of doors chosen should be minimal to facilitate periodic lock changes at a reasonable cost.

Leisure Services Responses

- We do know how many and who has keys to the Casino Building. Keys are taken from former employees at time of separation from the City. Leisure Services staff has been instructed to keep a master key log-in sheet.
- The building was designed with 38 keyed doors. The Beach Fund does not have available funding to re-key the building at this point in time.
- Employees are given keys to areas that they must access to accomplish their job duties. I’m not aware of keys being given to non-employees and if this has happened it has not been at my instruction.

Internal Audit Follow-up Comments

- Per Brad and Terri, there may be keys outstanding that we do not know about. Additionally, Terri stated that some caterers “had to have” keys so they could lock up the Ballroom at night. Phil yesterday indicated that he is working on an updated key list, a project well worth his time and effort. I would question the accuracy of any key lists prepared under prior on-site ballroom management.

- As in any risk area, management may consciously elect to accept certain risks as well as mitigate other risks. This is always the prerogative of a well informed management body. Key status and overall security condition of the ballroom may or may not have been known to management until recently. However, at this point in time, they will have to determine if the security risks are sufficient to require mitigation, which would require additional money in the budget. I strongly urge that we don't dismiss any identified risk with the "no money in the budget" statement, even though it may be technically true. Please view this comment in the broadest City-wide sense and not directed purely at the management of the Casino. Overall risk appetite is a function that only the Commission can assume.

Leisure Services Follow-up Comments

- Again, I am not aware nor did I approve giving non-employees keys to the ballroom or supporting offices. If I'm being told something that contradicts what you're being told then I will find out. Unknown actions of previous City employees are being addressed and our staff is doing everything we can to our knowledge to ensure that the City is not exposed to any risks resulting from actions of previous employees. I have asked our current staff to identify and recover the possibility of someone and/or a caterer having keys to the ballroom. Our City staff opens and locks the facility every day as they have been previously instructed by me and we are implementing corrective actions to remedy any other outstanding items identified in previous reports.
- A decision on what level of risk the City is willing to accept is not for me to decide solely. That is a policy decision that should include City Management along with the City's Risk Manager. In response to your item I was simply stating that the beach fund currently cannot support the recommended corrective action of changing out the majority of 38 doors. If those funds do become available at the direction of the City Commission or City Manager, I will gladly instruct my staff to implement the recommendations if that is the direction given. We are constantly evaluating and implementing corrective actions to reduce any level of exposure that the City may have in its various operations and we do take a global/bigger picture approach when dealing with these issues as we become aware of them.

4. **Internal Audit Comment** The credit card reader has not been replaced, as recommended in my memo of January 28, 2014. That comment is paraphrased below:

The credit card machine used to process payments for the dances held at the Casino on Wednesday nights has "bad connections" rendering it useless on occasion. Additionally, it is in the Casino "office" (a group of cubicles in the unoccupied, unfinished portion of the second floor of the Casino) and is not easily accessible when participants are charging their dance tickets the night of the dance. The current process requires the ticket seller/taker to leave his/her post at the door of the dance and proceed to the office to process the charge. This may result in lapses in security at the door of the dance.

Recommendation: Either a credit card "Square" reader should be obtained to allow credit card processing through an iPad or an iPhone at the door of the Ballroom on the night of the dance, or an old fashioned manual carbon copy credit card machine should be considered.

Leisure Services Response The credit card machine had a “bad connection” on only one occasion, and the machine has operated fine since then.

Internal Audit Follow-up Comment Your response does not address the most important point: The credit card machine is in an inconvenient and insecure location.

Leisure Services Follow-up Response This machine can disappear entirely from the ballroom and we will no longer accept credit/debit card transactions moving forward at the Community Dances.

5. **Internal Audit Comment** The combinations for the safes at the Wimbley Gym and the Shuffleboard building should be changed immediately. I am aware of the possible costs involved and the uncooperativeness of the current safe service company, Acorn, but a periodic safe combination change is a basic, accepted best practice that should be part of the City’s control structure.

Leisure Services Response At the time of purchase it was not known that changing the combination would incur a cost, so provisions for that expenditure were never made. Since your conversation with Melissa Garvin, she has coordinated with Kevin from Acorn next week to show her how to change the combination moving forward free of charge. Please note that he is only willing to train one person in the changing of the combination, so a decision on who receives that training will have to be determined.

6. **Internal Audit Comment** Provision for Ballroom events coverage when Lauren is not working is not formalized. Under current staffing, it appears there may be times when Lauren would be required to work a seven day week, and possibly work significantly more than eight hours on any given day. Coverage to minimize this overtime should be formalized in writing. Individuals covering ballroom events should be qualified to do so.

Leisure Services Response Lauren has been counseled on various occasions to limit the work week to 40 hours and to adjust her schedule accordingly to meet the needs of the booked events. There are few instances that have been unavoidable due to pre-scheduled events that Lauren works overtime to accomplish the ballroom duties. Her overtime is pre-approved. The Sales, Marketing and Event Manager position is still vacant awaiting a proposal that could potentially eliminate the need to fill that position. I do not anticipate extending this vacancy much longer. It is my desire to have this matter resolved by the end of April.



OFFICE OF THE INTERNAL AUDITOR

7 North Dixie Highway · Lake Worth, Florida 33460 · Phone: 561-586-1749 · Fax: 561-586-1750

To: Mayor P. Triolo
Commissioner S. Maxwell
Commissioner A. Amoroso
Commissioner C. McVoy
Commissioner J. Szerdi

CC: Mike Bornstein

From: Ken Oakes

Date: March 14, 2014

Subject: Internal Audit Plan for Fiscal 2015

DISCUSSION

Based on the risk assessment interviews conducted in February 2013, information obtained from audit work and interviews performed during calendar 2013 and calendar 2014 to date and a review of available policies and procedures, the following audit plan is proposed for Fiscal 2015. Please note that there will generally be more than one audit in progress at any given point in time, as work schedules for the auditees may conflict. Down time on one audit may be filled with active time on another, so the goal is for at least two audits to run simultaneously. These audits will be started in the approximate order presented below.

The risk analysis exercise will be conducted approximately every two years. During that two year cycle, information regarding risks and threats facing the City will be gathered continually as part of the normal functioning of the Internal Audit Department. The risk profile of the City is always subject to change based on this dynamic profile.

The following plan is underway. Audits will be undertaken in the approximate order listed below, highest to lowest priority. The reader will note that several of the audit projects are carryovers from the 2014 fiscal year plan. This memo is being prepared about half way through fiscal 2014, and some of these projects may have been completed prior to the beginning of the 2015 year (which begins October 1, 2014). All open audit projects that have been formally planned but not completed as of the date of this memo have been included.

AUDITS PROPOSED

Accounts Payable (underway)

- The entire process will be walked through
- Basic controls will be identified and tested
- Approval authority will be tested
- Our flow will be compared to best practices
- Continuous monitoring of high risk payments will be suggested where appropriate

Procurement Process

- Walk-through of the entire process
- Particular attention to bidding, RFP, vendor selection, due diligence, new vendor additions to the purchasing system.
- Purchase order or requisition review is viewed as cumbersome and could require very high level approval for immaterial acquisitions.

Payroll Review

- Traditionally a high risk area
- Review the process of adding new employees, pay changes and benefit changes
- Review the controls mitigating the chances of phantom employees

Utilities (exclusive of cash handling)

- When the FMPA transition to OUC begins, a significant percentage of time will be devoted to this process.
- The inventory system in place will be revisited when most or all of the initiatives that were under way when this area was first audited two fiscal years ago.

Building Department (In Process)

- Walk through inspection process
- Follow flow of cash from permit seeker request to issuance of permit
- **Ongoing Projects; Part of the Above Audits** Process ownership in the various areas of discipline is not always clear, based on the interviews completed in February 2013. A component of each of the audits above will include the identification of process owners and a comparison to best practices. Where owners are not apparent, recommendations will be made.
- Potential new revenue sources will be identified. These will be noted in the audit reports.
- Span of authority appears to be very broad for some individuals. These will be discussed with Human Resources and compared to best practices.

Special Projects

During the course of planned audit work throughout calendar 2013 and 2014 to date, numerous special audits, inquiries and investigations occurred that were not anticipated. Though specifics are not known now, these will add audit time to the schedule, and possibly trigger several reprioritizations of audit work throughout the year.

CITY OF LAKE WORTH

INTERNAL AUDIT DEPARTMENT

UPDATE: JUNE 17, 2014

A SYNOPSIS OF ALL WORK FROM
AUGUST 6, 2013
TO DATE

- Change in emphasis and direction, based on audits, Inquiries and investigations performed
- Greater number of smaller projects
- Some larger projects on hold, some in process
- Smaller reactive projects substituted
- First follow-up reports issued end of October

DISCUSSION

– Significant challenges before the City

- ✓ Employee safety (City Hall, Annex)
- ✓ Asset security (Warehouse, Annex)
- ✓ Policy and procedure creation and updating in key areas
- ✓ Hiring and promotion practices
- ✓ Casino issues
- ✓ Code issues (but improvement noted)

DISCUSSION

– **Follow-up** reports issued, and top concerns outstanding from each report:

✓ Customer Service and Cash Handling

Ø Cash “pulls” should be performed

Ø Annex is not alarmed

✓ Common Area Maintenance and Ballroom Ops

Ø Ballroom security still needs improvement

Ø Ensure that CAM charges collected are maximized and in agreement with tenant leases

REPORTS ISSUED: HIGHLIGHTS

– **Follow-up** concerns, continued

✓ Purchase Card Process Audit

Ø Purchasing restrictions not programmed into card

Ø No other significant outstanding concerns

✓ Fleet Maintenance

Ø No significant outstanding concerns

Ø Additional Internal Audit follow-up to be performed

REPORTS ISSUED: HIGHLIGHTS

– New reports issued

✓ Cell Phone Review

- Ø Control over all phones should be stronger
- Ø Policies on issuance and use should be created
- Ø Ownership of the program should be established

REPORTS ISSUED: HIGHLIGHTS

- **New Reports Issued, continued**

- ✓ **Human Resources Audit**

- Ø Thirteen Findings and two Other Considerations are being or have been addressed

- Ø Creating policies on hiring and promoting practices most important

REPORTS ISSUED: HIGHLIGHTS

- **New Reports Issued, continued**

- ✓ Memo on Barter

- A policy should be implemented specifying precise rules for barter, or prohibiting it, as the Commission directs

- ✓ Employee promotion

- Policy should be created specifying hiring and promotion requirements and process

- Twelve comments and suggestions in total

REPORTS ISSUED: HIGHLIGHTS

– New Reports Issued, continued

- ✓ Cash Received by the Leisure Department
 - Ø Additional control for Finance should be added
 - Ø Five Comments and Recommendations offered
- ✓ Casino Security
 - Ø Control over keys should improve

REPORTS ISSUED: HIGHLIGHTS

- **New Reports Issued, continued**

- ✓ Employee investigation

- ∅ No fraud or malfeasance found

- ∅ Employee terminated

- ∅ Report in hard copy available upon request

- ✓ Investigation of a complaint against an employee

- ∅ Report is in Draft form, and is therefore not available to the public

- ∅ Investigation protocol proposed; edits in process

REPORTS ISSUED: HIGHLIGHTS

Refer to Internal Audit Plan for Fiscal 2015

- Accounts Payable
- Procurement
- Payroll
- Utilities
- Building Department

AUDIT AGENDA

- Ongoing projects

- ✓ Process ownership

- ✓ Span of authority

- ✓ Special audits resulting from reported audit findings

AUDIT AGENDA



CITY OF LAKE WORTH

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

AGENDA DATE: June 17, 2014, Regular Meeting

DEPARTMENT: Electric Utility

EXECUTIVE BRIEF

TITLE:

Purchase seven, 150kVA padmount transformers from Wesco Distribution

SUMMARY:

The Electric Utility requests to purchase seven (7) padmount transformers to meet requirements for service to the Villages of Lake Worth located at Lake Worth Road and 2nd Avenue North. The total cost of electric construction required to serve the complex will be borne by the developer.

BACKGROUND AND JUSTIFICATION:

The Villages of Lake Worth is a housing project located at Lake Worth Road and 2nd Avenue North. Electric service to the complex requires an extension of underground facilities and the installation of 7 padmount transformers.

Bids were received for the purchase of these transformers on March 11, 2014. The transformers are standard size and standard specification. Wesco Distribution is the lowest initial cost and the lowest total ownership cost vendor; they meet all specifications. Pricing for a 150kVA transformer is \$9,885.00 each for a total cost of \$69,195.00.

The Developer has paid a deposit to cover the utility costs associated with the project that includes these 7 transformers.

This purchase was recommended by the Electric Utility Advisory Board on June 4, 2014.

MOTION:

I move to approve/ disapprove the purchase of seven (7), 150kVA padmount transformers for use at the Villages of Lake Worth housing project from Wesco Distribution not to exceed \$69,195.00.

ATTACHMENT(S):

1. Fiscal Impact Analysis
2. Tabulation Sheet
3. Invitation For Bid

FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2014	2015	2016	2017	2018
Capital Expenditures	69,195	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	69,195	0	0	0	0

No. of Addn'l Full-Time Employee Positions	0	0	0	0	0
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B. Recommended Sources of Funds/Summary of Fiscal Impact:

Utilities T&D			
Account Number	Current Balance	Agenda Item Expenditures	Remaining Balance
401-6034-531.64-00	\$2,319,779.53	\$69,195	\$2,250,584.53

C. Department Fiscal Review: Clay Lindstrom

CITY OF LAKE WORTH

INVITATION FOR BID # UT-WH-13-14-111

Purchase of Transformers – Three Phase Pad Mount

Sealed bids are being accepted by the City of Lake Worth Utilities Department for the purchase of **Transformers, Three Phase (3 ϕ) Pad Mount** to support requirements within the Transmission and Distribution Division. Bids are due in the Procurement Office no later than **March 11th 2014 at 2:00 P.M.**, at which time and place all bids will be opened.

BIDS RECEIVED AFTER THE SPECIFIED DATE AND TIME REFERENCED ABOVE WILL NOT BE CONSIDERED RESPONSIVE, NOR BE ACCEPTED.

It is the sole responsibility of the bidder to ensure that their bid is in the possession of the Procurement Office before the closing date and time. The City will in no way be responsible for any delays.

BID PACKAGES: Will be available at no cost, as follows

- Via email in .PDF format
- To download from the City's Purchasing Website, go to www.lakeworth.org under Purchasing Opportunities along left-hand side of the home page
- Pick-up in person at the following location:

City of Lake Worth – City Hall
Procurement Office – 2nd Floor
7 North Dixie Hwy
Lake Worth, FL 33460

MANDATORY REQUIREMENTS:

- Page 9 must be signed by a person authorized to bind the firm. **Must submit one (1) original and two (2) copies of your proposal.**
- All bids, to include any Addenda or acknowledgement of Addenda, must be sealed, and mailed or delivered to the Procurement Office, at the address above. No fax, email, telegram or phone bids will be accepted.
- All sealed bids must have the following information plainly marked in the lower left side of the outside of the envelope or package:

IFB #UT-WH-13-14-111 – Purchase of Transformers, Three Phase Pad Mount
Attn: Procurement Office
Opening Date/Time: March 11th 2014 at 2:00pm


Kari Hansen, Purchasing Agent

PUBLISH: PALM BEACH POST
February 23rd 2014

BID INFORMATION

PURPOSE OF BID

The sole purpose of this Invitation for Bid (IFB) is to **purchase 3Phase (3 ϕ) Pad Mount Transformers**, which in the opinion of the City, meets or exceeds the technical specifications described herein, and offers the best value to the City.

REQUESTED BID ITEM(S)

All sealed bids shall be based on the requested bid items reflected below. If offering a product other than the requested bid item, please identify what you are offering on the Clarifications & Exceptions Page on page 10.

TERMS AND CONDITIONS

The procurement of the bid items shall be in accordance with the City's Standard Purchase Order Terms and Conditions which have been made part of this solicitation, and are reflected on the last page of this document. Any bid submitted which is based on terms other than those reflected in this solicitation must stipulate such on the Clarifications/Exceptions page (page 10), included.

PRICE VALIDITY PERIOD

No Bid may be withdrawn for a period of ninety (90) days after the scheduled closing for the receipt of bids. Bid price offered must be firm for 90 days after bid date.

NOTICE TO PROCEED WITH ORDER

Bidder agrees to not deliver the bid item(s) without receiving an executed City of Lake Worth Purchase Order, and a fully-executed copy of the accepted bid.

CHANGES

After the issuance of a Purchase Order for the requested item(s), any changes to the products or services must be performed through the issuance of a change order to the existing Purchase Order. The seller/supplier is not authorized to deliver any products not included in the bid, or to invoice in any amount in excess of the bid price, without receiving a change order or revised Purchase Order issued by the Purchasing Division, which accepts the change.

FLORIDA STATUTES, SECTION 287.133, PARAGRAPH (2)(a): (‘PUBLIC ENTITY CRIMES’)

‘A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction

or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.'

APPROVAL OF ACCOUNTING SYSTEM

Except with respect to firm fixed-price contracts, no contract type shall be used unless the Purchasing Manager has determined in writing that:

- 1) The proposed contractor's accounting system will permit timely development of all necessary cost data in the form required by the specific contract type contemplated; and
- 2) The proposed contractor's accounting system is adequate to allocate costs in accordance with generally accepted cost accounting principles.

RIGHT TO INSPECT PLANT

The City may, at reasonable times, inspect any part of the plant, place of business, or work site of a contractor or subcontractor which is pertinent to the performance of any contract awarded or to be awarded by the City.

RIGHT TO AUDIT RECORDS

- 1) **Audit of Cost or Pricing Data:** The City may, at reasonable times and places audit the books, documents, papers and records of any contractor who has submitted cost or pricing data to the extent that such books, documents, papers and records are pertinent to such cost or pricing data. Any person who receives a contract, change order or contract modifications for which cost or pricing data is required, shall maintain such books, documents, papers and records that pertinent to such costs or pricing data for three (3) years from the date of the final payment under the contract.
- 2) **Contract Audit:** The City shall be entitled to audit the books, documents, papers and records of a contractor or a subcontractor at any tier under any negotiated contract or subcontract other than a firm fixed-price contract to the extent that such books, documents, papers and records are pertinent to the performance of such contract or subcontract. Such books, documents, papers and records shall be maintained by the contractor for a period of three (3) years from the date of final payment under the prime contract and by the subcontractor for a period of three (3) years from the date of final payment under the subcontract.
- 3) **Contractor Records:** If a contract is being funded in whole or in part by assistance from a federal agency, then the contract shall include provisions:
 - A) Requiring the contractor and subcontractor at any tier to maintain for three (3) years from the date of final payment under the contract all books, documents, papers and records pertinent to the contract; and requiring the contractor and subcontractor, at any tier, to provide to the

City, the federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives access to such books, documents, papers and records for the purposes of examining. Auditing and copying them.

APPROPRIATION OF FUNDS

No public officer or employee shall enter into any contract on behalf of the city, which contract binds the city for the purchase of services or tangible personal property for a period in excess of 1 fiscal year (or the end of the current fiscal year, whichever is shorter). If the agreed-to services or tangible property resultant from the solicitation are properly ordered by the City, then the City's continuing performance and obligation to pay beyond the end of the City's concurrent Fiscal year under this contract, is contingent upon consecutive, annual appropriations by the City Commission for the life of the contract."

LOCAL VENDOR PREFERENCE

In the event the lowest responsive, responsible bidder or the highest ranked responsive, responsible proposer in the procurement of goods, services or construction is a non-LOCAL business, then all bids and or proposals from responsive, responsible LOCAL businesses to the same solicitation shall be adjusted by five (5) percent, solely for the purpose of determining bid/contract award. The bid price of LOCAL bidders will be adjusted downward by five (5) percent for purposes of ranking of bidders.

In no event, shall the application of this adjustment to a responsive quote or bid change the actual bid amount. Further, it will not cause the City to pay more than \$15,000 above the amount bid by that non-local vendor, which would have been recommended for award if the local vendor preference had not been applied.

If the application of the five-percent local vendor preference causes the *evaluated local vendor price* to be less than the actual low-bid price, but the actual bid price of the local vendor is more than \$15,000 higher than the actual low-bid price of a non-local vendor, then the non-local vendor submitting the actual low-bid, shall be viewed as the low-bidder, and be recommended for award, unless for reasons other than price, the bid is not found to be responsive and/or responsible.

The determination as to whether a bidder or proposer is a local or non-local business shall be made by the Office of Management and Budget, after confirming the vendor has a valid business tax receipt and certificate of occupancy, as reflected within the Business Master File of the city's ERP system. The bidder or proposer does not have to be a current vendor to the City (City as a customer) at the time of bidding/proposing, but must have been issued a business tax receipt applicable to the goods/services/construction being requested, PRIOR to the due date/time for bids/proposals. Prior to making an award through the application of the local vendor preference, city staff may require a bidder or proposer to provide additional information at any time prior to the award.

A *LOCAL business*, for the purposes of the application of a local vendor preference, means a bidder or proposer which has a permanent, physical place of business within the city

limits, and a valid business tax receipt applicable to the required goods, services, or construction items being procured. Post office boxes or locations at a postal service center are not verifiable and shall not be used for the purpose of establishing said physical address. If the business is a joint venture/partnership, it is sufficient for qualification as a LOCAL business if at least one party of the joint venture/partnership meets the test set forth in this Section.

Permanent place of business means headquarters which are located within the city limits or a permanent office or other site located within the city limits from which a bidder or proposer will produce a substantial portion of the goods or perform a substantial portion of the services to be purchased. A post office box or location at a postal service center shall not constitute a permanent place of business.

WARRANTY

All bids must include the warranty time and conditions of the warranty, under which the offer is being made.

ENTIRE AGREEMENT

This contract (consisting of this IFB, any Addenda, and Seller's Bid), states the entire contract between the parties hereto with respect to the subject matter hereof, and all prior and contemporaneous understandings, representations, and agreements pertaining to this requirement, are merged herein or superseded hereby. No alterations, modifications, release, or waiver of this contract or any of the provisions hereof shall be effective unless in writing, executed by the parties. The products/services required of this contract will be officially "ordered" through the issuance of a Purchase Order. Seller shall NOT deliver product(s) until it has been issued a signed Purchase Order from the City of Lake Worth.

PROTEST PROCEDURE

Protests may only be filed by a firm which has submitted a timely bid.

Protests must be addressed to the City of Lake Worth, Office of Management and Budget Director, in writing, identifying the protester, the solicitation and basis for the protest; and must be received by the Procurement Office three (3) business days (excluding Saturdays, Sundays, and legal holidays) after the date that notice of the written recommendation of contract award has been posted on the Purchasing Office bulletin board. It shall be the responsibility of the bidder to ascertain bid award information from the Procurement Office. The protest is considered filed when it is received by the Procurement Office of Management and Budget.

Failure to file a protest within the specified time frame shall constitute a waiver of protest rights.

PUBLIC RECORDS REQUESTS DURING BID OPENINGS

Sealed bids or proposals received by the City in response to an invitation to bid are exempt from public records disclosure requirements until the City provides a notice of decision or thirty (30) days after the opening of the proposal/bid.

If the City rejects all bids or proposals submitted in response to an invitation to bid or request for proposals and the City concurrently provides notice of its intent to reissue the competitive solicitation, the rejected bids or proposals remain exempt from public records disclosure until such time as the City provides notice of a decision or intended decision concerning the competitive solicitation or until the City withdraws the reissued competitive solicitation. A bid, proposal, or reply is not exempt for longer than twelve (12) months after the initial City notice rejecting all bids, proposals, or replies. Requests for bid or proposal documents should be submitted to the City Clerk's Office. Documents may be inspected without charge, but a charge will be incurred to obtain copies.

SPECIFICATIONS

The City of Lake Worth Transmission and Distribution Division desires to purchase Transformers, three phase pad-mounted which meet the minimum specifications of:

TRANSFORMER, THREE PHASE PAD-MOUNTED AS FOLLOWS:

KVA: 150 and 300 KVA (same spec)

TANK, BASE & CABINTRY – 304L STAINLESS STEEL

PRIMARY VOLTAGE – 13200GY/76200x26400GRDY/15240

SECONDARY VOLTAGE - 120/208

HV KV BIL - 125

LV KV BIL - 30

TYPE – DEAD FRONT

LIQUID TYPE – MINERAL OIL

CONNECTION – LOOP FEED

**FUSING: BAY-O-NET CURRENT SENSING EXPULSION FUSES WITH ELSP CURRENT LIMITING BACK-UP FUSES IN SERIES MOUNTED INTERNAL UNDER OIL
VENDOR TO INCLUDE SPECIFIED FUSE SIZES/ CATALOG NUMBER ON BID FORM**

TAPS – 2AN2BN (+2, -2@2.5%)

NEUTRAL – HOXO BUSH (NEUTRALS TIED)

**HV BUSHINGS – 25 KV – 200 AMP RATED BUSHING WELLS AND ELASTIMOLD INSERTS
INSTALLED**

LV BUSHINGS – 8 HOLES NEMA SPADE TERMINALS WITH SUPPORTS

ACCESSORIES – DRIP SHIELD

**COMBINATION HOOK-STICK OPERATED OIL DRAIN/SAMPLING VALVE
PRESSUE RELIEF DEVICE (1" MINIMUM) LOCATED ON SECONDARY
SIDE OF TRANSFORMER COMPARTMENT**

EVALUATED WATT LOSSES – W x 4.382 NL (CORE) _____

W x 1.93 FL (COIL) _____

P + 2.5% TOC CONSIDERED EQUIVALENT TO LOW BID DEPENDING ON OTHER FACTORS.

The City of Lake Worth is requesting ID/IQ (Indefinite Delivery/Indefinite Quantity) pricing on the transformers referenced by item number below and on the Bid Form. This is to be interpreted to mean the valid ordering price for the associated transformer on a unit price basis, with no guaranteed minimum quantity. The quantities reflected within are for estimating purposes only, based on expected requirements/usage, in consideration of our current supply of each item and our estimated upcoming usage.

STOCK NUMBER	ESTIMATED QUANTITY	DESCRIPTION / KVA
285-86-78165	7 Each	Transformer, 150 KVA, 3 Phase Pad-Mount
285-86-78167	3 Each	Transformer, 300 KVA, 3 Phase Pad-Mount

Pricing shall be fixed for a one (1) year period, commencing upon the date of contract execution by the City. The solicitation allows for two (2) consecutive renewals of one (1) year each, following the initial year. The date of the contract execution shall be the date the City's Mayor signs the signature page.

The unit price of each Transformer **must include all delivery charges.**

Transformers shall be delivered to: Utility Complex, 1900 2nd Avenue North, Lake Worth, FL 33461

Any questions pertaining to this bid, please contact Procurement Office in writing, or call:

**Kari Hansen, Purchasing Agent
Procurement Office
7 N. Dixie Highway
Lake Worth, FL 33460
KHansen@LakeWorth.org
561-586-1674**

BID FORM

IFB #UT-WH-13-14-111
Purchase of Transformer, Three Phase Pad-mounted

Pricing shall be fixed for a one (1) year period, commencing upon the date of contract execution by the City. The solicitation allows for two (2) consecutive renewals of one (1) year each, following the initial year. The date of the contract execution shall be the date the City's Mayor signs the signature page.

ITEM	STOCK #	DESCRIPTION	QTY	UNIT PRICE EACH
1	285-86-78165	TRANSFORMER, 3 Ph, 150 KVA	7 EA.	\$ _____
2	285-86-7878167	TRANSFORMER, 3 Ph, 300 KVA	3 EA.	\$ _____

TOTAL PRICE: _____

Manufacturer: _____

LEADTIME: _____ days / weeks
Circle one

150 KVA: Fuse size: _____ Catalog # _____

300 KVA: Fuse size: _____ Catalog # _____

Evaluated Watt loses W x 4.382 NL (Core) _____

W x 1.93 FL (Coil) _____

Complete Technical Specifications/Brochure Included with Bid? ()Yes ()No

Warranty: _____

Name of Firm: _____

HQ Address: _____ ST _____ Zip _____

Phone: () _____ Email: _____

Print Name: _____ Title: _____

SIGNATURE: _____ Date: _____

Sales Office: _____ ST _____ Zip _____

Sales Contact Name: _____ Title: _____

Phone: () _____ Email: _____

CERTIFICATION OF DRUG FREE WORKPLACE PROGRAM

I certify the firm of _____,
maintains a drug-free workplace program, and that the following conditions are met:

1. We publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace; and specifying that actions will be taken against employees for violations of such prohibitions.
2. We inform employees about the dangers of drug abuse in the workplace, the company's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.
3. We give each employee engaged in providing the commodities or contractual services that are under bid a copy of the statement specified in subsection one (1).
4. In the statement specified subsection one (1), we notify the employee that, as a condition of working in the commodities or contractual services that are under bid, the employee will abide by the terms of the statement; and will notify the employer of any conviction of, or plea of guilty or 'nolo contendere' to any violation of Chapter 893 or of any controlled substance law of the United States or any state, for a violation occurring in the workplace, no later than five (5) days after such conviction.
5. We impose a sanction on, or require the satisfactory participation in a drug-abuse assistance or rehabilitation program if such is available in the employee's community, by any employee who is convicted.
6. We make a good faith effort to continue to maintain a drug-free workplace through implementation of this section.

As the person authorized to sign the statement, I certify that this firm complies fully with the above requirements.

Authorized Signature (Date)

Name & title (typed)

LIST OF REFERENCES

Following are references from agencies/companies/individuals in which your company has provided the same product as bid herein within the last 5 years:

REFERENCE #1

Company Name: _____

Address: _____

Point of Contact: _____

Phone Number: _____

Fax Number: _____

Email Address: _____

REFERENCE #2

Company Name: _____

Address: _____

Point of Contact: _____

Phone Number: _____

Fax Number: _____

Email Address: _____

REFERENCE #3

Company Name: _____

Address: _____

Point of Contact: _____

Phone Number: _____

Fax Number: _____

Email Address: _____



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, JULY 01, 2014 - 6:00 PM

1. **ROLL CALL:**
2. **INVOCATION:**
3. **PLEDGE OF ALLEGIANCE:** Led by Commissioner Andy Amoroso
4. **AGENDA - Additions/Deletions/Reordering:**
5. **PRESENTATIONS:** (there is no public comment on Presentation items)
 - A. 2014 Annual Citizen Survey Report by Sharon Parsons
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)
 - A. Continuing Contracts for Professional Services
 - B. Contract with Thompson Consulting Services for Debris Monitoring after a disaster incident
10. **PUBLIC HEARINGS:**
 - A. Ordinance No. 2014-xx - Second Reading and Public Hearing - update the Police Retirement System to comply with the Internal Revenue Service Code
 - B. Ordinance No. 2014 - xx - Second Reading and Public Hearing - update the General Employees Retirement System to comply with the Internal Revenue Service
 - C. Ordinance No. 2014-XX - Second Reading and Public Hearing - provide for the annual payment from Division II to Division I of the Police Pension System

11. UNFINISHED BUSINESS:

12. NEW BUSINESS:

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:

14. CITY ATTORNEY'S REPORT:

15. CITY MANAGER'S REPORT:

A. July 15, 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.