Meeting Date: March 8, 2016 Agenda Item 1

REQUESTED COMMISSION ACTION:

X Consent ____ Ordinance ____ Resolution ____ Consideration ____ Workshop

SHORT TITLE OR MOTION: VARIOUS INDIVIDUALS ARE REQUESTING TO TRANSFER OWNERSHIP OF VARIOUS PLOTS TO OTHERS, IN THE NORTH AND WEST LAWNS BURIAL RIGHT AGREEMENTs 1175 AND 4306 (COST: $0.00)

SUMMARY OF PURPOSE AND WHY:

City Code 92.52(A) Mandates the transfer or assignment of any Cemetery lot or plot shall be valid with consent in writing of the City Commission. Various individuals to transfer ownership of various plots on the North and West Lawns of the cemetery. Burial Right Agreement numbers 1175 and 4306 are included.

QUESTIONS TO BE ANSWERED BY ORIGINATING DEPARTMENT:

(1) Origin of request for this action: Various Individuals
(2) Primary staff contact: Robert A. McCaughan, Public Works Director Ext 4097
(3) Expiration of contract, if applicable: N/A
(4) Fiscal impact and source of funding: $0.00

DEPARTMENTAL COORDINATION	DATE	DEPARTMENTAL RECOMMENDATION	DEPARTMENTAL HEAD SIGNATURE
Public Works	2/26/16	APPROVE	Robert A. McCaughan
Finance	2/26/16	APPROVE	D. Sibble
Budget	2/29/16	APPROVE	

___ Advisory Board
___ Development Services Director
X City Manager

Dennis W. Beach

ACTION TAKEN BY COMMISSION:

Ordinance	Resolution	Consideration	Workshop
1st Reading	1st Reading	Results:	Results:
2nd Reading			

TRANSFER AND ASSIGNMENT OF BURIAL RIGHT AGREEMENT

I (we), **Suzanne Guest**
(Assignor)
of **2850 NE 30th Street. Fort Lauderdale, FL 33306**
hereby **(Address)**
assign, transfer and set over this date to **Edgar Guest**
(Assignee)
Right(s), title and interest in and to Burial Right Agreement# **1175** entered to the 13 day of **January 2016** between the City of Pompano Beach, a municipal corporation existing under the laws of the State of Florida, and being in Broward County, Florida and
Suzanne Guest
(Assignor)
(Said burial agreement(s) attached hereto) subject to all the terms and conditions thereof, and do hereby remise, release and quit-claim unto the said **Edgar Guest**
(Assignee)

All my (our) right(s), title and interest in and to the Burial Right Agreement(s) described herein and agreed to be conveyed. Block **09** Lot(s) **8** Plot(s **3,4**) Lawn **North Lawn**

Suzanne Guest
(Assignor)

(Assignor)

Lois Guest
(Witness)

Subscribed and sworn to/affirmed before me on January 13, 2016, by Suzanne Guest who is personally known to me or has presented Florida Driver License as identification.

NOTARY PUBLIC STATE OF FLORIDA
HIAWATHA PREECE
MY COMMISSION # FF 130120
EXPIRES: June 5, 2018
Bonded Thru Budget Notary Services

Hiawatha Preece
Notary Public

The City Commission of the City of Pompano Beach, Florida, hereby accepts the foregoing assignment of Burial Right Agreement(s), subject to all terms and conditions thereof.

Lamar Fisher, Mayor

ATTEST:
Asceleta Hammond, **City Clerk**

TRANSFER AND ASSIGNMENT OF BURIAL RIGHT AGREEMENT

I (we), **Suzanne Guest**
(Assignor)
of **2850 NE 30th Street. Fort Lauderdale, FL 33306**
hereby **(Address)**
assign, transfer and set over this date to **John Guest**
(Assignee)
Right(s), title and interest in and to Burial Right Agreement# **1175** entered to the 13 day of **January 2016** between the City of Pompano Beach, a municipal corporation existing under the laws of the State of Florida, and being in Broward County, Florida and
Suzanne Guest
(Assignor)
(Said burial agreement(s) attached hereto) subject to all the terms and conditions thereof, and do hereby remise, release and quit-claim unto the said **John Guest**
(Assignee)

All my (our) right(s), title and interest in and to the Burial Right Agreement(s) described herein and agreed to be conveyed. Block **09** Lot(s) **6** Plot(s **3,4**) Lawn **North Lawn**

Suzanne Guest
(Assignor)

(Assignor)

Lois Guest
(Witness)

Subscribed and sworn to/affirmed before me on January 13, 2016, by Suzanne Guest who is personally known to me or has presented Florida Driver License as identification.

HIAWATHA PREECE
MY COMMISSION # FF 130120
EXPIRES: June 5, 2018
Bonded Thru Budget Notary Services

Notary Public

The City Commission of the City of Pompano Beach, Florida, hereby accepts the foregoing assignment of Burial Right Agreement(s), subject to all terms and conditions thereof.

Lamar Fisher, Mayor

ATTEST:
Asceleta Hammond, **City Clerk**

(Resident)

POMPANO BEACH CEMETERY

POMPANO BEACH, FLORIDA

THIS CERTIFIES THAT Suzanne Guest
NAME

611 SE 6th Avenue Pompano Beach Florida 33060
ADDRESS

has paid $ 1,200.00 the receipt of which is hereby acknowledged for the services listed below.

	AMOUNT		PLOT	LOT	BLOCK
Purchase of Lot SIZE 4'x10' plot AREA ____ SQ. FT. UNIT PRICE $ ____	800	00	3+4	6	9
			3+4	7	9
~~Purchase of Plot With Option to Buy Plot~~	400	00	3+4	8	9
Infant Plot					
Interment Charge					
Concrete Liner					
Memorial					
Transfer Charge					
Total	1,200.00				

№ 1175

Signed Bonda Sorbrch
MANAGER

Date January 15, 1973

DISTRIBUTION

CARE FUND		GENERAL		TOTAL
600	00	600	00	1,200.00

pompano beach
Florida's Warmest Welcome

Pompano Beach Cemetery
Burial Right Agreement

No. 1175

THIS INDENTURE, made this 14 day of January, A.D., 2016 between CITY OF POMPANO BEACH, a municipal corporation existing under the laws of the State of Florida, and being in Broward County, Florida, Party of the First Part, and **Mr.Edgar A. Guest** of the County of **Broward** and State of **Florida** Party of the Second Part, whose address is: **2740 SE 7th St. Pompano Beach, FL 33062.**

WITNESSETH, that the said Party of the First Part for and in consideration of the sum of **$0.00** to it in hand paid by the Party of the Second Part, receipt of which is hereby acknowledged, does hereby give and grant to the said Party of the Second Part, the exclusive and perpetual Right of Burial of the human dead in that certain parcel of land, situate, lying and being in Broward County, Florida, to wit:

Block **09** Lot **8** Plot **3,4** of Pompano Beach Cemetery **North Lawn** according to a plat thereof recorded in Plat Book 41, Page 40, of the public records of Broward County, Florida.

The right hereby granted and given shall be exercised and used in accordance with the Rules and Regulations of the City Commission, governing such property now in existence, and as hereafter prescribed, altered or amended from time to time. The Party of the Second Part does agree that such rules and regulations may be amended or altered from time to time by the City Commission, and as so amended will be valid and binding against the right herein given and granted. The Party of the Second Part does hereby agree that the premises above described shall remain under the perpetual care of the Party of the First Part in accordance with the Rules and Regulations now and hereafter in effect; and Party of the First Part hereby agrees that a true and correct copy of the current Rules and Regulations in existence shall be kept in the office of the Cemetery Management for inspection by Party of the Second Part at all reasonable times.

IN WITNESS WHEREOF, the said City of Pompano Beach has caused these presents to be signed in its name by its Mayor-Commissioner and City Manager and its corporate seal to be affixed, attested by its City Clerk the day and year above written.

PARTY OF THE SECOND PART

By_____

By_____

Lois S. Guest
WITNESS

_____
WITNESS

CITY OF POMPANO BEACH

By_____
CITY MANAGER

_____
MAYOR-COMMISSIONER

ATTEST

_____
CITY AUDITOR-CLERK (SEAL)

Signed, sealed and delivered in our presence:

_____
WITNESS

_____
WITNESS

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this_____201___ __by **Lamar Fisher** as Mayor, **Dennis W. Beach** as City Manager and **Asceleta Hammond**, as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who are personally known to me.

NOTARY'S SEAL

_____
NOTARY PUBLIC, STATE OF FLORIDA
(Signature of Notary Taking Acknowledgment)

_____
(Name of Acknowledger Typed, Printed or Stamped

cc: City Clerk
Public Works

pompano beach
Florida's Warmest Welcome

Pompano Beach Cemetery
Burial Right Agreement No. 1175

THIS INDENTURE, made this 14 day of January, A.D., 2016 between CITY OF POMPANO BEACH, a municipal corporation existing under the laws of the State of Florida, and being in Broward County, Florida, Party of the First Part, and **Mr.John C. Guest II** of the County of **Broward** and State of **Florida** Party of the Second Part, whose address is: **6024 SW 103 Loop. Ocala, FL 34476.**

WITNESSETH, that the said Party of the First Part for and in consideration of the sum of **$0.00** to it in hand paid by the Party of the Second Part, receipt of which is hereby acknowledged, does hereby give and grant to the said Party of the Second Part, the exclusive and perpetual Right of Burial of the human dead in that certain parcel of land, situate, lying and being in Broward County, Florida, to wit:

Block **09** Lot **06** Plot **3,4** of Pompano Beach Cemetery **North Lawn** according to a plat thereof recorded in Plat Book 41, Page 40, of the public records of Broward County, Florida.

The right hereby granted and given shall be exercised and used in accordance with the Rules and Regulations of the City Commission, governing such property now in existence, and as hereafter prescribed, altered or amended from time to time. The Party of the Second Part does agree that such rules and regulations may be amended or altered from time to time by the City Commission, and as so amended will be valid and binding against the right herein given and granted. The Party of the Second Part does hereby agree that the premises above described shall remain under the perpetual care of the Party of the First Part in accordance with the Rules and Regulations now and hereafter in effect; and Party of the First Part hereby agrees that a true and correct copy of the current Rules and Regulations in existence shall be kept in the office of the Cemetery Management for inspection by Party of the Second Part at all reasonable times.

IN WITNESS WHEREOF, the said City of Pompano Beach has caused these presents to be signed in its name by its Mayor-Commissioner and City Manager and its corporate seal to be affixed, attested by its City Clerk the day and year above written.

PARTY OF THE SECOND PART

By John C. Guest II

By

Lois S. Guest
WITNESS

WITNESS

CITY OF POMPANO BEACH

By
CITY MANAGER

MAYOR-COMMISSIONER

ATTEST

CITY AUDITOR-CLERK (SEAL)

Signed, sealed and delivered in our presence:

WITNESS

WITNESS

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this_____201____by **Lamar Fisher** as Mayor, **Dennis W. Beach** as City Manager and **Asceleta Hammond**, as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who are personally known to me.

NOTARY'S SEAL

NOTARY PUBLIC, STATE OF FLORIDA
(Signature of Notary Taking Acknowledgment)

(Name of Acknowledger Typed, Printed or Stamped

cc: City Clerk
Public Works

Lisa Vaughan
25350 US Highway 19 N #347
Clearwater, FL 33763

December 22, 2015

Pompano Beach Cemetery
400 SE 23 Avenue
Pompano Beach, FL 33062

I, Lisa Jo Vaughan am the only living child of Betty Jo Vaughan and I have no interest in the cemetery plot owned by my mother. I would like the plot to go to my mother's sister Nikki Workman.

Block 6
Lot 8
Grave 4

Thank you in advance and if I can be of any assistance you may reach me at 727-831-5995.

Sincerely,

Lisa Jo Vaughan Date: 1-10-2016

Lisa Jo Vaughan

Date: 1/07/6

Notary

CLAUDE COTE
NOTARY PUBLIC
STATE OF FLORIDA
Comm# FF080840
Expires 1/5/2018

pompano beach
Florida's Warmest Welcome

POMPANO BEACH CEMETERY

DECLARATION OF RESERVATION

Pursuant to section 92.51 (A) Burial Rights of the Pompano Beach Code of Ordinances:

I, Lisa Jo Vaughan, *owner of Plot(s)* 4, *Lot* 8, *Block* 6, *in the West Lawn of Pompano Beach Cemetery, designate the following person(s) for interment in the plot(s) noted above:*

Pibbi Workman
Name — *Plot:* ____

_____
Name — *Plot:* ____

Turanza Mulcan
Witness Signature

Pibbi Workman
Owner's Signature

5-12-41
Date of Birth

2-4-16
Date

This Declaration of Reservation may be amended by the Owner in the office of the Pompano Beach Cemetery.

pompano beach
Florida's Warmest Welcome

Pompano Beach Cemetery
Burial Right Agreement No. 4306

THIS INDENTURE, made this 4 day of Febuary, A.D., 2016 between CITY OF POMPANO BEACH, a municipal corporation existing under the laws of the State of Florida, and being in Broward County, Florida, Party of the First Part, and **Ms. Nikki Workman** of the County of **Broward** and State of **Florida** Party of the Second Part, whose address is: **2639 North Riverside Dr. #703 Pompano Beach FL 33062.**

WITNESSETH, that the said Party of the First Part for and in consideration of the sum of **$850.00** to it in hand paid by the Party of the Second Part, receipt of which is hereby acknowledged, does hereby give and grant to the said Party of the Second Part, the exclusive and perpetual Right of Burial of the human dead in that certain parcel of land, situate, lying and being in Broward County, Florida, to wit:

Block **06** Lot **8** Plot **4** of Pompano Beach Cemetery **West Lawn** according to a plat thereof recorded in Plat Book 41, Page 40, of the public records of Broward County, Florida.

The right hereby granted and given shall be exercised and used in accordance with the Rules and Regulations of the City Commission, governing such property now in existence, and as hereafter prescribed, altered or amended from time to time. The Party of the Second Part does agree that such rules and regulations may be amended or altered from time to time by the City Commission, and as so amended will be valid and binding against the right herein given and granted. The Party of the Second Part does hereby agree that the premises above described shall remain under the perpetual care of the Party of the First Part in accordance with the Rules and Regulations now and hereafter in effect; and Party of the First Part hereby agrees that a true and correct copy of the current Rules and Regulations in existence shall be kept in the office of the Cemetery Management for inspection by Party of the Second Part at all reasonable times.

IN WITNESS WHEREOF, the said City of Pompano Beach has caused these presents to be signed in its name by its Mayor-Commissioner and City Manager and its corporate seal to be affixed, attested by its City Clerk the day and year above written.

PARTY OF THE SECOND PART

By Nikki Workman

By_____

Terrance Mahon
WITNESS

_____
WITNESS

CITY OF POMPANO BEACH

By_____
CITY MANAGER

_____
MAYOR-COMMISSIONER

ATTEST

_____
CITY AUDITOR-CLERK (SEAL)

Signed, sealed and delivered in our presence:

_____
WITNESS

_____
WITNESS

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this_____201___ __by **Lamar Fisher** as Mayor, **Dennis W. Beach** as City Manager and **Asceleta Hammond**, as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who are personally known to me.

NOTARY'S SEAL

_____
NOTARY PUBLIC, STATE OF FLORIDA
(Signature of Notary Taking Acknowledgment)

_____
(Name of Acknowledger Typed, Printed or Stamped

cc: City Clerk
Public Works

Meeting Date: 3/8/16 Agenda Item 2

REQUESTED COMMISSION ACTION:

x Consent ____ Ordinance ____ Resolution ____ Consideration/Discussion ____ Presentation

SHORT TITLE Approval to award Bid L-17-16, Safety Shoes, to all responsive bidders: Gold Nugget Uniform d/b/a Argo Uniform Co., Red Wing Brands of America, Inc., Ritz Safety LLC Safety Shoe Distributors L.L.P., Sole Brothers, Inc. d/b/a Red Wing Shoes for annual open-end contracts, to be paid for from budgeted funds in various department budgets; total anticipated annual expenditure $59,454.

Summary of Purpose and Why:

Bid L-17-16 was issued to establish annual, open-end contracts for the purchase of safety shoes per Union contracts and Department requirements. Multiple contract awards will be made to provide Departments the flexibility to ensure their employees have quality shoes with good fit at prices less than those charged to retail customers. Bid awards are recommended to all responsive bidders at the discounted prices bid: Gold Nugget Uniform d/b/a Argo Uniform Co., Red Wing Brands of America, Inc., Ritz Safety LLC (Local Pompano Beach Business), Safety Shoe Distributors L.L.P., and Sole Brothers, Inc. d/b/a Red Wing Shoes. The contract period is one year, commencing upon award by the Commission, with contract renewal possible as stated in the bid specifications. Based on past purchases by all Departments, the annual expenditure for safety shoes from all vendors may total $59,454. City Commission approval of this contract award is requested.

(1) Origin of request for this action: Staff
(2) Primary staff contact: Otis J. Thomas, General Services Director 954 786-4098
(3) Expiration of contract, if applicable: n/a
(4) Fiscal impact and source of funding: As needed, from budgeted funds each department's clothing expenditure account.

DEPARTMENTAL COORDINATION	DATE	DEPARTMENTAL RECOMMENDATION	DEPARTMENTAL HEAD SIGNATURE
General Services	2/22/16	APPROVE	[illegible]
Finance	2/25/16	Approval	S. Libble
Budget	2/26/16	Approve	[illegible]

X City Manager [illegible]

ACTION TAKEN BY COMMISSION:

Ordinance	Resolution	Consideration	Workshop
1st Reading	1st Reading	Results:	Results:
2nd Reading			

MEMORANDUM

Purchasing #16-052
February 22, 2016

To: Dennis W. Beach, City Manager

Through: Otis J. Thomas, General Services Director

From: Cassandra LeMasurier, Purchasing Supervisor CL

Subject: Award Bid L-17-16, Safety Shoes

Contract Need/Background

Bid L-17-16 was issued to establish annual contracts for the purchase of safety shoes, as needed, by all City departments that require their employees to wear safety shoes. Bidders proposed discounted pricing for safety shoes, for mail order, pick up from local store, and shoemobile delivery. Departments open one or more Purchase Orders to vendors for the purchase of safety shoes after reviewing the discounted pricing offered by all bidders and the types of shoes offered. The multiple contract awards allow departments the flexibility to ensure their employees have quality shoes with a good fit at a price less than that charged to retail customers. Each department determines the amount to be paid toward a pair of shoes based on the applicable Union contract and their department budget. The employee must pay any amount due to the vendor in excess of their department's allowance.

Attached you will find copies of the bid tabulation, and bid solicitation document.

Bidders List

The Bidders List was created by using companies that have responded to prior bids, companies that have requested their names be placed on the Bid List, and companies from appropriate listings in other source books. The General Services Department conducted outreach to three (3) Pompano Beach companies that carry safety shoes to notify them of this bid opportunity.

Number of complete bids received 5

Advertising

The Bid was advertised in the Sun Sentinel, and notices were sent to bid notice agencies throughout the nation. Bid notices are also posted on the City's web page and sent to all registered bidders by email.

Funding

The total annual value of this contract, based on past expenditures by all departments with all contracted shoe vendors, is estimated to be $59,454. Purchases of safety shoes will be made, as required by all Departments, from budgeted funds in the appropriate clothing expenditure account.

Award Recommendation

It is recommended that one-year contract awards be made to all bidders responding to Bid L-17-16 based upon the discounted pricing offered: Gold Nugget Uniform d/b/a Argo Uniform Co., Red Wing Brands of America, Inc., Ritz Safety LLC (Local Pompano Beach Business), Safety Shoe Distributors L.L.P., and Sole Brothers, Inc. d/b/a Red Wing Shoes. The contract period will be one (1) year, commencing upon award by the Commission. The contract may be renewed for three (3) additional periods, subject to the terms and conditions contained in the bid specifications.

enclosures

cc: file

CITY OF POMPANO BEACH -- BID TABULATION
Bid #: L-17-16 Title: Safety Shoes
Date 2/17/2016

Bidder:	**Gold Nugget Uniform dba Argo Uniform Co. 101 N Dixie Hwy. Hallandale Beach, FL 33009**	**Red Wing Brands of America, Inc. 314 Main Street Red Wing, MN 55066**	**Ritz Safety LLC 2200 W Copans Road Pompano Beach, FL 33069**
Address for pick up of shoes:	101 N Dixie Hwy. Hallandale Beach, FL 33009	5436 W Sample Rd., Margate, FL 33073, 2828 N University Dr., Sunrise, FL 33322	2200 W Copans Road Pompano Beach, FL 33069
Warranty information:	provided	provided	provided
Minimum order amount mail order with free delivery/shipping:	no minimums	No mail ordering allowed	none
Minimum anticipated expenditure required to schedule a shoemobile visit:	Do not provide a shoemobile service	$2,000	Do not provide a shoemobile service
Extend prices to other governmental entities?	yes	yes	yes
Catalogs:	Bates, Haix, Thorogood	Red Wing Shoes (3 catalogs)	Timberland Pro, Georgia Boot, Thorogood, Work Zone, Reebok, Rockport Works, Warson Brands (Iron Age, Grabbers, Knapp), Florsheim Work
Price list:	January and February 2016	Price List 01/16	Price List 01/16
Percentage discount allowed from list prices:	15%	12%	15%
Discount is for:	mail order or pick up from local store	pick up from local store or shoemobile	mail order or pick up from local store
1) Catalog:	Bates 2015 Product Guide		Timberland Pro Spring 2016
Price list:	Price list 02/16		Price List 07/15
Percentage discount allowed from list prices:	15% of MAP		15%
Discount is for:	mail order or pick up from local store		mail order or pick up from local store

CITY OF POMPANO BEACH -- BID TABULATION
Bid #: L-17-16 Title: Safety Shoes
Date 2/17/2016

Bidder:	**Gold Nugget Uniform dba Argo Uniform Co. 101 N Dixie Hwy. Hallandale Beach, FL 33009**	**Red Wing Brands of America, Inc. 314 Main Street Red Wing, MN 55066**	**Ritz Safety LLC 2200 W Copans Road Pompano Beach, FL 33069**
2) Catalog:	Haix USA & Canada Collection 2014		Georgia Boot 2015 Catalog
Price list:	Price List 01/16		Price List 01/16
Percentage discount allowed from list prices:	15% off list price		15%
Discount is for:	mail order or pick up from local store		mail order or pick up from local store
3) Catalog:	Thorogood Uniform Footwear 2015		Thorogood 2016 Work Footwear
Price list:	Price List 01/16		Price List 01/16
Percentage discount allowed from list prices:	15% of MAP		15%
Discount is for:	mail order or pick up from local store		mail order or pick up from local store
4) Catalog:			Work Zone
Price list:			Price List 01/16
Percentage discount allowed from list prices:			15%
Discount is for:			mail order or pick up from local store
5) Catalog:			Reebok 2016 Occupational Footwear Catalog
Price list:			Price List 01/16
Percentage discount allowed from list prices:			15%
Discount is for:			mail order or pick up from local store
6) Catalog:			Rockport Works 2016 Occupational Footwear
Price list:			Price List 01/16
Percentage discount allowed from list prices:			15%

CITY OF POMPANO BEACH -- BID TABULATION
Bid #: L-17-16 Title: Safety Shoes
Date 2/17/2016

Bidder:	**Gold Nugget Uniform dba Argo Uniform Co. 101 N Dixie Hwy. Hallandale Beach, FL 33009**	**Red Wing Brands of America, Inc. 314 Main Street Red Wing, MN 55066**	**Ritz Safety LLC 2200 W Copans Road Pompano Beach, FL 33069**
Discount is for:			mail order or pick up from local store
7) Catalog:			Warson Brands 2016 Occupational Footwear (Iron Age, Grabber, Knapp)
Price list:			Price List 01/16
Percentage discount allowed from list prices:			15%
Discount is for:			mail order or pick up from local store
8) Catalog:			Florsheim Work 2016 Occupational Catalog
Price list:			Price List 01/16
Percentage discount allowed from list prices:			15%
Discount is for:			mail order or pick up from local store

CITY OF POMPANO BEACH -- BID TABULATION
Bid #: L-17-16 Title: Safety Shoes
Date 2/17/2016

Bidder:	**Safety Shoe Distributors, LLP** **6932 NW 72 Avenue** **Miami, FL 33166**	**Sole Brothers dba Red Wing Shoes** **5436 W Sample Road** **Margate, FL 33073**
Address for pick up of shoes:	6932 NW 72 Avenue Miami, FL 33166	5436 W Sample Road Margate, FL 33073
Warranty information:	provided	provided
Minimum order amount mail order with free delivery/shipping:	1 pair of safety shoes	$50
Minimum anticipated expenditure required to schedule a shoemobile visit:	$1,200	$1,000
Extend prices to other governmental entities?	yes	yes
Catalogs:	Hytest Safety Footwear Network(Hytest Footrests, Wolverine, CAT, Harley-Davidson Motor Cycles, Hush Puppies Professionals, Bates, Merrell), Timberland Pro, Tegopro, Puma Safety, Reebok, Florsheim Work, Rockport Works, Warson Brands (Iron Age, Grabbers, Knapp)	Red Wing Shoes, Irish Setter, Worx
Price list:	Price list 2015 and 01/2016	Price List 01/16
Percentage discount allowed from list prices:	5% - 30%	10% - 20%
Discount is for:	mail order, pick up from local store, and shoemobile	mail order, pick up from local store, and shoemobile
1) Catalog:	Hytest Safety Footwear Network 2016 (Hytest Footrests, Wolverine, CAT, Harley-Davidson Motor Cycles, Hush Puppies Professionals, Bates, Merrell)	Red Wing
Price list:	01/16 National Price List	Price List 01/16
Percentage discount allowed from list prices:	30%	20%
Discount is for:	mail order, pick up from local store, and shoemobile	mail order, pick up from local store, and shoemobile

CITY OF POMPANO BEACH -- BID TABULATION
Bid #: L-17-16 Title: Safety Shoes
Date 2/17/2016

Bidder:	**Safety Shoe Distributors, LLP** **6932 NW 72 Avenue** **Miami, FL 33166**	**Sole Brothers dba Red Wing Shoes** **5436 W Sample Road** **Margate, FL 33073**
2) Catalog:	Timberland Pro 2015 PPE Guide	Irish Setter
Price list:	Price List Fall 2015	Price List 01/16
Percentage discount allowed from list prices:	18%	10%
Discount is for:	mail order, pick up from local store, and shoemobile	mail order, pick up from local store, and shoemobile
3) Catalog:	Tegopro Professional Protection Spring 2016	Worx
Price list:	Price List 01/15	Price List 01/16
Percentage discount allowed from list prices:	5%	10%
Discount is for:	mail order, pick up from local store, and shoemobile	mail order, pick up from local store, and shoemobile
4) Catalog:	Puma Safety 2016	
Price list:	2016 Price List	
Percentage discount allowed from list prices:	12%	
Discount is for:	mail order, pick up from local store, and shoemobile	
5) Catalog:	Reebok 2016 Occupational Footwear Catalog	
Price list:	25%	
Percentage discount allowed from list prices:	Price List 01/16	
Discount is for:	mail order, pick up from local store, and shoemobile	
6) Catalog:	Florsheim Work 2016 Occupational Catalog	
Price list:	Price List 01/16	
Percentage discount allowed from list prices:	25%	

CITY OF POMPANO BEACH -- BID TABULATION
Bid #: L-17-16 Title: Safety Shoes
Date 2/17/2016

Bidder:	**Safety Shoe Distributors, LLP** **6932 NW 72 Avenue** **Miami, FL 33166**	**Sole Brothers dba Red Wing Shoes** **5436 W Sample Road** **Margate, FL 33073**
Discount is for:	mail order, pick up from local store, and shoemobile	
7) Catalog:	Rockport Works 2016 Occupational Footwear	
Price list:	Price List 01/16	
Percentage discount allowed from list prices:	20%	
Discount is for:	mail order, pick up from local store, and shoemobile	
8) Catalog:	Warson Brands 2016 Occupational Footwear (Iron Age, Grabbers,	
Price list:	Price List 01/16	
Percentage discount allowed from list prices:	15%	
Discount is for:	mail order, pick up from local store, and shoemobile	

Bidder Name _____

City of Pompano Beach, Purchasing Division
1190 N.E. 3rd Avenue, Building C
Pompano Beach, Florida, 33060

BID L-17-16 -- SAFETY SHOES

January 12, 2016

The City of Pompano Beach is currently soliciting bids to establish annual contracts for the purchase of safety shoes as needed. Sealed bids will be received until **2:00 p.m. (local), February 17, 2016**, in the Purchasing office at 1190 North East 3rd Avenue, Building C, Pompano Beach, Florida. These bids will then be publicly opened at the above time and date in the presence of City officials. Bid openings are open to the public. All bidders and/or their representatives are invited to be present. Bids may not be submitted by facsimile.

Once opened, the bids will be tabulated, evaluated, and presented to the appropriate City officials for contract award.

There are three (3) sections in this bid: Specifications/Special Conditions, General Conditions, and Proposal. Please read all sections thoroughly. Complete the bid in accordance with the instructions and return all numbered pages, initialed at the bottom of each page, when you submit your bid package. Failure to do so may result in the rejection of your bid.

If you need any additional information regarding this bid, please contact Cassandra LeMasurier, Purchasing Supervisor, at (954) 786-4098.

SECTION I - SPECIFICATIONS/SPECIAL CONDITIONS

A. Intent

The intent of this bid is to establish annual, open-end contracts for the purchase of safety work shoes and boots, with and without steel toes, for use by various City departments. Shoes will be required for both male and female personnel, and should be manufactured using appropriate patterns. Vendors must normally maintain an ample range of styles and sizes for both male and female shoes.

When necessary, footwear shall meet all O.S.H.A. and City requirements. All items shall be new and unused, manufacturer's latest production, carry manufacturer's standard warranty, and be of the best quality and highest grade of workmanship.

B. Contract Period

The initial contract period shall be one year, commencing upon award by the appropriate City officials.

The contract will be renewed for three additional one-year periods, unless the General Services Director or the successful bidder receiving award shall give notice to the other party of intent not to renew for the additional period, which notice must be delivered by certified mail and must be received at least sixty (60) days prior to the end of the current contract period. All terms, prices and conditions shall remain firm for the initial period of the contract, and any renewal period.

In the event delivery/service is scheduled to end because of the expiration of this contract, the Contractor shall continue to deliver/service upon the request of the General Services Director. The extension period shall not extend for more than ninety (90) days beyond the expiration date of the existing contract. The Contractor shall be compensated for the product/service at the rate in effect when this extension clause is invoked by the City.

C. Quantities

No warranty or guarantee is given or implied as to the total amount to be purchased as a result of this contract. Shoes will be ordered as needed.

Bidders should indicate in their proposal the minimum order required for free delivery (if shoes are ordered), and the minimum anticipated expenditure required to schedule a shoemobile visit.

D. Basis of Award

Contract award will be based on the percentage discount(s) offered, and/or discounted price lists. In order to meet the needs of the City, contract awards will be made to multiple vendors. The City will be the sole judge of acceptability or non-acceptability of a bidder's proposal.

E. Pricing

Bid pricing should be submitted as a discount from a published price list, or as firm discounted unit pricing of identified styles, or a combination of both pricing methods.

If bidding a discount, such discount must be a fixed discount from a current published price list. Discount(s) offered must be held firm for the entire period of the contract.

If bidding firm discounted unit pricing for identified styles, such discounted pricing must be held firm for the entire contract.

One copy of each catalog and price list should be submitted with your bid. In addition, successful bidders will be required to furnish additional catalogs and price lists, after bid award. Catalogs may be provided in electronic form.

If bidding on safety shoes to be delivered, prices bid shall be F.O.B. destination/delivered (all freight charges included in cost of shoes), to any City department, as indicated on each individual order. Bidders are to state the minimum order required for free delivery.

F. Delivery

Bids shall be based on either pick-up at bidder's place of business, or delivery to any location within the City of Pompano, or pre-arranged shoemobile visits to City site(s).

For items to be delivered, bidders are to state the number of calendar days after receipt of an order required for delivery. The City seeks a source of supply that will provide accurate and timely delivery. The ordering department must be notified of any "backorders" immediately, as employees cannot be without safety shoes for any extended length of time.

The awarded bidder must adhere to delivery schedules. If, in the opinion of the General Services Director, the successful bidder(s) fail at any time to meet the requirements herein, including the delivery requirements, then the contract may be cancelled upon written notice. See Section II - General Conditions, (6) "Delivery," and (10) "Default," for additional information.

G. Addenda

The issuance of a written addendum is the only official method whereby interpretation, clarification, or additional information can be given. If any addenda are issued to this Bid solicitation the City will attempt to notify all known prospective Bidders, however, it shall be the responsibility of each Bidder, prior to submitting their bid, to contact the City Purchasing Office at (954) 786-4098 to determine if addenda were issued and to make such addenda a part of their Bid proposal. Addenda will be posted to the City's website.

H. Small Business Enterprise Program

The Pompano Beach City Commission has established a voluntary Small Business Enterprise (SBE) Program to encourage and foster the participation of Small Business Enterprises in the central procurement activities of the City. The City of Pompano Beach is strongly committed to ensuring the participation of Small Business Enterprises (SBE's) as contractors and subcontractors for the procurement of goods and services. The definition of a SBE, for the purpose of the City's voluntary program, is taken from the State of Florida Statute 288.703(1).

As of the date of publication of this solicitation, a small business means an independently owned and operated business concern that employs 200 or fewer permanent full-time employees and that, together with its affiliates, has a net worth of not more than $5 million or any firm based in Florida that has a Small Business Administration 8(a) certification. As applicable to sole proprietorships, the $5 million net worth requirement shall include both personal and business investments.

The City encourages all firms to undertake good faith efforts to identify appropriate Small Business Enterprise partners. Sources of information on certified Small Business Enterprises include the Broward County Small Business Development Division, the State of Florida Office of Supplier Diversity, South Florida Water Management District, and other agencies throughout the State. The City includes links to these organizations from the City's website www.pompanobeachfl.gov. Please indicate in your response if your firm is a certified Small Business Enterprise.

Please note that, while no voluntary goals have been established for this solicitation, the City encourages small business participation in *all* of its procurements.

I. Local Business Program

On March 23, 2010, the City Commission approved a Resolution establishing a Local Business Program, a policy to increase the participation of City of Pompano Beach businesses in the City's procurement process.

You can view the list of City businesses that have a current Business Tax Receipt on the City's website, and locate local firms that are available to perform the work required by the bid specifications. The business information, sorted by business use classification, is posted on the webpage for the Business Tax Receipt Division: www.pompanobeachfl.gov.

Please note that, while no voluntary goals have been established for this solicitation, the City encourages Local Business participation in *all* of its procurements.

J. Price Adjustment - Discount Percentages

The percentage discount offered shall be applied to the price list submitted with bid. In the event revisions are made to the price list(s) or catalog(s) submitted with the bid, the vendor must forward this information to the Purchasing Division, with a written request that they be considered a replacement for the catalog(s) and price list(s) currently in effect. This written request must state the effective date of any such revision, and must be received by the City of Pompano Beach not less than ten (10) days prior to the effective date of same.

The City will notify the contractor in writing only in the event of non-acceptance of the submission. In the event of non-acceptance, the contract will be deemed terminated as of the close of business the day prior to effective date of change as stated in contractor's submission. In the event of acceptance by the City, the revisions will be effective as of the date stated in letter of submission.

THE CITY WILL ACCEPT ONLY ONE REVISION TO THE PRICE LIST DURING ANY ONE-YEAR CONTRACT PERIOD. The percentage discount offered at time of submission of bid is not subject to any reduction during the contract period. THE PRICES APPLICABLE TO ANY ORDER ARE THOSE THAT WERE IN EFFECT ON THE DATE OF ISSUANCE OF THE ORDER BY THE CITY.

If bidding firm discounted unit pricing for identified styles, rather than a discount from price list, such pricing must be held firm for the first year of the contract, and may only be changed once annually, with notice to be provided to the City as above.

K. Shoes to be Picked Up

For those bidders located a reasonable distance from the City of Pompano Beach, employees may choose to pick up shoes, rather than have them delivered.

Contractors who allow employees to pick up shoes at their store must agree to the following procedure:

> The City pays an established amount for safety shoes based upon provisions contained in current Union contracts. Each department/division will establish a Purchase Order for the purchase of safety shoes, and each Purchase Order will explain how much that department/division will pay toward safety shoes. Employees must pay any excess between their department/division's allowance, and the actual cost of the shoes, when they pick up the shoes. Contractor agrees to invoice the City for the net amount due, showing the City's Purchase Order number, employee's name, exact style of footwear, the amount paid by the employee, and the amount to be paid by the City. A Purchase Order is required for ALL orders. All tickets must be signed by employee and name printed under signature.
>
> All prices charged to City employees for safety shoes are to be the prices bid by the vendor to the City in this bid.

L. Warranty

Bidders should include a copy of each shoe manufacturer's standard warranty with their bid. Describe how your company process warranty claims for defective shoes in your Bid Proposal.

M. Shoemobile Service

All shoemobile service will only be scheduled upon request of a specific City department/division. No unscheduled visits will be allowed. Bidders must clearly state in their Proposal the price schedule to apply to shoes purchased through a shoemobile visit, and shall describe the range of styles and sizes carried by the shoemobile.

The purchase procedure through a shoemobile shall be identical to that outlined above for shoes to be picked up from a fixed store.

Any vendor providing shoemobile service must provide proof of insurance as specified.

N. Insurance

The contractor shall not commence operations (shoemobile service) pursuant to the terms of this agreement until certification or proof of insurance, detailing terms and provisions of coverage, has been received and approved by the City of Pompano Beach Risk Manager.

The following insurance coverage shall be required.

A. Worker's Compensation Insurance covering all employees and providing benefits as required by Florida Statute, Chapter 440, regardless of the size of the company (number of employees). The Contractor further agrees to be responsible for employment, control and conduct of its employees and for any injury sustained by such employees in the course of their employment.

B. Liability Insurance

1) Naming the City of Pompano Beach as an additional insured, on General Liability Insurance only, in connection with work being done under this contract.

2) Such Liability insurance shall include the following checked types of insurance and indicated minimum policy limits.

C. Real & Personal Property Insurance

The Contractor is responsible for any loss or damage to tools, equipment and supplies at the job site and is also responsible for any loss or damage to buildings being constructed until that building is completed and a certificate of occupancy is issued.

Bidder Name _____

LIMITS OF LIABILITY

	Type of Insurance		each occurrence	aggregate
GENERAL LIABILITY		***MINIMUM $1,000,000 OCCURRENCE/AGGREGATE***		
XX	comprehensive form			
XX	premises - operations	bodily injury		
__	explosion & collapse hazard	property damage		
__	underground hazard			
XX	products/completed operations hazard	bodily injury and		
XX	contractual insurance	property damage		
XX	broad form property damage	combined		
XX	independent contractors			
XX	personal injury	personal injury		
AUTOMOBILE LIABILITY		***MINIMUM $1,000,000 OCCURRENCE/AGGREGATE***		
		bodily injury (each person)		
XX	comprehensive form	bodily injury (each accident)		
XX	owned	property damage		
XX	hired	bodily injury and		
XX	non-owned	property damage combined		
REAL & PERSONAL PROPERTY				
XX	comprehensive form		Organization must show proof they have this coverage.	
EXCESS LIABILITY				
__	umbrella form	bodily injury and		
__	other than umbrella	property damage combined	$2,000,000.	$2,000,000.

The certification or proof of insurance must contain a provision for notification to the City ten (10) days in advance of any material change in coverage or cancellation.

The successful bidder shall furnish to the City the certification or proof of insurance required by the provisions set forth above, within ten (10) days after notification of award of contract. Certificate(s) to be issued to City of Pompano Beach, Attention Risk Manager, 100 West Atlantic Boulevard, Pompano Beach, Florida, 33060.

O. Questions And Communication

All questions regarding the solicitation are to be submitted in writing to the Purchasing Office, 1190 N.E. 3rd Avenue, Building C (Front), Pompano Beach, Florida 33060, fax (954) 786-4168 or email purchasing@copbfl.com. All questions must include the inquiring firm's name, address, telephone number and solicitation name and number. Questions must be received at least seven (7) calendar days before the scheduled solicitation opening. Oral and other interpretations or clarifications will be without legal effect. Any addendum necessary to answer questions will be posted to the City's website, and it is the Proposer's responsibility to obtain all addenda before submitting a response to the solicitation.

SECTION II - GENERAL CONDITIONS

1. Submission and Receipt of Bids

1.1. Bidders must use the form furnished by the City.

1.2. Bids having any erasures or corrections must be initialed by the bidder in ink. Bid shall be typewritten or filled in with pen and ink. Manual signature must be in ink.

1.3. It will be the sole responsibility of the bidder to have their bid delivered to the Purchasing office before the closing hour and date shown for receipt of bids.

1.4. Bid envelopes are provided with the bid forms. Your bid should be returned in the envelope (with the correct postage affixed if the bid is mailed) and should show the following information:

1.4.1. Your return mailing address in the upper left-hand corner.

1.4.2. Bid Number - write or type the bid number that appears on the first page of the bid form on the line for it on the front of the envelope.

1.4.3. Bid Items - write or type the title of the bid on line "Sealed bid for: _____".

1.5. If not using the City-provided envelope to mail your bid, or if using a delivery service other than the U.S. Post Office, use the following address:

City of Pompano Beach
Purchasing Division
1190 N.E. 3rd Avenue, Building C
Pompano Beach, FL 33060

1.6. Late bids will not be considered and will be returned unopened.

1.7. Bids transmitted by facsimile will not be accepted.

2. Completion of Bid Forms

Bidder is to fill in all of the blank spaces on the bid forms and return all numbered pages. Bidder should initial each page at the bottom to indicate he has read and understands the provisions contained on that page.

3. Signature Required

All bids must show the company name and be signed by a company officer or employee who has the authority to bind the company or firm by their signature. UNSIGNED BIDS WILL BE REJECTED. All manual signatures must be original - no rubber stamp, photocopy, etc.

4. Prices to be Firm

Bidder certifies that prices, terms and conditions in the bid will be firm for acceptance for a period of ninety (90) days from the date of bid opening unless otherwise stated by the City. Bids may not be withdrawn before the expiration of ninety (90) days. Prices shall be firm, with no escalator clauses unless specified by the City. Bids may be withdrawn after ninety (90) days only upon written notification to the City.

5. Extensions

If there is an error in extensions (mathematical calculations), unit prices will prevail.

6. Delivery

6.1. All items are to be bid F.O.B. delivered with freight charges prepaid and included, to designated addresses as specified by the City on its purchase order(s) or in letter(s) of authorization.

6.2. Bidder must state specific number of calendar days required for delivery of each item bid in appropriate space on the bid pages for consideration of award of this bid.

6.3. Delivery time will be a factor for any orders placed as a result of this bid. The City reserves the right to cancel such order(s) or any part thereof, without obligation, if delivery is not made within the time(s) specified herein and hold the vendor in default. (See Section 10.)

7. Signed Bid Considered an Offer

This signed bid is considered an offer on the part of the bidder, which offer shall be considered accepted upon approval by the City Commission of the City of Pompano Beach (if required). The City of Pompano Beach will issue a purchase order or a letter of authorization to the successful bidder, as authorization for delivery of the items awarded subject to requirements of detailed specifications and those contained herein.

In the event of default on the part of the bidder after such acceptance, the City may take such action as it deems appropriate including legal action for damages or specific performance.

8. Quality

All materials used for the manufacture or construction of any supplies, materials or equipment covered by this bid shall be new. The items bid must be new, the latest model, of the best quality and highest grade workmanship unless otherwise specified in this bid by the City.

9. Brand Names

Whenever proprietary names are used, (whether or not followed by the words "or approved equal"), the item(s) will be subject to acceptance and/or approval by authorized City personnel, and said personnel will deem it their prerogative to select the item(s) which are lowest bid, item by item, meeting specifications from the information furnished by the bidder with the bid and/or sample inspection or testing of the item(s) called for herein.

10. Default Provisions

In the event of default by the bidder, the City reserves the right to procure the item(s) bid from other sources and will hold the bidder responsible for excess costs incurred as a result. A contractor who defaults on a City contract may be banned from doing business with the City for a period of 36 months from the date of default.

11. Samples

Samples, when requested, must be furnished at, or before, bid opening, (unless otherwise specified), and will be delivered at no charge to the City. If not used and/or destroyed in testing, said sample(s) will, at bidder's request, be returned within thirty (30) days of bid award at bidder's expense. If requested by the City, samples and/or inspection of like items are to be made available in the southeast Florida area.

12. Acceptance of Materials

The material delivered as a result of this bid shall remain the property of the seller until a physical inspection and actual usage of the item(s) is made and thereafter deemed acceptable to the satisfaction of the City, in compliance with the terms and specifications contained herein. In the event that the item(s) supplied to the City is/are found to be defective, or does/do not conform to specifications, the City reserves the right to cancel the order upon written notice to the seller and return the item(s) to the seller at the seller's expense.

13. Manufacturers' Certifications

The City reserves the right to obtain separate manufacturer certification of all statements made in the bid.

14. Copyrights and Patent Rights

Bidder warrants that there has been no violation of copyrights or patent rights in manufacturing, producing and/or selling the item(s) ordered or shipped as a result of this bid, and successful bidder agrees to hold the City harmless from any and all liability, loss or expense by any such violation.

15. Laws and Regulations

All applicable laws and regulations of the Federal government, the State of Florida, and ordinances of the City of Pompano Beach will apply to any resulting bid award.

16. Taxes

The City of Pompano Beach is exempt from any taxes imposed by the State and Federal government. Exemption certificates will be provided upon request. State sales tax exemption certificate #85-8012621672C-6 and Federal exemption tax #59-74-0083K apply and appear on each purchase order.

17. Conflict of Instructions

If a conflict exists between the General Conditions and instructions contained herein, and the Specific Conditions and instructions contained herein, the specifics shall govern.

18. Exceptions to Specifications

For purposes of evaluation, bidder must indicate any exception to the specifications, terms, and/or conditions, no matter how minor. This includes any agreement or contract forms supplied by the bidder that are required to be signed by the City. If exceptions are not stated by the bidder, in his bid, it will be understood that the item(s)/services fully comply with the specifications, terms and/or conditions stated by the City. Exceptions are to be listed by the bidder on an attachment included with his bid. The City will not determine exceptions based on a review of any attached sales or manufacturer's literature.

19. Warranties

The City of Pompano Beach will not accept any disclaimer of the warranties of merchantability and fitness for a particular purpose for the product(s) offered. Proposals will clearly state any additional warranties and guarantees against defective materials and workmanship. A copy of the complete manufacturer's warranty statement is to be submitted with the bid.

20. Retention of Records and Right to Access Clause

The successful bidder shall preserve and make available all financial records, supporting documents, statistical records, and any other documents pertinent to this contract for a period of five (5) years after termination of this contract; or if an audit has been initiated and audit findings have not been resolved at the end of these five (5) years, the records shall be retained until resolution of audit finding.

21. Facilities

The City reserves the right to inspect the bidder's facilities at any time, without prior notice.

22. Anti-collusion Statement

By submitting this bid, the bidder affirms that this bid is without previous understanding, agreement, or connection with any person, business, or corporation submitting a bid for the same materials, supplies, or equipment, and that this bid is in all respects fair, and without collusion or fraud.

Additionally, bidder agrees to abide by all conditions of this bid and certifies that they are authorized to sign this bid for the bidder. In submitting a bid to the City of Pompano Beach, the bidder offers and agrees that if the bid is accepted, the bidder will convey, sell, assign or transfer to the City of Pompano Beach all rights, title and interest in and to all causes of action it may now or hereafter acquire under the Anti-trust laws of the United States and the State of Florida for price fixing relating to the particular commodities or services purchased or acquired by the City of Pompano Beach. At the City's discretion, such assignment shall be made and become effective at the time the City tenders final payment to the bidder.

23. Indemnification

Contractor covenants and agrees that it will indemnify and hold harmless the City and all of the City's officers, agents, and employees from any claim, loss, damage, costs, charge or expense arising out of any act, action, neglect or omission by contractor during the performance of the contract, whether direct, or indirect, and whether to any person or property to which the City of said parties may be subject, except that neither the contractor nor any of its sub-contractors will be liable under this section for damages arising out of injury or damage to persons or property directly caused or resulting from the sole negligence of City or any of its officers, agents, or employees.

24. Reservation for Rejections and Award

The City reserves the right to accept or reject any or all bids or parts of bids, to waive irregularities and technicalities, and to request re-bids. The City also reserves the right to award the contract on such items the City deems will best serve the interests of the City. The City further reserves the right to award the contract on a "split order" basis, or such combination as shall best serve the interests of the City unless otherwise specified.

25. Interpretations

Any questions concerning the conditions and specifications contained in this bid should be submitted in writing and received by the Purchasing Division no later than five (5) working days prior to the bid opening. The City of Pompano Beach shall not be responsible for oral interpretations given by any City personnel or representative or others. The issuance of a written addendum is the only official method whereby interpretation, clarification or additional information can be given.

26. Failure to Respond

If you elect not to bid, please return enclosed "Statement of No Response" form by the bid due date, and state your reason(s) for not bidding. Failure to respond, either by submitting a bid, or by submitting a "Statement of No Response" form, may result in your name being removed from our mailing list.

27. Bid Tabulations

Bidders who wish to receive a copy of the bid tabulation should request it by enclosing a stamped, self-addressed envelope with their bid, or by requesting a tabulation be sent to their fax machine. Bid results will not be given out by telephone. The City does not notify unsuccessful bidders of contract awards.

28. Assignment

Successful bidder may not assign or transfer this contract, in whole or part, without prior written approval of the City of Pompano Beach.

29. Termination for Convenience of City

Upon seven (7) calendar days written notice delivered by certified mail, return receipt requested, to the successful bidder, the City may without cause and without prejudice to any other right or remedy, terminate the agreement for the City's convenience whenever the City determines that such termination is in the best interest of the City. Where the agreement is terminated for the convenience of the City the notice of termination to the successful bidder must state that the contract is being terminated for the convenience of the City under the termination clause and the extent of the termination. Upon receipt of such notice, the contractor shall promptly discontinue all work at the time and to the extent indicated on the notice of termination, terminate all outstanding sub-contractors and purchase orders to the extent that they relate to the terminated portion of the contract and refrain from placing further orders and subcontracts except as they may be necessary, and complete any continued portions of the work.

30. Public Entity Crimes

In accordance with Florida State Statute 287.133 (2)(a): 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 s. 287.017 for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

31. Governing Procedures

This bid is governed by the applicable sections of the City's General Services Procedures Manual. A copy of the manual is available for review at the City Purchasing office.

32. Identical Tie Bids

In accordance with Section 287.087, State of Florida Statutes, preference shall be given to businesses with Drug-free Workplace Programs. Whenever two or

more bids which are equal with respect to price, quality, and service are received for the procurement of commodities or contractual service, a bid received from a business that certifies that it has implemented a Drug-free Workplace Program shall be given preference in the award process.

Established procedures for processing tie bids will be followed if none of the tied vendors have a Drug-free Workplace Program. In order to have a Drug-free Workplace Program, a business shall:

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

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

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

4) In the statement specified in subsection (1), notify the employees that, as a condition of working on the commodities or contractual services that are under 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 of any State, for a violation occurring in the workplace no later than five (5) days after such conviction.

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

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

33. Invoicing/Payment

All invoices should be sent to City of Pompano Beach, Accounts Payable, P.O. Drawer 1300, Pompano Beach, Florida, 33061. In accordance with Florida Statutes, Chapter 218, payment will be made within 45 days after receipt of merchandise and a proper invoice. The City will attempt to pay within fewer days if bidder offers a payment discount. The City cannot make advance payments, make deposits in advance of receipt of goods, or pay C.O.D. Bidders should state any payment discount in space provided on Proposal form.

34. Optional Contract Usage

As provided in Section 287.042(17), Florida Statutes, State of Florida agencies may purchase from a contract resulting from this solicitation, provided the Department of Management Services, Division of Purchasing, has certified its use to be cost effective and in the best interest of the State. Contractor(s) may sell such commodities or services certified by the Division to State of Florida agencies at the contractor's option.

35. Non Discrimination

There shall be no discrimination as to race, color, religion, gender, national origin, ancestry, and physical or mental disability in the operations conducted under this contract. Included as applicable activities by the contractor under this section are the solicitation for, or purchase of, goods or services, or the subcontracting of work in performance of this contract.

36. Notice To Contractor

The employment of unauthorized aliens by any contractor is considered a violation of Section 274A(e) of the Immigration and Nationality Act. If the contractor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of the contract.

Bidder Name _____

SECTION III - PROPOSAL

IMPORTANT!!!
BID MUST BE SIGNED TO BE CONSIDERED FOR AWARD
PER GENERAL CONDITIONS SECTION 3

Complete the following information for each manufacturer offered. Make a copy of this page if necessary.

DESCRIPTION AND DISCOUNT:

CATALOG: _____
(Name of Manufacturer or other Identification)

PRICE LIST: _____
(Date and Number)

PERCENTAGE DISCOUNT ALLOWED FROM LIST PRICES: _____

This discount is for: _____ Mail Order _____ Pick Up from Local Store _____ Shoemobile

DESCRIPTION AND DISCOUNT:

CATALOG: _____
(Name of Manufacturer or other Identification)

PRICE LIST: _____
(Date and Number)

PERCENTAGE DISCOUNT ALLOWED FROM LIST PRICES: _____

This discount is for: _____ Mail Order _____ Pick Up from Local Store _____ Shoemobile

DESCRIPTION AND DISCOUNT:

CATALOG: _____
(Name of Manufacturer or other Identification)

PRICE LIST: _____
(Date and Number)

PERCENTAGE DISCOUNT ALLOWED FROM LIST PRICES: _____

This discount is for: _____ Mail Order _____ Pick Up from Local Store _____ Shoemobile

Bidder Name _____

(One copy of each catalog and price list should be included with your bid.)

If proposing fixed prices for specific styles include a detailed list with style numbers and prices with your bid. Indicate if prices are for mail order, pick up from local store, or shoemobile service.

If prices for shoemobile sales are different from those stated above, describe pricing completely in an attachment to your bid.

State address of your store for pick up of shoes by City employees:

_____

_____

_____

Describe in detail how your company handles warranty claims for defective shoes (including proof of purchase, time limits, types of damage excluded, etc.):

_____

_____

_____

_____

_____

_____

Include a copy of each shoe manufacturer's warranty with your bid proposal.

Minimum Order Amount Mail Order with free delivery/shipping: $_____

Minimum anticipated expenditure required to schedule a shoemobile visit: $_____

If awarded the contract resulting from this bid, will your company agree to extend the same prices, terms and conditions to other governmental entities? (Note -- Optional, agreement not required for contract award.)

_____ Yes _____ No

Bidder Name _____

Conflict of Interest: For purposes of determining any possible conflict of interest, all bidders must disclose if any City of Pompano Beach employee is also an owner, corporate officer, or employee of their business. Indicate either "Yes" (a City employee is also associated with your business), or "No". If yes, give person(s) name(s) and position(s) with your business. (Note: If answer is "Yes", you must file a statement with the Supervisor of Elections, pursuant to Florida Statutes 112.313.)

No ___ Yes ___ Name & position _____

Drug-Free Workplace: Whenever two or more bids which are equal with respect to price, quality, and service are received for the procurement of commodities or contractual service, a bid received from a business that certifies that it has implemented a Drug-free Workplace Program shall be given preference in the award process. If bidder's company has a Drug-free Workplace Program as outlined in General Conditions, section 32., so certify below:

Yes, bidder has a drug-free workplace program ___ No _____

Name & address of company submitting bid:

.....

.....

..... zip .....

Federal Employer Identification #: .....

Telephone number: .....

"Fax" number: .....

Email: .....

Acknowledgment of the following Addenda is noted:

Addendum Number(s)_____ Date(s) Issued _____

Manual signature of company officer: .....

IMPORTANT!!! -- SIGN IN BOX ABOVE ↑, TYPE OR PRINT NAME BELOW ↓

Signer's name (typed or printed): .....

Title of signer: .....

Bidder Name _____

L-17-16, SAFETY SHOES
STATEMENT OF NO RESPONSE

If you do not intend to bid on this requirement, please complete and return this form by the bid opening deadline to the City of Pompano Beach Purchasing Division, Building C, 1190 N.E. 3rd Avenue, Pompano Beach, Florida 33060; this form may be faxed to (954) 786-4168. Failure to respond, either by submitting a bid, or by submitting a "Statement of No Response" form, may result in your firm's name being removed from our mailing list.

WE, the undersigned, have declined to bid on this solicitation for the following reason(s):

_____ We do not offer this product or an equivalent

_____ Our workload would not permit us to perform

_____ Insufficient time to respond to the Invitation for Bid

_____ Unable to meet specifications (explain below)

_____ Other (specify below)

Remarks _____

_____

_____

_____

_____

COMPANY NAME _____

ADDRESS _____

TELEPHONE _____

SIGNATURE/TITLE _____

DATE _____

Meeting Date: March 8, 2016 Agenda Item: 3

REQUESTED COMMISSION ACTION:

X Consent	Ordinance	X Resolution	Consideration/ Discussion	Presentation

SHORT TITLE A RESOLUTION APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A SATISFACTION OF MORTGAGE PERTAINING TO A FIRST TIME HOMEBUYER LOAN GIVEN BY THE CITY OF POMPANO BEACH TO TAMMY L. CHINELLY, A SINGLE WOMAN; PROVIDING AN EFFECTIVE DATE.

Summary of Purpose and Why:

This Resolution authorizes execution for reasons of hardship the attached Satisfaction of Mortgage securing $20,000 in SHIP First Time Homebuyer funds loaned to Tammy L. Chinelly in 2006. The City will be paid $7,000 to satisfy its lien. The property is under short sale contract for $90,000.00.

The present First Mortgage holder, US Bank, has agreed to accept $65,490.90 in satisfaction of the loan's $126,990 loan's face value. Ms. Tammy L. Chinelly will not receive any sale proceeds.

(1) Origin of request for this action: Office of Housing and Urban Improvement
(2) Primary staff contact: Miriam Carrillo, Director Ext. 4656
(3) Expiration of contract, if applicable:
(4) Fiscal impact and source of funding: SHIP Funds in the amount of $20,000

DEPARTMENTAL COORDINATION		DEPARTMENTAL RECOMMENDATION	DEPARTMENTAL HEAD SIGNATURE
OHUI	2/26/16	Approval	
City Attorney	2/26/16	✓	
Finance	2/26/16	Approval	S. Sibble

X City Manager

ACTION TAKEN BY COMMISSION:

Ordinance	Resolution	Consideration	
Workshop			
1st Reading	1st Reading	Results:	Results:
2nd Reading			

pompano beach
Florida's Warmest Welcome

City of Pompano Beach
Office of Housing and Urban Improvement

Memorandum No. 16-062

MEMORANDUM

DATE: February 26, 2016

TO: Dennis Beach, City Manager

THROUGH: Mark Berman, City Attorney

FROM: Miriam Carrillo, Director MC

RE: Agenda Item - Approval for Short Sale Satisfaction of Mortgage

---

This Resolution authorizes execution for reasons of hardship the attached Satisfaction of Mortgage securing $20,000 in SHIP First Time Homebuyer funds loaned to Tammy L. Chinelly in 2006. The City will be paid $7,000 to satisfy its lien. The property is under short sale contract for $90,000.00.

The present First Mortgage holder, US Bank, has agreed to accept $65,490.90 in satisfaction of the loan's $126,990 loan's face value. The Third Mortgage holder, State of Florida has agreed to accept $3,000 and Ms. Tammy L. Chinelly will not receive any sale proceeds.

Please present the attached Resolution and Satisfaction of Mortgage to the City Commission on March 8th, 2016 for approval.

Thank you.

Attachments: Resolution
Satisfaction of Mortgage
HUD-1
Mortgage Deed

RESOLUTION NO. 2016-_____

CITY OF POMPANO BEACH
Broward County, Florida

A RESOLUTION APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A SATISFACTION OF MORTGAGE PERTAINING TO A FIRST TIME HOMEBUYER LOAN GIVEN BY THE CITY OF POMPANO BEACH TO TAMMY L. CHINELLY, A SINGLE WOMAN; PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA:

SECTION 1. That a Satisfaction of Mortgage pertaining to a First Time Homebuyer Loan given by the City of Pompano Beach, a copy of which satisfaction is attached hereto and incorporated by reference as if set forth in full, is hereby approved.

SECTION 2. That the proper City officials are hereby authorized to execute said Satisfaction of Mortgage.

SECTION 3. That Resolution shall become effective upon passage.

PASSED AND ADOPTED this _____ day of _____, 2016.

_____

LAMAR FISHER, MAYOR

ATTEST:

_____

ASCELETA HAMMOND, CITY CLERK

"CITY":

Witnesses:

CITY OF POMPANO BEACH

_____

By:_____
LAMAR FISHER, MAYOR

_____

By:_____
Dennis Beach
CITY MANAGER

Attest:

_____
ASCELETA HAMMOND
CITY CLERK

(SEAL)

Approved As to Form:

_____
MARK E. BERMAN
CITY ATTORNEY

STATE OF FLORIDA

COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this _____ day of _____, 2016 by LAMAR FISHER, as Mayor, DENNIS BEACH, as City Manager and ASCELETA HAMMOND, as City Clerk of the City of Pompano Beach, a municipal Florida corporation, on behalf of the municipal corporation, who are personally known to me.

NOTARY'S SEAL:

_____
NOTARY PUBLIC, STATE OF FLORIDA

_____
(Name of Acknowledger Typed, Printed or Stamped)

_____
Commission Number

THIS INSTRUMENT PREPARED BY:

Office of Housing and Urban Improvement
City of Pompano Beach
P. O. Box 1300
Pompano Beach, Florida 33061

SATISFACTION OF MORTGAGE

The **CITY OF POMPANO BEACH**, located at 100 West Atlantic Boulevard, Pompano Beach, Florida 33060, the undersigned owner and holder of a certain mortgage deed and of the indebtedness secured by it, made by TAMMY L. CHINELLY, of 1263 SW 46 Avenue, Pompano Beach, Florida 33069, to the CITY OF POMPANO BEACH for Twenty Thousand and 00/100 Dollars ($20,000.00) dated October 6, 2006 and recorded in Official Records Book 42969, Pages 1899, of the Public Records of Broward County, Florida, the property situate in Broward County, Florida, described as follows, to-wit:

> Condominium Unit No. 2113, in Building 21, of ROYAL POINCIANA, A CONDOMINIUM, according to the Declaration of Condominium thereof, as recorded on February 2nd, 2006, in Official Records Book 41388, at Page 421, of the Public Records of Broward County, Florida; together with exhibits, amendments thereof, and an undivided interest in the common elements.
>
> **A/K/A 1263 SW 46th Avenue, #2113**
> **POMPANO BEACH, FL 33069**
>
> **A/K/A Royal Poinciana Condo Unit 13 Bldg 21**

does acknowledge by and through its undersigned officials that the above-described indebtedness has been satisfied, and by this instrument does cancel the above-described mortgage and the indebtedness secured by said mortgage.

A. Settlement Statement

U.S. Department of Housing and Urban Development

OMB No. 2502-0265

B. Type of Loan

◯ 1. FHA ◯ 2. FmHA ◯ 3. Conv. Unins. ◯ 4. V.A. ◯ 5. Conv. Ins.	6. File Number chinnelly	7. Loan Number ID:	8. Mortg. Ins. Case Num.

C. **NOTE:** This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c.)" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.

D. NAME OF BORROWER: Morton Kroneberg, a single man
Address of Borrower:

E. NAME OF SELLER: Tammy Chinnelly, a single woman
Address of Seller: TIN:

F. NAME OF LENDER:
Address of Lender:

G. PROPERTY LOCATION: 1263 SW 46th Ave, Pompano Beach, Florida 33069

H. SETTLEMENT AGENT: Supreme Title TIN: 56-2392940
Place of Settlement: 4175 Davie Road, Suite 110, Davie, Florida 33314 Phone: 954-726-5580

I. SETTLEMENT DATE: 2/29/16 **DISBURSEMENT DATE:** 2/29/16

J. Summary of borrower's transaction		K. Summary of seller's transaction	
100. Gross amount due from borrower:		400. Gross amount due to seller:	
101. Contract sales price	90,000.00	401. Contract sales price	90,000.00
102. Personal property		402. Personal property	
103. Settlement charges to borrower (Line 1400)	37.00	403.	
104.		404.	
105.		405.	
Adjustments for items paid by seller in advance:		Adjustments for items paid by seller in advance:	
106. City/town taxes		406. City/town taxes	
107. County taxes		407. County taxes	
108. Assessments		408. Assessments	
109.		409.	
110.		410.	
111.		411.	
112.		412.	
120. Gross amount due from borrower:	90,037.00	**420. Gross amount due to seller:**	90,000.00
200. Amounts paid or in behalf of borrower:		500. Reductions in amount due to seller:	
201. Deposit or earnest money		501. Excess deposit (see instructions)	
202. Principal amount of new loan(s)		502. Settlement charges to seller (line 1400)	8,427.50
203. Existing loan(s) taken subject to		503. Existing loan(s) taken subject to	
204. Principal amount of second mortgage		504. Payoff of first mortgage loan	65,491.90
205.		505. Payoff of second mortgage loan	3,000.00
206.		506. Deposits held by seller	
207. Principal amt of mortgage held by seller		507. Principal amt of mortgage held by seller	
208.		508. HAFA Relocation	10,000.00
209.		509. Third mortgage	3,000.00
Adjustments for items unpaid by seller:		Adjustments for items unpaid by seller:	
210. City/town taxes		510. City/town taxes	
211. County taxes from 01/01/16 to 02/29/16	80.60	511. County taxes from 01/01/16 to 02/29/16	80.60
212. Assessments		512. Assessments	
213.		513.	
214.		514.	
215.		515.	
216.		516.	
217.		517.	
218.		518.	
219.		519.	
220. Total paid by/for borrower:	80.60	**520. Total reductions in amount due seller:**	90,000.00
300. Cash at settlement from/to borrower:		600. Cash at settlement to/from seller:	
301. Gross amount due from borrower (line 120)	90,037.00	601. Gross amount due to seller (line 420)	90,000.00
302. Less amount paid by/for the borrower (line 220)	(80.60)	602. Less total reductions in amount due seller (line 520)	(90,000.00)
303. Cash (☑ From ☐ To) Borrower:	89,956.40	603. Cash (☐ To ☐ From) Seller:	0.00

Substitute Form 1099 Seller Statement: The information contained in blocks E, G, H, and I and on line 401 is important tax information and is being furnished to the IRS. If you are required to file a return, a negligence penalty or other sanction will be imposed on you if this item is required to be reported and the IRS determines that it has not been reported.

Seller Instructions: If this real estate was your principal residence, file Form 2119, Sale or Exchange of Principal Residence, for any gain, with your tax return; for other transactions, complete the applicable parts of Form 4797, Form 6262 and/or Schedule D (Form 1040).

L. Settlement charges	Borrower POC Seller POC	Paid from Borrower's Funds at Settlement	Paid from Seller's Funds at Settlement
700. Total Sales/Brokers Com. based on price	$90,000.00 @ 6.0000 % = 5,400.00		
701. 2,700.00 3.0000 % to			
702. 2,700.00 3.0000 % to			
703. Commission paid at settlement			5,400.00
704. to			
800. Items payable in connection with loan:	**Borrower POC Seller POC**		
801. Loan origination fee % to			
802. Loan discount % to			
803. Appraisal fee to			
804. Credit report to			
805. Lender's inspection fee to			
806. Mortgage insurance application fee to			
807. Assumption Fee to			
808. to			
809. to			
810. to			
811. to			
900. Items required by lender to be paid in advance:	**Borrower POC Seller POC**		
901. Interest from to @ /day			
902. Mortgage insurance premium for months to			
903. Hazard insurance premium for years to			
904. Flood insurance premium for years to			
905. years to			
1000. Reserves deposited with lender:	**Borrower POC Seller POC**		
1001. Hazard insurance	months @ per month		
1002. Mortgage insurance	months @ per month		
1003. City property taxes	months @ per month		
1004. County property taxes	months @ per month		
1005. Annual assessments	months @ per month		
1006. Flood insurance	months @ per month		
1007.	months @ per month		
1008.	months @ per month		
1009. Aggregate accounting adjustment			
1100. Title charges:	**Borrower POC Seller POC**		
1101. Settlement or closing fee to Supreme Title		$750.00	~~1,600.00~~
1102. Abstract or title search to			
1103. Title examination to			
1104. Title insurance binder to			
1105. Document preparation to			
1106. Notary fees to			
1107. Attorney's Fees to			
(includes above item numbers:)			
1108. Title Insurance to Lawyers Title Insurance Company/Supreme Title			517.50
(includes above item numbers:)			
1109. Lender's coverage (Premium):			
1110. Owner's coverage (Premium): $90,000.00 ($517.50)			
1111. Endorse:			
1112. to			
1113. to			
1200. Government recording and transfer charges:			
1201. Recording fees Deed $18.50 Mortgage(s) $18.50 Releases		37.00	
1202. City/county tax/stamps Deed Mortgage(s)			
1203. State tax/stamps Deed $630.00 Mortgage(s)			630.00
1204. to			
1205. to			
1300. Additional settlement charges:	**Borrower POC Seller POC**		
1301. HOA Transfer Fee to			200.00
1302. Pest Inspection to			
1303. city lien search to Reliable Lien Search Inc.			180.00
1304. past due utilities to			
1305. to			
1306. to			
1307. to			
1308. to			
1309.			
1400. Total settlement charges:			
(Enter on lines 103, Section J and 502, Section K)		37.00	8,427.50

I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction. I further certify that I have received a copy of the HUD-1 Settlement Statement.

Morton Kroneberg — Borrower

Tammy Chinnelly — Seller

Borrower

Seller

The HUD-1 Settlement Statement which I have prepared is a true and accurate account of this transaction. I have caused, or will cause, the funds to be disbursed in accordance with this statement.

Supreme Title

By: _____ _____

As Its Authorized Representative Date

WARNING: It is a crime to knowingly make false statements to the United States on this or any other similar form. Penalties upon conviction can include a fine and imprisonment. For details see: Title 18 U.S. Code Section 1001 and Section 1010.

DoubleTime®

UNIFORM BORROWER ASSISTANCE FORM

If you are experiencing a temporary or long-term hardship and need help, you must complete and submit this form along with other required documentation to be considered for available solutions. On this page, you must disclose information about (1) you and your intentions to either keep or transition out of your home; (2) the property's status; (3) bankruptcy; and (4) your credit counseling agency.

On Page 2, you must disclose information about all of your income, expenses and assets. Page 2 also lists the required income documentation that you must submit in support of your request for assistance. Then on Page 3, you must complete the Hardship Affidavit in which you disclose the nature of your hardship. The Hardship Affidavit informs you of the required documentation that you must submit in support of your hardship claim.

NOTICE: In addition, when you sign and date this form, you will make important certifications, representations and agreements, including certifying that all of the information in this Borrower Assistance Form is accurate and truthful and any identified hardship has contributed to your submission of this request for mortgage relief.

REMINDER: The Borrower Response Package you need to return consists of: (1) this completed, signed and dated Borrower Assistance Form; (2) completed and signed IRS Form 4506T-EZ (4506T for self-employed borrowers or borrowers with rental income); (3) required income documentation; and (4) required hardship documentation.

Loan Number 9900160830 (usually found on your monthly mortgage statement)
Servicer's Name U.S. Bank

I want to: ☐ Keep the Property ☐ Vacate the Property ☑ Sell the Property ☐ Undecided

The property is currently: ☐ My Primary Residence ☑ A Second Home ☐ An Investment Property

The property is currently: ☐ Owner Occupied ☐ Renter Occupied ☑ Vacant

BORROWER		CO-BORROWER	
BORROWER'S NAME Tammy Chinelly Negron		CO-BORROWER'S NAME	
SOCIAL SECURITY NUMBER 590507275	DATE OF BIRTH 10/17/1978	SOCIAL SECURITY NUMBER	DATE OF BIRTH
HOME PHONE NUMBER WITH AREA CODE		HOME PHONE NUMBER WITH AREA CODE	
CELL OR WORK NUMBER WITH AREA CODE 954-336-2770		CELL OR WORK NUMBER WITH AREA CODE	

MAILING ADDRESS
5717 NW 70th Ave. Tamarac, FL 33321

PROPERTY ADDRESS (IF SAME AS MAILING ADDRESS, JUST WRITE SAME)
1263 SW 46 Ave. #2113, Pompano Beach, FL 33069

EMAIL ADDRESS
rtnegron@yahoo.com

Is the property listed for sale? ☑ Yes ☐ No
If yes, what was the listing date? 1/14
If property has been listed for sale, have you received an offer on the property? ☑ Yes ☐ No
Date of offer: 2/11/15 Amount of Offer: $ 60,000
Agent's Name: Andrew Nowak
Agent's Phone Number: 954-559-9777
For Sale by Owner? ☐ Yes ☑ No

Have you contacted a credit-counseling agency for help?
☐ Yes ■ No
If yes, please complete the counselor contact information below:
Counselor's Name: ____
Agency's Name: ____
Counselor's Phone Number: ____
Counselor's Email Address: ____

Do you have condominium or homeowner association (HOA) fees? ☑ Yes ☐ No
Total monthly amount: $ 265.00
Name and address that fees are paid to: Royal Poinciana Condo Association

Have you filed for bankruptcy? ☐ Yes ☑ No
If yes: ☐ Chapter 7 ☐ Chapter 11 ☐ Chapter 12 ☐ Chapter 13
Filing Date: ____
Has your bankruptcy been discharged? ☐ Yes ☐ No
Bankruptcy case number: ____

UNIFORM BORROWER ASSISTANCE FORM

Monthly Household Income		Monthly Household Expenses and Debt Payments		Household Assets (associated with the property and/or borrower(s))	
Gross wages	$ 6503.56	First Mortgage Payment	$ 765.00	Checking Account(s)	$ 19,000
Overtime	$ 0	Second Mortgage Payment	$ 0	Checking Account(s)	$ 0
Child Support / Alimony*	$ 0	Homeowner's Insurance	$ 0	Savings / Money Market	$ 0
Non-taxable social security/SSDI	$ 0	Property Taxes	$ 0	CDs	$ 0
Taxable SS benefits or other monthly income from annuities or retirement plans	$ 0	Credit Cards / Installment Loan(s) (total minimum payment per month)	$ 200	Stocks / Bonds	$ 0
Tips, commissions, bonus and self-employed income	$ 0	Alimony, child support payments	$ 0.00	Other Cash on Hand	$ 0
Rents Received	$ 0	Car Lease Payments	$ 185.00	Other Real Estate (estimated value)	$ 0
Unemployment Income	$ 0	HOA/Condo Fees/Property Maintenance	$ 265.00	Other ____	$ 0
Food Stamps/Welfare	$ 0	Mortgage Payments on other properties	$		$
Other ____	$ 0	Other ____	$ 6100		$
Total (Gross income)	$ 6503.56	**Total Household Expenses and Debt Payments**	$ 7515	**Total Assets**	$ 19,000

Any other liens (mortgage liens, mechanics liens, tax liens, etc.)

Lien Holder's Name	Balance and Interest Rate	Loan Number	Lien Holder's Phone Number
US Bank/State of Florida	25,000		US Bank
City Pompano Beach	20,000		954-786-4600 Ext 7

Required Income Documentation

☑ **Do you earn a salary or hourly wage?**
For each borrower who is a salaried employee or paid by the hour, include paystub(s) reflecting the most recent 30 days' earnings and documentation reflecting year-to-date earnings, if not reported on the paystubs (e.g. signed letter or printout from employer).

☐ **Are you self-employed?**
For each borrower who receives self-employed income, include a complete, signed individual federal income tax return and, as applicable, the business tax return; AND either the most recent signed and dated quarterly or year-to-date profit/loss statement that reflects activity for the most recent three months; OR copies of bank statements for the business account for the last two months evidencing continuation of business activity.

☐ **Do you have any additional sources of income?** Provide for each borrower as applicable:

"Other Earned Income" such as bonuses, commissions, housing allowance, tips, or overtime:

- ☐ Reliable third-party documentation describing the amount and nature of the income (e.g., paystub, employment contract or printouts documenting tip income).

Social Security, disability or death benefits, pension, public assistance, or adoption assistance:

- ☐ Documentation showing the amount and frequency of the benefits, such as letters, exhibits, disability policy or benefits statement from the provider, and
- ☐ Documentation showing the receipt of payment, such as copies of the two most recent bank statements showing deposit amounts.

Rental income:

- ☐ Copy of the most recent filed federal tax return with all schedules, including Schedule E—Supplement Income and Loss. Rental income for qualifying purposes will be 75% of the gross rent you reported reduced by the monthly debt service on the property, if applicable; or
- ☐ If rental income is not reported on Schedule E – Supplemental Income and Loss, provide a copy of the current lease agreement with either bank statements or cancelled rent checks demonstrating receipt of rent.

Investment income:

- ☐ Copies of the two most recent investment statements or bank statements supporting receipt of this income.

Alimony, child support, or separation maintenance payments as qualifying income:*

- ☐ Copy of divorce decree, separation agreement, or other written legal agreement filed with a court, or court decree that states the amount of the alimony, child support, or separation maintenance payments and the period of time over which the payments will be received, and
- ☐ Copies of your two most recent bank statements or other third-party documents showing receipt of payment.

***Notice: Alimony, child support, or separate maintenance income need not be revealed if you do not choose to have it considered for repaying this loan.**

UNIFORM BORROWER ASSISTANCE FORM

HARDSHIP AFFIDAVIT

I am requesting review of my current financial situation to determine whether I qualify for temporary or permanent mortgage loan relief options.

Date Hardship Began is: _____

I believe that my situation is:

- ☐ Short-term (under 6 months)
- ☐ Medium-term (6 – 12 months)
- ☐ Long-term or Permanent Hardship (greater than 12 months)

I am having difficulty making my monthly payment because of reason set forth below:

(Please check the primary reason and submit required documentation demonstrating your primary hardship)

If Your Hardship is:	Then the Required Hardship Documentation is:
☐ Unemployment	☐ No hardship documentation required
☐ Reduction in Income: a hardship that has caused a decrease in your income due to circumstances outside your control (e.g., elimination of overtime, reduction in regular working hours, a reduction in base pay)	☐ No hardship documentation required
☐ Increase in Housing Expenses: a hardship that has caused an increase in your housing expenses due to circumstances outside your control	☐ No hardship documentation required
☐ Divorce or legal separation; Separation of Borrowers unrelated by marriage, civil union or similar domestic partnership under applicable law	☐ Divorce decree signed by the court; OR ☐ Separation agreement signed by the court; OR ☐ Current credit report evidencing divorce, separation, or non-occupying borrower has a different address; OR ☐ Recorded quitclaim deed evidencing that the non-occupying Borrower or co-Borrower has relinquished all rights to the property
☐ Death of a borrower or death of either the primary or secondary wage earner in the household	☐ Death certificate; OR ☐ Obituary or newspaper article reporting the death
☐ Long-term or permanent disability; Serious illness of a borrower/co-borrower or dependent family member	☐ Doctor's certificate of illness or disability; OR ☐ Medical bills; OR ☐ Proof of monthly insurance benefits or government assistance (if applicable)
☐ Disaster (natural or man-made) adversely impacting the property or Borrower's place of employment	☐ Insurance claim; OR ☐ Federal Emergency Management Agency grant or Small Business Administration loan; OR ☐ Borrower or Employer property located in a federally declared disaster area
☐ Distant employment transfer / Relocation	**For active-duty service members:** Notice of Permanent Change of Station (PCS) or actual PCS orders. **For employment transfers/new employment:** ☐ Copy of signed offer letter or notice from employer showing transfer to a new employment location; OR ☐ Pay stub from new employer; OR ☐ If none of these apply, provide written explanation In addition to the above, documentation that reflects the amount of any relocation assistance provided, if applicable (not required for those with PCS orders).
☐ Business Failure	☐ Tax return from the previous year (including all schedules) AND ☐ Proof of business failure supported by one of the following: ☐ Bankruptcy filing for the business; OR ☐ Two months recent bank statements for the business account evidencing cessation of business activity; OR ☐ Most recent signed and dated quarterly or year-to-date profit and loss statement
☑ Other: a hardship that is not covered above	☑ Written explanation describing the details of the hardship and relevant documentation

Borrower/Co-Borrower Acknowledgement and Agreement

1. I certify that all of the information in this Borrower Assistance Form is truthful and the hardship(s) identified above has contributed to submission of this request for mortgage relief.
2. I understand and acknowledge that the Servicer, owner or guarantor of my mortgage, or their agent(s) may investigate the accuracy of my statements, may require me to provide additional supporting documentation, and that knowingly submitting false information may violate Federal and other applicable law.
3. I understand the Servicer will obtain a current credit report on all borrowers obligated on the Note.
4. I understand that if I have intentionally defaulted on my existing mortgage, engaged in fraud or misrepresented any fact(s) in connection with this request for mortgage relief or if I do not provide all required documentation, the Servicer may cancel any mortgage relief granted and may pursue foreclosure on my home and/or pursue any available legal remedies.
5. I certify that my property has not received a condemnation notice.
6. I certify that I am willing to provide all requested documents and to respond to all Servicer communications in a timely manner. I understand that time is of the essence.
7. I understand that the Servicer will use this information to evaluate my eligibility for available relief options and foreclosure alternatives, but the Servicer is not obligated to offer me assistance based solely on the representations in this document or other documentation submitted in connection with my request.
8. If I am eligible for a trial period plan, repayment plan, or forbearance plan, and I accept and agree to all terms of such plan, I also agree that the terms of this Acknowledgment and Agreement are incorporated into such plan by reference as if set forth in such plan in full. My first timely payment following my Servicer's determination and notification of my eligibility or prequalification for a trial period plan, repayment plan, or forbearance plan (when applicable) will serve as acceptance of the terms set forth in the notice sent to me that sets forth the terms and conditions of the trial period plan, repayment plan, or forbearance plan.
9. I agree that when the Servicer accepts and posts a payment during the term of any repayment plan, trial period plan, or forbearance plan it will be without prejudice to, and will not be deemed a waiver of, the acceleration of my loan or foreclosure action and related activities and shall not constitute a cure of my default under my loan unless such payments are sufficient to completely cure my entire default under my loan.
10. I agree that any prior waiver as to my payment of escrow items to the Servicer in connection with my loan has been revoked.
11. If I qualify for and enter into a repayment plan, forbearance plan, and trial period plan, I agree to the establishment of an escrow account and the payment of escrow items if an escrow account never existed on my loan.
12. I understand that the Servicer will collect and record personal information that I submit in this Borrower Response Package and during the evaluation process, including, but not limited to, my name, address, telephone number, social security number, credit score, income, payment history, and information about my account balances and activity. I understand and consent to the Servicer's disclosure of my personal information and the terms of any relief or foreclosure alternative that I receive to any investor, insurer, guarantor, or servicer that owns, insures, guarantees, or services my first lien or subordinate lien (if applicable) mortgage loan(s) or to any HUD-certified housing counselor.
13. If I am eligible for foreclosure prevention relief under the federal Making Home Affordable Program, I understand and consent to the disclosure of my personal information and the terms of any Making Home Affordable Agreement by the Servicer to (a) the U.S. Department of the Treasury, (b) Fannie Mae and Freddie Mac in connection with their responsibilities under the Homeowner Affordability and Stability Plan, and (c) companies that perform support services in conjunction with Making Home Affordable.
14. I consent to being contacted concerning this request for mortgage assistance at any cellular or mobile telephone number I have provided to the Lender. This includes text messages and telephone calls to my cellular or mobile telephone. Providing a cellular or mobile telephone number indicates your express consent for us to contact you at this number using an automated dialer, if needed.

Borrower Signature | Date 10/02/15 | Co-Borrower Signature | Date

Case Number: CACE-15-015908 Division: 11
Filing # 31664300 E-Filed 09/03/2015 10:41:52 AM

IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT, IN AND FOR BROWARD COUNTY, FLORIDA

CASE NO.

U.S. BANK NATIONAL ASSOCIATION
Plaintiff,
vs.
TAMMY L. CHINELLY AKA TAMMY LYNN NEGRON; UNKNOWN SPOUSE OF TAMMY L. CHINELLY AKA TAMMY LYNN NEGRON; FLORIDA HOUSING FINANCE CORPORATION; CITY OF POMPANO BEACH; ROYAL POINCIANA CONDOMINIUM ASSOCIATION, INC.; UNKNOWN TENANT #1; UNKNOWN TENANT #2,
Defendants.
_____/

NOTICE OF LIS PENDENS

TO THE DEFENDANTS NAMED IN THE ABOVE-STYLED ACTION AND TO ALL OTHER WHOM IT MAY CONCERN:

YOU ARE HEREBY NOTIFIED of the institution of the above styled action by the above named plaintiff against you seeking to foreclose a Mortgage recorded in Official Records Book 42969 Page 1869 of the Public Records of BROWARD County, Florida, on the following described property:

CONDOMINIUM UNIT NO. 2113, IN BUILDING 21, OF ROYAL POINCIANA, A CONDOMINIUM, ACCORDING TO THE DECLARATION OF CONDOMINIUM THEREOF, AS RECORDED ON FEBRUARY 2, 2006, IN OFFICIAL RECORDS BOOK 41388, AT PAGE 421, OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA; TOGEHTER WITH EXHIBITS, AMENDMENTS THERETO, ANDAN UNDIVIDED INTEREST IN COMMON ELEMENTS.

DATED this 2 day of Sept, 2015.

GREENSPOON MARDER, P.A.
TRADE CENTRE SOUTH, SUITE 700
100 WEST CYPRESS CREEK ROAD
FORT LAUDERDALE, FL 33309
Telephone: (954) 343 6273
Hearing Line: (888) 491-1120
Facsimile: (954) 343 6982
Email 1: brandon.loshak@gmlaw.com
Email 2: gmforeclosure@gmlaw.com
By:
Brandon Loshak, Esq.
Florida Bar No. 99852

Firm File # 31516.0666

LORI PARRISH BROWARD COUNTY PROPERTY APPRAISER

Site Address	1263 SW 46 AVENUE 2113 , POMPANO BEACH	ID #	4942 06 CM 3010
Property Owner	CHINELLY,TAMMY L	Millage	1512
Mailing Address	1263 SW 46 AVE APT 2113 POMPANO BEACH FL 33069	Use	04

Legal Description	ROYAL POINCIANA CONDO UNIT 2113 BLDG 21

The just values displayed below were set in compliance with Sec. 193.011, Fla. Stat., and include a reduction for costs of sale and other adjustments required by Sec. 193.011(8).

Property Assessment Values
Click here to see 2011 Exemptions and Taxable Values to be reflected on Nov. 1, 2011 tax bill.

Year	Land	Building	Just / Market Value	Assessed / SOH Value	Tax
2012	$4,210	$37,880	$42,090	$40,940	
2011	$4,210	$37,880	$42,090	$39,750	$420.72
2010	$3,920	$35,250	$39,170	$39,170	$409.92

IMPORTANT: The 2012 values currently shown are "roll over" values from 2011. These numbers will change frequently online as we make various adjustments until they are finalized on June 1. Please check back here AFTER June 1, 2012, to see the actual proposed 2012 assessments and portability values.

2012 Exemptions and Taxable Values by Taxing Authority

	County	School Board	Municipal	Independent
Just Value	$42,090	$42,090	$42,090	$42,090
Portability	0	0	0	0
Assessed/SOH 07	$40,940	$40,940	$40,940	$40,940
Homestead 100%	$25,000	$25,000	$25,000	$25,000
Add. Homestead	0	0	0	0
Wid/Vet/Dis	0	0	0	0
Senior	0	0	0	0
Exempt Type	0	0	0	0
Taxable	$15,940	$15,940	$15,940	$15,940

Sales History

Date	Type	Price	Book	Page
10/6/2006	SWD	$172,000	**42969**	1867

Land Calculations

Price	Factor	Type
Adj. Bldg. S.F.		903
Beds/Baths		2/2

Special Assessments

Fire	Garbage	Light	Drainage	Improvement	Safe
15			4D		
R			4D		
1					

FUNDING SOURCE: SHIP FUNDS:

THIS MORTGAGE DEED

Executed the 6 day of October A.D. 2006 by

Tammy L. Chinelly, a Single Woman

hereinafter called the mortgagor, to

THE CITY OF POMPANO BEACH, whose post office address is 100 West Atlantic Boulevard, Pompano Beach, Florida 33060,

THIS IS NOT AN OFFICIAL COPY

hereinafter called the mortgagee, to:

(Wherever used herein the terms "mortgagor" and "mortgagee" include all the parties to this instrument and the heirs, legal representatives and assigns of individuals, and the successors and assigns of corporations; and the term "note" includes all the notes herein described if more than one.)

Witnesseth, that for good and valuable considerations, and also in consideration of the aggregate sum named in the promissory note of even date herewith, hereinafter described, the mortgagor hereby grants, bargains, sells, aliens, remises, conveys and confirms unto the mortgagee all the certain land of which the mortgagor is now seized and in possession situate in Broward County, Florida, via:

AKA 1263 SW 46TH AV #2113
POMPANO, BEACH FLORIDA 33069

a/k/a Royal Poinciana Condo Unit 13 Bldg 21
This is a **second mortgage** and is inferior to the **first mortgage** in favor of

To Have and to Hold the same, together, with the tenements, hereditaments and appurtenances thereto belonging, and the rents, issues and profits thereof, unto the mortgagee, in fee simple.

And the mortgagor covenants with the mortgagee that the mortgagor is indefeasibly seized of said land in fee simple; that the mortgagor has good right and lawful authority to convey said land as aforesaid; that the mortgagor will make such further assurances to perfect the fee simple title to said land and will defend the same against the lawful claims of all persons whomsoever; and that said land is free and clear of all encumbrances.

Provided Always, that if said mortgagor shall pay unto said mortgagee the certain promissory note hereinafter substantially copies or identified, to-wit:

Exhibit of Promissory Note executed on pages 4 and 5

FUNDING SOURCE: SHIP FUNDS:

PROMISSORY NOTE
FOR PERMANENT SECOND MORTGAGE

FOR VALUE RECEIVED, the undersigned Borrower(s) jointly and severally promise(s) to pay to the order of the CITY OF POMPANO BEACH, or its successors and assigns (herein called "Lender"), the maximum principal sum of **TWENTY Thousand Dollars and 00/100 Dollars ($20,000.00)**, or such lesser amount as may be endorsed on this note on behalf of lender, which is a loan in the form of a Permanent Second Mortgage.

This permanent second mortgage is at 0% interest rate. Should the property be sold, refinanced or rented, 100% of the original loan amount becomes due and payable to the SHIP Housing Trust Fund.

THIS IS NOT AN

THIS NOTE with interest is secured by a Mortgage duly filed for record in Broward County, Florida.

OFFICIAL COPY

If the Borrower shall default in the payment of a first mortgage on the property which secures this Note, and the mortgage holder commences foreclosure on that first mortgage, the entire balance on this Loan shall become due and payable.

All parties to this Note hereby waive presentment for payment, demand, protest, notice of protest and notice of dishonor. The Borrower hereby waives, to the extent permitted by law, any and all homestead and other exemption rights which otherwise would apply to the debt evidenced by this Note.

And shall perform, comply with and abide by each and every the agreements, stipulations, conditions and covenants thereof, and of this mortgage, then this mortgage and the estate hereby created, shall cease, determine and be null and void.

And the mortgagor hereby further covenants and agrees to pay promptly when due the principal and interest and other sums of money provided for in said note and this mortgage, or either; to pay all and singular the taxes, assessments, levies, liabilities, obligations, and encumbrances of every nature on said property; to permit, commit or suffer no waster, impairment or deterioration of said land or the improvements thereon at any time; to keep the buildings now or hereafter on said land fully insured in a sum of not less than the full insurable value in a company or companies acceptable to the mortgagee, the policy or policies to be held by and payable to said mortgagee, and in the event any sum of money becomes payable by virtue of such insurance the mortgagee shall have the right to receive and apply the same to the indebtedness hereby secured, accounting to the mortgagor for any surplus; to pay all costs, charges, and expenses, including lawyer's fees and title searches, reasonably incurred or paid by the mortgagee because of the failure of the mortgagor to promptly and fully comply with the agreements, stipulations, conditions and covenants of said note and this mortgage, or either; to perform, comply with and abide by each and every the agreements, stipulations, conditions and covenants set forth in said note and this mortgage or either. In the event the mortgagor fails to pay when due any tax, assessment, insurance premium or other sum of money payable by virtue of said note and this mortgage, or either, the mortgagee may pay the same, without waiving or affecting the option to foreclose or any other right hereunder, and all such payments shall bear interest from date thereof at the highest lawful rate then allowed by the laws of the State of Florida.

If any sum of money herein referred to be not promptly paid within thirty (30) days next after the same becomes due, or if each and every the agreements, stipulations, conditions and covenants of said note and this mortgage, or either, are not fully performed, complied with and abided by, then the entire sum mentioned in said note, and this mortgage, or the entire balance unpaid thereon, shall forthwith or thereafter, at the option of the mortgagee, become and be due and payable, anything in said note or herein to the contrary notwithstanding. Failure by the

FUNDING SOURCE: SHIP FUNDS:

mortgagee to exercise any of the rights or options herein provided shall not constitute a waiver of any rights or options under said note or this mortgage accrued or thereafter accruing.

In Witness Whereof, the said mortgagor has hereunto signed and sealed these presents the day and year first above written.

WITNESSES

Print Name: Jim Chinelly Sr

Print Name: Pamela J Chinelly

Signed, sealed and delivered in the presence of:

Print Name: Tammy L. Chinelly

Print Name:

THIS IS NOT AN OFFICIAL COPY

STATE OF FLORIDA)
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me on the 6 day of October 2006 by Tammy L. Chinelly who is personally known to me or who has produced (type of identification) as identification.

NOTARY SEAL:

NOTARY PUBLIC, STATE OF FLORIDA

Print Name

(Commission Number)

LIZETTE KIRSCHBAUM
Notary Public - State of Florida
My Commission Expires Mar 3, 2010
Commission # DD 506593
Bonded By National Notary Assn.

FUNDING SOURCE: SHIP FUNDS:

PROMISSORY NOTE
FOR PERMANENT SECOND MORTGAGE LOAN

OWNER: Tammy L. Chinelly

PROPERTY ADDRESS: 1263 SW 46th Av #2113
POMPANO BEACH, FL 33069

PLACE EXECUTED: Broward County

TAX FOLIO NO.: _____ DATE EXECUTED: 10-06-06

THIS IS NOT AN OFFICIAL COPY

$20,000.00 Maximum

FOR VALUE RECEIVED, the undersigned Borrower(s) jointly and severally promise(s) to pay to the order of the CITY OF POMPANO BEACH, or its successors and assigns (herein called "Lender"), the maximum principal sum of **Twenty Thousand and 00/100 Dollars ($20,000.00)**, or such lesser amount as may be endorsed on this note on behalf of lender, which is a loan in the form of a Permanent Second Mortgage Loan.

This permanent second mortgage is at 0% interest rate. Should the property be sold, refinanced or rented, 100% of the original loan amount becomes due and payable to the SHIP Housing Trust Fund.

THIS NOTE is secured by a Mortgage duly filed for record in Broward County, Florida.

If the Borrower shall default in the payment of a first mortgage on the property which secures this Note, and the mortgage holder commences foreclosure on that first mortgage, the entire balance on this Loan shall become due and payable.

All parties to this Note hereby waive presentment for payment, demand, protest, notice of protest and notice of dishonor. The Borrower hereby waives, to the extent permitted by law, any and all homestead and other exemption rights which otherwise would apply to the debt evidenced by this Note.

IN WITNESS WHEREOF, this Note has been duly executed by the undersigned Borrower(s) as of the date shown above.

Tammy L Chinelly
Tammy L Chinelly
PRINT NAME

_____

_____
PRINT NAME

Exhibit "A"

Legal Description for Loan No.: 002003717102

Condominium Unit No.2113, in Building 21, of ROYAL POINCIANA, A CONDOMINIUM, according to the Declaration of Condominium thereof, as recorded on February 2nd, 2006, in Official Records Book 41388, at Page 421, of the Public Records of Broward County, Florida; together with exhibits, amendments thereto, and an undivided interest in the common elements.

THIS IS NOT AN OFFICIAL COPY

ET File No.: P21-2113

202333401 NEW 10/07 8710061027

OFFICIAL CHECK

HOLD DOCUMENT UP TO THE LIGHT TO VIEW TRUE WATERMARK

OFFICIAL CHECK

HOLD DOCUMENT UP TO THE LIGHT TO VIEW TRUE WATERMARK

citibank

Citibank, N.A.

170574192

62-20
311

FC#00529 FA# 008 $10.00 ONL PIC
081-03 Ck. Ser.# 170574192

DATE 02/25/16

PAY ****SEVEN THOUSAND DOLLARS****

$7,000.00

TO THE ORDER OF ****CITY OF POMPANO BEACH****

Security Features Details on Back.

NAME OF REMITTER RICHARD L NEGRON

ADDRESS

Citibank, N.A. One Penn's Way
New Castle, DE 19720

Drawer: Citibank, N.A.

BY

AUTHORIZED SIGNATURE

⑈170574192⑈ ⑆031100209⑆ 3876292 4⑈

Meeting Date: March 8 ,2016 Agenda Item 4

REQUESTED COMMISSION ACTION:

X Consent ___ Ordinance X Resolution ___ Consideration ___ Workshop ___ Initiative

SHORT TITLE OR MOTION: A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE WORK AUTHORIZATION NO. 1 IN THE AMOUNT OF $38,665.00 PERSUANT TO THE CONTRACT FOR CONSULTING/ PROFESSIONAL SERVICES BETWEEN THE CITY OF POMPANO BEACH AND TETRA TECH, INC FOR CONTINUING ENGINEERING SERVICES; PROVIDING AN EFFECTIVE DATE; **($38,665.00).**

Summary of Purpose and Why:
Per the Facilities Assessment, subsequent CDM study (Building Structural Review for Hurricane Hardening Grant) that was previously conducted, and current Florida Building Code wind load requirements, it has been determined that some of the Water Plant facility still requires structural modifications and hurricane rated impact windows and doors for adequate hurricane hardening of the Water Treatment Plant. This study will evaluate the specific buildings.The results will include estimated costs and be used to determine the scope to upgrade the buildings.

Accomplishing this item supports achieving initiative "1.4. Ensure safe drinking water standards" identified in the City's: Quality and Affordable Services Strategy

QUESTIONS TO BE ANSWERED BY ORIGINATING DEPARTMENT:

(1) Origin of request for this action: Utilities Department
(2) Primary staff contact: A. Randolph Brown / Alessandra Delfico Ext 7044 / 4144
(3) Expiration of contract, if applicable: N/A
(4) Fiscal impact and source of funding: $38,665 from CIP 16-289 Account 420-7567-533.65-03 Budget adjustment attached

DEPARTMENTAL COORDINATION	DATE	DEPARTMENTAL RECOMMENDATION	DEPARTMENTAL HEAD SIGNATURE
Utilities	02-24-16	APPROVE	
Purchasing	3/2/16	APPROVE	
City Attorney		APPROVE	
Finance	2/26/16	APPROVE	
Budget	2/29/16	APPROVE	

___ Advisory Board
___ Development Services Director
X City Manager

ACTION TAKEN BY COMMISSION:

Ordinance	Resolution	Consideration	Workshop
1st Reading	1st Reading	Results:	Results:
2nd Reading			

City Attorney's Communication #2016-497
February 10, 2016

TO: Alessandra Delfico, P.E., Engineer

FROM: Jill R. Mesojedec, FRP, Paralegal

VIA: Mark E. Berman, City Attorney

RE: Resolution – Work Authorization No. 1 / Tetra Tech, Inc.

As requested in your memorandum dated February 4, 2016, Utilities Memorandum No. 16-43, I have prepared and attached the following form of Resolution:

> **A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE WORK AUTHORIZATION NO. 1 IN THE AMOUNT OF $38,665.00 PURSUANT TO THE CONTRACT FOR CONSULTING/PROFESSIONAL SERVICES BETWEEN THE CITY OF POMPANO BEACH AND TETRA TECH, INC. FOR CONTINUING ENGINEERING SERVICES; PROVIDING AN EFFECTIVE DATE.**

Please feel free to contact me if I may be of further assistance.

JILL R. MESOJEDEC

/jrm
l:cor/util/2016-497

Attachment

RESOLUTION NO. 2016-_____

CITY OF POMPANO BEACH
Broward County, Florida

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE WORK AUTHORIZATION NO. 1 IN THE AMOUNT OF $38,665.00 PURSUANT TO THE CONTRACT FOR CONSULTING/PROFESSIONAL SERVICES BETWEEN THE CITY OF POMPANO BEACH AND TETRA TECH, INC. FOR CONTINUING ENGINEERING SERVICES; PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA:

SECTION 1. That a Work Authorization between the City of Pompano Beach and Tetra Tech, Inc. for the Water Treatment Plant Building Hurricane Hardening Study, a copy of which Work Authorization is attached hereto and incorporated by reference as if set forth in full, is hereby approved.

SECTION 2. That the proper City officials are hereby authorized to execute said Work Authorization between the City of Pompano Beach and Tetra Tech, Inc.

SECTION 3. This Resolution shall become effective upon passage.

PASSED AND ADOPTED this _____ day of _____, 2016.

_____
LAMAR FISHER, MAYOR

ATTEST:

_____
ASCELETA HAMMOND, CITY CLERK

/jrm
2/10/16
l:reso/2016-132

TETRA TECH

CITY OF POMPANO BEACH
CONTINUING CONTRACT FOR ENGINEERING SERVICES FOR WATER AND REUSE TREATMENT PLANT PROJECTS

Work Authorization No. 1
Water Treatment Plant Building Hurricane Hardening Study

I. PROJECT DESCRIPTION

That the services rendered pursuant to this Work Authorization No. 1 are in accordance with the terms and conditions of the Agreement for Consulting/ Professional Services between the City of Pompano Beach and Tetra Tech Inc., dated January 19, 2016 and approved by City Ordinance No. 2016-26.

Tetra Tech, Inc. (Tetra Tech) is pleased to present this proposal for engineering services to prepare a study to identify hurricane hardening elements at specific buildings of the Pompano Beach Water Treatment Plant This proposal includes our understanding of the scope of work and level of effort necessary to complete this project.

Based on our recent site visit, our understanding of the project is to perform a hurricane hardening study of the Filter, High Service Pump (HSP)/Generator, Chemical, and Sludge Dewatering Buildings at the Water Treatment Plant (WTP), with a tiered approach to the improvements. The results of this study will include opinions of estimated cost, which will be utilized by the City to determine the scope for upgrading or modifying the existing structures in a future project.

II. SCOPE OF WORK

Task 1 – WTP Buildings Hurricane Hardening Study

The study will evaluate specific buildings (Filter, High Service Pump (HSP)/Generator, Chemical, and Sludge Dewatering) at the WTP to identify building component improvements to meet a Risk Category 3, 180-mph wind velocity in Exposure C terrain. The study will evaluate the following items for each building:

- the roofing and structural roof deck system,
- the exterior building walls and lateral force resisting system,
- exterior doors, windows, and louvers.

Task 1.1 – Data Collection, Review, and Documentation

Tetra Tech will collect and review data collected on the existing buildings, including electronic drawings. These drawings will be utilized to create figures within the memorandum. Drawings will not be created in AutoCad.

A site visit will be performed by two Tetra Tech staff to document the size and condition of various building components. WTP staff will escort and assist Tetra Tech staff to access various building components. Estimations will be made for building components which are difficult to access.

Tetra Tech will also attempt to obtain and review recent bids for similar building hardening improvements for use in estimating construction costs.

Task 1.2 – Identify and Quantify WTP Buildings Hardening Improvements
Hardening improvements for the four buildings will be identified, which meet the wind load requirements, improve lighting conditions in those areas requiring improved lighting identified by WTP staff, and provide equivalent airflow/ventilation to the existing conditions.

New building components and anticipated building modifications/improvements will be described and itemized by WTP building to facilitate prioritization.

Task 1.3 – Prepare Planning Level Estimated Construction Costs
A Class 4 planning level opinion of probable construction cost estimate will be prepared. Recent bids for similar building hardening projects will be utilized as a basis for costs. Estimated costs will include engineering and other costs as well as contingencies.

Task 1.4 – Draft Technical Memorandum
Tetra Tech will prepare a draft technical memorandum summarizing data obtained, hardening improvements and building modifications/improvements, and estimated construction costs. Where practical, a tiered approach to the hardening requirements for each building will be provided showing feasible improvements of certain building components that will achieve resistance to wind loads higher than the current design. The intent is to provide the City with information to make decisions based on a cost-benefit analysis. Figures, if required, will be created using electronic data collected. The draft Technical Memorandum will be utilized during in Task 1.5 for prioritization purposes.

Task 1.5 – Prioritization Meeting
A meeting will be coordinated to obtain review comments from the City on the draft Technical Memorandum, to prioritize the building hardening improvements, and to identify subsequent steps for this project.

Task 1.6 – Final Technical Memorandum
Tetra Tech will prepare a final technical memorandum incorporating review comments received from the City and prioritization of the improvements to be incorporated into the City's capital improvement plan. Meeting minutes from the Prioritization Meeting will be included in the final Technical Memorandum as an appendix.

III. ASSUMPTIONS and EXCLUSIONS

We have determined the following assumptions and exclusions as being critical to our proposed scope and compensation:

- The City will provide Tetra Tech copies of all available existing construction plans and specifications.

- Tetra Tech is anticipating one site visit to perform the building investigation work and one meeting with the City to review the results of the report.

- Tetra Tech may need to perform minor destructive testing to ascertain the existing construction. Minor destructive testing may include drilling small diameter holes in existing CMU cells to confirm the location of grouted rebar, small viewing holes in drywall surfaces, exterior excavation with a hand shovel to confirm foundation depths and sizes, etc. The amount of destructive investigation will be minimized to the greatest extent possible. Repair of any wall and ceiling finishes, vegetation, etc. is not part of Tetra Tech's scope of work. The locations for destructive testing will be approved by the City prior to undertaking.

- If the City is seeking any grant funds for this project or future follow on work, Tetra Tech should be provided with the respective document to ensure the recommendations meet any additional requirements not found in the building code.

IV. COMPENSATION

The total Lump Sum compensation for the Scope of Services described in Section II is $38,665 and will be invoiced monthly on a percentage complete by subtask. The compensation for the Scope of Services by subtask is summarized below.

Task	Description	Fee
1	WTP Buildings Hurricane Hardening Study	$38,665
	Lump Sum Total	**$38,665**

V. DELIVERABLES AND SCHEDULES

Tetra Tech's deliverable will the following in .pdf format and delivered via email:

- Draft WTP Buildings Hardening Study Technical Memorandum – 1 month
- Final WTP Buildings Hardening Study Technical Memorandum – 2 weeks from comments

"CITY":

Witnesses:

CITY OF POMPANO BEACH

_____

By:_____
LAMAR FISHER, MAYOR

_____

By:_____
DENNIS W. BEACH, CITY MANAGER

Attest:

_____ (SEAL)
ASCELETA HAMMOND, CITY CLERK

Approved As To Form:

_____
MARK E. BERMAN, CITY ATTORNEY

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this _____ day of _____, 2016 by **LAMAR FISHER** as Mayor, **DENNIS W. BEACH** as City Manager and **ASCELETA HAMMOND** as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who are personally known to me.

NOTARY'S SEAL:

_____
NOTARY PUBLIC, STATE OF FLORIDA

_____
(Name of Acknowledger Typed, Printed or Stamped)

_____
Commission Number

"CONTRACTOR":

Tetra Tech, Inc.
(Print name of company

By: _____

Print Name: Leslie L. Shoemaker

Title: Executive Vice President

TETRA TECH, INC. INCORPORATED FEB 4 1988 DELAWARE

Witnesses:

_____

_____

ACKNOWLEDGMENT OF CONTRACTOR, IF A CORPORATION

STATE OF }
} ss:
COUNTY OF }

On this _____ day of _____, _____, before me personally came and appeared _____, to me known, who, being by me duly sworn, did depose and say that he resides at _____ _____, that he is the _____ of ___ Tetra Tech, Inc. _____, the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that one of the impressions affixed to said instrument is an impression of such seal; that he is the proper official of said corporation designated to execute such contract, that he has authority so to do, that he executed same for and in behalf of said corporation, and this his act is the act and deed of said corporation.

Witness my hand and official notarial seal at _____ _____ the day and year above written.

(SEE ATTACHED)

_____
Notary Public

My Commission Expires: _____

CALIFORNIA JURAT WITH AFFIANT STATEMENT **GOVERNMENT CODE § 8202**

☑ See Attached Document (Notary to cross out lines 1–6 below)
☐ See Statement Below (Lines 1–6 to be completed only by document signer[s], *not* Notary)

Signature of Document Signer No. 1 *Signature of Document Signer No. 2 (if any)*

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of LOS ANGELES

Subscribed and sworn to (or affirmed) before me on this 2ND day of FEBRUARY, 2016, by
Date *Month* *Year*

(1) LESLIE L. SHOEMAKER

~~(and (2) _____),~~
Name(s) of Signer(s)

proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

TERRY PAULINE FRIAS
Commission # 2099336
Notary Public - California
Los Angeles County
My Comm. Expires Feb 7, 2019

Signature _____
Signature of Notary Public

Seal
Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____ **Document Date:** _____

Number of Pages: _____ **Signer(s) Other Than Named Above:** _____

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Price Proposal

Price Summary / Totals	
Task Pricing Totals	38,665
Specify Add'l Fees on Setup	0
Technology Use Fee	
Total Price	**38,665**

Contract Type: Lump Sum

Project Phases / Tasks	Total Labor Hrs	Sr. Project Manager	Sr. Engineer 1	Project Engineer 1	Sr. Architect 2	Project Engineer 2	Project Assistant 2	QA/QC	Labor Rate Esc.	Labor	ODCs	Task Pricing Totals
	Bill Rate >	210.00	215.00	135.00	165.00	165.00	70.00	225.00				
	Proj Area >											
	257	10	8	139	46	24	24	6	0.00%	37,165	1,500	38,665
1 - WTP Buildings Hurricane Hardening Study	**257**	**10**	**8**	**139**	**46**	**24**	**24**	**6**		**37,165**	**1,500**	**38,665**
1.1 - Data Collection, Review, and Documentation	8			4	2		2			1,010		1,010
1.2 - Identify and Quantify WTP Buildings Hardening Improvements	106			68	20	18				15,450	1,500	16,950
1.3 - Prepare Planning Level Estimated Construction Costs	60			40	8	6	4	2		8,440		8,440
1.4 - Draft Technical Memorandum	42	4	4	16	8		8	2		6,190		6,190
1.5 - Prioritization Meeting	9	2		3	2		2			1,295		1,295
1.6 - Final Technical Memorandum	32	4	4	8	6		8	2		4,780		4,780
Totals	**257**	**10**	**8**	**139**	**46**	**24**	**24**	**6**	**0.00%**	**37,165**	**1,500**	**38,665**

Labor Plan

7 Resource

Pricing by Resource

CERTIFICATE
TETRA TECH, INC.

To: City of Pompano Beach

I hereby certify to you that I am the duly elected and qualified Senior Vice President, General Counsel and Secretary of Tetra Tech, Inc., a Delaware corporation (the "Company"), and that, as such, I am authorized to execute this Certificate on behalf of the Company. I further certify to you on behalf of the Company that:

Leslie L. Shoemaker, Executive Vice President of the Company, is authorized and empowered, in the name of the Company, in accordance with the Company's Signature Approval Authority Matrix, as approved by the Company's Board of Directors, for and on behalf of the Company, to sign work authorization proposals related to the Agreement for Consulting/Professional Services between the City of Pompano Beach and the Company, dated January 19, 2016, as approved by City Ordinance No. 2016-26.

Further, Ms. Shoemaker knows the seal of the Company and shall affix such seal to any and all work authorization proposals.

IN WITNESS WHEREOF, I have hereunto set my hand as of this 2nd day of February, 2016.

Janis B. Salin

Janis B. Salin
Senior Vice President, General Counsel and Secretary

(Seal)

TETRA TECH, INC.
INCORPORATED
FEB
4
1988
DELAWARE

The attached certificate **copy** is meant to supplement the California notary language which does not mirror the Florida notary language on page five.

This is sort of a "blanket" certificate – not specific to any one work authorization.

#4

pompano beach. Florida's Warmest Welcome

CITY OF POMPANO BEACH
BUDGET ADJUSTMENT

ORIGINATING DEPT.: Utilities

DATE: 2/24/16

ACCOUNT DESCRIPTION	FND	DP	DV	SUB	EL	OB	AVAILABLE FUNDS	CURRENT BUDGET	* INCREASE	* DECREASE	REVISED BUDGET
CIP Hurricane Preq 16-289 EQUIP.	420	75	67	533	65	11		475,000		40,000	
Design/ CIP 16289	420	75	67	533	65	03	NEW	-0-	40,000		
								TOTAL	40,000	40,000	

*** USE WHOLE DOLLARS ONLY**

REASON: Move funding from equipment 65-11 to design 6503

Mark Lewis 02-24-16
Department Head Date

Adjustment is within total budget of department - Yes X No ____
Adjustment requires only City Manager approval - Yes ____ No X
Adjustment requires City Commission approval - Yes X No ____

Adjustment approved at City Commission Meeting of _____

Finance Director	Budget Office	City Manager	AUDITED BY	INPUT BY	CONTROL NO.
S. Gibble 2/26/16 Date	Date	Date	2/26		

Distribution By Finance: White Copy - Finance Yellow Copy - Department Pink Copy - Budget

PB 1330 (Revised 5/05)

Meeting Date: March 8,2016 Agenda Item 5

REQUESTED COMMISSION ACTION:

X Consent ___ Ordinance X Resolution ___ Consideration ___ Workshop ___ Initiative

SHORT TITLE OR MOTION: A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE WORK AUTHORIZATION NO. 2 IN THE AMOUNT OF $25,180.00 PERSUANT TO THE CONTRACT FOR CONSULTING/ PROFESSIONAL SERVICES BETWEEN THE CITY OF POMPANO BEACH AND TETRA TECH, INC FOR CONTINUING ENGINEERING SERVICES; PROVIDING AN EFFECTIVE DATE; **($25,180.00).**

Summary of Purpose and Why:
The well house for well number 10 is in the approach to runway 10-28. When the runway is extended 500 feet to the west the well house will penetrate the height clearance. This study will evaluate alternatives such as lowering the well house or moving the well house so that when the runway is extended it will not be in the way. The runway is scheduled to be extended in 2020.

Accomplishing this item supports achieving initiative "1.4. Ensure safe drinking water standards" identified in the City's: Quality and Affordable Services Strategy

QUESTIONS TO BE ANSWERED BY ORIGINATING DEPARTMENT:

(1) Origin of request for this action: Utilities Department
(2) Primary staff contact: A. Randolph Brown / Alessandra Delfico Ext 7044 / 4144
(3) Expiration of contract, if applicable: N/A
(4) Fiscal impact and source of funding: $25,180 from CIP 07-932 Account 420-7310-533.65-03 Budget adjustment attached

DEPARTMENTAL COORDINATION	DATE	DEPARTMENTAL RECOMMENDATION	DEPARTMENTAL HEAD SIGNATURE
Utilities	02-24-16	APPROVE	
Purchasing	3/2/16	APPROVE	
City Attorney		APPROVE	
Finance	2/26/16	APPROVE	
Budget	2/29/16	APPROVE	

___ Advisory Board
___ Development Services Director
X City Manager

ACTION TAKEN BY COMMISSION:

Ordinance	Resolution	Consideration	Workshop
1st Reading	1st Reading	Results:	Results:
2nd Reading			

City Attorney's Communication #2016-498
February 10, 2016

TO: Alessandra Delfico, P.E., Engineer

FROM: Jill R. Mesojedec, FRP, Paralegal

VIA: Mark E. Berman, City Attorney

RE: Resolution – Work Authorization No. 2 / Tetra Tech, Inc.

As requested in your memorandum dated February 4, 2016, Utilities Memorandum No. 16-44, I have prepared and attached the following form of Resolution:

> **A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE WORK AUTHORIZATION NO. 2 IN THE AMOUNT OF $25,180.00 PURSUANT TO THE CONTRACT FOR CONSULTING/PROFESSIONAL SERVICES BETWEEN THE CITY OF POMPANO BEACH AND TETRA TECH, INC. FOR CONTINUING ENGINEERING SERVICES; PROVIDING AN EFFECTIVE DATE.**

Please feel free to contact me if I may be of further assistance.

JILL R. MESOJEDEC

/jrm
l:cor/util/2016-498

Attachment

RESOLUTION NO. 2016-_____

CITY OF POMPANO BEACH
Broward County, Florida

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE WORK AUTHORIZATION NO. 2 IN THE AMOUNT OF $25,180.00 PURSUANT TO THE CONTRACT FOR CONSULTING/PROFESSIONAL SERVICES BETWEEN THE CITY OF POMPANO BEACH AND TETRA TECH, INC. FOR CONTINUING ENGINEERING SERVICES; PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA:

SECTION 1. That a Work Authorization between the City of Pompano Beach and Tetra Tech, Inc. for Well No. 10 Relocation Study, a copy of which Work Authorization is attached hereto and incorporated by reference as if set forth in full, is hereby approved.

SECTION 2. That the proper City officials are hereby authorized to execute said Work Authorization between the City of Pompano Beach and Tetra Tech, Inc.

SECTION 3. This Resolution shall become effective upon passage.

PASSED AND ADOPTED this _____ day of _____, 2016.

_____
LAMAR FISHER, MAYOR

ATTEST:

_____
ASCELETA HAMMOND, CITY CLERK

/jrm
2/10/16
l:reso/2016-133

TETRA TECH

CITY OF POMPANO BEACH
CONTINUING CONTRACT FOR ENGINEERING SERVICES FOR WATER AND REUSE TREATMENT PLANT PROJECTS

Work Authorization No. 2
Well No. 10 Relocation Study

I. PROJECT DESCRIPTION

That the services rendered pursuant to this Work Authorization No. 1 are in accordance with the terms and conditions of the Agreement for Consulting/ Professional Services between the City of Pompano Beach and Tetra Tech Inc., dated January 19, 2016 and approved by City Ordinance No. 2016-26.

Tetra Tech, Inc. (Tetra Tech) is pleased to present this proposal for engineering services to prepare a study for the relocation of portions of Well No. 10, which is located on the Pompano Beach Airpark, at the end of a runway which will be extended. This proposal includes our understanding of the scope of work and level of effort necessary to complete this project.

Based on our recent site visit, our understanding of the project is to perform a study of two alternatives for relocation of components of Well No. 10 to accommodate the future runway project at the Pompano Beach Airpark. The objective of the two alternatives identified for Well No. 10 is not to create a confined space requirement. The results of this study will include opinions of estimated cost, which will be utilized by the City to determine the scope for upgrading or modifying the existing structures in a future project.

II. SCOPE OF WORK

Task 1 – Well No. 10 Relocation Study

Tetra Tech will complete a study to evaluate up to two (2) alternatives to relocate portions of Well No. 10 due to the expansion of a runway at Pompano Beach Airpark.

Task 1.1 – Data Collection, Review, and Documentation
Tetra Tech will collect and review data collected on the existing well house and equipment, including electronic drawings. These drawings will be utilized to create figures within the memorandum. Drawings will not be created in AutoCadd. Information on the runway expansion and applicable regulations will also be collected and reviewed.

Task 1.2 – Identify and Detail Two Relocation Alternatives
Tetra Tech will identify two alternatives for relocation of portions of Well No. 10, understanding that the City desires to keep the well in its current location and that the objective is that the relocated portions of Well No. 10 will not be confined spaces, as defined by OSHA laws and confined space regulations.

Two alternatives will be identified and further developed. Preliminary concepts which may be considered include converting the well to a submersible pump/motor installation, with relocated above-ground components, and converting the above-ground well housing into a below-ground vault.

Proposed work required for the relocation of the well will be identified, which could include reuse of existing equipment or new equipment, based on visual evaluations and input from City staff. Mechanical, electrical and structural improvements will be considered.

Task 1.3 – Prepare Planning Level Estimated Construction Costs
A Class 4 planning level opinion of probable construction cost estimate as defined by AACE will be prepared. Estimated costs will include engineering and other costs as well as contingencies.

Task 1.4 – Draft Technical Memorandum
Tetra Tech will prepare a draft technical memorandum summarizing data obtained, the two relocation alternatives, and their estimated construction costs. Figures, if required, will be created using electronic data collected. The draft Technical Memorandum will be utilized to select which alternative will be used to continue with relocation of Well No. 10.

Task 1.5 – Final Technical Memorandum
Tetra Tech will prepare a final technical memorandum incorporating review comments received from the City and identify which alternative will be incorporated into the City's capital improvement plan.

III. ASSUMPTIONS and EXCLUSIONS

We have determined the following assumptions and exclusions as being critical to our proposed scope and compensation:

- The City will provide Tetra Tech copies of all available existing construction plans and specifications.
- If the City is seeking any grant funds for this project or future follow on work, Tetra Tech should be provided with the respective document to ensure the recommendations meet any additional requirements not found in the building code.
- The Well House No. 10 Study will not include surveying, geotechnical services, final design, permitting, or construction administrative services.

IV. COMPENSATION

The total Lump Sum compensation for the Scope of Services described in Section II is $25,180 and will be invoiced monthly on a percentage complete by subtask. The compensation for the Scope of Services by subtask is summarized in the attached Price Proposal Table.

V. DELIVERABLES AND SCHEDULES

Tetra Tech's deliverable will the following in .pdf format and delivered via email:

- Draft Well No. 10 Relocation Study Technical Memorandum – 1 month
- Final Well No. 10 Relocation Study Technical Memorandum- 2 weeks from comments

"CITY":

Witnesses:

CITY OF POMPANO BEACH

_____

By:_____
LAMAR FISHER, MAYOR

_____

By:_____
DENNIS W. BEACH, CITY MANAGER

Attest:

_____ (SEAL)
ASCELETA HAMMOND, CITY CLERK

Approved As To Form:

_____
MARK E. BERMAN, CITY ATTORNEY

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this _____ day of _____, 2016 by **LAMAR FISHER** as Mayor, **DENNIS W. BEACH** as City Manager and **ASCELETA HAMMOND** as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who are personally known to me.

NOTARY'S SEAL:

_____
NOTARY PUBLIC, STATE OF FLORIDA

_____
(Name of Acknowledger Typed, Printed or Stamped)

_____
Commission Number

"**CONTRACTOR**":

Tetra Tech, Inc.
(Print name of company

Witnesses:

Debra Merkelbach

Karen Miller

By: _____

Print Name: Leslie L. Shoemaker

Title: Executive Vice President

TETRA TECH, INC. INCORPORATED FEB 4 1988 DELAWARE

ACKNOWLEDGMENT OF CONTRACTOR, IF A CORPORATION

STATE OF }
} ss:
COUNTY OF }

On this _____ day of _____, _____, before me personally came and appeared _____, to me known, who, being by me duly sworn, did depose and say that he resides at _____ _____, that he is the _____ of ___ Tetra Tech, Inc. _____, the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that one of the impressions affixed to said instrument is an impression of such seal; that he is the proper official of said corporation designated to execute such contract, that he has authority so to do, that he executed same for and in behalf of said corporation, and this his act is the act and deed of said corporation.

Witness my hand and official notarial seal at _____ _____ the day and year above written.

(SEE ATTACHED)

_____
Notary Public

My Commission Expires: _____

CALIFORNIA JURAT WITH AFFIANT STATEMENT **GOVERNMENT CODE § 8202**

☑ See Attached Document (Notary to cross out lines 1–6 below)
☐ See Statement Below (Lines 1–6 to be completed only by document signer[s], *not* Notary)

Signature of Document Signer No. 1 *Signature of Document Signer No. 2 (if any)*

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of LOS ANGELES

Subscribed and sworn to (or affirmed) before me on this 2ND day of FEBRUARY, 2016, by
Date *Month* *Year*
(1) LESLIE L. SHOEMAKER
(and (2) _____),
Name(s) of Signer(s)

proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

TERRY PAULINE FRIAS
Commission # 2099336
Notary Public - California
Los Angeles County
My Comm. Expires Feb 7, 2019

Signature _____
Signature of Notary Public

Seal
Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____ **Document Date:** _____

Number of Pages: _____ **Signer(s) Other Than Named Above:** _____

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Price Proposal

Price Summary / Totals	
Task Pricing Totals	25,180
Specify Add'l Fees on Setup	0
Technology Use Fee	
Total Price	**25,180**

Labor Plan

8 Resource

	Bill Rate >	210.00	215.00	135.00	165.00	165.00	135.00	70.00	225.00				
	Proj Area >												
Contract Type: Lump Sum										**Pricing by Resource**			
Project Phases / Tasks	**Total Labor Hrs**	Sr. Project Manager	Sr. Engineer 1	Project Engineer 1	Sr. Architect 2	Project Engineer 2	Project Engineer 1	Project Assistant 2	QA/QC	Labor Rate Esc.	Labor	ODCs	**Task Pricing Totals**
	176	12	-	10	8	8	110	16	12	0.00%	25,180	-	25,180
1 - Well No. 10 Relocation Study	176	12	-	10	8	8	110	16	12		25,180	-	25,180
1.1 - Data Collection, Review, and Documentation	4		-	2			2				540		540
1.2 - Identify and Detail Two Relocation Alternatives	58	2	-	2	2	2	48		2		8,280		8,280
1.3 - Prepare Planning Level Estimated Construction Costs	44	2	-	2	2	2	32	2	2		6,260		6,260
1.4 - Draft Technical Memorandum	38	4	-	2	2	2	16	8	4		5,390		5,390
1.5 - Final Technical Memorandum	32	4	-	2	2	2	12	6	4		4,710		4,710
Totals	176	12	-	10	8	8	110	16	12	0.00%	25,180	-	25,180

CERTIFICATE
TETRA TECH, INC.

To: City of Pompano Beach

I hereby certify to you that I am the duly elected and qualified Senior Vice President, General Counsel and Secretary of Tetra Tech, Inc., a Delaware corporation (the "Company"), and that, as such, I am authorized to execute this Certificate on behalf of the Company. I further certify to you on behalf of the Company that:

Leslie L. Shoemaker, Executive Vice President of the Company, is authorized and empowered, in the name of the Company, in accordance with the Company's Signature Approval Authority Matrix, as approved by the Company's Board of Directors, for and on behalf of the Company, to sign work authorization proposals related to the Agreement for Consulting/Professional Services between the City of Pompano Beach and the Company, dated January 19, 2016, as approved by City Ordinance No. 2016-26.

Further, Ms. Shoemaker knows the seal of the Company and shall affix such seal to any and all work authorization proposals.

IN WITNESS WHEREOF, I have hereunto set my hand as of this 2nd day of February, 2016.

Janis B. Salin

Janis B. Salin
Senior Vice President, General Counsel and Secretary

(Seal)

TETRA TECH, INC.
INCORPORATED
FEB
4
1988
DELAWARE

The attached certificate **copy** is meant to supplement the California notary language which does not mirror the Florida notary language on page five.

This is sort of a "blanket" certificate – not specific to any one work authorization.

#5

pompano beach. Florida's Warmest Welcome

CITY OF POMPANO BEACH
BUDGET ADJUSTMENT

ORIGINATING DEPT.: Utilities

DATE: 2/24/16

ACCOUNT DESCRIPTION	FND	DP	DV	SUB	EL	OB	AVAILABLE FUNDS	CURRENT BUDGET	* INCREASE	* DECREASE	REVISED BUDGET
CIP 07-932 Wellmaint/Construction	420	73	10	533	65	12	92,823	217,663		22,000	195,663
CIP 07932 Wellmaint/Design	420	73	10	533	65	03	3,445	3445	22,000		25,445
								TOTAL	22,000	22,000	

* USE WHOLE DOLLARS ONLY

REASON: move funding from construction to design CIP 07932 For TETRATECH

Mark Lemmett 02-24-16
Department Head Date

Adjustment is within total budget of department - Yes X No
Adjustment requires only City Manager approval - Yes X No
Adjustment requires City Commission approval - Yes X No

Adjustment approved at City Commission Meeting of _____

Finance Director 2/26/16 Date | Budget Office Date | City Manager Date | AUDITED BY 02/26/16 | INPUT BY | CONTROL NO.

Distribution By Finance: White Copy - Finance Yellow Copy - Department Pink Copy - Budget

PB 1330 (Revised 5/05)

Meeting Date: **March 8, 2016** Agenda Item 6

REQUESTED COMMISSION ACTION:

X Consent ____ Ordinance X Resolution ____ Consideration ____ Workshop

SHORT TITLE OR MOTION: A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE AN ADDITIONAL HOME FUNDING AGREEMENT BETWEEN THE CITY OF POMPANO BEACH AND CAPTIVA COVE II ASSOCIATES, LTD. PROVIDING FOR NEW CONSTRUCTION OF CAPTIVA COVE II, AN 88 UNIT MULTI-FAMILY RENTAL DEV.PROVIDING AN EFFECTIVE DATE. (HOME FUNDS $100,327)

Summary of Purpose and Why:

This resolution authorizes approval and signature by the City of an additional HOME Funding Agreement between the City and Captiva Cove II Associates, Ltd, and Captiva Cove Associates II, Ltd., which is developing its final 88 units of affordable rental housing at Captiva Cove, 1201 W. Dixie Highway. The City previously contributed $950,000 in HOME funds to Phase I, which is complete.

Resolution 2015-66 was adopted on November 10, 2014, approving and authorizing a HOME Funding Agreement for Captiva Cove Phase II that contributed $186,559 towards its construction. Phase II is comprised of the final 88 units necessary to build out the development.

This evening's additional HOME Funding Agreement provides an additional $100,327 of HOME funding in order to assure that the project is completed as planned. These additional funds are available because the money was repaid to the City's HOME Program from the sale of an earlier, unrelated HOME Program project.

QUESTIONS TO BE ANSWERED BY ORIGINATING DEPARTMENT:

(1) Origin of request for this action: **Office of Housing and Urban Improvement**
(2) Primary staff contact: **Miriam Carrillo/Mark Korman** Ext. **4656**
(3) Expiration of contract, if applicable:
(4) Fiscal impact and source of funding: **HOME Funds - $100,327.00** (304-8113-587-9910)

DEPARTMENTAL COORDINATION	DATE	DEPARTMENTAL RECOMMENDATION	DEPARTMENTAL HEAD SIGNATURE
OHUI	2/26/16	Approval	M Carrillo
City Attorney	2/26/16	✓	S. Sibble
Finance	2/26/16	Approval	
X City Manager			

ACTION TAKEN BY COMMISSION:

Ordinance	Resolution	Consideration	Workshop
1st Reading ____	1st Reading ____	Results:	Results:

RESOLUTION NO. 2016-_____

CITY OF POMPANO BEACH
Broward County, Florida

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A HOME FUNDING AGREEMENT BETWEEN THE CITY OF POMPANO BEACH AND CAPTIVA COVE II ASSOCIATES, LTD. PROVIDING FOR NEW CONSTRUCTION OF CAPTIVA COVE II, AN 88 UNIT MULTI-FAMILY RENTAL DEVELOPMENT; PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA:

SECTION 1. That an Agreement between the City of Pompano Beach and Captiva Cove II Associates, Ltd., providing for new construction of Captiva Cove II, an 88 unit multi-family rental development, a copy of which Agreement is attached and incorporated by reference as if set forth in full, is hereby approved.

SECTION 2. That the proper City officials are hereby authorized to execute said Agreement between the City of Pompano Beach and Captiva Cove II Associates, Ltd.

SECTION 3. That Resolution shall become effective upon passage.

PASSED AND ADOPTED this _____ day of _____, 2016.

_____

LAMAR FISHER, MAYOR

ATTEST:

_____

ASCELETA HAMMOND, CITY CLERK

HOME FUNDING AGREEMENT
Between
CITY OF POMPANO BEACH
and
CAPTIVA COVE II ASSOCIATES, LTD.
PROVIDING FOR

NEW CONSTRUCTION OF CAPTIVA COVE II

AN 88 UNIT

MULTI-FAMILY RENTAL DEVELOPMENT

EXHIBITS

EXHIBIT "A"	PROJECT DESCRIPTION
EXHIBIT "B"	COSTS/BUDGET FOR PROJECT
EXHIBIT "C"	TIMETABLE/SCHEDULE FOR PROJECT
EXHIBIT "D"	MORTGAGE AMENDMENT TO MORTGAGE ATTACHMENT "A" TO EXHIBIT "D" — FUTURE ADVANCE NOTE
EXHIBIT "D-1"	DECLARATION OF RESTRICTIVE COVENANTS FOR RENTAL UNITS
EXHIBIT "E"	MONTHLY PROGRESS REPORT
EXHIBIT "F"	FINAL ACCOUNTING FOR PROJECT
EXHIBIT "G"	REQUEST FOR PAYMENT FORM
EXHIBIT "H"	RENTAL SET UP AND COMPLETION FORM
EXHIBIT "I"	PROJECT RENTS
Exhibit "J"	FINANCIAL CONDITION REPORT

HOME FUNDING AGREEMENT

Between

CITY OF POMPANO BEACH

and

CAPTIVA COVE II ASSOCIATES, LTD.

PROVIDING FOR

NEW CONSTRUCTION OF CAPTIVA COVE II
AN 88 UNIT
MULTI-FAMILY RENTAL DEVELOPMENT

This is a Home Funding Agreement ("Agreement") between: CITY OF POMPANO BEACH, a municipal corporation of the state of Florida, its successors and assigns, hereinafter referred to as "CITY,"

AND

CAPTIVA COVE II ASSOCIATES, LTD., a Florida for-profit Limited Partnership its successors in interest, hereinafter referred to as "CAPTIVA COVE II."

WHEREAS, CITY is a recipient of Home Investment Partnerships (HOME) grant funds from the United States Department of Housing and Urban Development pursuant to 24 CFR 92; and

WHEREAS, on July 8, 2014, the CITY Commission approved funding to CAPTIVA COVE II as a Developer of funding under CITY's HOME Program as part of its FY 2014-2015 Action Plan, for the provision of a multi-family rental new construction housing project under the terms and conditions of that certain Home Funding Agreement, between CITY and CAPTIVA COVE II, dated December 16, 2014; and

WHEREAS, CAPTIVA COVE II shall now receive additional funding under CITY's HOME Program for the Project, in the amount of One Hundred Thousand Three Hundred Twenty-Seven and 00/100 ($100,327.00) (the "HOME Funds"); and

WHEREAS, the purpose of this Agreement is to increase the availability of affordable residential units by complementing and expanding existing low income housing initiatives currently funded by public and private funds, reduce the cost of housing, and thereby providing rental opportunities for Very-low, and Low Income Families in City of Pompano Beach; NOW, THEREFORE,

WITNESSETH: In consideration of the mutual terms and conditions, promises, covenants and payments, hereinafter set forth, CITY and CAPTIVA COVE II agree as follows:

ARTICLE 1

For the purposes of this Agreement, the exhibits thereto, and the various covenants, conditions, terms and provisions which follow, the DEFINITIONS and IDENTIFICATIONS set forth below are true and correct and are agreed upon by the parties.

1.1 Assurances: means those assurances made by CAPTIVA COVE II to CITY as specifically set forth in Article 8 of this Agreement.

1.2 Affordability Period: means the thirty three (33) year period of time the HOME Assisted Units under this Agreement shall remain affordable in compliance with In 24 CFR 92.252 and 24 CFR 92.254 and the same thirty three (33) year period that all rental units under this Agreement shall remain affordable in compliance with CITY policy.

1.3 CITY: means the City of Pompano Beach, Florida.

1.4 Contract Administrator: means CITY'S Office of Housing and Urban Improvement Director. The primary responsibilities of the Contract Administrator are to coordinate and communicate with CAPTIVA COVE II and to manage and supervise execution and completion of the Project and the terms and conditions of this Agreement as set forth herein. In the administration of this Agreement, as contrasted with matters of policy, all parties may rely on the instructions or determinations made by the Contract Administrator; provided, however, that such instructions and determinations do not change the Project.

1.5 CITY Manager: The City Manager of CITY.

1.6 CITY Attorney: The chief legal counsel for CITY who directs and supervises the Office of the CITY Attorney.

1.7 Division: means the Office of Housing and Urban Improvement of City of Pompano Beach, Florida.

1.8 HOME: means the Home Investment Partnerships Program.

1.9 H.U.D.: means the United States Department of Housing and Urban Development.

1.10 Income Eligible Households: means (i) one or more natural persons or a family, (including students who reside in the household), that have a gross income for the household that does not exceed sixty percent (60%) of the area median income (AMI) adjusted for family size for households within the metropolitan statistical area (MSA) for City of Pompano Beach; and, (ii) in accordance with H.U.D.'s requirement for projects with five (5) or more HOME Assisted Units, the term also means that at least twenty percent (20%) of the HOME Assisted Units must be for one or more natural persons or a family (including students who reside in the household) that have a gross income for the household that does

not exceed fifty percent (50%) of AMI adjusted for family size for households within the MSA for City of Pompano Beach.

1.11 Project: means the project set forth in Article 2 hereof, and Exhibit "A," entitled Project Description, which includes a site or sites together with any building , or buildings, located on the site, that are under common ownership, management, and financing and are to be assisted with HOME funds provided by CITY. The term Project Includes ail the activities associated with the site and building.

1.12 Project Completion: means that all necessary title transfer requirements and construction work have been performed; the project complies with the requirements of this part (including the property standards under §92.251); the final drawdown of the HOME funds has been disbursed for the project; and the project completion information has been entered into the disbursement and information system established by HUD, except that with respect to rental housing project completion, for the purposes of §92.502(d) of this part, project completion occurs upon completion of construction and before occupancy . Project must be completed within 4 years of commitment or sooner based on project schedule provided in Exhibit C.

1.13 Rules and Regulations of H.U.D.: shall include but not be limited to 24 C.F.R. 92 (HOME Investment Partnerships Program Final Rule, revised August 15, 2014), Fair Housing Act - Section 301 of the Housing and Urban-Rural Recovery Act of 1983; Pub. Law No. 98-181, 97 Stat. 1166, CPD Notice 92-18, Procedures for the Cash and Management Information (C/MI) System for the HOME Program, and as may be amended from time to time; copies of which are incorporated herein by reference.

ARTICLE 2— PROJECT

CAPTIVA COVE II agrees to provide and implement the Project in accordance with the terms of this Agreement on the real property more specifically described in Exhibit "A".

ARTICLE 3- AFFORDABILITY

3.1 The Affordability Period for the Project described in this Agreement and more fully described in Exhibit "A," Project Description, shall be thirty three (33) years. CAPTIVA shall ensure that three one bedroom units of the total number of the eighty-eight (88) units to be constructed for the Project pursuant to the terms of this Agreement shall be designated as HOME Assisted Units for the Affordability Period.

3.2 "HOME Assisted Units" shall mean the three one bedroom units that can receive HOME funds based on required subsidy limits as specified in 24 C.F.R. Part 92.250, Sub Part F. The Affordability Period shall begin on the date the HOME Assisted Units have reached Project Completion, as defined in Section 1.12 above. HOME Assisted Units are deemed floating units providing CAPTIVA COVE II with the flexibility to designate different units in the Project at different times as HOME Assisted Units; provided, however, that CAPTIVA COVE II maintains the amount of total units with the same unit mix (i.e., number by each bedroom size).

3.3 CAPTIVA COVE II agrees that one hundred percent (100%) of the HOME assisted rental units shall be occupied by Income Eligible Households as defined in Section 1.10 above and the rent shall meet the requirements of 24 C.F.R. 92.252(b)(1) or (2). CAPTIVA COVE II shall be responsible for obtaining initial income certification at the time of the initial leasing of the HOME Assisted Units to Income Eligible Households as evidence by submission of Exhibit H to the City upon project completion and resale. Thereafter, on a yearly basis, CAPTIVA COVE II shall obtain income certification from the Income Eligible Households in accordance with 24 C.F.R. 92.203 and provide same to CITY, upon CITY's request. The CITY has adopted the income determination methodology as defined at 24 CFR 5.609. CAPTIVA COVE II agrees that, in accordance with 24 CFR 92.252(f) 2, all subsequent rents during the affordability must be approved by the CITY. The CITY agrees to provide Developer with information on update HOME rents and utility allowances. Further Developer agrees to provide the CITY with information on rents and occupancy annually.

3.4 In the event that, within six (6) months of project completion, a rental unit remains unoccupied, an enhanced marketing plan must be provided to CITY for review and approval. The plan shall be provided no later than 7 months after project completion.

3.5 In the event that, eighteen (18) months from the date of project completion, efforts to market unoccupied units are not successful, and the unit(s) are not occupied by HOME eligible tenants, all HOME funds provided to Developer by CITY must be repaid no later than 19 months following project completion.

ARTICLE 4 - TERM OF AGREEMENT

The term of this Agreement, shall commence on the date of execution by CITY, and shall end on December 31, 2016 unless extended or terminated earlier as provided for herein. Notwithstanding the expiration date of this Agreement as it relates to construction of the Project, this Agreement shall survive and remain in effect for purposes of enforcing the Affordability Period,

ARTICLE 5- FUNDING AND METHOD OF PAYMENT

5.1 CAPTIVA COVE II is obtaining funding for the Project from various sources. The HOME funds to be provided to CAPTIVA COVE II by CITY under this Agreement for the Project were allocated in FY 2016. The maximum amount payable by CITY under this Agreement shall be One Hundred Thousand Three Hundred Twenty-Seven Dollars and 00/100 ($100,327.00). The HOME funds provided by CITY to CAPTIVA COVE II shall be in the form of a deferred payment loan and payment to CAPTIVA COVE II shall be made by CITY at Loan closing subject to the terms and conditions set forth herein.

5.2 The Parties agree that the HOME Funds shall be secured by that certain Mortgage, executed by the Parties on December 16, 2014, and recorded in the Official Public Records of Broward County, Florida, BK 51326, PG 1206, as amended by that certain Amendment to Mortgage, executed by the Parties hereto and dated on an even date herewith (Exhibit "D"), together with that certain Future Advance Note, executed by the Parties hereto and dated on an even date herewith ("Note") (Attachment "A" to Exhibit "D"); each in substantially the forms attached hereto. Additionally, CAPTIVA COVE II executed and CITY recorded in the Public Records of Broward County, Florida, BK 51326, PG 1204, a Declaration of Restrictive Covenants, to ensure that the rental units remain affordable during the Affordability Period described in Section 3.1 above.

5.3 Upon CITY's acceptance of a properly submitted Request for Payment, Exhibit G, for the construction costs by CAPTIVA COVE II, CITY will process payment of same for Loan closing.

5.3.1 CITY shall pay CAPTIVA COVE II within thirty (30) calendar days from *receipt* of CAPTIVA COVE II's Request for Payment, as provided for in this Section 5.3, for reimbursement of Eligible Costs in accordance with CITY's Prompt Payment Ordinance, Sec 1-51.6, as may be amended from time to time.

5.3.2 Payment shall be made to CAPTIVA COVE II at:

Mara S. Mades
Cornerstone Captiva Cove II, L.L.C., General Partner of
Captiva Cove II Associates, Ltd.
2100 Hollywood Boulevard
Hollywood, Florida 33020

5.4 CAPTIVA COVE II shall provide CITY with Monthly Progress Reports, in the form attached as Exhibit "E" or other reports required by the Division. CAPTIVA COVE II agrees to report beneficiary data as units are rented after project completion.

5.5 CAPTIVA COVE II shall have an adequate financial system and internal fiscal controls in accordance with H.U.D. and CITY requirements.

5.6 CAPTIVA COVE II agrees to provide the CITY with financial condition reports (Exhibit J) for the Project in sufficient detail that the CITY can evaluate the continued viability throughout the affordability period.

5.7 CAPTIVA COVE II agrees to expend HOME funds provided by CITY under this Agreement in accordance with Exhibit "B," Costs/Budget for Project. HOME funds shall not be paid by CITY until the funds are needed for the payment of Eligible Costs as defined by 24 CFR 92.206. All HOME funds not expended within the term of this Agreement shall remain in the custody and control of CITY. In the Director's discretion, unexpended HOME funds may be reallocated to other HOME Program projects which have been approved for funding by the CITY.

5.8 CITY shall pay CAPTIVA COVE II as specific consideration for the indemnification contained in Article 10, indemnification, the sum of One Dollar ($1.00) in cash, the receipt of which is acknowledged by CAPTIVA COVE II.

ARTICLE 6— RENTAL UNITS

6.1 If, following Project Completion any of the rental units fail to remain

affordable during the Affordability Period described in Section 3.1 above, it shall be deemed an event of default under this Agreement. CAPTIVA COVE II shall be required to repay to CITY all HOME funds provided by CITY under this Agreement within in 30 days of CITY's determination and written notification to Developer that the Affordability provisions have not been met. Additionally, in such event, the terms of the Declaration of Restrictive Covenants may be enforced against CAPTIVA COVE II. The affordability restrictions may, in the sole discretion of CITY, terminate upon foreclosure or transfer in lieu of foreclosure or upon repayment of HOME funds, unless otherwise provided by law.

6.2 The maximum amount CAPTIVA COVE II shall charge as rent for any HOME Assisted Unit shall be governed by the rent limitations described in 24 CFR 92.252 (a) and (b), as may be amended from time to time. The HOME Assisted Units shall be rented at the amounts set forth in Exhibit "I," Project Rents, for the type and size of unit and adjusted for utilities. The City will provide developer with utility allowances

6.3 CAPTIVA COVE II shall not refuse to lease a HOME Assisted Unit to a certificate or voucher HOLDER under 24 C.F.R. 982, Section 8, Tenant Based Assistance, Unified Rule for Tenant Based Assistance under the Section 8 Rental Certificate Program and Section 8 Rental Voucher Program, incorporated herein by reference, or the HOLDER of a comparable document evidencing participation in a HOME tenant based rental assistance program because of the status of the prospective tenant as a HOLDER of such certificate voucher or comparable HOME tenant based assistance document.

6.4 CAPTIVA COVE II shall enter into a written lease with Income Eligible Households for a period of not less than one (1) year, unless a mutual agreement is reached between CAPTIVA COVE II and the Income Eligible Households, CAPTIVA COVE II must obtain CITY's written approval prior to increasing the rental amount of a HOME Assisted Unit, CAPTIVA COVE II, where not inconsistent with the terms of a written lease, shall provide the Income Eligible Households with not less than thirty (30) days prior written notice before implementing any increase in rent.

6.5 Income Eligible Households who no longer qualify for the HOME Assisted Units must pay rent as set forth in 24 C.F.R. 92.252(i)(2).

6.6 CAPTIVA COVE II's leases shall not contain language prohibited per 24 CFR 92.253 (b) pertaining to tenant protection.

6.7 CAPTIVA COVE II may not terminate the tenancy or refuse to renew the lease of a tenant in a HOME Assisted Unit except for serious or repeated violation of the terms and conditions of the lease; for violation of applicable federal, state, or local law; for completion of the tenancy period for transitional housing; or for other good cause. To terminate or refuse to renew tenancy, CAPTIVA COVE II shall serve written notice upon the tenant specifying the grounds for the action at least thirty (30) days before the termination of tenancy.

6.8 CAPTIVA COVE II shall adopt and follow written tenant selection policies and criteria that are compliant with 24 CFR 92.252 (d)(1) and (2) and are consistent with the purpose of providing housing for Income Eligible Households; are

reasonably related to program eligibility and the applicants' ability to perform the obligations of the lease; give reasonable consideration to the housing needs of families that would have a federal preference under Section 6(c)(4)(A) of the Housing Act of 1937; provide for the selection of tenants from a written waiting list in the chronological order of their application, insofar as is practicable; and give prompt written notification to any rejected applicant of the grounds for rejection.

6.9 CAPTIVA COVE II agrees to comply with the provisions of 24 CFR 92.253 (c) which states that the tenant leases for HOME assisted units may not be terminated without good cause. Good cause is defined as repeated violations of lease terms or violations of federal, State or local law; or in the case of transitional housing, completion of the transitional housing period tenancy period.

6.10 CITY shall have the right to perform on-site inspections of HOME Assisted Units to determine compliance with the property standards set forth in 24 C.F.R. 92.251 and to verify the information submitted to CITY by CAPTIVA COVE II.

ARTICLE 7 – PROJECT CONSTRUCTION AND CONSTRUCTION STANDARDS

7.1 CAPTIVA COVE II agrees to acquire the property for the Project in accordance with the terms and conditions set forth in this Agreement, consistent with Exhibit "B," Costs/Budget for Project, and Exhibit "C," Timetable/Schedule for Project. Failure of CAPTIVA COVE II to maintain the Timetable/Schedule for Project within sixty (60) days of the deadlines identified in the Timetable/Schedule for Project shall warrant a full review by the Division's staff.

7.2 The construction standards shall meet or exceed the requirements of 92.252(2) and ongoing maintenance of the rental units shall meet or exceed all federal, state and local housing quality standards and code requirements as well as the provisions of 24 CFR 92.251(f)

7.3 CITY will perform annual monitoring and evaluation activities during the term of this Agreement, including the Affordability Period, to determine compliance with the terms of this Agreement. Upon request by Broward County or CITY, CAPTIVA COVE II shall furnish to Broward County, the CITY or their designees, such records and other documentation deemed necessary by Broward County or CITY to complete its annual monitoring and evaluation activities.

7.4 CAPTIVA COVE II shall provide CITY with Monthly Progress Reports, in the form attached hereto as Exhibit "E," indicating the status of all outstanding work including the planned versus actual progress of activities and related budgets under this Agreement. Such Monthly Progress Reports shall be submitted to the Contract Administrator on the first business day following the end of the preceding month.

7.5 CAPTIVA COVE II shall meet with CITY during regular CITY business hours to address the Project upon reasonable notice provided by CITY.

7.6 CAPTIVA COVE II shall display a sign identifying CITY and H.U.D. as contributing lenders utilizing HOME funds on the encumbered property during the construction period.

ARTICLE 8- ASSURANCES

8.1 The Assurances set forth herein shall survive the expiration or earlier termination of this Agreement.

8.2 This Project is funded with grant funds provided by the United States Department of Housing and Urban Development. CAPTIVA COVE II shall comply with all applicable federal, state and CITY laws, ordinances, and codes and regulations. Any conflict or inconsistency between the federal, state or CITY guidelines or regulations and this Agreement shall be resolved in favor of the more restrictive guidelines or regulations.

8.3 CAPTIVA COVE II shall act in accordance with Title VI of the Civil Rights Act of 1964 (Pl. 88-352), which provides in part that, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which CAPTIVA COVE II receives federal financial assistance and will Immediately take any measures necessary to effectuate this Agreement. If any real property or structure thereon is provided or Improved with the aid of federal financial assistance extended to CAPTIVA COVE II, this assurance shall obligate CAPTIVA COVE II or, in the case of any transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which the federal financial assistance is extended or for another purpose involving the provision of similar Services or benefits.

8.4 CAPTIVA COVE II shall comply with the anti-lobbying legislation set forth in 24 CFR Part 87 and in CITY's Consolidated Plan submitted to H.U.D. for the HOME Program; both incorporated herein by reference.

8.5 CAPTIVA COVE II shall administer, in good faith, a policy designed to assure a workplace free from the illegal use, possession or distribution of drugs or alcohol by its beneficiaries.

8.6 CAPTIVA COVE II shall comply with Title I and Title II of the Americans with Disabilities Act regarding nondiscrimination on the basis of disability in employment and in state and local government services, In the course of providing any services funded in whole or in part by CITY.

8.7 CAPTIVA COVE II shall take all reasonable steps pursuant to 24 C.F.R. 92, subpart 11, to minimize the displacement of persons as a result of the Project and carry out those activities described in subpart H, except CAPTIVA COVE II does not assume CITY's responsibilities for environmental review under 24 C.F.R. 92.352

8.8 Housing assisted with HOME funds constitutes H.U.D. associated housing for the purpose of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821, et. seq.) and is, therefore, subject to 24 C.F.R. 35, incorporated herein by reference.

8.9 CAPTIVA COVE II certifies that, pursuant to 24 C.F.R. 24, incorporated herein by reference, neither CAPTIVA COVE II nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participating in the Project.

8.10 CAPTIVA COVE II shall comply with applicable uniform administrative requirements, as described in 24 C.F.R. 92.505.

8.11 HOME funds may not be provided to primarily religious organizations as further specified In 24 C.F.R, 92.257.

8.12 CAPTIVA COVE II shall keep such books and records as will allow CITY to comply with the record keeping requirements of 24 C.F.R. 92.

ARTICLE 9- FINANCIAL RESPONSIBILITY

9.1 Except when prohibited by federal or state law, CAPTIVA COVE II hereby gives CITY, H.U.D., and the U.S. Comptroller General, through any of its authorized representatives, access to and the right to examine all records, books, papers, or documents relating to the Project.

9.2 CITY shall have the right to audit the books, records, papers, accounts, or documents of CAPTIVA COVE II that are related to this Agreement. CAPTIVA COVE II shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to this Agreement for the Affordability Period. CAPTIVA COVE II agrees that, in the event CITY determines that HOME funds are due back to CITY, CITY may, in its sole discretion, require CAPTIVA COVE II to pay interest on those funds, at the rate stated in the Note, which interest shall be calculated from the date that CITY incorrectly paid CAPTIVA COVE II.

9.3 CAPTIVA COVE II shall preserve and make available, at reasonable times for examination and audit by CITY, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the Affordability Period. If any audit has been initiated and audit findings have not been resolved at the end of Affordability Period, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by CITY to be applicable to CAPTIVA COVE II's records, CAPTIVA COVE II shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by CAPTIVA COVE II. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for CITY's disallowance and recovery of any payment upon such entry.

9.4 CAPTIVA COVE II shall disclose to CITY any and all third party funding, whether public or private, for the Project. No CITY funding shall be used to supplant existing third party funding.

9.5 CAPTIVA COVE II shall submit to the Division within thirty (30) days of Project Completion, a complete financial accounting of all its Project activities, as provided for In Exhibit "F," Final Accounting for Project.

ARTICLE 10 - INDEMNIFICATION

10.1 CAPTIVA COVE II shall at all times hereafter indemnify, hold harmless and, at the CITY Attorney's option, defend or pay for an attorney selected by the CITY Attorney to defend CITY, its officers, agents, servants, and employees against any and all claims, losses, liabilities, and expenditures of any kind, including attorney fees, court costs, and expenses, caused by any intentional or negligent act or omission of

CAPTIVA COVE II, its employees, agents, servants, or officers, or accruing, resulting from, or related to the subject matter of this Agreement including, without limitation, any and all claims, demands, or causes of action of any nature whatsoever resulting from injuries or damages sustained by any person or property. The provisions of this section shall survive the expiration or earlier termination of this Agreement. To the extent considered necessary by the Contract Administrator and the CITY Attorney, any sums due CAPTIVA COVE II under this Agreement may be retained by CITY until all of CITY's claims for indemnification pursuant to this Agreement have been settled or otherwise resolved; and any amount withheld shall not be subject to payment of interest by CITY.

ARTICLE 11 — INSURANCE

11.1 CAPTIVA COVE II shall keep the Improvements hereafter erected on the Property subject to this Agreement insured against loss by fire, extended flood coverage, vandalism and malicious mischief, hazards, and such other hazards as CITY may require and in such amounts and for the Affordability Period as CITY may require.

11.1.1 In the event of loss, CAPTIVA COVE II shall give prompt notice to the Insurance carrier and CITY. CITY may make proof of loss if not made promptly by CAPTIVA COVE II.

11.1.2 Unless the Parties otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged, provided such restoration or repair is economically feasible and CITY's interest Is not thereby impaired. If such restoration or repair is not economically feasible or if CITY's interest would be impaired, the insurance proceeds shall be applied to the sums contemplated in this Agreement, with the excess, if any, paid to CAPTIVA COVE II. If the Property is abandoned by CAPTIVA COVE II or if CAPTIVA COVE II fails to respond to CITY within thirty (30) days from the date notice is mailed by CITY that the insurance carrier offers to settle a claim for insurance benefits, CITY is authorized to collect and apply the insurance proceeds at CITY's option either to restoration or repair of the Property or to the sums contemplated under this Agreement.

11.1.3 Such policy or policies shall be issued by approved companies authorized to do business in the state of Florida, and having agents upon whom service of process may be made in City of Pompano Beach, Florida. CAPTIVA COVE II shall specifically protect CITY by naming City of Pompano Beach as an additional insured and certificate holder.

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11.1.4 CAPTIVA COVE II shall furnish to CITY Certificates of Insurance or endorsements and a copy of the Declarations Page evidencing the insurance coverage specified in this Article prior to beginning performance of work under this Agreement

11.1.5 All policies must be endorsed to provide CITY with at least thirty (30) days' notice of cancellation and/or restriction. If any of the insurance coverage will expire prior to the required term, copies of renewal policies shall be furnished at least thirty (30) days prior to the date of their expiration.

11.2 CAPTIVA COVE II shall provide for and maintain the following insurance coverage:

11.2.1 In order to insure the Indemnification obligation contained in Article 10 above, CAPTIVA COVE shall, as a minimum, provide, pay for, and maintain inforce at all times during the term of this Agreement and for the Affordability Period as CITY may require (unless otherwise provided), the insurance coverage set forth in this Article 11 in accordance with the terms and conditions required by this Article.

11.2.2 A Commercial General Liability Insurance Policy shall be provided which shall contain minimum limits of One Million Dollars ($1,000,000.00) per occurrence combined single limit for bodily injury liability and property damage liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Commercial General Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office and must include:

11.2.2. Premises and/or operations.

11.2.2.2 Independent contractors.

11.2.2.3 Broad Form Contractual Coverage applicable to this specific Contract, including any hold harmless and/or indemnification agreement.

11.2.2.4 Personal Injury Coverage with Employee and Contractual Exclusions removed, with minimum limits of coverage equal to those required for Bodily Injury Liability and Property Damage Liability.

11.3 Workers' Compensation insurance to apply for all employees in compliance with the 'Workers' Compensation Laws' of the State of Florida and all applicable federal laws. In addition, the policy(ies) must include Employers' Liability with a limit of Five Hundred Thousand Dollars ($500,000.00) each accident, Five Hundred Thousand Dollars ($500,000.00) each employee and Five Hundred Thousand Dollars ($500,000.00) each disease.

11.4 CAPTIVA COVE II shall require its General Contractor to provide the same coverage's and limits set forth in Sections 11.2.2 and 11.3 herein and Builder's Risk in the amount of one hundred percent (100%) of replacement value of the completed structure. Such Builder's Risk policy shall be an all risk form with a deductible not to exceed Ten Thousand Dollars ($10,000.00)

each claim and shall contain a loss payable clause to include City of Pompano Beach.

11.5 CAPTIVA COVE II shall furnish to the Contract Administrator Certificates of Insurance or endorsements evidencing the insurance coverage specified by this Article prior to beginning performance of work under this Agreement.

11.8 Coverage is not to cease and is to remain in force (subject to cancellation until all performance required of CAPTIVA COVE II is completed. All policies must be endorsed to provide CITY with at least thirty (30) days' notice of cancellation and/or restriction. If any of the insurance coverage will expire prior to the completion of the work, copies of renewal policies shall be furnished at least thirty (30) days prior to the date of their expiration.

ARTICLE 12- TERMINATION

12.1 This Agreement Is subject to the availability of funds from H.U.D. In the event H.U.D. makes a determination that HOME funds shall no longer be available to CITY, in accordance with 24 CFR 85.44 incorporated herein by reference, CITY shall have a right to terminate this Agreement for convenience and shall provide no less than thirty (30) days' notice to CAPTIVA COVE II in accordance with Article 13, Notices, herein. Notwithstanding the notice of termination provided by CITY to CAPTIVA COVE II, CITY shall not be required to reimburse CAPTIVA COVE II for any of its Eligible Costs under this Agreement up to the date of termination if CITY is not able to obtain such funding from H.U.D. for the payment of these costs.

12.2 In the event that the Project is terminated prior to completion, either voluntarily or otherwise, CAPTIVA COVE II shall be required to repay CITY all HOME funds provided to CAPTIVA COVE II under this Agreement.

12.3 If, through any cause, CAPTIVA COVE II fails to fulfill its obligations under or violates any of the terms of this Agreement, CITY shall, pursuant to 24 C.F.R. 85.43, incorporated herein by reference, provide notice to CAPTIVA COVE II, in accordance with Article 13, Notices, specifying the nature of the default and providing CAPTIVA COVE II with an opportunity to cure said default within thirty (30) calendar days of the date of the notice. In the event CAPTIVA COVE II fails to cure the default to the reasonable satisfaction of CITY, CITY shall have the right to terminate this Agreement.

12.4 CAPTIVA COVE II shall not be relieved of liability to CITY for damages sustained by CITY by virtue of any breach of this Agreement by CAPTIVA COVE II, and CITY may take any action at law or in equity or otherwise, whether for specific performance of any covenant in this Agreement or such other remedy as may be deemed most effectual by CITY to enforce the obligations of CAPTIVA COVE II with respect to the Project.

12.5 In the event that CAPTIVA COVE II is under investigation or charged with violation of any State or Federal law with respect to and directly related to CAPTIVA COVE II's contractual relationship with CITY, this Agreement

shall terminate immediately upon notice from CITY to CAPTIVA COVE II in accordance with Article 13, Notices. In the event CAPTIVA COVE II is ultimately cleared of any wrongdoing, CITY shall pay CAPTIVA COVE II for Eligible Costs properly documented and committed to a third party up to the date of termination. However, if CAPTIVA COVE II is found to have violated any State or Federal law relative to this Agreement, CAPTIVA COVE II shall be required to repay CITY all HOME funds that have been paid to CAPTIVA COVE II.

12.6 In the even that, eighteen (18) months from the date of project completion, HOME assisted unit(s) are no occupied by HOME eligible tenants, all HOME funds provided to Developer by City must be repaid.

ARTICLE 13- NOTICES

Whenever either party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or sent by commercial express carrier with acknowledgement of delivery, or by hand delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom It is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the parties designate the following:

FOR CITY: Miriam Carrillo, Director
City of Pompano Beach Office of Housing and Urban Improvement
100 West Atlantic Blvd., Rm. 220
Pompano Beach, FL 333060

FOR CAPTIVA COVE II: Mara S. Mades, V.P.
Cornerstone Captiva Cove II, L.L.C., General Partner of Captiva Cove II Associates, Ltd.
2100 Hollywood Boulevard
Hollywood, Florida 33020

ARTICLE 14— EEO AND CBE COMPLIANCE

14.1 EEO COMPLIANCE: CAPTIVA COVE II shall not unlawfully discriminate on the basis of race, color, national origin, sex, religion, age, marital status, political affiliation, disability, pregnancy, gender identity and expression, or sexual orientation as may be amended from time to time, in the performance of this Agreement, the solicitation for or purchase of goods or services relating to this Agreement, or in subcontracting work in the performance of this Agreement. CAPTIVA COVE II shall include the foregoing or similar language in its contracts with any subcontractors or sub-consultants, except that any project assisted by the U.S. Department of Transportation funds shall comply with the non-discrimination requirements in 49 C.F.R. Parts 23 and 26, as amended. Failure to comply with the foregoing requirements is a material breach of this Agreement,

which may result in the termination of this Agreement or such other remedy as CITY deems appropriate.

CAPTIVA COVE II shall not unlawfully discriminate against any person in its operations and activities or in its use or expenditure of funds in fulfilling its obligations under this Agreement, CAPTIVA COVE II shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services funded by CITY, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. In addition, CAPTIVA COVE II shall take affirmative steps to ensure nondiscrimination in employment against disabled persons.

By execution of this Agreement, CAPTIVA COVE II represents that it has not been placed on the discriminatory vendor list (as provided in Section 287,134, Florida Statutes, as may be amended from time to time). CITY hereby materially relies on such representation in entering into this Agreement. An untrue representation of the foregoing shall entitle CITY to terminate this Agreement and recover from CAPTIVA COVE II all monies paid by CITY pursuant to this Agreement, and may result in debarment from CITY's competitive procurement activities.

ARTICLE 15 — MISCELLANEOUS

15.1 Affirmative marketing and Minority Outreach – in accordance with 24 CFR 92.351, CITY has adopted guidance on affirmative procedures and has provided same to CAPTIVA COVE II prior to execution of this Agreement. CAPTIVA COVE II agrees to follow CITY's guidance when marketing units.

15.2 INDEPENDENT CONTRACTOR. CAPTIVA COVE II is an independent contractor under this Agreement Services provided by CAPTIVA COVE II shall be performed by employees of CAPTIVA COVE II and subject to supervision by CAPTIVA COVE II, and shall not be deemed officers, employees, or agents of CITY. Personnel policies, tax responsibilities, social security and health insurance, employee benefits, purchasing policies and other similar administrative procedures applicable to services rendered under this Agreement shall be those of CAPTIVA COVE II, which policies of CAPTIVA COVE II shall not conflict with CITY, or State of Florida policies, rules or regulations relating to the use of HOME Funds provided by CITY under this Agreement. No partnership, joint venture, or other joint relationship is created hereby. CITY does not extend to CAPTIVA COVE II or CAPTIVA COVE II's agents any authority of any kind to bind CITY in any respect whatsoever.

15.3 PRIOR AGREEMENTS SUPERSEDED. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained; and the parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms shall be predicated upon any prior representations or agreements whether oral or written.

15.4 AMENDMENTS. CITY may, in its discretion, amend this Agreement to conform to changes in federal, state, local, and/or CITY directives and objectives. Such amendments shall in be in writing and the CITY Manager is

authorized to execute said amendments as well as amendments that change the term of this Agreement, reduce funding, or that change the Project, so long as the Project consists of eligible activities under 24 C.F.R. 92. Except for the provisions as set forth herein, no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

15.5 ASSIGNMENT AND PERFORMANCE. CAPTIVA COVE II shall not transfer or assign the performance of services for the Project under this Agreement. CITY may terminate this Agreement, effective immediately, if there is any assignment, or attempted assignment, transfer, or encumbrance, by

CAPTIVA COVE II of this Agreement or any right or interest herein without CITY's written consent. However, this Agreement shall run to CITY or its successors.

CAPTIVA COVE II represents that each person who will render services pursuant to this Agreement is duly qualified to perform such services by all appropriate governmental authorities, where required, and that each such person is reasonably experienced and skilled in the area(s) for which he or she will render his or her services.

CAPTIVA COVE II shall perform its duties, obligations, and services under this Agreement in a skillful and respectable manner. The quality of CAPTIVA COVE II's performance and all interim and final product(s) provided to or on behalf of CITY shall be comparable to the best local and national standards.

15.6 REPORTS, PLANS AND OTHER AGREEMENTS. All reports, plans, information, and documents, developed, prepared, assembled or completed by CAPTIVA COVE II for the purposes of this Agreement shall become the property of CITY without restriction, reservation or limitation of their use and shall be made available by CAPTIVA COVE II at any time upon request by CITY or the Division. Upon Project Completion, copies of all of the above data shall be delivered to the Division Director upon written request, including but not limited to any project set-up and completion reports requested by H.U.D.

15.7 CONFLICT OF INTEREST. CAPTIVA COVE II covenants it shall comply with the requirements of 24 CFR 92.356 (f) relative to the Conflict of Interest provisions which states that no Owner, Developer or Sponsor of a project assisted with HOME funds (or officer, employee, agent, elected or appointed official, or consultant of the Owner, Developer or Sponsor or immediate family member of an officer, employee, agent, elected or appointed office, or consultant of the Owner, Developer or Sponsor, whether private, for profit or nonprofit (including CHDOs) may occupy a HOME assisted affordable housing unit in a project during the required affordability period. Any possible conflicting interest on the part of CAPTIVA COVE II, its employees, or agents, shall be disclosed in writing to the Division within 10 business days of identifying such a conflict.

15.7.1 CONFLICTS. Neither CAPTIVA COVE II nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with CAPTIVA COVE II's loyal and conscientious exercise of judgment related to its performance under this Agreement. CAPTIVA COVE II agrees that

none of its employees shall, during the term of this Agreement, serve as an adverse or hostile expert witness against CITY in any legal or administrative proceeding in which he or she is not a party, unless compelled by court process, nor shall such persons give sworn testimony or issue a report or writing, as an expression of his or her opinion, which is adverse or prejudicial to the interests of CITY In any such pending or threatened legal or administrative proceeding. The limitations of this section shall not preclude such persons from representing themselves in any action or in any administrative or legal proceeding regarding this Agreement. In the event CAPTIVA COVE II is permitted to utilize subcontractors to perform any services required by this Agreement, CAPTIVA COVE II agrees to prohibit such subcontractors, by written contract, from having any conflicts as within the meaning of this section.

15.8 GOVERNING LAW; VENUE, WAIVER OF JURY TRIAL. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the state of Florida. All parties agree and accept that jurisdiction of any controversies or legal problems arising out of this Agreement, and any action involving the enforcement or interpretation of any rights hereunder, shall be exclusively in the state courts of the Seventeenth Judicial Circuit in City of Pompano Beach, Florida, and venue for litigation arising out of this Agreement shall be exclusively in such state courts, forsaking any other jurisdiction which either party may claim by virtue of its residency or other jurisdictional device. BY ENTERING INTO THIS AGREEMENT, CAPTIVA COVE II AND CITY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT.

15.9 SEVERANCE. In the event this Agreement or a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless CITY or CAPTIVA COVE II elects to terminate this Agreement. An election to terminate this Agreement based upon this provision shall be made within seven (7) days after the finding by the court becomes final.

15.10 LEGAL PROVISIONS DEEMED INCLUDED. Each and every provision of any law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein, and this Agreement shall be read and enforced as though it were included herein and if, through mistake or otherwise, any such provision is not inserted or is not correctly inserted, then upon application of either party this Agreement shall forthwith be amended to make such insertion.

15.11 KNOWLEDGE AND COMPLIANCE WITH APPLICABLE LAWS. CAPTIVA COVE II shall keep fully informed of all Federal and State laws, all local laws, ordinances and regulations, and all orders and decrees of bodies or tribunals having jurisdiction or authority which, in any manner, affect work authorized under the terms of this Agreement. CAPTIVA COVE II shall at all times observe and comply with all such laws, ordinances, regulations, orders and decrees.

15.12 PUBLIC ENTITY CRIMES ACT. CAPTIVA COVE II represents that the execution of this Agreement will not violate the Public Entity Crimes Act (Section 287.133, Florida Statutes), which essentially provides that a person or affiliate who is a contractor, consultant or other provider and 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 CITY, may not submit a bid on a contract with CITY for the construction or repair of a public building or public work, may not submit bids on leases of real property to CITY, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under

a contract with CITY, and may not transact any business with CITY in excess of the threshold amount provided in Section 287.017, Florida Statutes, for category two purchases for a period of thirty-six (36) months from the date of being placed on the convicted vendor list Violation of this section shall result in termination of this Agreement and recovery of all monies paid hereto, and may result in debarment from CITY's competitive procurement activities. In addition to the foregoing, CAPTIVA COVE II further represents that there has been no determination, based on an audit, that it committed an act defined by Section 287.133, Florida Statutes, as a "public entity crime" and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether CAPTIVA COVE II has been placed on the convicted vendor list.

15.13 THIRD PARTY BENEFICIARIES. Neither CAPTIVA COVE II nor CITY intends to directly or substantially benefit a third party by this Agreement. Therefore, the parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of them based upon this Agreement The parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this Agreement.

15.14 WAIVER OF BREACH AND MATERIALITY. Failure by CITY to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement No waiver shall be effective unless it is in writing and signed by the party against whom it is asserted. A waiver of any provision of this Agreement or failure to perform any of the terms, covenants, and conditions of this Agreement shall not be deemed a waiver of any prior or subsequent failure to perform any term, covenant or condition of this Agreement and shall not be construed to be a modification of the terms of this Agreement. CITY and CAPTIVA COVE II agree that each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof.

15.15 JOINT PREPARATION. CITY and CAPTIVA COVE II acknowledge that they have sought and received whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations under this Agreement, and the preparation of this Agreement has been a joint effort of CITY and CAPTIVA COVE II and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than any other.

15.16 PRIORITY OF PROVISIONS. If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached

hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of this Agreement, the term, statement, requirement, or provision contained In Articles 1 through 15 of this Agreement shall prevail and be given effect. In the event of a conflict between any provision(s) set forth in this Agreement and a more stringent State or Federal provision applicable to any services performed under this Agreement, the more stringent State or Federal provision shall prevail.

15.17 INCORPORATION BY REFERENCE. The truth and accuracy of each WHEREAS clause set forth above is acknowledged by the parties. The attached Exhibits "A" — "J" are incorporated into and made a part of this Agreement Any rules and regulations of H.U.D. addressed in this Agreement which are not specifically identified in the definition contained in Section 1.13 herein shall be deemed incorporated herein by reference.

15.18 SURVIVAL. Either party's right to monitor, evaluate, enforce, indemnify and insure, audit and review, and any assurances and items of financial responsibility shall survive the expiration or earlier termination of this Agreement until the conclusion of the Affordability Period. Any provision of this Agreement which contains a restriction or requirement which extends beyond the date of termination or expiration set forth herein shall survive termination or expiration of this Agreement and be enforceable.

15.19 COOPERATION. CAPTIVA COVE II and CITY agree to execute, acknowledge, deliver, and cause to be done, executed, acknowledged, and delivered, all such further documents and perform such acts as shall reasonably be requested of it to carry out this Agreement and give effect hereto. Accordingly, without in any manner limiting the specific rights and obligations set forth in this Agreement, the parties declare their intention to cooperate with each other in effectuating the terms of this Agreement.

15.20 WAIVER OF CLAIMS. CAPTIVA COVE II hereby waives any claim against CITY, and its agents, servants and employees for loss of anticipated profits caused by any suit or proceedings directly or indirectly attacking the validity of this Agreement or any part thereof, or by any judgment of award in any suit or proceeding declaring this Agreement null, void or voidable, delaying the same or any part thereof, from being carried out.

15.21 CUMULATIVE RIGHTS. All rights and remedies of CITY hereunder or at law or in equity are cumulative and shall be in addition to any other rights and remedies available. The exercise of any right or remedy shall not be taken to exclude or waive the right to the exercise of any other. Failure by CITY to promptly exercise any of its rights shall not operate to forfeit or be treated as a waiver of any such rights.

15.22 SPECIFIC PERFORMANCE. CAPTIVA COVE II agrees that, in addition to all other remedies, its obligations contained herein shall be subject to the remedy of specific performance by appropriate action commenced in a court of proper Jurisdiction.

15.23 FORCE MAJEURE. if the performance of this Agreement, or any obligation hereunder is prevented by reason of hurricane, earthquake, or

other casualty caused by nature, or by labor strike, war, or by a law, order, proclamation, regulation, ordinance of any governmental agency, the party so affected, upon giving prompt notice to the other party, shall be excused from such performance to the extent of such prevention, provided that the party so affected shall first have taken reasonable steps to avoid and remove such cause of nonperformance and shall continue to take reasonable steps to avoid and remove such cause, and shall promptly notify the other party in writing and resume performance hereunder whenever such causes are removed; provided, however, that if such non-performance exceeds sixty (80) days, the party that is not prevented from performance by the force majeure event shall have the right to terminate this Agreement upon written notice to the party so affected. This section shall not supersede or prevent the exercise of any right the parties may otherwise have to terminate this Agreement.

15.24 EXECUTION AUTHORITY. The individuals executing this Agreement on behalf of CAPTIVA COVE II personally warrant that he or she has full authority to execute this Agreement on behalf of CAPTIVA COVE II.

15.25 EXECUTION. This document may be executed in four (4) counterparts, each of which shall be deemed to be an original.

15.26 SUBORDINATION. Captiva Cove II and the City hereby expressly acknowledge and agree that this Agreement is (i) subordinate to that certain Mortgage and Security Agreement dated as of December 16, 2014, made by Captiva Cove II to and for the benefit of Florida Housing Finance Corporation, as recorded December 18, 2014, in Official Records Book 51326, Page 1071, pursuant to and as further described in that certain Subordination Agreement dated as of December 16, 2014 and recorded December 18, 2014, in Official Records Book 51326, Page 1272 (the "Subordination Agreement"), all of the Public Records of Broward County, Florida, and (ii) subject to the Subordination Agreement.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

Commission • DP M11707

CITY:

Witnesses:

_____

_____

CITY OF POMPANO BEACH
By:_____
_____, MAYOR
By:_____
_____, CITY MANAGER

Attest:

_____

(SEAL)

[name]
CITY CLERK
Approved As to Form:

_____

[name]
CITY ATTORNEY
STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this _____ day of _____, 2016 by _____, as Mayor, _____, as City Manager and _____, as City Clerk of the City of Pompano Beach, a municipal Florida corporation, on behalf of the municipal corporation, who are personally known to me.

NOTARY'S SEAL:

_____
NOTARY PUBLIC, STATE OF FLORIDA

_____
(Name of Acknowledger Typed, Printed or Stamped)

_____
Commission Number

HOME FUNDING AGREEMENT BETWEEN THE CITY OF POMPANO BEACH AND CAPTIVIA COVE, LLC PROVIDING FOR NEW CONSTRUCTION OF CAPTIVA COVE II (a/k/a "CAPTIVA COVE II"), AN 88 UNIT MULTI-FAMILY RENTAL DEVELOPMENT

CAPTIVA COVE II:

WITNESSES:

Signature _____

Print Name Meryl Wolfe

Signature _____

Print Name Sonia Rodriguez

CAPTIVA COVE II ASSOCIATES, LTD.

By _____

Leon J. Wolfe, President of
Cornerstone Captiva Cove II, L.L.C.

STATE OF FLORIDA)
) ss
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me this 25 day of February 2016, by Leon J. Wolfe, as president of Cornerstone Captiva Cove II, L.L.C., a Florida limited liability company, the general partner of CAPTIVA COVE II ASSOCIATES, LTD., a Florida limited partnership on behalf of the partnership. He is personally known to me or has produced _____ as identification and did/did not take an oath.

NOTARY PUBLIC

Elaine Santiago

Print name:
Elaine Santiago

(seal)
My commission expires:

Commission No.:

ELAINE SANTIAGO
Notary Public - State of Florida
Commission # FF 204849
My Comm. Expires Jun 24, 2019
Bonded through National Notary Assn.

EXHIBIT "A"

PROJECT DESCRIPTION

Project Address
1201 S. Dixie Highway West, Pompano Beach, FL 33060

CAPTIVA COVE II shall utilize the HOME funds provided by CITY under the Agreement to acquire property to construct a multi-family affordable rental development to be known as CAPTIVA COVE II. CAPTIVA COVE II will consist of EIGHTY-EIGHT (88) units financed with tax-exempt bonds issued by the Florida Housing Finance Corporation, Four percent (4%) tax credits awarded by the Florida Housing Finance Corporation, HOME funds awarded by the Florida Housing Finance Corporation, local subsidy and the HOME funds provided by CITY under the Agreement. The development will consist of four (4) residential buildings. Under the terms of this Agreement and the Home Funding Agreement dated November 10, 2014 as approved by the City Commission of the City of Pompano Beach by Resolution 2015-66, CAPTIVA COVE II shall provide a total of ten (10) HOME Assisted Units for the Affordability Period of thirty three (33) years described in the Agreements; however, all the rental units shall be affordable for households consistent with the terms of the Agreement for the Affordability Period set for therein.

EXHIBIT "A"

PROJECT DESCRIPTION, CONTINUED

Legal Description:

PARCELS A AND B OF CAPTIVA CLUB ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 176, AT PAGE 143, OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA.

BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHEAST CORNER OF SAID PARCEL B; THENCE S.29°48'54"W., A DISTANCE OF 38.03 FEET; THENCE S.14°10'21"W., A DISTANCE OF 155.00 FEET; THENCE S.75°49'39"E., A DISTANCE OF 12.00 FEET; THENCE S.14°10'21"W., A DISTANCE OF 10.00 FEET; THENCE S.25°28'57"W. A DISTANCE OF 61.19 FEET; THENCE N.75°49'39"W., A DISTANCE OF 3.00 FEET; THENCE S.14°10'21"W., A DISTANCE OF 50.00 FEET; THENCE S.75°49'39"E., A DISTANCE OF 3.00 FEET; THENCE S.04°15'44"E., A DISTANCE OF 37.95 FEET; THENCE S.14°10'21"W., A DISTANCE OF 24.66 FEET, THE PREVIOUS 10 COURSES AND DISTANCES BEING COINCIDENT WITH THE EAST LINE OF SAID PARCEL B AND THE WEST RIGHT OF WAY LINE FOR DIXIE HIGHWAY (STATE ROAD 811); THENCE N.88°15'37"W., ALONG THE MOST NORTHERLY SOUTH LINE OF SAID PARCEL B, A DISTANCE OF 136.63 FEET; THENCE S.14°10'21"W., ALONG THE EAST LINE OF SAID PARCEL B, A DISTANCE OF 320.80 FEET; THENCE N.88°15'37"W., ALONG THE SOUTH LINE OF SAID PARCEL A AND B, A DISTANCE OF 178.65 FEET; THENCE N.01°44'23"E., A DISTANCE OF 30.00 FEET; THENCE N.05°00'07"E., A DISTANCE OF 66.64 FEET; THENCE N.06°06'00"E., A DISTANCE OF 289.89 FEET TO A POINT ON THE ARC OF A NON-TANGENT CURVE CONCAVE TO THE NORTHWEST, A RADIAL LINE OF SAID CURVE THROUGH SAID POINT HAVING A BEARING OF S.15°13'39"E.; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE, TO THE LEFT, HAVING A CENTRAL ANGLE OF 10°50'19" AND A RADIUS OF 84.00 FEET FOR AN ARC DISTANCE OF 15.89 FEET TO A POINT ON A NON-TANGENT LINE; THENCE N.73°26'18"E., A DISTANCE OF 10.65 FEET; THENCE N.06°05'59"E., A DISTANCE OF 16.42 FEET TO POINT OF CURVATURE OF TANGENT CURVE CONCAVE TO THE SOUTHEAST; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE, TO THE RIGHT, HAVING A CENTRAL ANGLE OF 36°01'47" AND A RADIUS OF 15.00 FEET FOR AN ARC DISTANCE OF 9.43 FEET TO A POINT OF REVERSE CURVATURE OF A TANGENT CURVE CONCAVE TO THE NORTHWEST; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE, TO THE LEFT, HAVING A CENTRAL ANGLE OF 21°46'10" AND A RADIUS OF 71.00 FEET FOR AN ARC DISTANCE OF 26.98 FEET TO A POINT OF REVERSE CURVATURE OF A TANGENT CURVE CONCAVE TO THE SOUTHEAST; THENCE NORTHEASTERLY AND EASTERLY ALONG THE ARC OF SAID CURVE, TO THE RIGHT, HAVING A CENTRAL ANGLE OF 59°06'31" AND A RADIUS OF 4.00 FEET FOR AN ARC DISTANCE OF 4.13 FEET TO A POINT OF TANGENCY; THENCE N.79°28'07"E., ALONG A LINE TANGENT TO THE LAST DESCRIBED CURVE, A DISTANCE OF 15.51 FEET; THENCE N.10°31'53"W., A DISTANCE OF 11.00 FEET; THENCE N.79°28'07"E., A DISTANCE OF 0.77 FEET TO A POINT ON THE ARC OF A NON-TANGENT CURVE CONCAVE TO THE SOUTHWEST, A RADIAL LINE OF SAID CURVE THROUGH SAID POINT HAVING A BEARING OF S.84°16'53"E. THENCE NORTHERLY AND NORTHWESTERLY ALONG THE ARC OF SAID CURVE, TO THE LEFT, HAVING A CENTRAL ANGLE OF 75°30'46" AND A RADIUS OF 84.00 FEET FOR AN ARC DISTANCE OF 110.71 FEET TO A POINT ON A NON-TANGENT LINE; THENCE N.00°58'07"E., ALONG THE WEST LINE OF SAID PARCEL B, A DISTANCE OF 56.57 FEET; THENCE N.89°58'53"E., A DISTANCE OF 13.55 FEET; THENCE N.02°06'11"E., A DISTANCE OF 72.05 FEET TO A POINT ON THE NORTH LINE OF SAID PARCEL B; THENCE S.88°36'36"E., ALONG SAID NORTH LINE, A DISTANCE OF 421.65 FEET, TO THE POINT OF BEGINNING.

SAID LANDS SITUATE AND BEING WITHIN THE CITY OF POMPANO BEACH AND CONTAINING 4.538 ACRES (197,685.55 SQUARE FEET), MORE OR LESS.

EXHIBIT "B"

COSTS/BUDGET FOR PROJECT

	COST/ SQ FT	COST/ UNIT	TOTAL COST
A. Uses			
Acquisition	$28.44	$28,523	$2,510,000
Land Carry	$0.00	$0	$0
County Impact fees	$3.96	$3,971	$349,438
City Impact Fees	$0.81	$1,100	$71,212
W&S Fees	$0.06	$57	$5,000
Architect	$0.79	$795	$70,000
Engineer	$0.32	$320	$28,120
Survey	$0.11	$114	$10,000
Environmental/Soils	$0.16	$163	$14,350
Borrower Legal Counsel, Profess. Fees	$1.25	$1,250	$110,000
Finance Fees	$5.09	$5,101	$ 448,868
Bldrs Risk Insurance	$0.57	$850	$50,000
Insurance	$0.18	$178	$ 15,620
Taxes	$0.35	$347	$ 30,569
Title & Recording	$0.74	$739	$65,000
Special Inspector	$0.00	$0	$0
Inspection	$0.43	$432	$38,000
Appraisal	$0.06	$63	$5,500
Market Study	$0.05	$51	$4,500
Accounting	$0.45	$455	$40,000
Tax Credit Fees	$0.84	$842	$74,115
Construction Interest	$2.38	$2,386	$210,000
Marketing & Start Up	$0.06	$57	$5,000
Miscellaneous	$0.00	$0	$0
Building Permits	$3.11	$3,117	$ 274,286
Construction Costs	$102.93	$103,239	$9,085,000
P&P Bond	$0.80	$804	$70,780
HC Contingency (in GC Contract)	$0.00	$0	$0
Reserves	$3.03	$3,034	$267,000
Developer's OH	$5.02	$5,034	$443,014
Developer's Fee	$17.57	$17,620	$1,550,550
Total Uses	$179.53	$180,067	$15,845,922

B. Sources			
Tax Credit Equity	$54.68	$54,841	$4,826,000
1st Mortgage	$96.30	$96,591	$8,500,000
Bond Redemption	($36.25)	($36,364)	($3,200,000)
Grant	$5.66	$5,682	$500,000
Pompano Beach, inclusive of $100,327	$4.38	$4,396	$386,886
County HOME 2014	$5.30	$5,318	$467,993
FHFC HOME	$31.72	$31,818	$2,800,000
Developer Note	$17.73	$17,785	$1,565,043
Other	$0.00	$0	$0
Total Sources	$179.53	$180,067	$15,845,922

EXHIBIT "C"

APPROXIMATE TIMETABLE/SCHEDULE FOR PROJECT

- **Anticipated closing date - October 31 , 2014**
- **Anticipated construction starting date - November 3, 2014**
    - **Building 1- August 31, 2015**
    - **Building 2- September 15, 2015**
    - **Building 3- September 30, 2015**
    - **Building 4- October 15, 2015**
- **Anticipated completion date - April 30, 2016**

EXHIBIT "D"

Prepared by and return to:

Zimmerman Kiser Sutcliffe, P.A.
315 East Robinson Street, Suite 600
Orlando FL 32801
Attention: John P. Grygiel, Esq.

This Mortgage and the Note secured hereby arrives out of or given to secure the repayment of a loan issued in connection with the financing of housing pursuant to the issuance of certain bonds by the Florida Housing Finance Corporation and is therefore exempt from the payment of Documentary Stamp and intangible taxes pursuant to the provisions of Section 420.513(1) and Section 199.183(1), respectively, of the Florida statutes.

MORTGAGE

THIS MORTGAGE ("**Mortgage**"), entered into as of December 16, 2014 by CAPTIVA COVE II ASSOCIATES, LTD., a Florida limited partnership (whether one or more, "**MORTGAGOR**") and CITY OF POMPANO BEACH, a public body corporate and politic ("**MORTGAGEE**"), collectively referred to herein as the "**Parties**."

WHEREAS, MORTGAGOR is indebted to Mortgagee in the amount of One Hundred Eighty-Six Thousand Eight Hundred Eighty-Six Dollars ($186,886) ("**Loan**"), which indebtedness is evidenced by that certain Promissory Note of even date herewith ("**Promissory Note**" or "**Note**") made by Mortgagor, as maker, to and in favor of Mortgagee, as holder; and

To secure to Mortgagee (a) the payment of the Loan, and all extensions and modifications of the Promissory Note; and (b) the performance of MORTGAGOR's covenants and agreements under this Mortgage and the Promissory Note which shall be attached to this Mortgage as Attachment A after execution by MORTGAGOR. MORTGAGOR mortgages, grants, and conveys to Mortgagee the property described in the legal description included in the Promissory Note and more particularly set forth on Attachment B attached hereto, and located in Broward County, Florida, together with all improvements now or later erected on the property, and all easements, rights, appurtenances, rents, royalties, mineral, oil and gas rights and profits, water, water rights, and water stock, and all fixtures now or later attached to the property, all of which, including replacements and additions, shall be deemed to be and remain a part of the property covered by this Mortgage; and all of the foregoing shall constitute and refer to the "**Property**."

MORTGAGOR covenants that MORTGAGOR is lawfully seized of the Property in fee, and has the right to mortgage, grant and convey its interest in the Property as provided herein; that title to the Property is marketable and free and clear of all encumbrances except for encumbrances and matters of record; and that MORTGAGOR will warrant and defend the title to the Property against the lawful claims of all persons whomsoever, except for encumbrances and matters of record as of the date hereof.

This Mortgage is expressly made subject and subordinate to the terms and conditions specified in (i) that certain mortgage from Mortgagor to Florida Housing Finance Corporation ("FHFC") dated December 16, 2014, to be recorded in Broward County, as assigned by FHFC to the Bank of New York Mellon, N.A. (the "**First Mortgage**") securing that certain Note or Notes having an aggregate original principal face amount of $8,500,000, dated December 16, 2014 (the "**First Note**"), made by Mortgagor payable to Florida Housing Finance Corporation as the First Mortgagee; (ii) that certain mortgage from Mortgagor to FHFC dated December 16, 2014 ,to be recorded in Broward County ("**Second Mortgage**") securing that certain Home Loan Note having an original principal face amount of $2,800,000 dated December 16, 2014 ("**Second Note**"), made by Mortgagor payable to Florida Housing Finance Corporation as the Second Mortgagee; and (iii) that certain mortgage from Mortgagor to Broward County, a political subdivision of the state of Florida, dated December 16, 2014 ("**Third Mortgage**") securing that certain HOME Loan Note having an original principal face amount of $467,993 , dated December 16, 2014 ("**Third Note"),** as well as to any refinancings of the foregoing (collectively, the "**Prior Mortgages**"), but only if the purpose of the refinance is the lowering of the interest rate on the First Note and Second Note.

UNIFORM COVENANTS. The Parties covenant and agree as follows:

1. **Payment of Debt**. MORTGAGOR shall pay when due, the debt evidenced by the Promissory Note. Payment due under the Promissory Note and this Mortgage shall be made in U.S. currency. However, if any check or other instrument received by Mortgagee as payment under the Promissory Note, or this Mortgage is returned to Mortgagee unpaid, Mortgagee may require that any, or all subsequent payments due under the Promissory Note and this Mortgage be made in one or more of the following forms, as selected by Mortgagee: (a) money order; (b) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (c) electronic funds transfer.

Payments are deemed received by Mortgagee when received at the location designated in the Promissory Note or at such other location as may be designated by Mortgagee in accordance with the notice provision herein. Mortgagee may return any payment or partial payment if the payment or partial payment is insufficient to bring the loan current. Mortgagee may accept any payment or partial payment insufficient to bring the loan current, without waiver of any rights, or prejudice to its rights to refuse such payment or partial payment in the future, but Mortgagee is not obligated to apply such payments at the time such payments are accepted.

2. **Charges; Liens**. MORTGAGOR shall pay all taxes, assessments and other charges, fines and impositions attributable to the Property which may attain a priority over this Mortgage prior to delinquency. MORTGAGOR shall promptly furnish to Mortgagee receipts, or other such documents acceptable to the Mortgagee, evidencing such payments.

MORTGAGOR shall not voluntarily create, or permit, suffer to be created, or to exist, on or against the Property, or any part thereof, any lien superior to the lien of this Mortgage, exclusive of the Prior Mortgages or liens, if any, to which this Mortgage is made subordinate to as set forth above or as set forth in that certain marked title commitment delivered to Mortgagee contemporaneously with this Mortgage.

3. **Hazard Insurance**. MORTGAGOR shall keep the improvements now existing or later erected on the Property insured against loss by fire and such other hazards included within the term "extended coverage," and any other hazards including, but not limited to earthquakes and/or floods for which insurance is required and as Mortgagee may require, in such amounts and for such periods as Mortgagee may require; provided, that Mortgagee shall not require that the amount of such coverage exceed that amount of coverage required to pay the sums secured by this Mortgage.

Unless otherwise required by the Mortgagee, subject to the terms of the Prior Mortgages, all such insurance shall be affected by Standard Fire and Extended Coverage Insurance policies, in amounts not less than necessary to comply with the coinsurance clause percentage of the value applicable to the location and character of the property to be covered. All such insurance shall be carried in companies approved by the Mortgagee and all policies therefore shall be in such form and shall have attached loss payable clauses in favor of the Mortgagee and any other party as shall be satisfactory to the Mortgagee. The insurance carrier providing the insurance shall be chosen by MORTGAGOR, subject to the Mortgagee's approval; provided that such approval shall not be unreasonably withheld.

Subject to the terms of the Prior Mortgages, all insurance policies and renewals shall be in a form acceptable to the Mortgagee and shall include a standard mortgage clause in favor of and in a form acceptable to the Mortgagee. MORTGAGOR shall promptly furnish to the Mortgagee all renew notices and all receipts of paid premiums. In the event of loss, MORTGAGOR shall give prompt notice to the insurance carrier and the Mortgagee, and the Mortgagee may make proof of loss if not made promptly by MORTGAGOR.

Unless the Parties otherwise agree in writing, and subject to the terms of the Prior Mortgages, insurance proceeds shall be applied to restoration or repair of the Property damaged, provided such restoration or repair is economically feasible, and the security of this Mortgage is not impaired. If such restoration or repair is not economically feasible, or if the security of this Mortgage would be impaired, the insurance proceeds shall be applied to the sums secured by this Mortgage, with the excess, if any, paid to MORTGAGOR. If the Property is abandoned by MORTGAGOR or if MORTGAGOR fails to respond to the Mortgagee within thirty (30) days after notice by the Mortgagee to MORTGAGOR that the insurance carrier offers to settle a claim for insurance benefits, the Mortgagee is authorized to collect and apply insurance proceeds at the Mortgagee's option either to restoration or repair of the Property or to the sums secured by this Mortgage.

Subject to the terms of the Prior Mortgages, during such repair and restoration period, the Mortgagee shall have the right to hold such insurance proceeds until the Mortgagee has had an opportunity to inspect such Property to ensure the work has been completed to the Mortgagee's satisfaction, provided that such inspection shall be undertaken promptly.

Subject to the terms of the Prior Mortgages, if the Property is acquired by the Mortgagee, all right, title, and interest of MORTGAGOR in and to any insurance policies and, in and to the proceeds (to the extent of the sums secured by this Mortgage immediately prior to such sale or construction) resulting from damage to the Property prior to the sale or construction shall pass to the Mortgagee.

The Mortgagee or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, the Mortgagee may inspect the interior of the Property

including improvements, if applicable. The Mortgagee shall give MORTGAGOR notice at the time of, or prior to, such an interior inspection specifying such reasonable cause.

4. **Preservation and Maintenance of Property**. MORTGAGOR shall keep the Property in good repair and shall not permit or commit waste, impairment, or deterioration of the Property, and will promptly comply with all the requirements of federal, state, and local governments pertaining to such property or any part. Except for repairs or replacements in the ordinary course of business or except for any emergency repairs, no building or other structure or improvement, fixture or personal property mortgaged, shall be removed or demolished without the written consent of the Mortgagee, except for obsolete, or worn out property that is replaced in the ordinary course of business. Except for repairs or replacements in the ordinary course of business or except for any emergency repairs, MORTGAGOR shall not make, permit, or suffer any alteration or addition to any building or other structure or improvement now, or which may later be erected or installed upon the mortgaged property, or any part, nor will MORTGAGOR use, or permit or suffer the use of, any of the mortgaged property for any purpose other than the purpose or purposes for which the same is now intended to be used, without the prior written consent of the Mortgagee.

5. **Protection of Mortgagee's Security**. The Mortgagee may, at its option, upon notice to MORTGAGOR, make such appearances, disburse such sums, and take such action as is necessary to protect the Mortgagee's interest, if MORTGAGOR fails to perform the covenants or agreements contained in this Mortgage or, if any action or proceeding is commenced which materially affects the Mortgagee's interests in the Property subject to this Mortgage, including but not limited to, eminent domain, insolvency, code enforcement, arrangements, or proceedings involving a bankruptcy.

6. Subject to MORTGAGOR's ability to cure as set forth in Paragraph 16 of this Mortgage, the amount of the loan shall become due at the option of the Mortgagee: (a) after MORTGAGOR's failure to exhibit to the Mortgagee, within ten (10) calendar days after demand, receipts showing payment of all taxes, water rates, sewer rates, and assessments; or (b) after the actual or threatened alteration, demolition, or removal of any building on the Property without the written consent of the Mortgagee; or (c) after the transfer of title to the Property, or any part thereof, without the written consent of the Mortgagee except as permitted under Section 4 of this Mortgage, and except for leases of residential units made in compliance with the Development Agreement ("Development Agreement") between MORTGAGOR and Mortgagee, and except for easements granted to governmental entities or other providers for utility or similar services necessary for the construction, use, occupancy, repair and maintenance of the property; or (d) if the buildings on the Property are not maintained in reasonably good repair; or (e) after failure to comply with any requirement, order, notice of violation of law, or ordinance issued by any governmental entity claiming jurisdiction over the Property; or (f) in the event of the removal, demolition, or destruction in whole, or in part, of any of the fixtures, chattels or articles of personal property covered, unless the same are promptly replaced by similar fixtures, chattels and articles of personal property at least equal in quality and condition to those replaced, free from chattel mortgages or other encumbrances and free from any retention of title; or (g) after thirty (30) calendar days' notice to MORTGAGOR, in the event of the passage of any law deducting from the value of land for the purpose of taxation any lien thereon, or changing in any way the taxation of mortgages or debts secured thereby for state or local purposes; or (h) if any default occurs thirty (30) calendar days after notice and demand; or (i) after default, notice, and demand either in assigning and delivering the policies insuring the buildings against loss by fire or in

reimbursing the Mortgagee for premiums paid on such insurance, as provided in this Mortgage; or (j) if MORTGAGOR fails to keep, observe and perform any of the other covenants, conditions or agreements contained in this Mortgage.

7. If any action or proceeding is commenced (except an action to foreclose this Mortgage or to collect the debt secured by this Mortgage), to which action or proceeding the Mortgagee is made a party, or in which it becomes necessary to defend or uphold the lien of this Mortgage, all sums paid by the Mortgagee for the expense of any litigation to prosecute or defend the rights and lien created by this Mortgage (including reasonable attorneys' fees), shall be paid by MORTGAGOR to the extent Mortgagee prevails, together with interest at the statutory rate per annum from the date demand for payment is made on MORTGAGOR, and any such sum including the related interest shall be a lien on the Property, prior to any right, or title to, interest in or claim upon the property attaching or accruing subsequent to the lien of this Mortgage, and shall be deemed to be secured by this Mortgage. In any action or proceeding to foreclose this Mortgage, or to recover or collect the debt secured by this Mortgage, the provisions of law respecting the recovering of costs, disbursements and allowances shall prevail unaffected by this covenant.

8. **MORTGAGOR's Loan Application**. MORTGAGOR shall be in default if, MORTGAGOR or any persons or entities acting at the direction of MORTGAGOR or with MORTGAGOR's knowledge or consent, gives materially false, misleading, or inaccurate information or statements to the Mortgagee (or failed to provide the Mortgagee with material information) in connection with the Loan.

9. **Condemnation**. Subject to the terms of the Prior Mortgages, the proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property or any part, or for conveyance in lieu of condemnation, are assigned and shall be paid to the Mortgagee. The proceeds referred to in this paragraph shall be applied to the sums secured by this Mortgage with the excess, if any, paid to MORTGAGOR. If the Property is abandoned by MORTGAGOR, or if, after notice by the Mortgagee to MORTGAGOR that the condemnor offers to make an award or settle a claim for damages, MORTGAGOR fails to respond to the Mortgagee within thirty (30) days after the date the notice is mailed, Mortgagee is, subject to the terms of the Prior Mortgages, authorized to collect and apply the proceeds, at the Mortgagee's option, either to restoration or repair of the Property, to the sums secured by this Mortgage.

10. **MORTGAGOR Not Released; Forbearance by the Mortgagee Not a Waiver**. Extension of time for payment or modification or amortization of the sums secured by this Mortgage Agreement granted by the Mortgagee to any successor in interest of MORTGAGOR shall not operate to release, in any manner, the liability of the original MORTGAGOR and MORTGAGOR's successor in interest. The Mortgagee shall not be required to commence proceedings against such successor or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Mortgage by reason of any demand made by the original MORTGAGOR and MORTGAGOR's successors in interest. Any forbearance by the Mortgagee for exercising any right or remedy, including, without limitation, the Mortgagee's acceptance of payments from third persons, entities or successors in interest or in amounts less than the amount then due, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy.

11. **Remedies Cumulative**. All remedies provided in this Mortgage are distinct and cumulative to any other right or remedy under this Mortgage or afforded by law or equity, and may be exercised concurrently, independently or successively.

12. **Joint and Several Liability; Successors and Assigns Bound; Captions**. MORTGAGOR covenants and agrees that MORTGAGOR's obligations and liability shall be joint and several. Any successor in interest of MORTGAGOR who assumes MORTGAGOR's obligations under this Mortgage in writing, and is approved by the Mortgagee, shall obtain all of MORTGAGOR's rights and benefits under this Mortgage. MORTGAGOR shall not be released from MORTGAGOR's obligations and liability under this Mortgage unless Mortgagee agrees to such release in writing. The covenants and agreements of this Mortgage shall bind and benefit the successors and assigns of Mortgagee. The captions and headings of the paragraphs of this Mortgage are for convenience only and are not to be used to interpret or define any specific provision.

13. **Notice**. All notices given by MORTGAGOR or the Mortgagee in connection with this Mortgage must be in writing. Any notice to MORTGAGOR (which shall simultaneously be delivered to the Borrower's investor limited partner, Stratford Captiva II Investors Limited Partnership, with an address at c/o Stratford Capital Group, 100 Corporate Place, Suite 404, Peabody, MA 01960, Attn: Asset Management (Captiva II), or such other address as the same may direct) in connection with this Mortgage shall be deemed to have been given to MORTGAGOR when mailed by first class mail or when actually delivered to MORTGAGOR's notice address if sent by other means. The notice address shall be the Property address unless MORTGAGOR has designated a substitute notice address by notice to Mortgagee. MORTGAGOR shall promptly notify the Mortgagee of MORTGAGOR's change of address. If the Mortgagee specifies a procedure for reporting MORTGAGOR's change of address, then MORTGAGOR shall only report a change of address through that specified procedure. There may be only one designated notice address under this Mortgage at any one time. Any notice to the Mortgagee shall be given by delivering it or by mailing it by first class mail to the Mortgagee's address unless the Mortgagee has designated another address by notice to MORTGAGOR. Any notice in connection with this Mortgage shall not be deemed to have been given to the Mortgagee until actually received by the Mortgagee. If any notice required by this Mortgage is also required under Florida law, the Florida law requirement will satisfy the corresponding requirement under this Mortgage.

14. **Governing Law; Severability; Rules of Construction**. This Mortgage shall be governed by Florida law and the laws of the jurisdiction in which the Property is located. In the event that any provision or clause of this Mortgage conflicts with Florida law, such conflict shall not affect other provisions of this Mortgage or the Promissory Note to be attached to this Mortgage as Attachment A following execution by MORTGAGOR, which can be given effect without the conflicting provision, and to this end, the provisions of this Mortgage and the Promissory Note are declared to be severable.

As used in this Mortgage: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

15. **Transfer of the Property; Assumption**. Except as provided in Paragraph 6(c) above or except for those transfers of the Property or Interests therein (in whole or part)

permitted under the Prior Mortgages, no part of the Property or any interest in the Property shall be sold or transferred by MORTGAGOR without the Mortgagee's consent consistent with Paragraph 21. If MORTGAGOR sells or transfers any interest or part in the Property, in violation of the terms and conditions of this Mortgage, the sums secured by this Mortgage shall become immediately due and payable. Notwithstanding the foregoing, the transfer of (i) any limited partnership interests in MORTGAGOR or (ii) any ownership interests in the Limited Partners of MORTGAGOR, as such term is defined in the Amended and Restated Limited Partnership Agreement dated as of December 16, 2014 (the "Partnership Agreement"), shall not require the consent of the Mortgagor, shall not be a default under the Loan documents, the Mortgagee shall not have the right to accelerate the Loan based on such transfers, and the Mortgagee shall not have the right to raise the interest rate under the Loan documents or impose any transfer fee. The Mortgagee's further consent to the execution of any documents, including without limitation any amendment to the Partnership Agreement to affect any transfer of limited partner interests, shall not be necessary.

The withdrawal, removal, and/or replacement of a general partner of the Mortgagor pursuant to the terms of the Partnership Agreement shall not constitute a default under any of the Loan documents, and any such actions shall not accelerate the maturity of the Loan, provided that any required substitute general partner is reasonably acceptable to the Mortgagee and is selected with reasonable promptness. The Mortgagee hereby approves Stratford SLP, Inc., MORTGAGOR's "Special Limited Partner" or any affiliate of the Special Limited Partner as a substitute general partner, and the Mortgagee's consent, nor acknowledgement, shall be required to any amendment to the Partnership Agreement necessary to effectuate the substitution of the Special Limited Partner, or any affiliate, as general partner.

If the amount becomes due and payable, the Mortgagee shall mail MORTGAGOR a Notice of Acceleration. Such Notice shall provide a period of not less than thirty (30) days from the date the Notice is received within which MORTGAGOR may pay the sums declared due. If MORTGAGOR fails to pay such sums prior to the expiration of such period, the Mortgagee may without further notice or demand on MORTGAGOR, invoke any available legal remedies.

NONUNIFORM COVENANTS. MORTGAGOR and the Mortgagee further covenant and agree as follows:

16. **Acceleration; Remedies**. Upon MORTGAGOR's breach of any covenant in this Mortgage or the Promissory Note to be attached as Attachment A following execution of same by MORTGAGOR, including the covenants to pay, when due, which breach is not cured after notice from the Mortgagee to MORTGAGOR and to Stratford Captiva II Investors Limited Partnership (the "Investor Limited Partner") and Special Limited Partner within any applicable curative period any sums secured by this Mortgage shall be accelerated. The Mortgagee prior to acceleration shall mail notice to MORTGAGOR specifying: (1) the breach; (2) the action required to cure such breach; (3) a date, not less than thirty (30) days from the date the notice is received by MORTGAGOR, by which such breach must be cured (provided, however, for any defaults or breaches other than failure to pay, such thirty (30) days shall be extended if a cure cannot reasonably be made within such time, in which case the time to cure shall be extended by a reasonable number of days to permit a cure as determined by Mortgagee in its sole and reasonable discretion, so long as Mortgagor is diligently attempting a cure); and (4) that failure to cure such breach on or before the date specified in the notice may result in any action in law or equity, as the Mortgagee determines to be most effectual to enforce

MORTGAGOR's obligations, including an action for specific performance, acceleration of the sums secured by this Mortgage, foreclosure by judicial proceeding and sale of the Property. Notwithstanding the foregoing, the Investor Limited Partner, or its designee, of MORTGAGOR shall have the right but not the obligation to cure any event of default under this Mortgage. The Mortgagee agrees to such performance as though the same has been performed by MORTGAGOR. If the breach is not cured on or before the date specified in the notice, the Mortgagee at the Mortgagee's option may declare all the sums secured by this Mortgage to be immediately due and payable without further demand and may foreclose this Mortgage by judicial proceeding. The Mortgagee shall be entitled to collect in such proceeding all expenses of foreclosure, including but not limited to, reasonable attorney's fees, and costs of documentary evidence, abstracts and title reports.

Notwithstanding anything in this Mortgage or the other documents evidencing or securing this Loan, in no event shall the Mortgagor or any partner thereof be personally liable for the principal and interest due on the Note, and the Mortgagee's sole recourse shall be to foreclose on the Property.

17. **MORTGAGOR's Right to Reinstate**. Notwithstanding the Mortgagee's acceleration of the sums secured by this Mortgage, MORTGAGOR shall have the right to have any proceedings begun by the Mortgagee to enforce this Mortgage discontinued at any time prior to an entry of a judgment enforcing this Mortgage if: (a) MORTGAGOR pays the Mortgagee all sums which would be then due under this Mortgage had no acceleration occurred; (b) MORTGAGOR cures all breaches of this Mortgage; (c) MORTGAGOR pays all reasonable expenses incurred by the Mortgagee in enforcing the covenants and agreements of MORTGAGOR contained in this Mortgage, including but not limited to reasonable attorney's fees; and (d) MORTGAGOR takes such action as the Mortgagee may reasonably require to assure that the lien of this Mortgage, the Mortgagee's interest in the Property and MORTGAGOR's obligation to pay the sums secured by this Mortgage shall remain in full force and effect.

18. After the occurrence of any default which is not cured within any applicable notice and curative period, MORTGAGOR shall, upon demand of the Mortgagee, surrender possession of the Property to the Mortgagee, and the Mortgagee may enter such property, and let the same and collect all rents which are due or to become due, and apply the same, after payment of all charges and expenses on account of indebtedness secured by this Mortgage, and all such rents and all leases existing at the time of such default are assigned to the Mortgagee as further security for the payment of the indebtedness secured; and the Mortgagee may also dispossess, by the usual summary proceedings, any tenant defaulting in the payment of any rent to the Mortgagee.

Mortgagor's Investor Limited Partner, Special Limited Partner, and/or their designees, shall have the right, but not the obligation, to cure any Mortgagor defaults, and the Mortgagee shall accept such cure on the same basis as if rendered by the Mortgagor.

19. The Mortgagee in any action to foreclose this Mortgage shall be entitled to the appointment of a receiver without notice, as a matter of right and without regard to the value of the mortgaged property, or the solvency or insolvency of MORTGAGOR or other party liable for the payment of the Promissory Note and other indebtedness secured by this Mortgage.

20. The amount due under the Promissory Note shall be paid at the end of thirty three (33) years, from and after the date that the Project to be constructed on the Property has been completed and a Certificate of Occupancy is issued with respect thereto. If, however, except as provided in Section 6(c) above, MORTGAGOR fails to utilize the Property during the thirty three (33) year Affordability Period for the purposes stated in the Promissory Note, to be attached to this Mortgage as Attachment A following execution by MORTGAGOR, which is secured hereby, or fails to comply with the terms and conditions of this Mortgage following the expiration of any grace or cure period, the amount of the Promissory Note shall immediately become due and payable to the Mortgagee.

21. **Transfer of the Property or a Beneficial Interest in MORTGAGOR**. "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by MORTGAGOR at a future date to a purchaser.

Except as permitted in Section 6(c) above or except as permitted under the Prior Mortgages, if all or any part of the Property, or any interest in the Property, is sold or transferred (or if MORTGAGOR is not a natural person and a general partner interest in MORTGAGOR is sold or transferred, except pursuant to section 15 above and as set forth below) without the Mortgagee's prior written consent, the Mortgagee may require immediate payment in full of all sums secured by this Mortgage. However, this option shall not be exercised by the Mortgagee if such exercise is prohibited by federal and state law.

If the Mortgagee exercises this option, the Mortgagee shall give MORTGAGOR notice of acceleration. The notice shall provide a period of not less than thirty (30) days from the date the notice is given in accordance with Section 13 within which MORTGAGOR must pay all sums secured by this Mortgage. If MORTGAGOR fails to pay these sums prior to the expiration of this period, the Mortgagee may invoke any remedies permitted by this Mortgage without further notice or demand on MORTGAGOR.

Notwithstanding the foregoing, the transfer or pledge of (i) any limited partnership interests in MORTGAGOR or (ii) any ownership interests in the Limited Partners of MORTGAGOR, as such term is defined in Partnership Agreement, shall not require the Mortgagee's consent, shall not be a default under the Loan documents, the Mortgagee shall not have the right to accelerate the Loan based on such transfers, and the Mortgagee shall not have the right to raise the interest rate under the Loan documents or impose any transfer fee. The Mortgagee's further consent to the execution of any documents, including without limitation any amendment to the Partnership Agreement to effect any transfer of limited partner interests, shall not be necessary.

The withdrawal, removal, and/or replacement of a general partner or limited partner of the Partnership pursuant to the terms of the Partnership Agreement shall not constitute a default under any of the Loan documents, and any such actions shall not accelerate the maturity

of the Loan, provided that any required substitute general partner is reasonably acceptable to the Mortgagee and is selected with reasonable promptness. The Mortgagee hereby approves the Special Limited Partner or any affiliate of the Special Limited Partner as a substitute general partner, and the Mortgagee's consent, nor acknowledgement, shall be required to any

amendment to the Partnership Agreement necessary to effectuate the substitution of the Special Limited Partner, or any affiliate, as general partner.

22. **MORTGAGOR's Right to Reinstate After Acceleration**. If MORTGAGOR meets certain conditions, MORTGAGOR shall have the right to have enforcement of this Mortgage discontinued at any time prior to the earliest of: (a) such period as federal and state law might specify for the termination of MORTGAGOR's right to reinstate; or (b) entry of a judgment foreclosing this Mortgage. Those conditions are that MORTGAGOR: (a) pays the Mortgagee all sums which then would be due under this Mortgage and the Promissory Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Mortgage, including, but not limited to, reasonable attorneys' fees, Property inspection and valuation fees, and other fees incurred for the purpose of protecting the Mortgagee's interest in the Property and rights under this Mortgage; and (d) takes such action as the Mortgagee may reasonably require to assure that the Mortgagee's interest in the Property and rights under this Mortgage, and MORTGAGOR's obligation to pay the sums secured by this Mortgage shall continue unchanged. The Mortgagee may require that MORTGAGOR pay such reinstatement sums and expenses in one or more of the following forms, as selected by the Mortgagee: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, secured instrument and obligations shall remain fully effective as if no acceleration had occurred.

Neither MORTGAGOR nor the Mortgagee may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Mortgage or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Mortgage until such MORTGAGOR or the Mortgagee has notified the other party of such alleged breach and afforded the other party a reasonable period after the giving of such notice to take corrective action. If Florida law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph.

23. **Hazardous Substances**. As used in this Section: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup. Hazardous Substances shall exclude substances generally used for household purposes and substances in amounts permitted by applicable laws.

MORTGAGOR shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. MORTGAGOR shall not do, nor voluntarily allow (to the extent permitted by law) anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two (2) sentences shall not apply to the presence, use, or storage on

the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

MORTGAGOR shall promptly give the Mortgagee written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which MORTGAGOR has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If MORTGAGOR learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, MORTGAGOR shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing in this Mortgage shall create any obligation on Mortgagee for an Environmental Cleanup.

24. **Attorneys' Fees**. As used in this Mortgage and the Promissory Note to be attached hereto as Attachment A following execution by MORTGAGOR, attorneys' fees shall include those awarded by a trial court, an appellate court and any attorneys' fees incurred in a bankruptcy proceeding.

25. **Jury Trial Waiver**. MORTGAGOR waives any right to a trial by jury in any action, proceeding, claim, or counterclaim, whether in contract or tort, at law or in equity, arising out of or in any way related to this Mortgage or the Promissory Note.

26. **Recordation**. This Mortgage shall be recorded in the Public Records of Broward County, Florida, by the Mortgagee at the expense of MORTGAGOR.

27. **Release**. Upon payment or reduction of all sums secured by this Mortgage and performance of all improvements and obligations provided for in the Note, the Mortgagee shall satisfy and release this Mortgage without charge to MORTGAGOR. MORTGAGOR shall pay all costs of recordation, if any.

28. **MORTGAGOR's Copy**. MORTGAGOR shall be given one (1) copy of the Promissory Note and this Mortgage.

29. **EXTENDED LOW-INCOME HOUSING COMMITMENT**. Mortgagee agrees that the lien of this Instrument shall be subordinate to any extended low-income housing commitment (as such term is defined in Section 42(h)(6)(B) of the Internal Revenue Code) (the "Extended Use Agreement") recorded against the Property; provided that such Extended Use Agreement, by its terms, must terminate upon foreclosure under this Instrument or upon a transfer of the Property by instrument in lieu of foreclosure, in accordance with Section 42(h)(6)(E) of the Internal Revenue Code.

BY SIGNING BELOW, MORTGAGOR accepts and agrees to the terms and covenants contained in this Mortgage and in any Rider approved by the Mortgagee and executed by MORTGAGOR and recorded with it.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, MORTGAGOR, CAPTIVA COVE II ASSOCIATES, LTD., has executed this Mortgage.

WITNESSES:

_____
Signature of Witness

_____
Print Name of Witness

_____
Signature of Witness

_____
Print Name of Witness

MORTGAGOR:

CAPTIVA COVE II ASSOCIATES, LTD., a Florida limited partnership

By: Cornerstone Captiva Cove II, L.L.C., Florida limited liability company, its general partner

By:_____
Mara S. Mades
Vice President

STATE OF FLORIDA)
SS
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me this _____ day of _____, 2014, by Mara S. Mades, as Vice President of Cornerstone Captiva Cove II, L.L.C., a Florida limited liability company, general partner of Captiva Cove II Associates, Ltd., a Florida limited partnership, on behalf of the companies. She is personally known to me or has produced _____ as identification.

_____
Print Name:_____
Notary Public, State of Florida at Large
Commission No._____

My Commission Expires:

EXHIBIT "D" CONTINUED
AMENDMENT TO MORTGAGE

Prepared by and return to:

Zimmerman Kiser Sutcliffe, P.A.
315 East Robinson Street, Suite 600
Orlando FL 32801
Attention: John P. Grygiel, Esq.

AMENDMENT TO MORTGAGE

THIS AMENDMENT TO MORTGAGE ("Amendment"), entered into as of _____, 2016 by CAPTIVA COVE II ASSOCIATES, LTD., a Florida limited partnership (whether one or more, "Mortgagor") and CITY OF POMPANO BEACH, a public body corporate and politic ("Mortgagee"), collectively referred to herein as the "Parties."

WHEREAS, the Parties executed that certain Mortgage, dated December 16, 2014, and recorded on December 18, 2014, in Official Records Book 51326, Page 1206, in the Public Records of Broward County, Florida 2014 (the "Original Mortgage", and as amended hereby, the "Mortgage"), wherein Mortgagor became indebted to Mortgagee in the amount of One Hundred Eighty-Six Thousand Eight Hundred Eighty-Six Dollars ($186,886) ("Original Loan"), which indebtedness is evidenced by that certain Promissory Note of even date therewith ("Original Promissory Note" or "Original Note") made by Mortgagor, as maker, to and in favor of Mortgagee, as holder; and

WHEREAS, upon the request of the Mortgagor, Mortgagee has agreed to advance Mortgagor an additional sum of $100,327, and in connection therewith they have executed that certain Home Funding Agreement, dated _____, 2016, wherein the Mortgagee agreed to advance to Mortgagor One Hundred Thousand Three Hundred Twenty-Seven Dollars ($100,327) (the "Advance"); and

WHEREAS, to evidence the Advance, the Mortgagor has delivered to Mortgagee a Future Advance Note; and

WHEREAS, to secure the Advance, Mortgagor and Mortgagee now wish to amend the Original Mortgage.

NOW, THEREFORE, for good and other valuable consideration, the receipt of which is hereby acknowledged, the Original Mortgage is amended as follows:

1. The following shall be added to the Original Mortgage as paragraph 30:

   Future Advances. Mortgagee may, at Mortgagee's option prior to release of this Mortgage, make Future Advances to Mortgagor. Such Future Advances, with interest thereon, shall be secured by this Mortgage when evidenced by any such future advance note(s) or amendments to the Original Note.

2. Any and all references to the Loan in the Original Mortgage shall refer to the principal amount of $287,213, as evidenced by that certain $186,886 promissory

note executed by Mortgagor on December 16, 2014, and that certain $100,327 Future Advance Note from Mortgagor to Mortgagee made on_____, 2016.

3. The Original Mortgage, as amended and modified hereby, is hereby in all respects ratified and confirmed.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, MORTGAGOR, CAPTIVA COVE II ASSOCIATES, LTD., has executed this Amendment to Mortgage.

MORTGAGOR:

WITNESSES:

_____

_____

_____

_____

CAPTIVA COVE II ASSOCIATES, LTD., a Florida limited partnership

By: Cornerstone Captiva Cove II, L.L.C., a Florida limited liability company, its general partner

By:_____
Mara S. Mades
Vice President

STATE OF FLORIDA)
SS
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me this _____ day of _____, 2016, by Mara S. Mades, as Vice President of Cornerstone Captiva Cove II, L.L.C., a Florida limited liability company, general partner of Captiva Cove II Associates, Ltd., a Florida limited partnership, on behalf of the companies. She is personally known to me or has produced _____ as identification.

_____
Print Name:_____
Notary Public, State of Florida at Large
Commission No._____

My Commission Expires:

MORTGAGEE:

WITNESSES:

_____

_____

CITY OF POMPANO BEACH
By:_____
_____, MAYOR
By:_____
_____, CITY MANAGER

Attest:

_____
[name]
CITY CLERK

(SEAL)

Approved As to Form:

_____
[name]
CITY ATTORNEY

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this _____ day of _____, 2016 by _____, as Mayor, _____, as City Manager and _____, as City Clerk of the City of Pompano Beach, a municipal Florida corporation, on behalf of the municipal corporation, who are personally known to me.

NOTARY'S SEAL:

_____
Print Name:_____
Notary Public, State of Florida at Large
Commission No._____

My Commission Expires:

ATTACHMENT "A" TO EXHIBIT "D"
FUTURE ADVANCE NOTE

FOR VALUE RECEIVED the undersigned, CAPTIVA COVE II ASSOCIATES, LTD., a Florida limited partnership ("MAKER"), promises to pay to the order of the CITY OF POMPANO BEACH, a public body corporate and politic, together with any other holder ("HOLDER") at 100 West Atlantic Boulevard, Pompano Beach, Florida 33060, or such other place as HOLDER may from time to time designate in writing, in lawful currency of the United States of America, the sum of $100,327 or so much of said sum as has been advanced and is then outstanding under this Note, together with interest thereon as hereinafter set forth ("Loan").

This Future Advance Note ("Note") is a Note under which advances may be made from time to time, subject to the terms and conditions of this Note, and pursuant to the terms of Resolution No.: _____of the City Commission of the City of Pompano Beach, Florida ("Authorizing Resolution"), and that Home Loan Agreement dated _____ between Maker and Holder with respect to an 88-unit apartment complex located at 1201 S. Dixie Highway West, Pompano Beach, Broward County, Florida 33060 ("Project").

The terms of this Note are as follows:

1. The property securing repayment of the Loan ("Property") is legally described as: See Exhibit A attached.

2. Advances made hereunder shall accrue interest at the rate of zero percent (0.00%) from the date hereof until the last day of the second year following the issuance of a certificate of occupancy on the Project, and at the rate of two percent (2.00%) per annum thereafter, until the Maturity Date, at which point the entire principal balance then outstanding shall be due and payable. Interest shall be payable quarterly, out of 75% of available cash flow remaining after paying amounts due under the notes secured by the Prior Mortgages (as defined in the Mortgage), on the first day of April, June, October and January of each year for which interest is payable hereunder. This Note shall mature on January 1, 2049 ("Maturity Date"). If, however, MAKER transfers title to the Property prior to the Maturity Date, or fails to utilize the Property for the purpose stated in the Mortgage (defined below), or fails to comply with the terms and conditions of the Authorizing Resolution or Development Agreement, or the Mortgage, this Note shall immediately become due and payable to HOLDER.

3. The principal balance advanced under this Note, subject to Section 2 above, shall be due and payable upon transfer or sale of the Property. If this Note is reduced to judgment, such judgment shall bear the statutory interest rate on judgments.

4. The principal balance advanced under this Note is payable, subject to Section 2, upon the conveyance of title (legal or equitable) to all or any portion of the Property, except as permitted in Section 6(c) of the Mortgage, or abandonment of the Property or use of the Property for nonresidential purposes.

5. If suit is instituted by HOLDER to recover under this Note, the undersigned agrees to pay all costs of such collection including reasonable attorneys' fees and court costs. This Note is subject to the nonrecourse provisions in the Mortgage described in paragraph 7 herein.

6. Demand, protest and notice of demand and protest are waived and the undersigned waives, to the extent authorized by law, any and all homestead and other exemption rights which otherwise would apply to the debt evidenced by this Note.

7. This Note is secured by that certain mortgage from Maker to Holder dated December 16, 2014, and recorded on December 18, 2014, in Official Records Book 51326, Page 1206, in the Public Records of Broward County, Florida 2014 , and as amended by that certain amendment thereto dated an even date hereof (as amended, the "Mortgage").

8. If MAKER performs all covenants and conditions of this Note and the Mortgage, then the Loan and all other documents evidenced by the Loan shall cease and terminate and, upon request of MAKER, HOLDER shall issue a Satisfaction of Mortgage.

THIS NOTE IS EXEMPT FROM DOCUMENTARY STAMP TAXES

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, MAKER, CAPTIVA COVE II ASSOCIATES, LTD., has executed this Note this _____ day of _____, 2016.

WITNESS:

_____
Print Name: _____

_____
Print Name: _____

MAKER:

CAPTIVA COVE II ASSOCIATES, LTD., a Florida limited partnership

By: Cornerstone Captiva Cove II, L.L.C., a Florida limited liability company, its general partner

By: _____
Mara S. Mades
Vice President

STATE OF FLORIDA)
) SS
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me this _____ day of _____, 2016, by Mara S. Mades, as Vice President of Cornerstone Captiva Cove II, L.L.C., a Florida limited liability company, general partner of Captiva Cove II Associates, Ltd., a Florida limited partnership, on behalf of the companies. She is personally known to me or has produced _____ as identification.

_____
Print Name:_____
Notary Public, State of Florida at Large
Commission No._____

My Commission Expires:

Prepared by:
Housing Finance & Community Development Division
110 N.E. Third Street
Fort Lauderdale, Florida 33301

EXHIBIT "D-1"

DECLARATION OF RESTRICTIVE COVENANTS
RENTAL UNITS

It is understood and agreed by Declarant, CAPTIVA COVE II ASSOCIATES, LTD., a Florida limited partnership, that the Project referenced herein on the Property described herein Is being funded under the HOME Investment Partnerships (HOME) Program, collectively referred to herein as the "Program." Pursuant to the Program, HOME funds provided by City of Pompano Beach (the "CITY") pursuant to a HOME Funding Agreement executed by the parties dated November 4, 2014, are being expended by Declarant to acquire real property for Improvements to be constructed at the Property located at 1201 S. Dixie Highway West, Pompano Beach, City of Pompano Beach, Florida (the "Project").

Under the Program, the above-referenced HOME funds have been provided as a deferred payment loan with no monthly payments required. However, as a condition of the loan, I agree that Declarant shall use the Property only for development of affordable multi-family residential rental units as described in the HOME Funding Agreement This Declaration of Restrictive Covenants shall remain in effect following Project Completion, as defined in the HOME Funding Agreement, for all rental units, including the HOME Assisted Units, until the Affordability Period of thirty third (33) years expires. Declarant shall rent the units, including the HOME Assisted Units only to Income Eligible Households as defined in and as required by the HOME Funding Agreement for the Affordability Period.

This Declaration of Restrictive Covenants shall be extinguished and released by City of Pompano Beach in whole, or in part, in accordance with the terms contained herein.

I have read the foregoing requirements and have been explained to me and/or I fully understand their terms.

Dated this 16th day of December, 2014

WITNESSES:

CAPTIVA COVE II ASSOCIATES, LTD.
a Florida limited partnership

By: Cornerstone Captive Cove II, L.L.C. a Florida limited liability company, Its general partner

Signature

Signature

By: _____
Mara S. Mades,
Vice President

STATE OF FLORIDA)
) SS
CITY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this _____ day of

2014 by Mara S. Mades, as vice president of Cornerstone Captiva Cove II, L.L.C., a Florida limited liability company, the general partner of CAPTIVA COVE II ASSOCIATES, LTD., a Florida limited partnership, on behalf of the companies. She ( ) is personally known to me or ( ) has_____
produced _____as identification.

Print

Name: _____

Notary Public, State of Florida at Large
Commission

No, _____
My Commission Expires:

EXHIBIT "E"

MONTHLY PROGRESS REPORT

PROGRAM OBJECTIVE

Measurable Objective	Specific Task Qualified	Projected Yearly Total	Monthly Progress	Progress Year-to Date	Supporting Documentation

EXHIBIT "E" Continued

MONTHLY PROGRESS REPORT

Period Covered: _____ to _____

A. Property information Date of Report:

Agency: _____

Person Preparing the Report: _____

Title: _____

Signature:

Project Title and Number: _____

Project Start-up Date: _____

Project Completion Date:

B.1(a)	Project Cost	Funds Expended To Date	Percentage
Total Project	$_____	$	
HOME Funding	$	$_____	_____
Other Funding	$_____	$_____	_____
(State Source)	_____		

B.1 (b) Declaration of Agency Budget Chances _____

Proclaim Income:
Source of Program Income: _____

EXHIBIT "E" Continued

B.1(c) Other Grant Awards

Dates): _____ **Dollar Amount(s):** _____

Funding Sources): _____

_____

_____

_____

_____

Funding Contact Person(s): _____

_____

_____

_____

_____

_____

B.1 (d) Describe other attempts to secure additional funding: _____

B.2 (a) Percent of Project Completed to Date: _____

1. **Office Hours:** _____
2. **Resignations:** _____
3. **Part-time of Full-time Employees(s)** _____

_____

_____

_____

_____

_____

_____

_____

_____

EXHIBIT "E" Continued

C.1 **Brief Project Description & Project Location:**

C.2 **Describe Specific Work Tasks and Qualified Accomplishments Completed This Month:**

Task	Qualified Accomplishments this Month

C.3 **Describe Success or Problems Encountered with the Project.**

C.4 **Anticipated problems or concerns with project: Please identify technical assistance needed and/or requested from CITY staff.**

C.5 **Anticipated advertisements and/or other contractual services: if so, has CITY staff been advised and appropriate steps taken to assure compliance?**

C.8 **If applicable, please complete the following direct Benefit Report Form on all program participants.**

EXHIBIT "F"

FINAL ACCOUNTING FOR PROJECT

Project Name _____

Initial HOME funding Amount _____

Amended HOME funding Amount _____

Amount Expended _____

Amount Unexpended _____

For each HOME Assisted Unit, furnish the following:

- household size
- race
- rental or homeowner
- number of bedrooms
- percent of median income
- female head of household — Answer

Other sources of Project funding:

- type
- interest rate
- loan term
- amount

For all rental units constructed with HOME funds provided under the Agreement for the Project, include the following information for each unit:

- Rent
- Amount of Utility allowance
- Tenant contribution
- Rental subsidy

Exhibit "G"
REQUEST FOR PAYMENT FORM

TO (OWNER):

FROM (CONTRACTOR):

CONTRACT FOR:

CONTRACTOR'S APPLICATION FOR PAYMENT

CHANGE ORDER SUMMARY			
Change Orders Approved in previous months by Owner TOTAL		ADDITIONS	DECUCTIONS
Approved this Month			
Number	Date Approved		
TOTALS			
Net change by Change Orders			

The undersigned Contractor certifies to the Owner that the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR:

By: Date:

PROJECT No: APPLICATION NO.:
FROM:
CONTRACT DATE: TO:

Application is made for Payment, as shown below, in connection with the Contract._

1. ORIGINAL CONTRACT SUM $

2. Net change by Change Orders $

3.. CONTRACT SUM TO DATE (Use l + 2) $

4. TOTAL COMPLETED & STORED TO DATE $

(Column G)
s_
RETAINAGE
(Column D + E)
b. % of Stored Material $

(Column F)
Total Retainage *(Line* 5a + 5B or
Total in Column in I) $

8. TOTAL EARNED LESS RETAINAGE
Line 4 less Line 5 Total) $

7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (One 6 from prior Certificate) $,

8. CURRENT PAYMENT DUE s

9. BALANCE TO FINISH. PLUS RETAINAGE
(Line 3 less Line 6) $

State of Florida County of Broward

Subscribed and sworn to before me this day of 20

Notary Public
My Commission Expires:

AMOUNT CERTIFIED $

Attach explanation if amount certified differs from the amount applied for.)

By *Date:*

This certificate is not negotiable. The AMOUNT CERTIFIED Is payable only to the Contractor named herein._ Issuance, payment, and acceptance of payment is without prejudice to any rights of the Owner under the Contract.

<< 91.69 591 tS6

EXHIBIT "H"
RENTAL SET UP AND COMPLETION FORM
CHART & INSTRUCTIONS

Name	No. of Bedrooms	Race	Size - Household	Type of Household: (single, non-elderly; elderly (62); single parent; two parents; other)	Payment Made to: O=Owner T=Tenant	New Contract (Y=Yes, tenant is newly assisted. N=No, tenant assistance has been renewed	$Amount of Security Deposit	$Amount of HOME Assistance	$Amount Tenant Contributed
TOTALS								$0.00	

Please note that instructions are on next page.

- **The HOME Completion Report Is to be completed and submitted to the Office of Housing and Urban Improvement once all HOME funds have been expended and the HOME Assisted Units are occupied.**
- **The information requested on the chart is to be submitted in the space provided.**
- **This information is necessary so that City of Pompano Beach can officially close out the Project in the U.S. Department of Housing and Urban Development's required Integrated Disbursement System (IDIS).**

EXHIBIT "I"
PROJECT RENTS

FORT LAUDERDALE, FL HMFA*

(June 2011)

Number of Bedrooms	Fair Market Rent	Low HOME	High HOME
Efficiency	$956	$693	$881
1	1,069	743	946
2	1,285	891	1,137
3	1,777	1,030	1,305
4	2,256	1,148	1,436
5	2,594	1,268	1,567
6	2,933	1,386	1,697

*Source: U.S. Department of Housing and Urban Development.

Meeting Date: March 8, 2016 Agenda Item 7

REQUESTED COMMISSION ACTION:

x Consent ___ Ordinance x Resolution ___ Consideration ___ Workshop

SHORT TITLE OR MOTION: A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A CONSTRUCTION MANAGER-AT-RISK CONTRACT NOT TO EXCEED THE AMOUNT OF $67,946.44 BETWEEN THE CITY OF POMPANO BEACH AND BURKHARDT CONSTRUCTION, INC. FOR THE INLET DOCK ADDITION AND CABLE RAILING; PROVIDING AN EFFECTIVE DATE.

Summary of Purpose and Why:
Attached is a construction manager-at-risk contract in the amount of $67,946.44,, consistent with the Construction Management at Risk Contract (RFQ T-12-15) that was awarded to Burkhardt Construction Inc. Scope of the contract includes installation of 6' X 12' wood dock and 229 linear feet of stainless steel cable railing with gate along seawall at east side of the inlet park.

Accomplishing this item supports achieving Initiative 2.6 "Improve City Parks" identified in the City's Great Places Strategy.

QUESTIONS TO BE ANSWERED BY ORIGINATING DEPARTMENT:

(1) Origin of request for this action: Staff
(2) Primary staff contact: Rob McCaughan Ext 786-4507
(3) Expiration of contract, if applicable: N/A
(4) Fiscal impact and source of funding: $67,946.44 from CIP 07-924, Acct No. 302-7302-530.65-12

DEPARTMENTAL COORDINATION	DATE	DEPARTMENTAL RECOMMENDATION	DEPARTMENTAL HEAD SIGNATURE OR ATTACHED MEMO NUMBER
Public Works	2/26/16	APPROVE	Robert McCaughan
Purchasing	3/2/16	APPROVE	
City Attorney	2/29/16	APPROVE	
Finance	2/29/16	APPROVE	
Budget	2/29/16	APPROVE	

___ Advisory Board
___ Development Services Director
X City Manager

ACTION TAKEN BY COMMISSION:

Ordinance	Resolution	Consideration	Workshop
1st Reading	1st Reading	Results:	Results:
2nd Reading			

City Attorney's Communication #2016-532

February 18, 2016

TO: Robert A. McCaughan, Public Works Director

FROM: Mark E. Berman, City Attorney

RE: Resolution – Construction Manager-at-Risk Contract with Burkhardt Construction, Inc.

As requested in your memorandum dated February 17, 2016, Public Works Department Memorandum No. 2016-12, the following form of Resolution, relative to the above-referenced matter, has been prepared and is attached:

> **A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A CONSTRUCTION MANAGER-AT-RISK CONTRACT NOT TO EXCEED THE AMOUNT OF $67,946.44 BETWEEN THE CITY OF POMPANO BEACH AND BURKHARDT CONSTRUCTION, INC., FOR THE HILLSBORO INLET DOCK ADDITION AND CABLE RAILING;; PROVIDING AN EFFECTIVE DATE.**

Please feel free to contact me if I may be of further assistance.

MARK E. BERMAN

/jrm
l:cor/pw/2016-532

Attachment

RESOLUTION NO. 2016-_____

CITY OF POMPANO BEACH
Broward County, Florida

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A CONSTRUCTION MANAGER-AT-RISK CONTRACT NOT TO EXCEED THE AMOUNT OF $67,946.44 BETWEEN THE CITY OF POMPANO BEACH AND BURKHARDT CONSTRUCTION, INC., FOR THE HILLSBORO INLET DOCK ADDITION AND CABLE RAILING;; PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA:

SECTION 1. That an Agreement between the City of Pompano Beach and Burkhardt Construction, Inc. for the Hillsboro Inlet Dock Addition and Cable Railing, a copy of which Agreement is attached hereto and incorporated by reference as if set forth in full, is hereby approved.

SECTION 2. That the proper officials are hereby authorized to execute said Agreement between the City of Pompano Beach and Burkhardt Construction, Inc.

SECTION 3. This Resolution shall become effective upon passage.

PASSED AND ADOPTED this _____ day of _____, 2016.

_____
LAMAR FISHER, MAYOR

ATTEST:

_____
ASCELETA HAMMOND, CITY CLERK

MEB/jrm
2/18/16
l:reso/2016-135

CONSTRUCTION MANAGER-AT-RISK CONTRACT

This Contract made and entered into this _____day of _____ between The City of Pompano Beach, a political subdivision of the State of Florida ("Owner"), and Burkhardt Construction, Inc.("Construction Manager"), a Florida Corporation, having its principal office located at 1400 Alabama Avenue, West Palm Beach, Florida 33401.

WITNESSETH:

That the said Construction Manager, having been awarded the Contract for the: Hillsboro Inlet Dock Addition and Cable Railing **("Project")** in accordance with the Request for Qualifications T-12-15 ("RFQ") therefore, and for and in consideration of the promises and of the covenants and agreements, and of the payments herein specified, to be made and performed by the Construction Manager and the Owner, the Construction Manager hereby covenants and agrees to and with the Owner to undertake and execute all of the said named work, in a good, substantial and workmanlike manner, and to furnish and pay for all materials, labor, supervision, equipment, supplies, fees, expertise, incidentals and services necessary to fully complete all Work, as defined in Article 1.4.8 below, in accordance with all requirements of the Contract Documents, and in accordance with all applicable codes and governing regulations. The Contract Documents ("Contract Documents") consist of this Contract, the General Conditions, and the following Exhibits, all hereto attached and made a part hereof:

PRE-CONSTRUCTION:
A The Request for Qualifications, T-12-15

CONSTRUCTION PHASE:
B General Conditions
C Certificate of Insurance

Attachment 1 GMP Proposal – Hillsboro Inlet Dock Addition & Cable Railing Improvements

ARTICLE 1

The Construction Team and Extent of Contract

1.1 The Construction Manager accepts the fiduciary relationship of trust and confidence established with the Owner by this Contract, and covenants with the Owner to furnish the Construction Manager's best skill and judgment in furthering the interests of the Owner, and to cooperate with the Owner in furthering the interests of the Owner. The Construction Manager agrees to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to use Construction Manager's best efforts to

perform and complete the Project in an expeditious and economical manner consistent with the interests of the Owner.

1.1.1 Construction Manager understands and agrees that a material inducement for the Owner entering into this Contract, following a competitive award process authorized under Florida law, was Construction Manager's representations about its expertise in the scheduling, sequencing and construction of the Hillsboro Inlet Dock Addition & Cable Railing Improvements and related infrastructure projects, as well as its superior familiarity with the unique local conditions and geography of the City of Pompano Beach, Florida, and the jobsite area. Construction Manager understands that time is of the essence in connection with the performance of the Work set forth in this Contract, and that even a minor breach of its terms may have a substantial, adverse impact upon the Owner, adjacent merchants, and the seasonal nature of City of Pompano Beach's economy, including the lifestyles of its residents and visitors. Accordingly, Construction Manager hereby affirms that the foregoing is true and correct, and that all anticipated costs to achieve the schedule and design intent have been included in the Guaranteed Maximum Price ("GMP") for the Project.

1.2 The Construction Team. The Construction Manager, the Owner, (the "Construction Team") will cooperate together through the completion of construction. The Construction Manager shall provide leadership to the Construction Team on all matters relating to construction. Nothing herein is intended to make the Owner liable for the acts or deeds of the Construction Manager, it being understood that Construction Manager at all times is an independent contractor

1.3 Extent of Contract. This Contract is complementary to the Drawings, Specifications and the General Conditions of the Contract, and together represent the entire integrated agreement between the Owner and the Construction Manager, superseding all prior negotiations, representations or agreements, either written or oral. Where this Contract is expressly in conflict with the General Conditions of the Contract, this Contract will prevail. Where this Contract is silent, the General Conditions of the Contract, and the requirements of the Drawings and Specifications will prevail, in that order. This Contract may be amended only by written instrument signed by the Owner and the Construction Manager.

1.4 Terms used in the Contract shall have the following meanings:

1.4.1 "Owner" means The City of Pompano Beach, Florida, or "City," and the terms may be used interchangeably;

1.4.2 "Project" means the Hillsboro Inlet Dock Addition & Cable Railing Improvements located as noted above;

1.4.3 "Design Professional" shall mean Architect, Engineer and other licensed Design Professionals engaged by the City;

1.4.4 "Contractor" means Construction Manager, and the terms may be used interchangeably;

1.4.5 "Subcontractor" means Trade Contractor, and the terms may be used interchangeably;

1.4.6 "Contract Sum" means Guaranteed Maximum Price ("GMP"), and the terms may be used interchangeably;

1.4.7 "Construction Team" means Owner, Architect and Construction Manager; and

1.4.8 "Work" means the totality of the obligations, including construction and other services, imposed on the Construction Manager by the Contract Documents, whether completed or partially completed, and including all labor, materials, equipment, services, fees, expertise and incidentals provided or to be provided by the Construction Manager to fulfill the Construction Manager's obligations.

ARTICLE 2

Construction Manager's Basic Services

2.0 The Construction Manager's Basic Services under this Contract include Preconstruction Phase services, as addressed below, and Construction Phase services.

2.1 The Preconstruction Phase.

2.1 The Preconstruction Phase. It is the intent of the Construction Manager at Risk project delivery system to engage the Construction Manager as an active participant in the design process working with the Owner and Architect/Engineer in maintaining the project budget and project scope. The Construction Manager shall:

2.1.1 Provide preconstruction deliverables consisting of value engineering, constructability analysis, together with a Guaranteed Maximum Price proposal.

2.1.2 NOT USED

2.1.3 Provide, for the Owner's review and acceptance, a Project Schedule that coordinates and integrates the Construction Manager's services, and the Owner's responsibilities with anticipated construction schedules. The Construction Manager shall update this schedule periodically, as required.

2.1.4 NOT USED

2.1.5 NOT USED

2.1.6 NOT USED

2.1.7 NOT USED

2.1.8 NOT USED

2.1.9 Provide the Project Construction Schedule for each set of bidding documents. Develop a plan for the phasing of construction, if phasing is required.

2.1.9.1 NOT USED

2.1.10 NOT USED

2.1.11 NOT USED

2.1.12 Schedule and conduct meetings as needed of the Construction Team, and prepare and distribute minutes.

2.1.13 NOT USED

2.2.13.2 NOT USED

2.1.14 The Construction Manager's personnel to be assigned during this phase and their duties are identified, as follows: To be determined, and at all times subject to Owner's approval.

2.2 Construction Phase. Unless otherwise authorized by the Owner, in writing, all Work shall be performed under Trade Contracts with the Construction Manager. The Construction Manager shall not bid on any of the Trade Contractor Work, or perform such Work with its own forces, without prior written notification and consent of the Owner. THE CONSTRUCTION MANAGER SHALL, WITHOUT LIMITATION:

2.2.1 Administer the Construction Phase as provided herein and in the General Conditions of the Contract.

2.2.2 Commence the Work within ten (10) days after receipt of a written Notice to proceed from the Owner.

2.2.3 With respect to work to be subcontracted by Construction Manager: a) Develop procedures that are reasonably acceptable to the Owner for the prequalification of Trade Contractors; b) Develop Trade Contractor interest in the Project, and conduct pre-bid conferences with interested bidders to review the documents; c) Take competitive bids on the Work of the various Trade Contractors or, if specifically authorized by the Owner, in writing, negotiate for the performance of that Work; d) Construction Manager may require bidders to submit bid bonds or other bid security acceptable to the Construction Manager as a prerequisite to bidding on the Work; e) Analyze and evaluate the results of the various bids and their relationship to budgeted and estimated amounts, and prepare for review with the Owner and Architect bid tabulation analysis and such other support data as necessary to properly compare the various bids and their responsiveness to the desired scope of Work; f) Review the scope of Work in detail with apparent low responsive bidders to determine that their bids are complete but do not include duplicate scope items; g) Maintain records of all pre-award interviews with apparent low bidders; h) Promptly award and execute Trade Contracts with approved Trade Contractors; i) Provide copies of fully executed Trade Contracts, insurance certificates, and, if required, bonds, to the Owner.

2.2.4 With respect to the scheduling, sequencing, and coordination of the Work: a) Manage, schedule and coordinate the Work, including the Work of the Trade Contractors, and coordinate the Work with the activities and responsibilities of the Owner, and Construction Manager in order to complete the Project in accordance with the Owner's objectives of cost, time, and quality as set forth in the Contract Documents; b) Develop and maintain a program, acceptable to the Owner, to assure quality control of the Work; c) Supervise the Work of all Trade Contractors so that the work conforms to the requirements of the plans and specifications; d) Provide instructions to each Trade Contractor when its Work does not conform to the requirements of the plans and specifications so that the work conforms to the requirements of the plans and specifications, and continue to manage each Subcontractor to ensure that corrections are made in a timely manner so as to not affect the progress of the Work; e) Should disagreement occur between the Construction Manager over acceptability of Work and conformance with the requirements of the specifications and plans, the Owner shall be the final judge of performance and acceptability, and the Owner's decision thereon shall be final and binding.

2.2.5 Maintain at all times exclusively for this Project adequate, competent staffing to coordinate and direct the Work and progress of the Trade Contractors on the Project. The Construction Manager shall maintain sufficient off-site support staff, and competent full time staff at the Project site authorized to act on behalf of the Construction Manager to coordinate, inspect and provide general direction of the work and progress of the Subcontractors and shall provide no less than those personnel during the respective phases of construction that are set forth in Exhibit "A" to this Contract. Construction Manager shall not change any of those persons named in Exhibit "A" unless mutually agreed to by the Owner and Construction Manager, in writing. In such case, the Owner shall have the right of approval of the qualifications of replacement personnel. All of the Construction Manager's on-site management and supervisory personnel shall be consistent with the RFP presentation that preceded the execution of this Contract, and shall not be removed or replaced without the Owner's written consent. The Owner shall have the right to direct the Construction Manager to remove or replace any on-site personnel whose performance becomes unsatisfactory to the Owner. In such event, the Construction Manager shall promptly replace such personnel, without entitlement to additional compensation or additional time for the replacement.

2.2.5.1 Establish and maintain a) on-site organization and lines of authority in order to carry out the overall plans of the Construction Team; b) Identify an on-site staff member to represent the Construction Manager, on a daily basis, with authority to negotiate Change Orders and contract modifications on behalf of the Construction Manager; c) Make available such executive personnel as necessary to execute Change Orders or other contract modifications on behalf of the Construction Manager so as not to delay the progress of the Work.

2.2.6 NOT USED

2.2.6.1 Require of the various Trade Contractors such Coordination Drawings as may be necessary to properly coordinate the Work among the Trade Contractors.

2.2.6.2 NOT USED

2.2.7 NOT USED

2.2.8 NOT USED

2.2.9 Determine the adequacy of the Trade Contractors' personnel and equipment, and the availability of materials and supplies to meet the schedule. In consultation with the Owner, take necessary corrective actions when requirements of a Trade Contract or a Trade Contract Schedule are not being met.

2.2.10 If applicable, whenever Owner-Furnished Contractor-Installed ("OFCI") materials or equipment are shipped to the Project site, the Construction Manager shall notify the Owner and shall be responsible for their inspection, proper storage, and incorporation into the Work, provided the scope of the OFCI work is included within the Guaranteed Maximum Price.

2.2.11 Develop and maintain an effective system of Project cost control which is satisfactory to the Owner. Revise and refine the initially approved Project Construction budget, incorporate approved changes as they occur, and develop cash flow reports and forecasts as needed. Identify variances between actual and budgeted or estimated costs and advise Owner whenever projected costs exceed budgets or estimates.

2.2.12 Maintain a system of accounting satisfactory to Owner and consistent with generally accepted construction accounting principles. The Construction Manager shall preserve all accounting records for a period of four (4) years after final acceptance of the Work or as otherwise requested in writing by the Owner. The Owner, or the Owner's auditors shall have access to all such accounting records, supporting documentation, correspondence, subcontracts, purchase orders, and other things relating to this Contract, at any time during regular business hours, both throughout the performance of the Work, and for a period of four (4) years after final payment of the Work.

2.2.13 Develop and implement a system for the preparation, review and processing of Change Orders. Without assuming any of the Architect's responsibilities for, among other things, design, recommend necessary or desirable changes to the Owner, review requests for changes and submit recommendations to the Owner and Architect.

2.2.13.1 When requested by the Owner, promptly prepare and submit informal estimates of probable cost for changes proposed in the Work including similar estimates from the Trade Contractors. If directed by the Owner, promptly secure formal written Change Order Proposals from such Trade Contractors.

2.2.14 Be responsible for initiating, maintaining and supervising effective safety programs and require similar programs of the Trade Contractors and Sub-subcontractors. The OSHA guidelines shall serve as the basis for the construction safety program. If the Owner implements an Owner Provided Insurance Program as provided for in Article 11, the Construction Manager

shall cooperate with the safety representatives of the Owner's Insurance Administrator and/or the Owner's insurance carrier(s) in the course of construction site inspections and in all other matters related to job safety and accident prevention.

2.2.14.1 Promptly notify the Owner and, where applicable, the Owner's Insurance Administrator, in writing, upon receiving notice of filing of any charge of non-compliance from OSHA, or upon receiving notification that a federal or state inspector shall visit or is visiting the Project site.

2.2.14.2 At progress meetings with Trade Contractors, conduct a review of job safety and accident prevention, and prepare minutes of such meetings that will be available to the Owner's Representative on request. The minutes of job safety and accident prevention portion of such progress meetings shall be made available to the Owner's Insurance Administrator, where applicable, upon request.

2.2.15 Make provisions for Project security acceptable to the Owner, to protect the Project site and materials stored off-site, or on-site, against theft, vandalism, fire and accidents, damage, or injury to person(s) or property, etc., as required by job and location conditions.

2.2.16 NOT USED

2.2.17 The Construction Manager shall be responsible for the removal, encapsulation, transportation and disposal of any hazardous material, including, without limitation, lead-based paint, and any asbestos or asbestos-related products as may be required in connection with the Work. Hazardous material, described by federal guidelines brought by the Construction Manager or the Trade Contractors shall remain their responsibility for proper disposal. Any hazardous material not specifically shown on the documents, or which was not discovered or should have been discovered during performance of the Pre-Con Agreement, shall be considered a concealed condition and may become the responsibility of the Construction Manager in a Change Order increasing the Guaranteed Maximum Price for any additional costs incurred in connection therewith. Such Change Order shall be submitted in as timely a manner as is reasonably possible after discovery of the concealed condition, as more particularly set forth in the General Conditions.

2.2.18 The Construction Manager shall prepare a Project Manual, as more particularly set forth in RFP Terms and Conditions, Article IV, pp. 21-22 thereof, incorporated herein by reference and made a part hereof.

ARTICLE 3

Additional Services

3.1 Upon the mutual agreement of the Owner and the Construction Manager, and upon written authorization from the Owner, the Construction Manager shall provide additional services that are beyond the scope of the Basic Services described in Article 2 herein. The

Construction Manager shall be compensated for such additional services by Change Order to be negotiated by the Owner and the Construction Manager at the time of the additional service request, as set forth in the General Conditions.

ARTICLE 4

Owner's Responsibilities

4.1 The Owner will designate a representative to act in its behalf. This representative, or his/her designee will receive progress reports of the Work from the Construction Manager, serve as liaison with the Construction Manager, receive and process communications and paperwork, and represent the Owner in the day-to-day conduct of the Project. The Construction Manager will be notified in writing of the representative and of his/her designee, or any changes thereto.

ARTICLE 5

Schedule

5.1 NOT USED

5.2 Construction Phase. The performance of the Work under the Construction Phase of this Contract shall be substantially completed by the Construction Manager on or before June 15, 2016, as may be later adjusted by Change Order(s), if any, and subject to adjustment for delays as otherwise provided for in this Contract.

5.3 The Construction Manager agrees to complete the Work in accordance with the agreed upon substantial completion date set forth above. The Construction Manager acknowledges that time is of the essence throughout this Contract, and that failure to complete the Project within the time set forth in the approved schedule will result in substantial damages to the Owner that are impossible to precisely ascertain. Upon failure of the Construction Manager to substantially complete the Project within the specified period of time, plus approved time extensions, Construction Manager shall pay to the Owner, as liquidated damages and not as a penalty, the sum of $1,000 for each calendar day in excess of the established substantial contract completion date, plus approved time extensions.

5.4 The Owner may direct the Construction Manager to expedite the Work by whatever means the Construction Manager may use, including, without limitation, increasing staffing or working overtime to bring the Work back within the agreed construction schedule. If expediting the Work is required due to reasons within the control or responsibility of the Construction Manager, then the additional costs incurred shall be chargeable to the Cost of the Work as part of, and subject to the GMP. If the expediting of the Work is required due to reasons outside the control or responsibility of the Construction Manager, then in such event, the additional costs incurred shall be the subject of an appropriate adjustment by Change Order, as elsewhere provided for in the General Conditions.

5.5 The Owner shall have the right to occupy, or use, any portion of the Work prior to completion of the Project. If use or occupancy ahead of schedule affects the cost of the Project or the schedule for the Work, the Construction Manager shall so notify the Owner, in writing, and the use or occupancy will be treated as a Change to the Work in accordance with Article 9, herein.

ARTICLE 6
Guaranteed Maximum Price

6.1 The "Guaranteed Maximum Price" (GMP), also referred to as the Contract Sum, includes Cost of the Work required by the Contract Documents as defined in Article 8 herein, the Construction Manager's Fixed Fee as defined in Paragraph 6.1.1 below, the Contingency Fund, and Construction Manager's Lump Sum General Conditions. The GMP will be established based on construction documents prepared by the Architect/Engineer. The GMP is guaranteed by the Construction Manager not to exceed the amount established herein, subject to additions and deductions by Change Order as provided for elsewhere in this Contract. Cost which would cause the GMP to be exceed shall be paid by the Construction Manager without recourse or reimbursement by the Owner.

6.1.1 The Construction Manager's Fixed Fee for performance of the Work as later set forth in GMP Amendment.

6.2 The GMP will only include those taxes in the Cost of the Work which are legally enacted at the time the GMP is established.

6.3 If and only in the event that this Project is substantially completed within the scheduled substantial completion date, as may be adjusted as provided for elsewhere herein, the following shared savings provisions shall apply: Upon final completion of the Work, if the total cost of the Work (excluding any unused portion of the Contingency Fund) is less than the Guaranteed Maximum Price, taking into account any adjustments made during the term of this Contract, as provided for elsewhere herein, the Owner and Construction Manager will be entitled to share this savings, as follows: Construction Manager will receive an amount equal to 50% of the difference between the actual cost of the Work and the final GMP amount (excluding any unused portion of the Contingency Fund), not to exceed, in any event, 3% of the adjusted GMP amount (excluding any unused portion of the Contingency Fund). Construction Manager's portion of these shared savings will be added to Contractor's Fee, and included in Construction Manager's Final Payment. Liquidated damages, if any, are different from, and are not a part of, this calculation.

6.4 The GMP shall include an agreed upon sum as a construction contingency fund which is exclusively reserved to cover Construction Manager's unanticipated and unforeseen Project conditions not otherwise covered by insurance, inadvertent, non-negligent scope and pricing omissions and errors, and other damages that are sustained by Construction Manager during the estimating, buy-out, and construction process, unless specifically enumerated as non-reimbursable costs of the Work as provided for elsewhere in this Contract. This Contingency Fund is not to be used for changes in the scope of the Work, which are otherwise provided for in the contract documents addressing Change Orders. No draws against the Contingency Fund may be made unless specifically agreed to by the Owner, in writing. There shall be no entitlement to overhead, fee, and general conditions in connection with any approved

payments from the Contingency Fund. The Construction Manager will be required to furnish documentation required by the Owner evidencing expenditures charged to this contingency prior to the release of funds by the Owner. The Architect-Engineer shall verify the actual costs, which are subject to audit.

6.5 By execution of this Contract, the Construction Manager certifies that all factual unit costs supporting the fees specified in this Contract are accurate, complete and current at the time of negotiations; and that any other factual unit costs that may be furnished the Owner in the future to support any additional fees that may be authorized will also be accurate and complete. The fees specified in this Contract and any additional fees that may be authorized in the future shall be adjusted to exclude any significant sums by which the Owner determines the fee was increased due to inaccurate, incomplete, or non-current factual unit costs.

6.6 Adjustments to the GMP will be made as described in the Conditions of the Contract.

ARTICLE 7

Payments to Construction Manager

7.1 In consideration of the performance of the Contract, the Owner agrees to pay the Construction Manager, as compensation for its services as set forth below:

7.1.1 For construction services, the total sum of sixty seven thousand nine hundred forty six dollars and 44/100 ($67,946.44) to be paid upon the satisfactory completion of line items for each Task as specified in a Construction Schedule of Values that is agreed to by the parties, in writing, before commencement of the construction services.

7.1.1.1 Upon receipt of the Notice to Proceed, the Construction Manager shall begin providing the indemnification described in the Conditions of the Contract, as part of the fee established for the first phase of preconstruction services.

7.1.2 Upon acceptance of the GMP, the amount established in the GMP Amendment to this Contract, which includes the Construction Manager's fee and Lump Sum General Conditions as described in Paragraph 7.2 and the Cost of the Work as described in Article 8, to be paid monthly as described in the General Conditions of the Contract.

7.1.2.1 As required by Section 287.0585, F.S., within seven working days from receipt of payment from the Owner, the Construction Manager shall pay each Trade Contractor out of the amount paid to the Construction Manager on account of such Trade Contractor's Work, the amount to which said Trade Contractor is entitled reflecting the percentage actually retained, if any, from payments to the Construction Manager on account of said Trade Contractor's Work. The Construction Manager shall, by appropriate Contract with each Trade Contractor, require each Trade Contractor to make payments to its subcontractors in a similar manner.

7.1.3 Pay requests for preconstruction services and for construction shall be documented in accordance with the General Conditions.

7.2 Construction Manager's Lump Sum General Conditions during the Construction Phase includes, without limitation, the following:

7.2.1 The cost of its home or branch office employees or consultants not at the Project site, including the cost of all benefits, insurance, and taxes attributable to wages and salaries and other company overhead expenses for said home office employees.

7.2.2 The cost of its field employees identified in Subparagraph 2.2.5 herein, or their approved replacements, including the cost of all benefits, insurance, and taxes attributable to wages and salaries for said field employees.

7.2.3 General operating expenses of the Construction Manager's principal and branch offices other than the field office.

7.2.4 Any part of the Construction Manager's capital expenses, including interest on the Construction

Manager's capital employed for the Work.

7.2.5 Overhead and profit, or general expenses of any kind, except as may be expressly included in Article 8, herein, as Cost of the Work.

7.2.6 All travel and per diem costs of Construction Manager's employees and consultants.

7.2.7 Those services set forth in Article 2.2.

7.2.8 Expenses such as long distance telephone calls, telephone service at the site, postage, office supplies, expressage, and similar items in connection with the Work.

7.2.9 Cost of equipment such as laptops, cameras, radios, computers, cell phones, copiers, telephones, dictating units, trailers, vehicles and furniture purchased or rented by the Construction Manager.

7.2.10 Administration of direct tax savings purchase program.

7.2.11 All costs incurred during the guarantee period after construction.

7.3 Adjustments in the Lump Sum General Conditions associated with compensable Changes in the Work, or compensable delays, shall be made as described in the General Conditions of the Contract, and in strict accordance therewith.

ARTICLE 8

Cost of the Work

8.1 The term "Cost of the Work" shall mean direct construction costs, including Lump Sum General Conditions as more specifically addressed in 7.2 et.seq. above, and in 8.1.2 below, incurred specifically in and about the performance of the Work, and paid or incurred by the Construction Manager, less any reimbursement for scrap value and cash or trade discounts, subject to Article 10, herein. Excluding those individuals included in the Lump Sum General Conditions, 8.1.2 below, the term "wages" used herein shall include the straight time and overtime pay authorized in writing by the Owner, and the cost of associated employee benefits. Excluding those individuals included in the Lump Sum General Conditions, employee benefits include, but are not limited to, unemployment taxes, social security taxes, compensated absences, and other mandatory and customary contributions and fringe benefits insofar as such costs are based on wages, salaries, or other remuneration paid to employees of the Construction Manager, excluding bonuses. Employee benefits do not include Workers' Compensation insurance when such insurance is provided by the Owner in accordance with Article 11.

8.1.1 Subject at all times to the amount of the GMP, the Owner agrees to pay the Construction Manager for the reimbursable Costs of the Work as defined in Article 8, herein, and its subparts, through completion of the Work, plus the Construction Manager's Fixed Fee,

8.1.2 For Construction Phase services, as more particularly set forth in Article 2.2 and its subparts, above, and further including those line items in Exhibit "C" designated as General Conditions, the Construction Manager shall be paid a lump sum amount (included in the GMP and as set forth in the GMP Amendment), in installments, as provided for elsewhere in these Contract Documents, which amount is subject to the Contract audit provisions for the limited purposes of verifying the Construction Manager's warrants and representations set forth in Article 6.8 above. This Lump Sum General Conditions amount preempts, disables and governs those reimbursable Costs of the Work set forth in Article 7.2, et.seq. and this Article 8, and its subparts. In the event that those specified reimbursables conflict with, or are subsumed by this Lump Sum General Conditions, it is the intention of the parties that the Lump Sum will not be adjusted for any reasons whatsoever during the Construction Phase, except and solely for compensable Change Orders and compensable delays, if any, that increase the GMP, and extend the contract completion date in excess of thirty (30) calendar days beyond the agreed Substantial Completion date of midnight, as later set forth in the GMP Amendment. In the event that the Lump Sum is exceeded by actual costs for such items incurred by the Construction Manager, there shall be no entitlement to reimbursement from the Owner by way of Change Order, Claims, requests for equitable adjustments, or from the Construction Contingency.

8.2 ***Cost of the Work includes, and is limited to, actual documented expenditure for the following cost items (all subparts below shall be preceded by the phrase "Except and to the extent governed by 8.1.2 above…":***

8.2.1 Subject to prior written approval by the Owner, wages paid for labor in the direct employ of the Construction Manager at the construction site other than those provided under Paragraph 7.2, herein, as a part of the Construction Manager's Fixed Fee in the performance of the Work under applicable collective bargaining agreements, or under a salary or wage schedule agreed upon by the Owner and Construction Manager, and including benefits, if any, as may be payable with respect thereto.

8.2.2 The cost of all materials, supplies and equipment incorporated into the Work or stored on site, including cost of transportation and storage thereof. At the Owner's sole discretion, the Owner may make payment for materials, supplies and/or equipment stored off-site and bonded.

8.2.3 Payments made by the Construction Manager to Trade Contractors for their Work performed pursuant to Trade Contracts with the Construction Manager.

8.2.4 Cost of the premiums for all insurance or bonds including Trade Contractor bonds which the Construction Manager is required to procure by this Contract, or other insurance or bonds subsequently deemed necessary by the Construction Manager, and agreed upon by the Owner, in writing. The cost of insurance for the Construction Manager, Trade Contractors, and Sub-subcontractors at any tier in the Work shall be excluded for any insurance to be provided by the Owner in accordance with Article 11 herein.

8.2.5 Sales, use, gross receipt, or similar taxes related to the Work imposed by any governmental authority and for which the Construction Manager is liable.

8.2.6 Building and operating permit fees, inspection and filing fees, sewer and water fees, and deposits lost for causes other than the Construction Manager's own negligence.

8.2.7 Cost of removal and disposal of all debris including clean-up and trash removal.

8.2.8 Cost incurred due to an emergency affecting the safety of persons and/or property.

8.2.9 Subject to prior written approval by Owner, legal costs reasonably, and properly, resulting from prosecution of the Work for the Owner provided, however, that they are not the result of the Construction Manager's own negligence or malfeasance. Legal costs incurred in connection with disputes solely between the Construction Manager and the Owner or incurred in connection with disputes solely between the Construction Manager and Trade Contractors are the responsibility of the Construction Manager and shall not be included in the Cost of the Work.

8.2.10 Cost to the Construction Manager of temporary electric power, lighting, water, sanitary facilities, and heat required for the performance of the Work, or required to protect the Work from weather damage.

8.2.11 Cost to the Construction Manager of temporary safety-related protection including barricades and safety equipment, temporary roads and parking, dust control, pest control, installation and operation of temporary hoists, scaffolds, ladders and runways, and temporary Project signs and costs of permits and fees pursuant to the General Conditions of the Contract.

8.2.12 Cost of watchmen or similar security services, if approved in writing by Owner.

8.2.13 Cost of surveys, measurements and layout work reasonably required for the execution of the Work or the requirements of the Contract.

8.2.14 Cost of preparation of shop drawings, coordination plans, photographs, or as-built documents not included in Trade Contracts.

8.2.15 All costs for reproduction of documents to directly benefit the Work.

8.2.16 Costs directly, properly, and reasonably incurred in the performance of the Work and not included in the Construction Manager's Fee as set forth in Paragraph 7.2, herein.

8.2.17 Testing laboratory costs, except relating to defective or non-conforming work for which reimbursement is otherwise excluded by the Contract Documents.

8.2.18 Deposits lost for causes other than Construction Manager's or any Trade Contractor's negligence or failure to fulfill a specific responsibility to the Owner under the Contract Documents.

8.2.19 Cost, including transportation and maintenance, of all materials, supplies, equipment, temporary facilities and hand tools not owned by the workmen that are employed or consumed in the performance of the Work.

8.2.20 Rental charges of all necessary machinery and equipment, including hand tools used in the performance of the Work, whether rented from the Construction Manager (upon prior written approval of the Owner, at the standard rate paid at the place of the Project) or others, including installation, repairs and replacements, dismantling, removal, costs of lubrication, transportation and delivery costs thereof.

8.2.21 Costs associated with setting up and demobilizing tool sheds, Project field offices, temporary fences, temporary roads, and temporary fire protection.

8.3 **Costs not to be reimbursed include**:

8.3.1 Those costs enumerated in Article 7.2.1 through 7.2.10 above, and as set forth in the Contract Documents as to be borne at the expense of the Construction Manager.

8.3.2 Salaries and other compensation of the Construction Manager's personnel stationed at Construction Manager's principal office or offices other than the site office;

8.3.3 Expenses of the Construction Manager's principal office and offices other than the site office;

8.3.4 Overhead and general expenses, except as may be expressly included in Article

8.3.5 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;

8.3.6 Costs due to the negligence or failure of the Construction Manager, subcontractors and suppliers or anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;

8.3.7 Any cost not specifically and expressly described in Section 8.3 and subparts;

8.3.8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded;

8.3.9 Costs resulting from failure of the Construction Manager or any subcontractor to procure and maintain insurance by the Contract Documents;

8.3.10 Amounts due by Construction Manager for federal and state income and franchise taxes, and the costs of licenses, fees, taxes, and other charges of a similar nature, required to be obtained or maintained by Construction Manager for the general conduct of its business;

8.3.11 Costs to replace or pay for lost or stolen machinery or equipment or materials, but only if not covered by Builder's Risk Insurance. Construction Manager may seek to recover replacement cost from insurance, sureties, Subcontractors, suppliers, or other such third parties;

8.3.12 The cost for any legal, accounting or other professional services except to the extent provided for in the reimbursable costs of the Work;

8.3.13 Penalties, fines, or costs imposed by governmental authorities in connection with, or resulting from any violations for noncompliance with laws, regulations, codes, ordinances, or directives by the Construction Manager or any subcontractor, except if the result of specific and written directive by the Owner;

8.3.14 Costs of any insurance deductibles for coverage furnished and paid by Construction Manager or any Subcontractor and losses or expenses for which the Construction Manager or any Subcontractor is compensated by insurance.

8.3.15 Costs associated with the Construction Manager's failure to obtain any and all permits in a timely manner, including, without limitation, the costs of any delays resulting therefrom, unless attributable to Owner's Design Professionals.

8.3.16 Costs of accelerating the Work to the extent caused by the negligence or default of the Construction Manager or any subcontractor of any tier, unless otherwise expressly provided for elsewhere in this Contract and in strict accordance therewith;

8.3.17 Overtime costs required to the extent caused by the Construction Manager or any subcontractor of any tier, unless otherwise expressly provided for elsewhere in this Contract and in strict accordance with the requirements therein;

8.3.18 Project incentive bonuses, except as approved by the Owner in writing;

8.3.19 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor shall not be deemed a Cost of the Work without Owner's prior written approval;

8.3.20 Any and all costs and or cost overruns, including schedule related costs, resulting from the default and/or termination of a bonded subcontractor and/or material supplier by Construction Manager.

8.3.21 Except as provided in Article 8.2.9 above, costs due to the negligence or failure of the Construction Manager, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them many be liable to fulfill a specific responsibility of the Contract.

8.3.22 Any cost not specifically and expressly described in Article 8.2 and its subparts, above.

8.3.23 Costs, other than costs included in Change Orders approved by the Owner, in writing, that would cause the GMP to be exceeded.

8.3.24 Costs exceeding the Lump Sum General Conditions, as set forth in Article 8.1.2 above.

ARTICLE 9

Changes in the Work

9.1 The Owner, without invalidating this Contract, may order Changes in the Work within the general scope of this Contract consisting of additions, deletions, or other revisions. All changes in the Work shall be authorized as described in the General Conditions of the Contract. Except in cases of emergency endangering life or property, the Construction Manager shall allow no Changes in the Work without the prior written approval of the Owner.

ARTICLE 10

Discounts

10.1 All quantity discounts shall accrue to the Owner if (i) before making the payment, the Contractor included them in an Application for Payment and received payment therefor from the Owner, or (ii) the Owner has deposited funds with the Contractor with which to make payments; otherwise, cash discounts shall accrue to the Contractor. All trade discounts, rebates and refunds, and all returns from the sale of surplus materials and equipment shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 11

Insurance

11.1 The Construction Manager shall provide insurance as required and addressed in RFQ T-12-15, and as specified in GC 31.

IN WITNESS WHEREOF, the parties to this Agreement have set their hands and seals on the day and year first above written.

SPACE LEFT INTENTIONALLY BLANK

"CORPORATION"

BURKHARDT CONSTRUCTION, INC.
(Print name of company)

Witnesses:

By: _____

Print Name: MARC R. KLEISLEY

Title: VICE PRESIDENT OF OPERATIONS

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 26th day of FEBRUARY, 2016, by MARC KLEISLEY as V.P. OF OPERATIONS of BURKHARDT CONSTRUCTION, INC., A Florida corporation on behalf of the corporation. He/she is personally known to me or who has produced _____ (type of identification) as identification.

NOTARY'S SEAL:

NOTARY PUBLIC, STATE OF FLORIDA

BRANDON RHODES
Notary Public - State of Florida
My Comm. Expires Jul 12, 2018
Commission # FF 105184

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number

"CITY":

Witnesses:

CITY OF POMPANO BEACH

_____

By:_____
LAMAR FISHER, MAYOR

_____

By:_____
DENNIS W. BEACH, CITY MANAGER

Attest:

_____
ASCELETA HAMMOND, CITY CLERK

(SEAL)

Approved As To Form:

_____
MARK E. BERMAN, CITY ATTORNEY

STATE OF FLORIDA

COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this _____ day of _____, 2016 by **LAMAR FISHER** as Mayor, **DENNIS W. BEACH** as City Manager and **ASCELETA HAMMOND** as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who are personally known to me.

NOTARY'S SEAL:

_____
NOTARY PUBLIC, STATE OF FLORIDA

_____
(Name of Acknowledger Typed, Printed or Stamped)

_____
Commission Number

EXHIBIT A

RFQ T-12-15

Florida's Warmest Welcome

CITY OF POMPANO BEACH
REQUEST FOR QUALIFICATIONS
T-12-15

CONSTRUCTION MANAGEMENT AT RISK CONTRACT SERVICES

RFQ OPENING: JANUARY 20, 2015 2:00 P.M.
PURCHASING OFFICE
1190 N.E. 3RD AVENUE, BUILDING C (Front)
POMPANO BEACH, FLORIDA 33060

December 17, 2014

CITY OF POMPANO BEACH, FLORIDA

REQUEST FOR QUALIFICATIONS
T-12-15

CONSTRUCTION MANAGEMENT AT RISK CONTRACT SERVICES

The City is seeking proposals from qualified firms to provide construction management at risk contract services to the City for various city streetscape projects.

The City will receive sealed proposals until **2:00 p.m. (local), January 20, 2015,** in the City's Purchasing Office, 1190 N.E. 3rd Avenue, Building C, Pompano Beach, Florida, 33060. E-mailed or faxed proposals will not be acceptable. Submittal of Response by fax is not acceptable.

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SECTION I - RFQ SCHEDULE

The following schedule will be followed for this RFQ:

RFQ Issued:	12/17/2014
Deadline for Questions:	01/13/2015
RFQ Opening:	01/20/2015
Evaluation of Proposals (estimated)	01/29/2015
Evaluation of Presentations (estimated if required)	02/10/2015
Commission Approval of Highest Ranked Firm (estimated)	02/24/2015

SECTION II INTRODUCTION

1. General

The City of Pompano Beach Public Works Department (CITY) has identified major projects and programs within the CITY boundaries with the goal to make the City more attractive to residents, visitors and tourists and promote economic growth and activity as detailed in the City's Strategic Plan.

The intent of this Request for Qualifications (RFQ) is, through a competitive process pursuant to Florida Statutes, Chapter 287.055(2)(g) (Consultants Competitive Negotiations Act), to select the three (3) most qualified firms based on the top three (3) rankings, with whom to negotiate Guaranteed Maximum Price (GMP) Agreements and enter into Construction Manager at Risk Contracts with on an interchangeable basis as determined by the City, for the potential projects listed herein and any other potential projects of similar nature to be determined by City.

The CITY, as part of the City's Capital Improvement Program and Strategic Plan, are providing for the renovation and replacement of existing facilities and the construction of new facilities within the City. The proposed improvements include, but are not restricted to, conversion of existing overhead utilities (e.g. electric, telephone and cable TV) to underground distribution, installation of new drainage, replacement of water and sewer distribution lines, and streetscape improvements, including lighting, sidewalks, pavement and landscaping. The proposed improvements may not occur at the same time, but may be phased as necessary.

Construction drawings and specifications for each project will be provided by the City to the awarded firm(s) to develop a GMP and Construction Manager at Risk contract accordingly, on an as needed basis as determined by the City. The City reserves the right to enter into agreements interchangeably with either of the top three (3) highest ranked firms as determined by the City.

2. Eligibility

Due to the requirement that the Contractor(s) need to be readily available for meetings, discussions and tours within the areas of responsibility, it will be necessary for any proposers to have an office physically located within the tri-county areas of Miami-Dade, Broward, and Palm Beach County. This office must be an active facility from which consultant services are routinely provided and not merely a post office box or other type of mail drop, nor can it be the office of simply a representative agent. The CITY reserves the right to inspect any facility designated by the proposer to insure that it complies with this section.

3. Small Business Enterprise Program

The Pompano Beach City Commission has established a voluntary Small Business Enterprise (SBE) Program to encourage and foster the participation of Small Business Enterprises in the central procurement activities of the City. The City of Pompano Beach is strongly committed to ensuring the participation of Small Business Enterprises (SBE's) as contractors and subcontractors for the procurement of goods and services. The definition of a SBE, for the purpose of the City's voluntary program, is taken from the State of Florida Statute 288.703(1).

As of the date of publication of this solicitation, a small business means an independently owned and operated business concern that employs 200 or fewer permanent full-time employees and

that, together with its affiliates, has a net worth of not more than $5 million or any firm based in Florida that has a Small Business Administration 8(a) certification. As applicable to sole proprietorships, the $5 million net worth requirement shall include both personal and business investments.

The City encourages all firms to undertake good faith efforts to identify appropriate Small Business Enterprise partners. Sources of information on certified Small Business Enterprises include the Broward County Small Business Development Division, the State of Florida Office of Supplier Diversity, South Florida Water Management District, and other agencies throughout the State. The City includes links to these organizations from the City's website www.pompanobeachfl.gov.

The City has set a 15% voluntary Small Business Enterprise Goal for this project. SBE Forms are located at the end of this solicitation, and all firms responding must return a response of participation or non-participation in order to be considered responsive for evaluation purposes.

Please indicate in your response if your firm is a certified Small Business Enterprise, and include the completed "Good Faith Effort Report" form with your proposal. Proposers should submit Exhibit A, detailing the list of SBE firms to be used on the proposed contract, and a completed Letter of Intent, Exhibit B, for all participating SBE firms. Submit Exhibit C listing SBE firms that were solicited but not selected. Submit Exhibit D explaining your firm's good faith efforts to include SBE firms on this contract.

4. Local Business Program

On March 23, 2010, the City Commission approved a Resolution establishing a Local Business Program, a policy to increase the participation of City of Pompano Beach businesses in the City's procurement process.

You can view the list of City businesses that have a current Business Tax Receipt on the City's website, and locate local firms that are available to perform the work required by the specifications. The business information, sorted by business use classification, is posted on the webpage for the Business Tax Receipt Division: http://pompanobeachfl.gov/pages/department_directory/development_services/business_tax_receipt_division/business_tax_receipt_division.html.php

The City has set a 15% voluntary Local Business goal for this project. Local Business program forms are located at the end of this solicitation, and all firms responding must return a response of participation or non-participation in order to be considered responsive for evaluation purposes.

The City of Pompano Beach is strongly committed to insuring the participation of City of Pompano Beach Businesses as contractors and subcontractors for the procurement of goods and services. Proposers are encouraged to participate in the City of Pompano Beach's voluntary Local Business Program by including, as part of their package, the Local Business Participation Form (Exhibit E,) listing the local businesses that will be used on the contract, and the Letter of Intent Form (Exhibit F) from each local business that will participate in the contract. Proposers should utilize businesses that are physically located in the City of Pompano Beach with a current Business Tax Receipt. Proposers who are unable to meet the recommended voluntary goals should also provide the Local Business Unavailability Form (Exhibit G,) listing firms that were

contacted but not available, and the Good Faith Effort Report (Exhibit H) describing the efforts made to include local business participation in the contract.

5. Contract Award

Upon successful competitive negotiations with the selected Construction Management Firm(s), individual Construction Management at Risk contracts will be developed for each project including a Guaranteed Maximum Price (GMP) and construction schedule. Construction shall not commence until Notice to Proceed is issued by the City. Commission approval will be required for construction projects in excess of $24,999.

6. Project List

Work to be accomplished under this contract is related, but not limited to the following streetscape, hardscape, and landscape improvement projects in which construction costs may exceed $2,000,000.00 as follows: The City does not guarantee that the top three (3) ranked firm(s) will be awarded these projects; these projects reflect what we envision to be prospective projects through which construction management at risk contracts are suitable; however, the City reserves the right to procure these services using other methods as deemed appropriate by the City and to expand upon this list or exclude projects from this list.

A. Briny Avenue Streetscape and Undergrounding Improvements
B. A1A Undergrounding of Overhead Utilities
C. DiVito Parking Lot Improvements
D. N.E. 1st Avenue Streetscape between N.E. 26th Avenue and N.E. 28th Avenue
E. Section 108 Loan project in Old Pompano (N.E. 1st Avenue, N.E. 1st Street, N.E. 2nd Street, N.E. 3rd Street, N.E. 2nd Avenue, etc.).

7. Insurance

The insurance described herein reflects the insurance requirements deemed necessary for this contract by the City. No contractor or sub-contractor shall commence work under this agreement without the minimal insurance set forth herein, nor without the approval by the City of Pompano Beach Risk Manager. It is not necessary to have this level of insurance in effect at the time of submittal, but certificates indicating that the insurance is currently carried or a letter from the Carrier indicating upgrade ability will speed the review process to determine the most qualified Proposer.

The successful Proposer(s) shall not commence operations until certification or proof of insurance, detailing terms and provisions of coverage, has been received and approved by the City of Pompano Beach Risk Manager.

The following insurance coverage shall be required.

a. Worker's Compensation Insurance covering all employees and providing benefits as required by Florida Statute, Chapter 440, regardless of the size of the company (number of employees). The Contractor further agrees to be responsible for employment, control and conduct of its employees and for any injury sustained by such employees in the course of their employment.

b. Liability Insurance

1) Naming the City of Pompano Beach as an additional insured, on General Liability Insurance only, in connection with work being done under this contract.
2) Such Liability insurance shall include the following checked types of insurance and indicated minimum policy limits.

			LIMITS OF LIABILITY	
	Type of Insurance		each occurrence	aggregate
GENERAL LIABILITY: ***MINIMUM $1,000,000 per OCCURRENCE/$2,000,000 AGGREGATE***				
	* Policy to be written on a claims incurred basis			
XX	comprehensive form			
XX	premises - operations	bodily injury		
XX	explosion & collapse hazard	property damage		
XX	underground hazard			
XX	products/completed operations hazard	bodily injury and		
XX	contractual insurance	property damage		
XX	broad form property damage	combined		
XX	independent contractors			
XX	personal injury	personal injury		
AUTOMOBILE LIABILITY: ***MINIMUM $1,000,000 per OCCURRENCE/$2,000,000 AGGREGATE***				
		bodily injury (each person)		
XX	comprehensive form	bodily injury (each accident)		
XX	owned	property damage		
XX	hired	bodily injury and		
XX	non-owned	property damage combined		
REAL & PERSONAL PROPERTY				
XX	comprehensive form	Contractor must show proof they have this coverage.		
EXCESS LIABILITY				
XX	umbrella form	bodily injury and		
XX	other than umbrella	property damage combined	$2,000,000.	$2,000,000.
XX	**PROFESSIONAL LIABILITY**		$1,000,000.	$1,000,000.
	* Policy to be written on a claims made basis			

The certification or proof of insurance must contain a provision for notification to the City thirty (30) days in advance of any material change in coverage or cancellation.

The successful Proposer shall furnish to the City the certification or proof of insurance required by the provisions set forth above, within ten (10) days after notification of award of contract.

8. GOVERNING LAW

Interested vendors will agree that agreements shall be governed by the laws of the State of Florida, and the venue for any legal action will be Pompano Beach, Florida.

9. CONFLICT OF INTEREST

For purposes of determining any possible conflict of interest, each Qualifier must disclose if any City employee is also an owner, corporate officer, or an employee of his business. If any City employee is also an owner, corporate officer, or an employee, the Qualifier must file a statement with the Broward County Supervisor of Elections pursuant to Florida Statutes 112.313.

10. LOBBYING PROHIBITED

Qualifiers are not to lobby any City officials, officers or personnel related or involved with this Request for Qualifications. All oral and written inquiries are to be directed to the Procurement Contacts contained herein. Any violation of this condition may result in rejection and/or disqualification of the proposal. The City Manager shall be excluded from this condition.

11. DRUG FREE WORKPLACE

The selected Qualifier with whom an agreement will be negotiated will be required to verify they will operate a "Drug Free Workplace" as outlined in Florida Statute, Section 287.087.

12. PUBLIC ENTITY CRIMES

A person or affiliate who has been placed on the convicted vendor list following a conviction for public entity crime may not submit a proposal on a contract to provide any goods or services to a public entity, may not submit a proposal on a contract with a public entity for the construction or repair of a public building or public work, may not submit proposals on leases of real property to 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 Florida Statute, Section 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

13. TAXES

The CONTRACTOR shall pay all applicable sales, consumer, use and other similar taxes required by law. The CONTRACTOR is responsible for reviewing the pertinent state statutes involving the sales tax and complying with all requirements.

14. HOLD HARMLESS AND INDEMNIFICATION

Proposer covenants and agrees that it will indemnify and hold harmless the City and all of its officers, agents, and employees from any claim, loss, damage, cost, charge or expense arising out of any act, action, neglect or omission by the Proposer, whether direct or indirect, or whether to any person or property to which the City or said parties may be subject, except that neither the Proposer nor any of its subcontractors will be liable under this section for damages arising out of injury or damage to persons or property directly caused by or resulting from the sole negligence of the City or any of its officers, agents or employees.

15. RETENTION OF RECORDS AND RIGHT TO ACCESS

The selected firm shall maintain during the term of the contract all books of account, receipt invoices, reports and records in accordance with generally accepted accounting practices and standards. The form of all records and reports shall be subject to the approval of the City's Internal Auditor. The selected firm must comply with the Internal Auditor's recommendation for changes, additions, or deletions. The City's Internal Auditor must be permitted during normal business hours to audit and examine the books of account, reports, and records relating to this contract. The selected firm shall maintain and make available such records and files for the duration of the contract and retain them until the expiration of three years after final payment under the contract.

16. COMMUNICATIONS

No negotiations, decisions, or actions shall be initiated or executed by the firm as a result of any discussions with any City employee. Only those communications, which are in writing from the City, may be considered as a duly authorized expression on behalf of the City. In addition, only communications from firms that are signed and in writing will be recognized by the City as duly authorized expressions on behalf of firms.

17. NO DISCRIMINATION

There shall be no discrimination as to race, sex, color, age, religion, or national origin in the operations conducted under any contract with the City.

18. INDEPENDENT CONTRACTOR

The selected firm will conduct business as an independent contractor under the terms of this contract. Personnel services provided by the firm shall be by employees of the firm and subject to supervision by the firm, and not as officers, employees, or agents of the City. Personnel policies, tax responsibilities, social security and health insurance, employee benefits, purchasing policies and other similar administrative procedures applicable to services rendered under this agreement shall be those of the firm.

19. STAFF ASSIGNMENT

The City of Pompano Beach reserves the right to approve or reject, for any reasons, Proposer's staff assigned to this project at any time. Background checks may be required.

20. CONTRACT TERMS

The contract resulting from this RFQ shall include, but not be limited to the following terms:

The contract shall include as a minimum, the entirety of this RFQ document, together with the successful Proposer's proposal. Contract shall be prepared by the City of Pompano Beach City Attorney.

If the City of Pompano Beach defends any claim, demand, cause of action, or lawsuit arising out of any act, action, negligent acts or negligent omissions, or willful misconduct of the contractor, its employees, agents or servants during the performance of the contract, whether directly or indirectly, contractor agrees to reimburse the City of Pompano Beach for all expenses, attorney's fees, and court costs incurred in defending such claim, cause of action or lawsuit.

21. WAIVER

It is agreed that no waiver or modification of the contract resulting from this RFQ, or of any covenant, condition or limitation contained in it shall be valid unless it is in writing and duly executed by the party to be charged with it, and that no evidence of any waiver or modification shall be offered or received in evidence in any proceeding, arbitration, or litigation between the parties arising out of or affecting this contract, or the right or obligations of any party under it, unless such waiver or modification is in writing, duly executed as above. The parties agree that the provisions of this paragraph may not be waived except by a duly executed writing.

22. SURVIVORSHIP RIGHTS

This contract resulting from this RFQ shall be binding on and inure to the benefit of the respective parties and their executors, administrators, heirs, personal representative, successors and assigns.

23. TERMINATION

The contract resulting from this RFQ may be terminated by the City of Pompano Beach without cause upon providing contractor with a least sixty (60) days prior written notice.

Should either party fail to perform any of its obligations under the contract resulting from this RFQ for a period of thirty (30) days after receipt of written notice of such failure, the non-defaulting part will have the right to terminate the contract immediately upon delivery of written notice to the defaulting part of its election to do so. The foregoing rights of termination are in addition to any other rights and remedies that such party may have.

24. MANNER OF PERFORMANCE

Proposer agrees to perform its duties and obligations under the contract resulting from this RFQ in a professional manner and in accordance with all applicable local, federal and state laws, rules and regulations.

Proposer agrees that the services provided under the contract resulting from this RFP shall be provided by employees that are educated, trained and experienced, certified and licensed in all areas encompassed within their designated duties. Proposer agrees to furnish the City of Pompano Beach with all documentation, certification, authorization, license, permit, or registration currently required by applicable laws or rules and regulations. Proposer further certifies that it and its employees are now in and will maintain good standing with such governmental agencies and that it and its employees will keep all license, permits, registration, authorization or certification required by applicable laws or regulations in full force and effect during the term of this contract. Failure of Proposer to comply with this paragraph shall constitute a material breach of contract.

25. ACCEPTANCE PERIOD

Proposals submitted in response to this RFP must be valid for a period no less than ninety (90) days from the closing date of this solicitation.

26. RFQ CONDITIONS AND PROVISIONS

The completed and signed proposal (together with all required attachments) must be returned to City on or before the time and date stated herein. All Proposers, by submission of a proposal, shall agree to comply with all of the conditions, requirements and instructions of this RFP as stated or implied herein. All proposals and supporting materials submitted will become the property of the City.

Any alteration, erasure, or interlineations by the Proposer in this RFP shall constitute cause for rejection. Exceptions or deviations to this proposal may not be added after the submittal date.

All Proposers are required to provide all information requested in this RFP. Failure to do so may result in disqualification of the proposal.

The City reserves the right to postpone or cancel this RFP, or reject all proposals, if in its sole discretion it deems it to be in the best interest of the City to do so.

The City reserves the right to waive any technical or formal errors or omissions and to reject all proposals, or to award contract for the items herein, in part or whole, if it is determined to be in the best interests of the City to do so.

The City shall not be liable for any costs incurred by the Proposer in the preparation of proposals or for any work performed in connection therein.

27. STANDARD PROVISIONS

a. Governing Law

Any agreement resulting from this RFP shall be governed by the laws of the State of Florida, and the venue for any legal action relating to such agreement will be in Broward County, Florida.

b. Licenses

In order to perform public work, the successful Proposer shall:
Be licensed to do business in Florida, if an entity, and hold or obtain such Contractor' and Business Licenses if required by State Statutes or local ordinances.

c. Conflict Of Interest

For purposes of determining any possible conflict of interest, each Proposer must disclose if any Elected Official, Appointed Official, or City Employee is also an owner, corporate officer, or an employee of the firm. If any Elected Official, Appointed Official, or City Employee is an owner, corporate officer, or an employee, the Proposer must file a statement with the Broward County Supervisor of Elections pursuant to §112.313, Florida Statutes.

d. Drug Free Workplace

The selected firm(s) will be required to verify they will operate a "Drug Free Workplace" as set forth in Florida Statute, 287.087.

e. Public Entity Crimes

A person or affiliate who has been placed on the convicted vendor list following a conviction for public entity crime may not submit a proposal on a contract to provide any goods or services to a public entity, may not submit a proposal on a contract with a public entity for the construction or repair of a public building or public work, may not submit proposals on leases of real property to 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 Florida Statute, Section 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

f. Patent Fees, Royalties, And Licenses

If the selected Proposer requires or desires to use any design, trademark, device, material or process covered by letters of patent or copyright, the selected Proposer and his surety shall indemnify and hold harmless the City from any and all claims for infringement by reason of the use of any such patented design, device, trademark, copyright, material or process in connection with the work agreed to be performed and shall indemnify the City from any cost, expense, royalty or damage which the City may be obligated to pay by reason of any infringement at any time during or after completion of the work.

g. Permits

The selected Proposer shall be responsible for obtaining all permits, licenses, certifications, etc., required by federal, state, county, and municipal laws, regulations, codes, and ordinances for the performance of the work required in these specifications and to conform to the requirements of said legislation.

h. Familiarity With Laws

It is assumed the selected firm(s) will be familiar with all federal, state and local laws, ordinances, rules and regulations that may affect its services pursuant to this RFP. Ignorance on the part of the firm will in no way relieve the firm from responsibility.

i. Withdrawal Of Proposals

A firm may withdraw its proposal without prejudice no later than the advertised deadline for submission of proposals by written communication to the General Services Department, 1190 N.E. 3rd Avenue, Building C, Pompano Beach, Florida 33060.

j. Composition Of Project Team

Firms are required to commit that the principals and personnel named in the proposal will perform the services throughout the contractual term unless otherwise provided for by way of a negotiated contract or written amendment to same executed by both parties. No diversion or substitution of principals or personnel will be allowed unless a written request that sets forth the qualifications and experience of the proposed replacement(s) is submitted to and approved by the City in writing.

k. Variances

While the City allows Proposers to take variances to the RFP terms, conditions, and specifications, the material nature, number, and extent of variances taken will be considered in determining proposal responsiveness and in allocating proposal evaluation points.

l. Invoicing/Payment

All invoices should be sent to City of Pompano Beach, Accounts Payable, P.O. Drawer 1300, Pompano Beach, Florida, 33061. In accordance with Florida Statutes, Chapter 218, payment will be made within 45 days after receipt of a proper invoice.

m. Public Records

1. The City of Pompano Beach is a public agency subject to Chapter 119, Florida Statutes. The Contractor shall comply with Florida's Public Records Law. Specifically, the Contractor shall:

    a. Keep and maintain public records that ordinarily and necessarily would be required by the City in order to perform the service;

    b. Provide the public with access to such public records on the same terms and conditions that the City would provide the records and at a cost that does not exceed that provided in chapter 119, Fla. Stat., or as otherwise provided by law;

    c. Ensure that public records that are exempt or that are confidential and exempt from public record requirements are not disclosed except as authorized by law; and

d. Meet all requirements for retaining public records and transfer to the City, at no cost, all public records in possession of the contractor upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt. All records stored electronically must be provided to the City in a format that is compatible with the information technology systems of the agency.

2. The failure of Contractor to comply with the provisions set forth in this Article shall constitute a Default and Breach of this Agreement and the City shall enforce the Default in accordance with the provisions set forth herein.

28. QUESTIONS AND COMMUNICATION

All questions regarding the RFQ are to be submitted in writing to the Purchasing Office, 1190 N.E. 3rd Avenue, Building C (Front), Pompano Beach, Florida 33060, fax (954) 786-4168, or email purchasing@copbfl.com. All questions must include the inquiring firm's name, address, telephone number and RFP name and number. Questions must be received at least seven (7) calendar days before the scheduled solicitation opening. Oral and other interpretations or clarifications will be without legal effect. Any addendum necessary to answer questions will be posted to the City's website, and it is the Proposer's responsibility to obtain all addenda before submitting a response to the solicitation.

29. ADDENDA

The issuance of a written addendum is the only official method whereby interpretation, clarification, or additional information can be given. If any addenda are issued to this solicitation the City will attempt to notify all known prospective Proposers, however, it shall be the responsibility of each Proposer, prior to submitting their response, to contact the City Purchasing Office at (954) 786 4098 to determine if addenda were issued and to make such addenda a part of their proposal.

30. CONTACT INFORMATION

For additional information regarding this RFQ, please contact City of Pompano Beach Public Works Department, Engineering Division, John Sfiropoulos, P.E., Civil Engineer III at 954-545-7009 or email john.sfiropoulos@copbfl.com.

SECTION III- SCOPE OF WORK

1. INTENTION

The intent of this "Request for Qualifications" is for the CITY to select a Construction Management Firm capable of providing construction management services necessary to construct the improvements within the CITY as outlined above. Applicants are encouraged to self- perform any of the general services listed on page 6. The Construction Management Firm(s) may retain necessary design professionals under the process provided in Florida Statute Section 287.055.

Based on the Guaranteed Maximum Price (GMP), the CITY may or may not proceed if the GMP is not acceptable to the CITY. The CITY reserves the right to discontinue with that firm without recourse or liability. The types of services required may include, but shall not be limited to, the following.

2. PRE-CONSTRUCTION PHASE

A. Review and coordinate the work that the architect, engineer and/or the owner prepared for the project, within the existing site conditions.
B. Submit to the architect, engineer and owner for consideration, appropriate cost and savings programs (value engineering).
C. Coordinate competitive bidding and contracting for trade subcontractors.
D. Calculate and provide a Guaranteed Maximum Price for the project or each phase of the project.
E. Provide a preliminary construction schedule.

3. CONSTRUCTION PHASE

A. Provide Performance and Payment Bonds for the full value of the GMP for each phase of the project.
B. Monitor Minority/Women and Small Business Enterprises participation (M/WBE, SBE) for the project or phases of the project.
C. Apply for, obtain, coordinate and pay for all permits, inspections and tests. Ensure the successful, timely, and economical completion of the project or phases of the project.
D. Coordinate and insure compliance with all insurance requirements.
E. Create, maintain, and present an overall construction schedule
F. Create a schedule of values for the project or phases of the project.
G. Coordinate Construction Management Services, including but not limited to:
    1) Regular job site meetings.
    2) Public presentations and Public outreach
    2) Maintaining and updating schedules.
    3) Overseeing quality assurances.
    4) Maintaining and providing copies of all contract documents.
    5) Insuring compliance with all safety programs.
    6) Coordination of all construction.

4. GENERAL SERVICES

Work to be accomplished under this contract may include the following:

A. Undergrounding existing FPL, ATT and Comcast overhead utilities.
B. Pedestrian improvements within the ROW and City owned property.
C. Exercise trail, passive park areas and possible playground upgrades
D. Eco-tourism elements
E. Trendy design and art elements
F. Landscape Beautification
G. On-Street Beachfront Parking along (if applicable)
H. Base information review/identification of site design issues/opportunities
I. Cost estimating and value engineering
J. Paving and Hardscape materials
K. Lighting-Electrical
L. Site Furnishings and Special Features
M. Roadway alignment plan coordination
N. Outline Specifications
O. Plans that shall reflect the location and dimensioning of the following elements:
    a. Plazas, walkways/sidewalks, and specialty features
    b. Steps, ramps and retaining walls
    c. Site furnishings
    d. Exterior lighting
    e. Hardscape/Paving Plans
    f. Special pavement materials and patterns (Type and location)
    g. Pedestrian surfaces
    h. Curbs and paving borders
    i. Planting Plans - Quantity, size, and description of the following:
        - Trees (including relocation of any existing trees)
        - Shrubs and groundcovers
        - Soil mixes
        - Planting details and specifications
P. Irrigation (City to supply source information for irrigation source, i.e., well or City water source).
    a. Piping and hydraulics design
    b. Pump and/or well design
    c. Specifications
Q. Construction Details
    a. Decorative walls (structural sub-consultant)
    b. Special pavements
    c. Various lighting treatments
    d. landscaped edges and buffers
    e. Stairs, ramps, walls and walkways
    f. Curbs and hardscape edges
    g. Site furniture
    h. Construction Details
    i. Construction Specifications
    j. Technical Specifications

5. COMPOSITION OF PROJECT TEAM

Qualifier will be required to commit that the personnel and/or principals named in the proposal shall remain assigned to the "project" throughout the period of the contract unless provided for otherwise in a negotiated contract. No diversion or substitution of personnel or principals will be allowed without submission of a written request with the qualifications and experience of the proposed replacement. The approval of the CITY will be required for any such diversion or substitution.

6. LICENSE

Firms must have previous municipal experience and must be licensed to practice General Contracting in the State of Florida, Florida State Statute 481, by the Board of Professional Regulation.

SECTION IV - SELECTION/EVALUATION PROCESS

1. Interested Respondents shall submit their qualifications and any other information required herein to the City of Pompano Beach's Purchasing Department's office on or before the date and the time specified.

2. Each partner of joint ventures must individually meet the conditions of the General Contractor's Evaluation. Contractor's License may not have been suspended, put on probation or revoked at any time in the last five (5) years.

3. Limited Liability Corporations (LLC) will be required to comply with a Guaranty of Obligations.

4. General Contractor shall provide a complete financial statement indicating organization's financial condition. Financial statements provided by general contractors shall not be older than six (6) months prior to the date of filing this Prequalification Application. The financial statements are to be reviewed and submitted with any accompanying notes and supplemental information. The City of Pompano Beach reserve the right to reject financial statements in which the financial condition shown is of a date six (6) months or more prior to the date of filing.

5. A certificate by a Certified Public Accountant (CPA) is required. The CPA may submit a certificate in his/her own words, including such qualifications as may be necessary in view of the scope of this assignment, provided that such qualifications shall not be so extensive as to nullify the value of the statement or its usefulness to the City of Pompano Beach. Certificate shall be signed and shall indicate license/certificate number.

6. Bearing in mind that working capital is an important factor in determining the prequalification of the general contractor, the accountant will perform a valuable service for their client and at the same time assist the City, if they will furnish, by supplemental schedules or as part of their certificate, any information not specifically called for by the statement which in their opinion might be taken into consideration. In the event that the general contractor's job income and expenditures are accounted on a completed contract basis and the balance sheet includes an item reflecting the excess of costs to date over billings to date, or vice versa, the elements of "Accumulated Costs" and "Billings to Date" must be shown in support of the balance sheet item.

7. A Selection Committee will review the submittals. The selected Firms will be notified and ranked. The committee may conduct discussions, for clarification purposes only, with the finalists and re-score and re- rank the finalists' qualifications. The final ranking will then be recommended to the CITY for approval. The CITY has the authority to (including, but not limited to); approve the recommendation; reject the recommendation and direct staff to re- advertise the solicitation; or, review the responses themselves and/or request oral presentations and determine a ranking order that may be the same or different from what was originally presented to the board.

8. After the CITY has approved the rankings of the firms and authorized negotiations to proceed, CITY staff may negotiate Contracts with any of the three (3) top ranked Firm(s) on an interchangeable basis, as determined by the CITY. The final Contract negotiated between the Firm and CITY staff will incorporate the contents of this "Request for Qualifications" the qualifications submitted by the Firm, and any other terms or conditions that the parties may agree to include by way of negotiation. If CITY staff is unable to negotiate a satisfactory Contract, CITY staff may terminate negotiations with that Firm without recourse or liability. After a Contract has been formally approved and executed by the CITY, the Firm will be issued an "Authorization to Proceed."

9. The Committee will rank responses based upon the following criteria:

A.	Overall approach and methodology: Explain the firm's approach to these types of projects from initial involvement in contract document preparation through the final construction phases. Include methods used during construction to monitor this project and resolve issues as well as methods of sequencing and coordination among the firm's trades to minimize conflict and errors.	0-20
B.	Prior experience with projects of similar size for a City and in an urban environment, beachfront or waterfront areas with an emphasis on streetscape improvements, utility improvements, large promenades, sophisticated landscape themes, undergrounding of overhead utilities in compliance with FPL (contractor and/or subcontractor must be FPL- approved/certified), Comcast, and AT&T standards and certifications, roadway resurfacing, etc., completed during the past five (5) years: a. Number of similar projects b. Complexity of similar projects c. References from past projects d. Safety record	0-20
C.	Knowledge of site and local conditions: Demonstrate knowledge of the site, State, County, and City requirements, codes, and ordinances. Also knowledge of local subcontractors and suppliers, capable of supplying quality workmanship and materials	0-5
D.	Financial Capability - An indication of the resources and the necessary working capital available and how it will relate to the Firm's financial stability through the completion of the project. In addition, the firm's ability to secure bonding shall be also be used as an indicator.	0-10
E.	Qualifications of personnel including sub consultants. The general and specific project related capability of the in-house office and field support, including previous experience with similar projects: a. Number of technical staff b. Qualifications of technical staff: (1) Number of licensed staff (2) Education of staff (3) Experience of staff	0-20
F.	Scheduling/Cost Control. A description of the Firm's general project management, scheduling, and cost controls indicating functions and capabilities, with emphasis on the Firm's ability to prevent cost overruns or change orders:	0-10
G.	Proximity of the nearest office to the project location: a. Location b. Number of staff at the nearest office	0-10

H.	Is the firm a certified minority or women owned business enterprise as defined by the City of Pompano Beach or the Florida Small and Minority Business Assistance Act of 1985? Or, is a minority or women owned business enterprise part of the team and assigned to participate in no less than 5% of the work?	0-5
	Total Points	0-100

The Committee has the option to use the above criteria for the initial ranking to short-list Proposers and to use an ordinal ranking system to score short-listed Proposers following presentations (if deemed necessary) with a score of "1" assigned to the short-listed Proposer deemed most qualified by the Committee.

Each firm should submit documentation that evidences the firm's capability to provide the services required for the Committee's review for short listing purposes. After an initial review of the Proposals, the City may invite Proposers for an interview to discuss the proposal and meet firm representatives, particularly key personnel who would be assigned to the project. Should interviews be deemed necessary, it is understood that the City shall incur no costs as a result of this interview, nor bear any obligation in further consideration of the submittal.

When more than three responses are received, the committee shall furnish the City Commission (for their approval) a listing, in ranked order, of no fewer than three firms deemed to be the most highly qualified to perform the service. If three or less firms respond to the RFP, the list will contain the ranking of all responses.

The City Commission has the authority to (including, but not limited to); approve the recommendation; reject the recommendation and direct staff to re-advertise the solicitation; or, review the responses themselves and/or request oral presentations and determine a ranking order that may be the same or different from what was originally presented to the City Commission.

SECTION V - SUBMITTAL FORMAT

Information to be submitted should include the following and be tabbed as indicated:

Title Page: Show the "Request for Qualifications" project title, project number, the name of the Respondent firm, address, telephone number, name of contact person and date.

A. Table of Contents: Clearly identify the section, topic, and page number.

B. The Essential Requirements Questionnaire and the Declaration page below.

C. Letter of Transmittal: Limit to one (1) or two (2) printed pages.
   1. Briefly state the firm's understanding of the work to be done and provide a positive commitment to perform the work.

2. Give the names of the persons who will be authorized to make representations for the firm including their titles, addresses and telephone numbers.

D. Profile of Construction Management Services:

1. Describe the firm, including the size, range of activities, and other pertinent information.
2. Provide an organizational chart.
3. State whether the organization is national, regional or local.
4. State the location of the office from which the work is to be performed.
5. Describe the organization of the proposed project team, detailing the level of involvement, field of expertise and estimated hours for each member of the team.

E. Provide a list and description of similar municipal or other projects satisfactorily performed within the past five (5) years that have been completed under a "Construction Management at Risk Services" agreement. For each project listed, include the name and telephone number of a representative for whom the project was undertaken who can verify satisfactory performance. Describe experiences in conducting similar projects for each of the staff assigned to the project, as well as their relevant educational background.

F. Provide information on any litigation (decided, settled or pending) the firm has been involved in within the last five (5) years.

G. Describe what municipal staff support is anticipated for this type of project.

H. Describe the firm's approach to performing the work. This should include the following points: overall plan for this project outlining major tasks and responsibilities, project time schedule and staff assigned.

I. Provide reviewed or audited financial statements for your most recent past three (3) complete fiscal years, accompanied by a review report by an independent Certified Public Accountant. Complied or internally prepared financial statements will not be accepted.

J. Insurance certificate and any other forms the Qualifier feels are pertinent.

K. City Forms: The RFP Proposal Signature Page must be completed, signed and returned. Proposer should return all RFQ pages, initialed where indicated.

The Submittal Package shall be submitted in accordance with the requirements of the Consultants Competitive Negotiation Act and shall include a completed sample insurance certificate listing the insurance company's name(s) for both Professional and General Liability Insurance and the dollar amounts of the coverage.

Submit one (1) original unbound and six (6) bound copies of the proposal. All copies will be on 8 ½" x 11" plain white paper, typed, and signed by an authorized representative who is able to contractually bind the Proposer. In addition, Proposers must submit one (1) original copy of the Proposal on electronic media in printable Adobe or Microsoft Word format (or other format approved by the City). Failure to adhere to the submittal quantity criteria may result in the Proposal being considered non-responsive.

Submittal packages should be marked on the exterior RFQ CM at Risk Contract Services For Various City Streetscape Improvement Projects and addressed to City of Pompano Beach, 1190 N.E. 3rd Avenue, Building C, Pompano Beach, Florida 33060.

SUBMITTALS MUST BE RECEIVED NO LATER THAN THE DATE SPECIFIED IN THE RFQ SCHEDULE IN THE SECTION I ABOVE.

No fax or e-mail copies will be accepted. Submittals received after the specified time and date will not be considered and will be returned unopened to the sender.

The CITY reserves the right to accept or reject any or all submittals, to waive any minor irregularities, and to extend the deadline for submission when it is in the best interest of the CITY.

VI. CONTRACT SECURITY

When the Successful Firm delivers the executed Agreement to the CITY, it must be accompanied by a Performance Bond equivalent to 100% of the contract. A warranty Bond, equal to 25% of the actual cost of construction shall remain in effect after the project(s) is completed and for a period of two (2) years from the date of final approval.

ESSENTIAL REQUIREMENTS QUESTIONNAIRE

1. Qualifier possesses a valid and current Florida Contractor's license for the project or projects for which it intends to submit a bid.

____Yes ____No

2. Qualifier has or will obtain a general liability insurance policy with a policy limit of at least $_____ per occurrence and $_____ aggregate.

____Yes ____No

3. Qualifier has current workers' compensation insurance policy.

____Yes ____No

Qualifier is exempt from this requirement, because it has no employees

a) A "no" answer to Question 4 will not be disqualifying if the Qualifier is exempt from complying with Question 4, for reasons explained in footnote 3.

b) A Qualifier disqualified solely because of a "Yes" answer given to question 6, 7, or 9 may appeal the disqualification and provide an explanation of the relevant circumstances during the appeal procedure.

c) Public Entity may request an additional notarized statement from the surety at the time of submission of a bid, if this pre-qualification package is submitted more than 60 days prior to submission of the bid.

4. Have you attached your latest copy of a reviewed or audited financial statement with accompanying notes and supplemental information?

____Yes ____No

NOTE: A financial statement that is not reviewed or audited is not acceptable. A letter verifying availability of a line of credit may also be attached; however, it will be considered as supplemental information only, and is not a substitute for the required financial statement.

5. Have you attached a notarized statement from an admitted surety insurer (approved by the Florida Department of Insurance) and authorized to issue bonds in the State of Florida, which states: (a) that your current bonding capacity is sufficient for the project for which you seek pre-qualification if you are seeking pre-qualification for the Project?

____Yes ____No

NOTE: Notarized statement must be from the surety company, not an agent or broker.

6. Has your contractor's license been revoked at any time in the last five years?

____Yes ____No

7. Has a surety firm completed a contract on your behalf, or paid for completion because your firm was default terminated by the project owner within the last five (5) years?

____Yes ____No

8. At the time of submitting this pre-qualification form, is your firm ineligible to bid on or be awarded a public works contract, or perform as a subcontractor on a public works contract?

____Yes ____No

If the answer is "Yes," state the beginning and ending dates of the period of debarment:

_____

9. At any time during the last five years, has your firm, or any of its owners or officers, been convicted of a crime involving the awarding of a contract for a government construction project, or the bidding or performance of a government contract?

____Yes ____No

ORGANIZATION, HISTORY, ORGANIZATIONAL PERFORMANCE, COMPLIANCE WITH CIVIL AND CRIMINAL LAWS

A. Current Organization and Structure of the Business

For Firms That Are Corporations:

1a. Date Incorporated: _____

1b. Under the laws of what state:_____

1c. Provide all the following information for each person who is either (a) an officer of the corporation (president, vice president, secretary, and treasurer), or (b) the owner of at least ten per cent of the corporation's stock.

Name: _____

Position: _____

Years with Company: _____

% Ownership:_____

Social Security #: _____

1d. Identify every construction firm that any person listed above has been associated with (as owner, general partner, limited partner or officer) at any time during the last five years.

NOTE: For this question, "owner" and "partner" refer to ownership of ten percent or more of the business, or 10 percent or more of its stock, if the business is a corporation.

Person's Name: _____

Construction Firm: _____

Dates of Person's Participation with Firm: _____

For Firms That Are Partnerships:

1a. Date of formation: _____

1b. Under the laws of what state: _____

1c. Provide all the following information for each partner who owns 10 per cent or more of the firm.

Name: _____

Position: _____

Years with Company: _____

% Ownership:_____

Social Security #: _____

1d. Identify every construction company that any partner has been associated with (as owner, general partner, limited partner or officer) at any time during the last five years.

NOTE: For this question, "owner" and "partner" refer to ownership of ten per cent or more of the business, or ten per cent or more of its stock, if the business is a corporation.

Person's Name: _____

Construction Firm: _____

Dates of Person's Participation with Firm: _____

For Firms That Are Sole Proprietorships:

1a. Date of commencement of business.

1b. Social security number of company owner.

1c. Identify every construction firm that the business owner has been associated with (as owner, general partner, limited partner or officer) at any time during the last five years.

NOTE: For this question, "owner" and "partner" refer to ownership of ten per cent or more of the business, or ten per cent or more of its stock, if the business is a corporation.

Person's Name: _____

Construction Firm: _____

Dates of Person's Participation with Firm: _____

For Firms That Intend to Make a Bid as Part of a Joint Venture:

1a. Date of commencement of joint venture.

1b. Provide all of the following information for each firm that is a member of the joint venture that expects to bid on one or more projects:

Name of firm: _____

% Ownership of Joint Venture: _____

B. History of the Business and Organizational Performance

1. Has there been any change in ownership of the firm at any time during the last three years?

NOTE: A corporation whose shares are publicly traded is not required to answer this question.

____Yes ____No

If "yes," explain on a separate signed page.

2. Is the firm a subsidiary, parent, holding company or affiliate of another construction firm?

NOTE: Include information about other firms if one firm owns 50 per cent or more of another, or if an owner, partner, or officer of your firm holds a similar position in another firm.

____Yes ____No

If "yes," explain on a separate signed page.

3. Are any corporate officers, partners or owners connected to any other construction firms?

NOTE: Include information about other firms if an owner, partner, or officer of your firm holds a similar position in another firm.

____Yes No

If "yes," explain on a separate signed page.

4. State your firm's gross revenues for each of the last three calendar years:

2013_____ 2012_____ 2011_____

5. How many years has your organization been in business in Florida as a contractor under your present business name and license number? ___ years

6. Is your firm currently the debtor in a bankruptcy case?

____Yes ____No

If "yes," please attach a copy of the bankruptcy petition, showing the case number, and the date on which the petition was filed.

7. Was your firm in bankruptcy at any time during the last five years? (This question refers only to a bankruptcy action that was not described in answer to question 7, above)

____Yes ____No

If "yes," please attach a copy of the bankruptcy petition, showing the case number and the date on which the petition was filed, and a copy of the Bankruptcy Court's discharge order, or of any other document that ended the case, if no discharge order was issued.

C. Licenses

1. List all Florida construction license numbers, classifications and expiration dates of the Florida contractor licenses held by your firm:

_____

_____

_____

_____

_____

_____

2. If any of your firm's license(s) are held in the name of a corporation or partnership, list below the names of the qualifying individual(s) listed on the Contractors State Licensing Board (CSLB) records who meet(s) the experience and examination requirements for each license.

_____

_____

_____

3. Has your firm changed names or license number in the past five years?

____Yes ____No

If "yes," explain on a separate signed page, including the reason for the change.

4. Has any owner, partner or (for corporations) officer of your firm operated a construction firm under any other name in the last five years?

____Yes ____No

If "yes," explain on a separate signed page, including the reason for the change.

5. Has a State of Florida license(s) held by your firm been suspended within the last five years?

____Yes ____No

If "yes," please explain on a separate signed sheet.

D. Disputes

1. At any time in the last five years has your firm been assessed and paid liquidated damages after completion of a project under a construction contract with either a public or private owner?

____Yes ____No

If yes, explain on a separate signed page, identifying all such projects by owner, owner's address, and the date of completion of the project, amount of liquidated damages assessed and all other information necessary to fully explain the assessment of liquidated damages.

2. In the last five years has your firm, or any firm with which any of your company's owners, officers or partners was associated, been debarred, disqualified, removed or otherwise prevented from bidding on, or completing, any government agency or public works project for any reason?

NOTE: "Associated with" refers to another construction firm in which an owner, partner or officer of your firm held a similar position, and which is listed in response to question 1c or 1d on this form.

____Yes ____No

If "yes," explain on a separate signed page. State whether the firm involved was the firm applying for pre-qualification here or another firm. Identify by name of the company, the name of the person within your firm who was associated with that company, the year of the event, the owner of the project, the project and the basis for the action.

3. In the last five years has your firm been denied an award of a public works contract based on a finding by a public agency that your company was not a responsible bidder?

____Yes ____No

If "yes," explain on a separate signed page. Identify the year of the event, the owner, the project and the basis for the finding by the public agency.

NOTE: The following two questions refer only to disputes between your firm and the owner of a project. You need not include information about disputes between your firm and a supplier, another contractor, or subcontractor.

4. In the past five years has any claim against your firm concerning your firm's work on a construction project been filed in court or arbitration?

____Yes ____No

If "yes," on separate signed sheets of paper identify the claim(s) by providing the project name, date of the claim, name of the claimant, a brief description of the nature of the claim, the court in which the case was filed and a brief description of the status of the claim (pending or, if resolved, a brief description of the resolution).

5. In the past five years has your firm made any claim against a project owner concerning work on a project or payment for a contract and filed that claim in court or arbitration?

____Yes ____No

If "yes," on separate signed sheets of paper identify the claim by providing the project name, date of the claim, name of the entity (or entities) against whom the claim was filed, a brief description of the nature of the claim, the court in which the case was filed and a brief description of the status of the claim (pending, or if resolved, a brief description of the resolution).

6. At any time during the past five years, has any surety company made any payments on your firm's behalf as a result of a default, to satisfy any claims made against a performance or payment bond issued on your firm's behalf, in connection with a construction project, either public or private?

____Yes ____No

If "yes," explain on a separate signed page the amount of each such claim, the name and telephone number of the claimant, the date of the claim, the grounds for the claim, the present status of the claim, the date of resolution of such claim if resolved, the method by which such was resolved if resolved, the nature of the resolution and the amount, if any, at which the claim was resolved.

7. In the last five years has any insurance carrier, for any form of insurance, refused to renew the insurance policy for your firm?

____Yes ____No

If "yes," explain on a separate signed page. Name the insurance carrier, the form of insurance and the year of the refusal.

E. Criminal Matters and Related Civil Suits

1. Has your firm or any of its owners, officers or partners ever been found liable in a civil suit or found guilty in a criminal action for making any false claim or material misrepresentation to any public agency or entity?

____Yes ____No

If "yes," explain on a separate signed page, including identifying who was involved, the name of the public agency, the date of the investigation and the grounds for the finding.

2. Has your firm or any of its owners, officers or partners ever been convicted of a crime involving any federal, state, or local law related to construction?

____Yes ____No

If "yes," explain on a separate signed page, including identifying who was involved, the name of the public agency, the date of the conviction and the grounds for the conviction.

3. Has your firm or any of its owners, officers or partners ever been convicted of a federal or state crime of fraud, theft, or any other act of dishonesty?

____Yes ____No

If "yes," identify on a separate signed page the person or persons convicted, the court (the City if a state court, the district or location of the federal court), the year and the criminal conduct.

F. Bonding

1. Bonding capacity: Provide documentation from your surety identifying the following:

Name of bonding company/surety: _____

Name of surety agent, address and telephone number:_____

_____

2. If your firm was required to pay a premium of more than one per cent for a performance and payment bond on any project(s) on which your firm worked at any time during the last three years, state the percentage that your firm was required to pay. You may provide an explanation for a percentage rate higher than one per cent, if you wish to do so.

_____

_____

_____

3. List all other sureties (name and full address) that have written bonds for your firm during the last five years, including the dates during which each wrote the bonds:

_____

_____

_____

4. During the last five years, has your firm ever been denied bond coverage by a surety company, or has there ever been a period of time when your firm had no surety bond in place during a public construction project when one was required?

____Yes ____No

If yes, provide details on a separate signed sheet indicating the date when your firm was denied coverage and the name of the company or companies, which denied coverage; and the period during which you had no surety bond in place.

G. Compliance with Occupational Safety and Health Laws and with Other Labor Legislation Safety

1. Has the Occupational Safety and Health Administration (OSHA) cited and assessed penalties against your firm for any "serious," "willful" or "repeat" violations of its safety or health regulations in the past five years?

NOTE: If you have filed an appeal of a citation, and the Occupational Safety and Health Appeals Board has not yet ruled on your appeal, you need not include information about it.

____Yes ____No

If "yes," attach a separate signed page describing the citations, including information about the dates of the citations, the nature of the violation, the project on which the citation(s) was or were issued, the amount of penalty paid, if any. If the citation was appealed to the Occupational Safety and Health Appeals Board and a decision has been issued, state the case number and the date of the decision.

2. Has the federal Occupational Safety and Health Administration cited and assessed penalties against your firm in the past five years?

NOTE: If you have filed an appeal of a citation and the Appeals Board has not yet ruled on your appeal, or if there is a court appeal pending, you need not include information about the citation.____Yes____No

If "yes," attach a separate signed page describing each citation.

3. Has the state or federal Environmental Protection Agency (EPA) or any Air Quality Management District or any Regional Water Quality Control Board cited and assessed penalties against either your firm or the owner of a project on which your firm was the contractor, in the past five years?

NOTE: If you have filed an appeal of a citation and the Appeals Board has not yet ruled on your appeal, or if there is a court appeal pending, you need not include information about the citation.

____Yes ____No

If "yes," attach a separate signed page describing each citation.

4. How often do you require documented safety meetings to be held for construction employees and field supervisors during the course of a project?

_____

5. Within the last five years has there ever been a period when your firm had employees but was without workers' compensation insurance or state-approved self-insurance?

____Yes ____No

If "yes," please explain the reason for the absence of workers' compensation insurance on a separate signed page. If "No," please provide a statement by your current workers' compensation insurance carrier that verifies periods of workers' compensation insurance coverage for the last five years. (If your firm has been in the construction business for less than five years, provide a statement by your workers' compensation insurance carrier verifying continuous workers' compensation insurance coverage for the period that your firm has been in the construction business).

_____

_____

_____

H. Prevailing Wage and Apprenticeship Compliance Record

1. Has there been more than one occasion during the last five years in which your firm was required to pay either back wages or penalties for your own firm's failure to comply with the state's prevailing wage laws?

NOTE: This question refers only to your own firm's violation of prevailing wage laws, not to violations of the prevailing wage laws by a subcontractor.

____Yes ____No

If"yes," attach a separate signed page or pages, describing the nature of each violation, identifying the name of the project, the date of its completion, the public agency for which it was constructed; the number of employees who were initially underpaid and the amount of back wages and penalties that you were required to pay.

SURETY AND BONDING REQUIREMENTS

A. Attach a notarized statement from the bonding company your firm proposes to use indicating their commitment to provide a Performance and Payment Bond for the full amount of the contract.

B. List the names of the Bonding firms utilized by your organization in the last five (5) years, for projects over $3,000,000.

Name of Bonding Company No. 1

_____

Address:_____

Contact Name:_____Telephone:_____

Project Name:_____

Amount Bonded:_____%_____

Completed_____

Name of Bonding Company No. 2

_____

Address:_____

Contact Name:_____Telephone:

Project Name:_____

Amount Bonded:_____%_____

Completed_____

INSURANCE REQUIREMENTS

Each policy of insurance carried by the successful bidder for this project shall be issued by an insurance company licensed to do business in the State of Florida with a rating of "A" or better and a financial size category of "V" or better according to the latest edition of "Bests".

A. Attach a notarized statement from the Worker's Compensation carrier specifying organization's current Experience Modification rating for Worker's Compensation in the State of Florida.

B. List the names of the insurance firms utilized by your organization in the last five (5) years, for projects over $3,000,000.

Name of Insurance Company No. 1

_____

Address:_____

Contact Name:_____Telephone: _____

Project Name:_____

Amount Bonded: _____ %_____

Completed_____

Name of Insurance Company No. 2

_____

Address:_____

_____

Contact Name:_____Telephone: _____

Project Name:_____

Amount Bonded: _____ %_____

Completed_____

Failure to provide all these attachments may be cause for disqualification for this project.

Attachment 1 – Certificate of Accountant Attachment 1A –
General Statement of Bank Credit Attachment 2 – Notarized
Statement from Bonding Company
Attachment 3 – Notarized Statement from Worker's Compensation Insurance Carrier
Attachment 4 – Current Copy of Organization's Florida Contractor's License(s)

Attachment 5 – Certification declaring that the applying Organization has not has a surety company finish work on any project within the last five (5) years.
Attachment 6 – Certification declaring that the applying Organization, in the last five (5) years has not been found by a judge, arbitrator, jury, or a nolo contendere plea to have submitted a false or fraudulent claim to a public agency
Attachment 7 – Certification declaring that the applying Organization has not been disqualified, removed, or otherwise prevented from bidding on, or completing a federal, state, or local government project because of violations of law or a safety regulation, pursuant to Public Contract Code section 10162

DECLARATION

1. Acknowledgement and Release. By signature and date on this page, prospective bidder authorizes any financial institution, credit reporting agency and/or service, legal firm or any other type of business, agency or individual named within this document to release to the City (or City's designated representative) any and all information as that information relates, or could relate, to their ability to evaluate the background, stability and general worthiness of this bidder to perform current or future construction activities if Pre-Qualified and awarded a contract by the City.

a. A photocopy of this page shall be deemed as valid as an original document.

b. This Acknowledgement and Release shall remain in effect until such time as the bidder, in writing, requests that the City cease any attempt to evaluate himself/herself/themselves as potential Pre-Qualified bidder for construction work on City of Pompano Beach properties.

c. Reserved Right. The City reserves the right, for the sole purpose of evaluating a potential Pre-Qualification candidate (bidder), to make other inquiries as permitted by law. Furthermore, the City reserves the right to reject any or all Pre-qualification applications.

AFFIDAVIT

I, the undersigned, certify and declare that I have read all the foregoing answers to this prequalification questionnaire and know their contents. The matters stated in the questionnaire answers are true of my own knowledge and belief, except as to those matters stated on information and belief, and as to those matters I believe them to be true. I declare under penalty of perjury under the laws of the State of Florida, that the foregoing is correct.

Dated: _____

_____

(Signature)

_____

PROPOSAL SIGNATURE PAGE
RFQ T-12-15, CONSTRUCTION MANAGEMENT AT RISK CONTRACT SERVICES

To: The City of Pompano Beach, Florida

The below signed hereby agrees to furnish the proposed services under the terms stated subject to all instructions, terms, conditions, specifications, addenda, legal advertisement, and conditions contained in the RFP. I have read the RFP and all attachments, including the specifications, and fully understand what is required. By submitting this signed proposal, I will accept a contract if approved by the City and such acceptance covers all terms, conditions, and specifications of this proposal.

Proposal submitted by:

Name (printed) _____ Title _____

Company (Legal Registered) _____

Federal Tax Identification Number _____

Address _____

City/State/Zip _____

Telephone No. _____ Fax No. _____

Signature _____ Date _____

Addendum Acknowledgment - Proposer acknowledges that the following addenda have been received and are included in his/her proposal:

Addendum No. _____ Date Issued _____

STATEMENT OF NO RESPONSE

If you do not intend to submit on this requirement, please complete and return this form by the submittal deadline to the City of Pompano Beach Purchasing Division, Building C, 1190 N.E. 3rd Avenue, Pompano Beach, Florida 33060; this form may be faxed to (954) 786-4168. Failure to respond, either by submitting a proposal, or by submitting a "Statement of No Response" form, may result in your firm's name being removed from our mailing list.

WE, the undersigned, have declined to submit on this solicitation for the following reason(s):

_____ We do not offer this product or an equivalent

_____ Our workload would not permit us to perform

_____ Insufficient time to respond to the Request for Letters of Interest

_____ Unable to meet specifications (explain below)

_____ Other (specify below)

Remarks _____

_____

_____

_____

COMPANY NAME _____

ADDRESS _____

TELEPHONE _____

SIGNATURE/TITLE _____

DATE _____

PROJECT TEAM FORM

RFQ NUMBER _____

Federal I.D.#_____

Is Prime Consultant a
Certified SBE firm YES__ NO_

PRIME

Role	Name of Individual Assigned to Project	Number of Years Experience	Education, Degrees
Principal-In-Charge	_____	_____	_____
Project Manager	_____	_____	_____
Asst. Project Manager	_____	_____	_____
Other Key Member	_____	_____	_____
Other Key Member	_____	_____	_____

SUB-CONSULTANT

Role	Company Name and Address of Office Handling This Project	Name of Individual Assigned to the Project
Surveying	_____	_____
	_____	_____
Landscaping	_____	_____
	_____	_____
Engineering	_____	_____
	_____	_____

Other Key Member _____ _____

_____ _____

Other Key Member _____ _____

_____ _____

Other Key Member _____ _____

_____ _____

Other Key Member _____ _____

_____ _____

EXHIBIT "A"
CITY OF POMPANO BEACH, FLORIDA
SMALL BUSINESS ENTERPRISE
PARTICIPATION FORM

RFQ Number & Title: _____ Contractor's Name: _____

Name of Firm	Contact Person, Telephone Number	Type of Work to be Performed	Contract Amount/Percentage

(INCLUDE CERTIFICATES FOR ANY FIRMS LISTED ON THIS PAGE)

FOR CITY USE ONLY

Total SBE Contract Participation _____

Are documents requested submitted accordingly ___ YES ___ NO

EXHIBIT "B"
SMALL BUSINESS ENTERPRISE
LETTER OF INTENT TO PERFORM AS A SUBCONTRACTOR

RFQ Number T-12-15

TO: _____
(Name of Prime or General Contractor)

The undersigned intends to perform subcontracting work in connection with the above contract as (check below)

_____ an individual _____ a corporation

_____ a partnership _____ a joint venture

The undersigned is prepared to perform the following work in connection with the above Contract, as hereafter described in detail:

_____

_____

_____

_____ _____
(Date) (Name of SBE Contractor)

BY: _____

EXHIBIT "C"
SMALL BUSINESS ENTERPRISE
UNAVAILABILITY FORM

RFQ # _____

I, _____
(Name and Title)

of _____, certify that on the _____day of

_____, _____, I invited the following SBE CONTRACTOR(s) to bid

work items to be performed in the City of Pompano Beach:

SBE Contractor Address	Work Items Sought	Form of Bid Sought (i.e., Unit Price, Materials/Labor, Labor Only, etc.)

Said SBE CONTRACTOR(s):

___ Did not bid in response to the invitation

___ Submitted a bid that was not the low responsible bid

___ Other: _____

Signature: _____ Date: _____

Note: Attach additional documents as available.

EXHIBIT "D"
SMALL BUSINESS ENTERPRISE
GOOD FAITH EFFORT REPORT

RFQ #_____

1. What portions of the contract have you identified as SBE opportunities?

_____

_____

_____

2. Did you provide adequate information to identified SBE? Please comment on how you provided this information.

_____

_____

_____

3. Did you send written notices to SBEs?

_____ Yes _____ No

If yes, please include copy of the notice and the list of individuals who were forwarded copies of the notices.

4. Did you advertise in local publications?

_____ Yes _____ No

If yes, please attach copies of the ads, including name and dates of publication.

5. Did you contact any organizations with large constituents of SBE members for possible sub-contractors? Please attach list of resource organizations used.

6. What type of efforts did you make to assist SBEs in contracting with you?

_____

_____

7. List the SBEs you will utilize and subcontract amount/percentage.

_____

_____

_____

8. Other comments: _____

_____

_____

_____

_____

Note: Please attach the unavailability letters with this report.

EXHIBIT E
CITY OF POMPANO BEACH, FLORIDA
LOCAL BUSINESS PARTICIPATION FORM

RFQ Number & Title: _____ Prime Contractor's Name: _____

Name of Firm, Address	Contact Person, Telephone Number	Type of Work to be Performed	Contract Amount

EXHIBIT F
LOCAL BUSINESS
LETTER OF INTENT TO PERFORM AS A SUBCONTRACTOR

RFQ Number_____

TO: _____
(Name of Prime or General Bidder)

The undersigned City of Pompano Beach business intends to perform subcontracting work in connection with the above contract as (check below)

_____ an individual _____ a corporation

_____ a partnership _____ a joint venture

The undersigned is prepared to perform the following work in connection with the above Contract, as hereafter described in detail:

_____

_____

_____

_____

_____

_____

_____

_____

_____

at the following price: _____

_____ _____
(Date) (Name of Local Business Contractor)

BY: _____

EXHIBIT G
LOCAL BUSINESS
UNAVAILABILITY FORM

RFQ #_____

I,_____
(Name and Title)

of_____, certify that on the _____day of

_____, _____, I invited the following LOCAL BUSINESSES to bid work items to be performed in the City of Pompano Beach:

Business Name, Address	Work Items Sought	Form of Bid Sought (i.e., Unit Price, Materials/Labor, Labor Only, etc.)

Said Local Businesses:

___ Did not bid in response to the invitation

___ Submitted a bid which was not the low responsible bid

___ Other:_____

Signature: _____

Date: _____

Note: Attach additional documents as available.

EXHIBIT H
GOOD FAITH EFFORT REPORT
LOCAL BUSINESS PARTICIPATION

RFQ #_____

1. What portions of the contract have you identified as Local Business opportunities?

_____

_____

_____

_____

2. Did you provide adequate information to identified Local Businesses? Please comment on how you provided this information.

_____

_____

_____

3. Did you send written notices to Local Businesses?

____ Yes ____ No

If yes, please include copy of the notice and the list of individuals who were forwarded copies of the notices.

4. Did you advertise in local publications?

____ Yes ____ No

If yes, please attach copies of the ads, including name and dates of publication.

5. What type of efforts did you make to assist Local Businesses in contracting with you ?

_____

_____

7. List the Local Businesses you will utilize and subcontract amount.

_____ $_____

_____ $_____

_____ $_____

8. Other comments: _____

_____

_____

_____

_____

EXHIBIT B

General Conditions

THE CITY OF POMPANO BEACH, FLORIDA

PROJECT: Hillsboro Inlet Dock Addition and Cable Railing

CONSTRUCTION MANAGER AT RISK CONTRACT

GENERAL CONDITIONS

PROJECT NO. 11-142

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GENERAL CONDITIONS
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GENERAL CONDITIONS

GC 1 ENTIRE AGREEMENT

1.1 This Construction Manager at Risk Contract embodies the entire agreement between Owner and Construction Manager and supersedes all other writings, oral agreements, or representations. The parties shall not be bound by or be liable for any statement, representation, promise, inducement or understanding of any kind or nature not set forth herein. No changes, amendments or modifications of any of the terms or conditions of the Contract shall be valid unless reduced to writing and signed by both parties.

GC 2 INDEPENDENT CONSTRUCTION MANAGER

2.1 Construction Manager represents that it is extensively experienced in the performance of streetscape and infrastructure construction Work as provided for herein, and that it is properly licensed as a General Contractor in the State of Florida, equipped, organized and financed to perform such Work. Construction Manager shall act as an independent contractor, and not as the agent of Owner, in performing the Contract, maintaining complete control over its employees, and all of its suppliers and subcontractors. Nothing contained in this Contract, or any subcontract awarded by Construction Manager, shall create any contractual relationship between any such supplier or subcontractor and the Owner. Construction Manager shall perform all work in accordance with its own means, methods, sequences and procedures, subject to compliance with the Contract. Construction Manager represents that all subcontractor agreements entered into shall incorporate by reference the terms and conditions of this Contract.

GC 3 AUTHORIZED REPRESENTATIVES

3.1 Before starting work, Construction Manager shall designate a competent, authorized representative acceptable to Owner to represent and act for Construction Manager and shall inform Owner in writing, of the name and address of such representative, together with a clear definition of the scope of his/her authority to represent and act for Construction Manager, and shall specify any and all limitations of such authority. Such representative shall be present or duly represented at the site of work at all times when work is actually in progress. During periods when work is suspended, arrangements for an authorized representative acceptable to Owner shall be made for any emergency work that may be required. All notices, determinations, instructions and other communications given to the authorized representatives of the Construction Manager shall be binding upon Construction Manager. Nothing contained herein shall be construed as modifying the Construction Manager's duty of supervision and fiscal management as provided for by Florida law. The Owner shall designate an authorized representative who will have limited authority to act for the Owner. The Owner will notify the Construction Manager in writing of the name of such representative(s). The Owner's representative will be the Public Works Director, or his designee. Any work performed by the Construction Manager without proper authorization, is performed at the Construction Manager's risk,

and the City of Pompano Beach shall have no obligation to compensate the Construction Manager for such work. The Owner has the right to assign various responsibilities of the Owner to the Design Professional of Record, and can do so at any time during the duration of this Contract with written notice to the Construction Manager.

3.2 The Construction Manager's Authorized Representative, Qualifying Agents, Project Managers, Superintendents and Supervisors are all subject to prior and continuous approval of the Owner. If, at any time during the term of the Contract, any individual nominally performing any of the positions named above is, for any reason, unacceptable to the Owner, Construction Manager shall replace the unacceptable personnel with personnel acceptable to the Owner.

GC 4 NOTICES

4.1 Any notices provided for hereunder shall be in writing and may be served either personally on the authorized representative of the receiving party at the job site, by certified mail, return receipt requested, or national overnight courier to that party at the addresses shown below:

OWNER: The City of Pompano Beach, Florida
1201 NE 5th Ave.
Pompano Beach, FL 33060
Attn.: Public Works Director: Rob McCaughan

CONSTRUCTION MANAGER: _____TBD_____
_____
_____

4.2 These addresses may be changed by either of the parties by written notice to the other.

GC 5 LAWS AND REGULATIONS

5.1 Construction Manager and its employees and representatives shall at all times comply with all applicable laws, codes, ordinances, statutes, rules and regulations in effect at the time Work is performed under this Contract.

5.2 If, during the term of this Contract, there are any changed or new laws, ordinances or regulations not known at the time of signing this Contract which become effective and which are known, or in the exercise of its due diligence, should have been known to Construction Manager as a licensed general contractor regarding the performance and conduct of the Work, and which affect the cost or time of performance of the Contract, Construction Manager shall immediately notify Owner, in writing, and submit detailed documentation of such affect in terms of both time and cost of performing the Contract. Upon concurrence by Owner as to the effect of such changes, an adjustment in the

compensation and/or time of performance may be made, subject to the provisions elsewhere set forth in these Contract Documents.

5.3 It is recognized that the Construction Manager's review of the drawings and specifications is made in the Construction Manager's capacity as a contractor and not as a licensed design professional. If any discrepancy or inconsistency should be discovered by Construction Manager between the drawings and specifications and any law, ordinance, regulation, order or decree, Construction Manager shall immediately report the same in writing to Owner and Design Professional, who will issue such instructions as may be necessary.

5.4 Construction Manager shall use its best efforts to investigate the rules, codes, regulations, statutes, and all ordinances of all applicable governmental agencies having jurisdiction over the Project or the Work, and advise Design Professional and Owner of same in writing, but Construction Manager assumes no responsibility or liability for any failure of the design of the Project to comply with same. However, at no time shall the Construction Manager's efforts fall below the commonly accepted knowledge base of an experienced Florida licensed general contractor.

5.5 Owner shall not be liable for any costs, delays or damages which Construction Manager incurs as a result of the actions or orders of any other governmental entity or agency that are caused by Construction Manager's failure to comply with the terms of this Contract.

GC 6 STANDARDS AND CODES

6.1 Wherever references are made in the Contract to standards or codes in accordance with which Work is to be performed or tested, the edition or revision of the standards or codes current on the effective date of this Contract shall apply, unless otherwise expressly set forth. Unless otherwise specified, reference to such standards or codes is solely for implementation of the technical portions of such standards and codes. In case of conflict among any referenced standards and codes, or between any referenced standards and codes which are later revised during the course of construction, the Owner will determine which shall govern. Construction Manager acknowledges that compliance with code requirements represents minimum standards for construction, and is not evidence that the Work has been completed in accordance with the Contract Documents.

GC 7 CODE RELATED INSPECTIONS

7.1 The Construction Manager recognizes that The City of Pompano Beach, FL Department of Planning, Zoning and Building ("PZ&B"), is a separate department within the City that is charged with the inspection of improvements to real property for code compliance. The Construction Manager agrees that it will not assert, as an Owner caused delay, or as a defense of any delay on the part of the Construction Manager, any good-faith action or series of actions on the part of PZ&B, including, but not limited to, PZ&B's refusal to accept any portion of the Construction Manager's Work. If it is ultimately determined by the Design Professional and Owner that such delay was not the result of Construction Manager's failure to comply with the Contract Documents, the Construction Manager may be entitled to make a claim for extension of Contract Time only as its exclusive remedy, not damages, in accordance with the terms of the Contract.

GC 8 GOVERNING LAW

8.1 The Contract shall be governed by the laws of the State of Florida, and venue for any action shall be in Broward County, Florida.

GC 9 RIGHTS AND REMEDIES

9.1 The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

GC 10 COMMERCIAL ACTIVITIES

10.1 Construction Manager shall not establish any commercial activity or issue concessions or permits of any kind to third parties for establishing commercial activities on lands owned or controlled by Owner. Construction Manager shall not allow its employees to engage in any commercial activities on the site.

GC 11 COOPERATION WITH OTHERS

11.1 Owner and other contractors may be working at the site during the performance of this Contract. Construction Manager shall fully cooperate with the Owner, Owner's designated Representative, and other separate contractors to avoid any delay or hindrance of their work. Owner may require that certain facilities be used concurrently by Construction Manager and other parties, and Construction Manager shall comply with such requirements. The Owner shall provide for coordination of the activities of the Owner's own forces, and of each separate contractor, with the Work of the Construction Manager, who shall cooperate and participate with other separate contractors and the Owner in reviewing their construction schedules.

11.2 If any part of the Construction Manager's work depends on proper execution or results from any work performed by the Owner or any separate contractor, the Construction Manager shall, prior to proceeding with the Work, promptly report to the Owner any apparent discrepancies or defects in such other work that render it unsuitable for such proper execution and results. Failure of the Construction Manager to report such discrepancies or defects shall constitute an acceptance of the Owner's separate contractor's work as fit and proper to receive Construction Manager's Work, except as to defects which are not then reasonably discoverable or which may subsequently become apparent in such work performed by others. Any costs caused by defective or ill-timed work of others shall be borne by the Construction Manager, unless Construction Manager gives written notice to Owner, if reasonably possible, prior to proceeding with the Work and in any event within three (3) days of commencement of Work. In no event shall Owner be liable to the Construction Manager for delay damages, however, as provided for in the Contract Documents. If Owner awards separate contracts, or if the Owner's forces are to perform construction or operations related to the Project, but for which Construction Manager's Work is not dependent, Owner and Construction manager shall coordinate that Work with the work of the Construction Manager. Any delays caused thereby to Construction Manager that demonstrably affect the critical path shall entitle Construction Manager to an extension of time and additional compensation in accordance with provisions set forth elsewhere in the Contract Documents.

GC 12 FORMS AND DOCUMENTS

12.1 The below listed documents are to be used by the Construction Manager and Owner during the administration of this Contract. Additional administrative forms may supplement this list upon written notice by the Owner (or Owner's Project representative). Owner reserves the right to modify these forms as it deems necessary. Construction Manager shall maintain logs for Items A-K and provide to Owner monthly.

A. Request for Information
B. Field Instruction
C. Field Bulletin
D. Construction Change Proposal
E. Change Order
F. Construction Change Directive
G. Submittal Transmittal
H. Deficiency Report
I. Non-Conformance Report
J. Construction Manager's Daily Report
K. Substitution Report

12.2 Examples of the above listed forms are attached as Appendix "A."

GC 13 PUBLIC RECORDS

13.1 Pursuant to the provisions of §119.0701, F.S., all records maintained by Construction Manager with respect to this Project are considered public records subject to inspection as provided for in Chapter 119, F.S.

GC 14 TAXES

14.1 Construction Manager shall pay all taxes, levies, duties and assessments of every nature which may be applicable to any Work under this Contract. The Contract Sum and any agreed variations thereof shall include all taxes imposed by law. Construction Manager shall make any and all payroll deductions required by law. Construction Manager herein indemnifies and holds the Owner harmless from any liability on account of any and all such taxes, levies, duties, assessments and deductions.

GC 15 FEES

15.1 Owner will be responsible for the following fees associated with this Project: utility connection fees, utility installation fees (including FPL, FPU, AT&T, and Comcast), and water meter charges except for fees/permits associated with Construction Manager mobilization which have not been waived by Owner. Construction Manager shall advise Owner ten (10) days in advance of permit application with any fee amount required. Water and/or sanitary sewer service capacity charges will also be paid directly by the Owner. There are no impact fees pursuant to Palm Beach County's Impact Fee Ordinance associated with this Project.

GC 16 UTILITIES

16.1 Construction Manager shall provide and maintain all utilities in work areas to meet the requirements of the Contract. Such utilities shall be furnished by the Construction Manager and shall include, but not be limited to, the following:

A. Public telephone service for the Construction Manager's use.
B. Construction power as required at each point of construction.
C. Water as required throughout the construction.

16.2 Prior to final acceptance of the Work, the Construction Manager shall, at its expense, satisfactorily remove and dispose of all temporary utilities developed to meet the requirements of the Contract. The Owner will assume the utility costs directly related to its usage of areas in which the Work has been certified as Substantially Complete.

GC 17 SUCCESSORS, ASSIGNS AND ASSIGNMENT

17.1 The Owner and the Construction Manager each binds itself, its officers, directors, qualifying agents, partners, successors, assigns and legal representatives to the other party hereto and to the partners, successors, assigns and legal representatives of such other

party in respect to all covenants, agreements and obligations contained in the Contract. Construction Manager shall not assign, transfer, convey or otherwise hypothecate the Contract or its right, title or interest in or to the same or any part thereof, or allow legal action to be brought in its name for the benefit of others, without previous written consent of the Owner, and concurred with by the Construction Manager's Surety. Construction Manager acknowledges that the City has entered into this Contract with Construction Manager after a comprehensive competitive award process, and evaluation of Construction Manager's particular qualifications and skills to perform the Work. Therefore, Construction Manager agrees that the City may withhold the consent to assignment referred to herein for any reason the City deems appropriate, in its sole and exclusive discretion.

GC 18 EXAMINATION OF CONSTRUCTION MANAGER'S BOOKS AND RECORDS

18.1 The Owner, or the Owner's auditors, shall have access to, and the right to examine, audit, download and copy electronic media, photocopy, transcribe, and photograph, any and all of Construction Manager's accounting records, supporting documentation, correspondence, subcontracts, purchase orders, and other documentation relating to this Contract, at any time during regular business hours, both throughout the performance of the Work, and for a period of four (4) years after final payment for the Work.

GC 19 COORDINATION AND CORRELATION OF DRAWINGS AND SPECIFICATIONS

19.1 The Construction Manager represents that the Construction Manager, its Subcontractors, material and equipment suppliers have carefully and diligently compared Phasing, Demolition, Landscaping, Design Professional ural, Structural, Electrical, Underground, Civil and Site Drawings and Specifications, and have compared and reviewed all general and specific details on the Drawings. Based thereon, Construction Manager represents that all conflicts, discrepancies, errors, omissions, and constructability issues that are within the commonly accepted knowledge base of a licensed general contractor with expertise in streetscape and related infrastructure improvements, have been clarified during the performance of the Pre-Con Agreement, and are included in the GMP. Notwithstanding anything contained in this Contract to the contrary, Construction Manager shall not be liable to the Owner for damages or costs resulting from errors, omissions, or inconsistencies in the Contract Documents, or for differences between field conditions and the Contract Documents, unless the Construction Manager recognized, or in the exercise of its due diligence, should have recognized the issue and knowingly failed to report it to the Owner. Construction Manager shall have the right to rely on the completeness and accuracy of written information, Drawings, and specifications provided by the Owner, Design Professional, or any other consultant of either, except if Owner requires full field verification by Construction Manager.

19.2 Construction Manager represents that the GMP embodies the total cost for a complete and functioning Project. The Construction Manager's review and comparison of all documents and things set forth in GC 19.1 above has taken into consideration the total

and complete functioning of all systems as provided, and as are reasonably inferable from the Drawings and Specifications.

GC 20 PERMIT DRAWINGS AND SPECIFICATIONS

20.1 The Construction Manager shall provide the Owner with two (2) complete sets of the permitted drawings within five (5) days of issuance. If the permitted set of Drawings change the scope of the Work to be performed, the Construction Manager shall notify the Owner and Design Professional, in writing, within ten (10) days after Construction Manager's receipt of the permitted Drawings, and such notification shall contain a written description of the change(s), and the estimated cost and time associated therewith, if any.

20.2 The Construction Manager shall perform work only in accordance with the permitted drawings, and any subsequent revisions thereto.

GC 21 CONTRACT INTERPRETATION

21.1 All claims of Construction Manager, and all questions the Construction Manager may have concerning interpretation or clarification of this Contract or its acceptable fulfillment shall be submitted immediately, in writing, to Owner for resolution. Owner, or its representatives, will render its determination concerning such resolution within an appropriate period, not to exceed five (5) days, unless additional time is needed due to the novelty or complexity of the interpretation or clarification requested, which determination shall be considered final and conclusive unless Construction Manager files a timely written protest pursuant to GC 22 "Disputes." The Construction Manager's written protest shall state clearly and in detail the basis thereof, and the relief it seeks, if any. Owner will consider Construction Manager's protest, and render its decision thereon within five (5) calendar days If Construction Manager does not agree with the Owner's decision, the Construction Manager shall immediately deliver written notice to that effect to the Owner. If questions of interpretation are not responded to by the Design Professional or Owner within the time frame above, and in a manner so as not to impede the natural progress of the Work as scheduled, and such delay impacts the critical path of the Work, Construction Manager shall be entitled to adjustment in the performance time as its exclusive remedy.

21.2 Construction Manager is solely responsible for requesting instructions or interpretations, and is solely liable for any cost and/or expenses arising from its failure to do so. Construction Manager's failure to protest Owner's determinations, instructions, clarifications or decisions within five (5) calendar days after receipt thereof shall constitute a waiver by Construction Manager of all its rights to further protest, judicially or otherwise.

GC 22 DISPUTES-WAIVER OF JURY TRIAL

22.1 Any and all disputes arising out of or in connection with this Contract shall be resolved through good faith efforts upon the part of Construction Manager and Owner, or its representatives. At all times, Construction Manager shall carry on the Work and maintain its progress schedule in accordance with the requirements of the Contract and the determination of the Owner or its representatives, pending resolution of any dispute. Any dispute that is not disposed of by mutual agreement shall be decided by the Owner or its representatives, who shall reduce such decision to writing. The decision of the Owner or its representatives shall be final and conclusive. Construction Manager's failure to protest Owner's determinations, instructions, clarifications or decisions within thirty (30) calendar days after receipt thereof shall constitute a waiver by Construction Manager of all its rights to further protest, judicially or otherwise.

22.2 The Owner and Construction Manager hereby expressly, knowingly and intentionally waive any right they may have to a jury trial in connection with, or in respect to, any litigation or claim based on or related to this Contract, or with regard to performance of the Work, including, but without limitation, any to which the Design Professional may also be a party.

GC 23 SUSPENSION

23.1 Owner may, at its sole option, suspend, at any time, the performance of all or any portion of Work to be performed under the Contract. Owner will notify Construction Manager of such decision, in writing. Such notice of suspension of work may designate the amount and type of plant, labor and equipment to be committed to the Work site. During the period of suspension, Construction Manager shall use its best efforts to utilize its plant, labor and equipment in such a manner as to minimize costs associated with suspension.

23.1.1 Upon receipt of any such written notice, Construction Manager shall, unless the notice requires otherwise:

1. immediately discontinue work on the date and to the extent specified in the notice;
2. place no further orders or subcontracts for material, services, or facilities with respect to suspended work other than to the extent required in the notice;
3. promptly make every reasonable effort to obtain suspension, upon terms satisfactory to Owner, of all orders, subcontracts and rental agreements to the extent they relate to performance of work suspended;
4. continue to protect and maintain the Work including those portions on which work has been suspended, and
5. take any other reasonable steps to minimize costs associated with such suspension.

23.1.2 In addition to all amounts that would otherwise be due for Work performed prior to the suspension, as compensation for such suspension, Construction Manager will be reimbursed for the following verifiable costs (without profit) and without duplication of any item, to the extent that such costs directly result from such suspension of work:

1. A standby charge to be paid to Construction Manager during the period of suspension of work which standby charge shall be sufficient to compensate Construction Manager for keeping, to the extent required in the notice, its organization and equipment committed to the Work in a standby status;
2. All reasonable costs associated with mobilization and demobilization of Construction Manager's plant, forces and equipment;
3. An equitable amount to reimburse Construction Manager for the cost of maintaining and protecting that portion of the Work upon which work has been suspended; and
4. If as a result of any such suspension of Work the cost to Construction Manager of subsequently performing Work is increased or decreased, an equitable adjustment will be made in the GMP.

23.2 In no event shall the Construction Manager be entitled to assert a claim for home office overhead in accordance with the Eichleay Formula, or otherwise, in the event of an Owner suspension. Upon receipt of notice to resume suspended work, Construction Manager shall immediately resume performance of the suspended work to the extent required in the notice. Any claim on the part of Construction Manager for time and/or compensation arising from suspension shall be made within twenty-one (21) calendar days after receipt of notice to resume work and Construction Manager shall submit for review a revised construction schedule. No adjustment shall be made for any suspension to the extent that performance would have been suspended, delayed, or interrupted by any Construction Manager's non-compliance with the requirements of this Contract.

GC 24 DECLARATION OF DEFAULT

24.1 The failure of the Construction Manager a) to supply enough properly skilled workers or materials, or b) its failure to make prompt payments to subcontractors, or for materials or labor, or c) to obey laws, ordinances, rules, regulations or orders of public agencies having jurisdiction, or d) to comply in any way with the Contract Documents, shall be sufficient grounds for the Owner to find the Construction Manager in material default, and that sufficient cause exists to terminate the Contract for cause, and to withhold payment or any part thereof until the cause or causes giving rise to the default has/have been eliminated by the Construction Manager and approved by the Owner. If a finding of default is made by the Owner, the Construction Manager and its Surety shall remain responsible for performance of the requirements of the Contract Documents unless and until the Owner terminates the Contract. Upon a finding of default, the Owner shall set a reasonable time, but in no event in excess of seven (7) calendar days after written notice from Owner detailing the default, within which the Construction Manager and its Surety

shall eliminate the cause or causes of default. When the basis for finding of default no longer exists, the Owner shall notify the Construction Manager and its Surety, in writing, that the default has been corrected, and that the Construction Manager is no longer in default. If the Construction Manager fails to correct the default within the time allowed, the Owner, without further notice to Construction Manager or its Surety, may immediately terminate the Contract and the employment of the Construction Manager, without otherwise waiving its rights against the Construction Manager or its Surety. To the extent that the time limits herein and in GC 25 conflict with those set forth in the Performance Bond, the time limits in GC 24 and GC 25 shall take precedence.

GC 25 TERMINATION FOR DEFAULT

25.1 Notwithstanding any other provisions of this Contract, Construction Manager shall be considered in default of its contractual obligation under this Contract if the:

a. Construction Manager fails or refuses to prosecute the Work or any severable part, with the diligence that will insure its completion within the time specified in this Contract;

b. Construction Manager fails or refuses to prosecute the Work on any severable part, with the diligence that will insure its completion within the time specified in construction schedules and related milestones issued in conjunction with this Contract;

c. Construction Manager fails to complete the Work within the time specified in this Contract;

d. Abandons or refuses to proceed with any or all Work, including modifications directed by Owner pursuant to change directives issued under the Contract;

e. Construction Manager fails to provide the materials or perform the services required of the Construction Manager under this Contract within the time specified in this Contract;

f. Construction Manager fails or refuses to provide sufficient, properly skilled, workmen or tradesmen;

g. Construction Manager refuses or fails to supply materials, equipment or services meeting the requirements of this Contract;

h. Construction Manager fails to make payments for materials, labor or services to subcontractors, sub-subcontractors, suppliers or materialmen of any tier in accordance with such agreements that may exist among them;

i. Construction Manager violates laws, ordinances, rules, regulations of any governmental authority having jurisdiction;

j. Construction Manager materially breaches any of the provisions of this Contract.

25.2 If Construction Manager or its Surety(ies) do(es) not cure such failure within seven (7) calendar days from receipt of notification, or sooner if consideration of safety to persons is involved, or if Construction Manager or its Surety(ies) fails to provide satisfactory evidence that such default will be corrected, Owner may, without further notice to Construction Manager, terminate in whole or in part Construction Manager's right to proceed with work by written notice and prosecute the Work to completion by contract or by any other method deemed expedient. Owner may take possession of and utilize any materials, plant, tools, equipment, and property of any kind furnished by Construction Manager and necessary to complete the Work.

25.3 Construction Manager, and its sureties, shall be liable, jointly and severally, to Owner for all costs in excess of the Contract price for such terminated work reasonably and necessarily incurred in the completion of the Work, as adjusted by Change Orders, if any, including costs of administration of any contract awarded to others for completion, design professional fees, plus Liquidated Damages.

25.4 Upon termination for default, Construction Manager shall:

A. immediately discontinue work on the date and to the extent specified in the notice and place no further purchase orders or subcontracts to the extent that they relate to the performance of work terminated;

B. inventory, maintain and turn over to Owner all materials, plant, tools, equipment, and property furnished by Construction Manager or provided by Owner for performance of work;

C. promptly obtain cancellation upon terms satisfactory to Owner of all purchase orders, subcontracts, rentals, or any other agreements existing for performance of the terminated work or assign those agreements to Owner as directed;

D. cooperate with Owner in the transfer of information and disposition of work in progress so as to mitigate damages;

E. comply with other reasonable requests from Owner regarding the terminated work; and

F. continue to perform in accordance with all of the terms and conditions of the Contract such portion of work that is not terminated.

25.6 If, upon termination pursuant to this GC 25, it is determined for any reason that Construction Manager was not in default, the rights and obligations of the parties shall be the same as if the default termination had been made pursuant to GC 26, "TERMINATION FOR CONVENIENCE."

GC 26 TERMINATION FOR CONVENIENCE

26.1 Owner may, at its option and convenience, terminate the Contract, in whole or in part, at any time by written notice thereof to Construction Manager, whether or not Construction Manager is in default. Upon any such termination, Construction Manager hereby waives any claims for damages from the termination, including, without limiting the generality thereof, loss of anticipated profits on Work not performed on account thereof, home office overhead, lost bonding capacity, and consequential damages. As the sole right and remedy of Construction Manager, Owner shall pay Construction Manager in accordance with Subparagraphs below; provided, however, that those provisions of the Contract, which by their very nature survive final acceptance under the Contract, shall remain in full force and effect after such termination .

A. Upon receipt of any such notice, Construction Manager and its Surety shall, unless the notice requires otherwise:

1. Immediately discontinue work on the date and to the extent specified in the notice;
2. Place no further orders or subcontracts for materials, services, or facilities, other than as may be necessary or required for completion of such portion of work under the Contract that is not terminated;
3. Promptly make every reasonable effort to obtain cancellation upon terms satisfactory to Owner of all orders and subcontracts to the extent they relate to the performance of work terminated;
4. If requested by the Owner in writing, assign to the Owner, all right, title and interest of the Construction Manager under the subcontracts terminated. Such Assignment shall not include assumption of Construction Manager's obligations or liabilities under any subcontract. The Owner shall have the right (but not the obligation) to assume the Construction Manager's obligations under any subcontracts assigned. Neither this paragraph or any assignment of subcontracts, shall constitute the Owner's assumption of Construction Manager's or other obligations under any such subcontract absent a written document executed by the Owner and the subcontractor in which the Owner expressly acknowledges an assumption of Construction Manager's obligations, and then only to the extent specified. In no event will the Owner assume any obligation of the Construction Manager under the subcontracts that arise out of or relate to Construction Manager's default prior to such assignment;

5. The Construction Manager shall include in all subcontracts, equipment leases and purchase orders, a provision requiring the subcontractor, equipment lessor, or supplier, to consent to the assignment of their subcontract or purchase order to the Owner;
6. Assist Owner, as specifically requested in writing, in the maintenance, protection and disposition of property acquired by Owner under the Contract; and,
7. Complete performance of any work that is not terminated.

B. Upon any such termination, Owner will pay to Construction Manager an amount determined in accordance with the following (without duplication of any item):

1. All amounts due and not previously paid to Construction Manager for work completed in accordance with the Contract prior to such notice, and for work thereafter completed as specified in such notice.
2. The reasonable cost of settling and paying claims arising out of the termination of work under subcontracts or orders as provided in Subparagraph A.3. above.
3. The verifiable costs incurred pursuant to Subparagraph A.4 above.
4. Any other reasonable costs which can be verified to be incidental to such termination of Work, including demobilization costs.

26.2 In the case of such termination for Owner's convenience, Construction Manager shall be entitled to receive payment for Work actually executed in accordance with GC 25.B.1 above, and verifiable costs incurred by reason of such termination, along with an amount not to exceed ten (10) percent for profit and overhead on such verifiable costs incurred.

26.3 The Owner's Termination for Convenience shall be without waiver or prejudice to, all of the Owner's claims, rights and remedies arising out of or related to any default, breach of contract, damages or other claims the Owner may have against Construction Manager, or Construction Manager's subcontractors, material suppliers of any tier, or any other person or entity at the time of termination, or arising thereafter.

26.3.1 Construction Manager hereby acknowledges acceptance of the risk and cost of the foregoing, and acknowledges and agrees to the foregoing limitation on Construction Manager's claims or damages arising out of, or relating to, a termination for convenience by the Owner.

26.4 Construction Manager shall submit within 30 days after receipt of notice of Termination, for Convenience, a written proposal for payment, including all incurred costs and other entitlements described herein. Owner shall review, analyze, and verify such proposal, and negotiate an equitable adjustment, and the Contract shall be amended in writing accordingly.

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GC 27 EXTENSION OF TIME/NO DAMAGES FOR DELAY

27.1 If the Construction Manager is delayed at any time in the progress of the Work by a written directive issued by the Owner or Design Professional, or any act, omission or neglect of the Owner or the Design Professional, or by a separate contractor employed by the Owner, or by any changes ordered in the Work, , labor disputes, unusual delay in deliveries, or other causes beyond Construction Manager's control, including discovery of unforeseen site conditions, and such delay extends the completion date, the date of Substantial Completion shall be extended by Change Order for such reasonable time as the Owner may determine.

27.2 The Construction Manager shall not be entitled to, and hereby expressly waives, any and all damages which it may suffer by reason of those instances set forth in Article 27.1 above (collectively "Noncompensable Events"), and further, hereby waives all damages which it may suffer by reason of these Noncompensable Events, including, but not limited to lost profits, overhead (whether determined by the Eichleay Formula or otherwise), home office expense, increased insurance costs, loss of bonding capacity or lost profits on alternate or unperformed contracts, supervision, material and labor escalation costs, and any other direct or consequential damages. Construction Manager hereby affirms that the extension of time granted herein is the Construction Manager's sole and exclusive remedy.

27.3 The Construction Manager must request the extension of time, in writing, and must provide the following information within the time periods stated hereafter. Failure to submit such information and in compliance with the time requirements hereinafter stated, shall constitute a waiver by the Construction Manager and a denial of the claim for extension of time:

a. Nature of the delay or change in the Work;
b. Dates of commencement/cessation of the delay or change in the Work;
c. Activities on the progress schedule current as of the time of the delay or change in the work affected by the delay or change in the Work;
d. Identification and demonstration that the delay or change in work impacts on the CRITICAL PATH (submittal of an updated CPM schedule) [For Horizontal Construction only: Construction Manager may substitute a Bar Chart, so long as the Bar Chart software provides the functional equivalent, to the extent possible, of the CPM provisions set forth in this Contract and its General Conditions. The Bar Chart format must be acceptable to the Owner. This provision shall govern any provisions hereafter dealing with CPM Scheduling.];
e. Identification of the source of delay or change in the Work;
f. Anticipated impact extent of the delay or change in the Work; and
g. Recommended action to minimize the delay.

27.4 The Construction Manager acknowledges and agrees that the evaluation of time extensions will be based upon the following criteria:

1. All schedule updates, submittals and other requirements of this General Condition have been met;
2. The delay must be due to the Owners or Design Professional's change in the Work,, an Act of God, or for other causes set forth in GC 27.1;
3. The delay which is the subject of the time extension must result in a demonstrable impact to the Critical Path;
4. The schedule must clearly display that the Construction Manager has used, in full, all the float time, except for Owner initiated changes. Float time is not for the exclusive use of either the Construction Manager or the Owner; and
5. If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be submitted within thirty (30) days of occurrence and shall be documented by data substantiating that weather conditions were abnormal for the period of time required for completion of the Work, could not have been reasonably anticipated, and that weather conditions had an adverse effect on the scheduled construction.

27.5 The Owner's determination as to the total number of days of Contract extension will be based upon the computer generated CPM construction schedule current at the time of the delay event, as revised in connection with the foregoing criteria.

27.6 The Construction Manager shall not be entitled to any extension of time for delays resulting from any cause unless it shall have notified the Owner in writing within twenty-four (24) hours after the commencement of such delay, or ninety-six (96) hours of knowledge of a potential delay, whichever is earlier. In any event, within seven (7) days of commencement of the delay, the Construction Manager shall provide in writing the information stated above.

27.5 The term "Force Majeure Event" means any action or event which occurs (i) outside Owner's and Construction Manager's reasonable control; and (ii) without the fault or negligence of either party, specifically, Acts of God, terrorism, war, riots, hurricanes, unusually severe weather (as substantiated by NOAA reports nearest to the jobsite location), floods, fires, civil disturbances, governmental restrictions, epidemics, explosions, acts of the public enemy, the enactment, imposition or modification of any applicable law which occurs after the date of this Agreement and which prohibits or materially interferes with the development or construction of the Project Improvements. Notwithstanding anything to the contrary, a "Force Majeure Event" shall not include acts, events, or other matters arising out of violations of any environmental laws with respect to or the presence or discharge of any hazardous substances on the lands comprising the Project. In the event of a Force

Majeure Event which impacts the critical path, Construction Manager shall only be entitled to an extension of time and shall not be entitled to any compensation or any increase in the GMP, except to the extent that a Force Majeure Event causes damage to Work in place or causes the Work to be shut down for more than thirty (30) days. Such costs for damage to Work in place may be recoverable by insurance that is applicable to the Project. Notwithstanding, however, if such costs to correct the Work damaged by a Force Majeure Event or for shut down for more than thirty (30) days are not covered by insurance, then Construction Manager shall be entitled to recover only its actual direct plus reasonable General Conditions costs associated to correct the Work or to its unavoidable costs for shut down for more than thirty (30) days but no other compensation, and without fee markup. No recovery on any basis shall take place unless the Construction Manager has satisfied all of the following conditions:

(i) Construction Manager has properly documented all such direct costs for the Owner and any insurance carrier; and
(ii) Construction Manager shall have used reasonable and diligent efforts to avoid and minimize delays, regardless of cause; and
(iii) Construction Manager shall cooperate with Owner to mitigate the impact of any delays encountered by Construction Manager that would entitle it to such extension of time, even if its performance is unreasonably delayed by the Owner.

27.6 For all Changes in the Work in which the Construction Manager claims entitlement to a time extension, the Construction Manager shall provide to the Owner the same information as required above within seven (7) days of the issuance of the request for Change Order or direction to change the scope of the Work. Construction Manager's failure to provide such information shall constitute a waiver by the Construction Manager, and a denial of any time extension for that change in the Work. Further, upon execution by the Owner and Construction Manager of any Change Order where no time extension has been requested or granted, that Change Order shall constitute a complete waiver of all claims for damages or for any extension of time related to that work, or any work impacted by the change.

GC 28 WARRANTY

28.1 Unless otherwise provided elsewhere in the Contract, all materials and equipment incorporated into any Work covered by the Contract shall be new and, where not specified, of the highest grade and quality for their intended use, and all workmanship shall be in accordance with construction practices acceptable to Owner. Unless otherwise provided in the Contract, Construction Manager warrants all equipment, materials, and labor furnished or performed under this Contract, against defects in design, materials and workmanship, for a period of twelve (12) months (unless longer guarantees or warranties are provided for elsewhere in the Contract in which case the longer periods of time shall prevail) from and after Substantial Completion of the Work under the Contract, regardless of whether the same were furnished or performed by Construction Manager or by any of its subcontractors of any tier. Even in the event that the Owner assumes partial

utilization of portions of the Work prior to completion of all Work, the Warranties for that portion shall also extend for twelve (12) months from Substantial Completion of the entire Work, so that all warranties are running concurrently upon Substantial Completion of the total Project.

28.2 Upon receipt of written notice from Owner of any defect in any such equipment, materials, or labor during the applicable warranty period due to defective design, materials or workmanship, the affected item or parts thereof shall be redesigned, repaired or replaced by Construction Manager at a time and in a manner acceptable to Owner in compliance with the Contract Documents, at its expense.

28.3 Construction Manager warrants such redesigned, repaired or replaced Work against defective design, materials and workmanship for a period of twelve (12) months from and after the date of acceptance thereof. Should Construction Manager fail to promptly make the necessary redesign, repair, replacement and tests, after written notice from Owner specifying the defects, Owner may perform or cause to be performed the same, at Construction Manager's sole cost and expense.

28.4 Construction Manager shall perform such tests as Owner may require to verify that such redesign, repairs and replacements comply with the requirements of this Contract. All costs incidental to such redesign, repair, replacement, and testing, including the removal, replacement, and reinstallation of equipment and materials necessary to gain access, shall be borne exclusively by Construction Manager. However, if such testing determines that the Work is not defective, than Owner shall compensate Construction Manager for such costs of testing and any affects on previously completed work.

28.5 Construction Manager and its Surety shall be liable for the satisfaction and full performance of the warranties as set forth herein, and any damage to other parts of the Work caused by the Construction Manager's failure to perform pursuant to this GC 28.

28.6 The Construction Manager shall commence Work to remedy or replace the defective, deficient Work within five (5) calendar days after receiving written (including transmittals by FAX) notice from the Owner, subject to allowance for long-lead items. If the Construction Manager fails to remedy or remove or replace that Work or material which has been found to be defective, or reasonably commence corrective action, then the Owner may remedy or replace the defective or deficient Work at the Construction Manager's expense; provided, however, all repairs to natural gas, telephone, radio, computer security, water, electric, air conditioning services and all emergency services shall be commenced within twelve (12) hours of notification, or by 7:00 a.m. whichever is earlier, and Construction Manager shall complete the repairs in an expeditious manner befitting the nature of the deficiency. The Construction Manager shall immediately pay the expenses incurred by the Owner for remedying the defects. If the Owner is not paid within ten (10) calendar days, the Owner may pursue any and all legal remedies it may have against the Construction Manager and its Surety.

28.7 The Construction Manager is required to provide a designated telephone number for warranty related emergencies which occur outside the normal workday. The Construction Manager is solely responsible for ensuring that all warranty Work is completed in the manner described above. If the Owner agrees, in writing, a subcontractor may be the point of contact for notices regarding warranty items, but such agreement shall not absolve the Construction Manager of its responsibility.

GC 29 PATENT INDEMNITY

29.1 Construction Manager hereby indemnifies and shall defend and hold Owner, Design Professional , and its representatives harmless from and against all claims, losses, costs, damages, and expenses, including reasonable attorneys' fees, incurred by Owner, Design Professional and its representatives, respectively, as a result of or in connection with any claims or actions based upon infringement or alleged infringement of any patent and arising out of the use of the equipment or materials furnished under the Contract by Construction Manager, or out of the processes or actions employed by, or on behalf of Construction Manager in connection with the performance of the Contract, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Design Professional. However, if the Construction Manager has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Construction Manager shall be responsible for such loss unless such information is promptly furnished to the Design Professional.

29.2 Construction Manager shall, at its sole expense, promptly defend against any such claim or action for which it is responsible under the prior paragraph unless directed otherwise by Owner or its representatives; provided that Owner or its representatives shall have notified Construction Manager upon becoming aware of such claims or actions, and provided further that Construction Manager's aforementioned obligations shall not apply to equipment, materials, or processes furnished or specified by Owner or representatives. Construction Manager shall have the right, in order to avoid such claims or actions, to substitute at its expense non-infringing equipment, materials, or processes, or to modify such infringing equipment, materials and processes so they become non-infringing, or obtain the necessary licenses to use the infringing equipment, material or processes, provided that such substituted and modified equipment, materials and processes shall meet all the requirements and be subject to all the provisions of this Contract.

GC 30 INDEMNITY

30.1 To the fullest extent provided for by law, Construction Manager agrees to protect, defend, reimburse, indemnify and hold the Owner, its agents, employees, elected officers and representatives and each of them, (hereinafter collectively and for the purposes of this paragraph, referred to as "Owner"), free and harmless at all times from and against any and all claims, liability, expenses, losses, costs, fines and damages, including reasonable

attorneys' fees, and causes of action of every kind and character against Owner by reason of any damage to property or the environment, economic losses, or bodily injury (including death) incurred or sustained by any party hereto, or of any party acquiring any interest hereunder, any agent or employee of any party hereto or of any party acquiring an interest hereunder, and any third or other party whomsoever, or any governmental agency, arising out of or in incident to or in connection with Construction Manager's performance under this Contract, the condition of the premises, Construction Manager's acts, or omissions or operations hereunder, or the performance, non-performance or purported performance of the Construction Manager of any breach of the terms of this Contract; provided however, and without waiving the provisions of §768.28, F.S., that Construction Manager shall not be responsible to Owner for damages resulting out of bodily injury or damages to property which Construction Manager can establish as being attributable to the negligence of Owner, its respective agents, servants, employees, officers, or others for whom Owner is responsible, including separate contractors. The indemnification shall not include the indemnity/defense of claims or damages resulting from gross negligence or willful, wanton, or intentional misconduct of Owner or its respective officers, directors, agents, or employees, or for statutory violation or punitive damages, except and to the extent the statutory violation or punitive damages are caused by or result from the acts or omissions of the Construction Manager, its agents, employees, or any of the Subcontractors, their agents, or of any tier or their respective employees. The parties acknowledge the requirements of Florida Statute § 725.06 have been fulfilled and apply to this GC 30.1.

30.2 Construction Manager further agrees to hold harmless and indemnify Owner for any fines, citations, court judgments, insurance claims, restoration costs or other liability resulting from Construction Manager's activities on the Project, whether or not Construction Manager was negligent or even knowledgeable of any events precipitating a claim or arising as a result of any situation involving Construction Manager's activities.

30.3 Said indemnification by Construction Manager shall be extended to include all deliverers, suppliers, furnishers of material or anyone acting for, on behalf of, or at the request of Construction Manager. Construction Manager recognizes the broad nature of this indemnification and hold harmless clause and voluntarily makes this covenant and expressly acknowledges consideration of one-hundred dollars ($100.00) therefore, which amount is incorporated into the GMP, as well as such other good and valuable consideration provided by Owner in support of this indemnification in accordance with the laws of the State of Florida. This clause shall survive termination of this Contract.

GC 31 INSURANCE

31.1 Unless otherwise specified in this Contract, Construction Manager shall, at its sole expense, maintain in effect at all times during the performance of Work hereunder insurance coverage with limits not less than those set forth in Exhibit "B" and "J" and with insurers and under forms of policies acceptable to Owner, copies of which shall be furnished to Owner upon its request. Construction Manager shall deliver to Owner

Certificates of Insurance, evidencing that such policies are in full force and effect, no later than ten (10) days after execution of the Contract by Owner and prior to commencing Work on the Project site. Such Certificates shall adhere to the conditions set forth in the table below.

31.2 Construction Manager shall purchase and maintain during the life of this Contract Workers Compensation insurance, including Employers Liability, to comply with all applicable State and Federal laws covering all of its employees on the Work site, and in accordance with all of the limits, terms and conditions set forth in Exhibits "B" and "J." If any Work is sublet, Construction Manager shall require all subcontractors to similarly comply with this requirement, unless such subcontractors' employees are covered by Construction Manager's Workers Compensation insurance policy.

31.3 Construction Manager shall purchase and maintain during the life of this Contract Comprehensive or Commercial General Liability insurance in accordance with all of the limits, terms and conditions set forth in the table below.

31.4 Should any of the Work hereunder involve watercraft owned or operated by Construction Manager or any subcontractor, such shall be insured under the Comprehensive or Commercial General Liability policy, or by other such liability insurance such as Protection and Indemnity.

31.5 Construction Manager shall purchase and maintain during the life of this Contract Comprehensive Automobile Liability insurance covering on all owned, non-owned and hired automobiles with all of the limits, terms and conditions set forth in Exhibits "B" and "J."

31.6 To the extent available for some or all of the component parts of this Project, Construction Manager shall procure and maintain "all risk" Builder's Risk insurance, including, but not necessary limited to fire, flood, wind and other water damage, in accordance with all of the limits, terms and conditions set forth in Exhibit "B" and "J" unless directed by Owner, in writing.

31.7 Should any of the Work hereunder involve the hauling and/or rigging of property in excess of $500,000.00 or $250,000.00 in transit, Construction Manager shall procure and maintain "all risk" Transit or Motor Truck Cargo insurance, or similar form of coverage, insuring against physical damage or loss to the property being transported, stored, moved or handled by Construction Manager or any subcontractor pursuant to the terms of this Contract, subject to the limits, terms and conditions set forth in Exhibits "B" and "J."

31.8 Should any of the Work hereunder involve aircraft (fixed wing or helicopter) owned or operated by Construction Manager or any subcontractor, Construction Manager shall procure and maintain Aircraft Liability insurance in accordance with the terms and conditions of the table set in Exhibits "B" and "J."

31.9 The requirements contained herein as to types and limits, as well as Owner's approval of insurance coverage to be maintained by Construction Manager are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by Construction Manager under the Contract.

31.10 The Certificates of Insurance must provide clear evidence that Construction Manager's Insurance Policies contain the minimum limits of coverage and special provisions prescribed in this GC-31, in accordance with all of the limits, terms and conditions set forth in the table below. All policies must be endorsed so that thirty (30) days notification of cancellation and any material change(s) in coverage shall be provided to the City.. Insurance shall remain in force until all Work required to be performed under the terms of this Contract are satisfactorily completed as evidenced by the formal acceptance by the City.. In the event that the insurance certificates provided hereunder indicates that the insurance shall terminate and lapse during the period of this Contract then, in that event, the Construction Manager shall furnish, at least thirty (30) days prior to the expiration of such insurance, a renewed certificate of insurance as proof that equal and like coverage for the balance of the period of the Contract and any extension thereunder is in effect. Construction Manager shall not continue to work pursuant to this Contract unless all required insurance remains in effect. Owner may withhold payment to the Construction Manager until coverage is reinstated.

31.11 The Construction Manager shall deliver the original of the initial Certificates of Insurance and five (5) copies to:

The City of Pompano Beach, Florida

Pompano Beach, FL
Attn.: Robert McCaughan, Public Works Director

31.12 Notices, in original and five (5) copies, of cancellation, terminations and alterations of such policies shall be delivered to:

The City of Pompano Beach, Florida
120 NE 5th Ave
Pompano Beach, FL 33060
Attn.: Robert McCaughan, Public Works Director

GC 32 SITE CONDITIONS

32.1 Construction Manager has the sole responsibility of satisfying itself concerning the nature and location of the Work and the general and local conditions, and particularly, but without limitation, with respect to the following: those affecting transportation, access, staging, parking, disposal, handling and storage of materials; availability, quantity and quality of labor, water and electric power; availability and condition of roads; climatic conditions, location of underground utilities as depicted on Contract documents, and

through verification with local utility companies and the Owner, physical conditions of existing construction, topography and ground surface conditions; subsurface geology, and nature and quantity of surface and subsurface materials to be encountered; the nature of the ground water conditions; equipment and facilities needed preliminary to and during performance of the Contract; and all other matters which would be reasonably known to a licensed general contractor with expertise in overhead utility undergrounding and related infrastructure construction as in any way affecting performance of the Contract, or the cost associated with such performance. The failure of Construction Manager to acquaint itself with any applicable condition will not relieve it from the responsibility for properly estimating either the difficulties or the costs of successfully and timely performing the Contract.

32.2 The Owner shall not be responsible for any conclusions or interpretations made by the Construction Manager based on the information made available by the Owner. The Town shall not be responsible for any understanding reached or representation made concerning conditions which can affect the Work by any of Construction Manager's officers, employees, agents, subcontractors, material men, or suppliers before execution of this Contract, unless that understanding or representation is expressly stated in this Contract.

32.3 The provisions of GC 32.1 shall be deemed a complete waiver by the Construction Manager of claims for equitable adjustment in Contract Time or Price, or both, unless due to (1) subsurface or concealed conditions which differ materially from those indicated on the Contract Documents, or (2) unknown physical conditions of an unusual nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction of the character provided in the Contract Documents; provided however, that claims under this GC 32.3 shall be denied in the event that the conditions were reasonably inferable from activities, testing and investigations performed in connection with the Pre-Con Agreement, and which would otherwise provide to Construction Manager an expectation that the conditions could be similar elsewhere in the Project.

GC 33 NOT USED

GC 34 ACCESS TO WORK AREAS

34.1 Owner, Design Professional, and their duly authorized representatives and employees, and all duly authorized representatives of governmental agencies having jurisdiction over Work areas or any part thereof shall, at all reasonable times, for the purpose of determining compliance with Contract requirements and permits, have access to such areas and the premises used by Construction Manager. Construction Manager shall also arrange for Owner, Design Professional, and their said representatives and employees, to have access at all reasonable times to all places where equipment or materials are being manufactured, produced, or fabricated for use under the Contract.

34.2 Construction Manager's access to the site and storage areas shall be as shown on the plans and as designated by the Owner. Access routes may also be used by Owner's employees, the public, and other separate Owner contractors. No other access points shall be allowed unless approved by the Owner, in writing. All Construction Manager traffic authorized to enter the site shall be experienced with the route or guided by Construction Manager personnel. The Construction Manager is responsible for immediate cleanup of any debris deposited along the access route as a result of its construction traffic.

GC 35 INGRESS AND EGRESS

35.1 Construction Manager's access to the Work area will be permitted only through approaches that will be designated by Owner, and then only in such manner that Construction Manager's traffic will not interfere with Owner's operations and Merchants/Tenants adjacent to the activity area(s). Construction Manager shall, at all times, maintain reasonably free unimpeded ingress and egress at the site. Construction Manager personnel are not to enter into any areas of the jobsite other than Work areas and areas of designated access. Construction Manager shall safely maintain, at all times during the performance of the Work, both vehicular and pedestrian traffic in, around, and adjacent to the Project.

GC 36 PRECONSTRUCTION CONFERENCE

36.1 As soon as practicable after execution of this Contract, and prior to commencing any Work, a pre-construction conference will be coordinated by the Construction Manager and the Owner. In attendance at said conference will be Owner, Design Professional, and any of their representatives as may be deemed advisable. The purpose of said conference is to determine procedures related to the smooth progress of the Project, review of any items requiring clarification, maintenance of traffic, merchant and pedestrian accessibility, related safety issues, and procedures for the processing and distribution of all documents and correspondence related to the Contract, among other things.

GC 37 MEETINGS

37.1 The Construction Manager shall, at its expense, as requested by Owner, attend any and all meetings called by Owner to discuss the Work under the Contract. Such meetings shall be conducted and recorded by the Owner with typed minutes of each meeting distributed to all attendees.

GC 38 NOT USED

GC 39 DELIVERY, UNLOADING AND STORAGE

39.1 Construction Manager shall, at its expense, receive, unload, store in a secure place, and deliver from storage to the construction site all materials, plant and equipment required for the performance of the Contract. The storage facilities, methods of storing and security provisions shall meet Owner's approval and manufacturer's recommendations. Materials and equipment subject to degradation by outside exposure shall be stored in a weather tight enclosure.

GC 40 WORK AREA

40.1 All Construction Manager's Work areas on the jobsite will be assigned by Owner. Construction Manager shall confine its office, shops, storage, assembly and equipment and vehicle parking to the areas so assigned. Before commencing Work, the Construction Manager shall provide a temporary office in the vicinity of the Work, or as otherwise agreed to by the Owner, in writing, which shall have a telephone where a representative of the Construction Manager may be reached at all times during normal working hours. Should Construction Manager find it necessary or advantageous to use any additional land outside the Project site for any purpose whatever, Construction Manager shall, provide and make its own arrangements for the use of such additional land.

GC 41 PLANT, EQUIPMENT AND FACILITIES

41.1 Construction Manager shall provide and use on any Work only such construction plant and equipment as are capable of producing the quality and quantity of work and materials required by the Contract and within the time or times specified in the Contract. Before proceeding with any Contract Work or with erection of any facilities, including, but not limited to, temporary structures, machinery, equipment, offices and warehouses, Construction Manager shall furnish Owner such information and drawings relative to such equipment, plant facilities as Owner may request.

41.2 Upon written order of Owner, Construction Manager shall discontinue operation of unsatisfactory plant and equipment or facilities and shall either modify or remove the unsatisfactory items from the site.

41.3 Construction Manager shall not remove construction plant or equipment from the site before the Work is finally accepted without Owner's written approval. Such approval shall not be unreasonably withheld.

GC 42 CONSTRUCTION MANAGER-FURNISHED MATERIALS, EQUIPMENT AND WORKMANSHIP

42.1 Only new, unused items of recent manufacture, of designated quality, but in no event less than the standard quality for the improvements, free from defects, will be accepted. Rejected items shall be removed immediately from the Work and replaced with items of specified quality. Failure by Owner to order removal of rejected materials and equipment shall not relieve Construction Manager from responsibility for quality of the materials supplied nor from any other obligation under the Contract Documents.

42.2 Construction Manager shall continuously check Design Professional ural and structural clearances for accessibility of equipment and mechanical and electrical systems. No allowance of any kind will be made for Construction Manager's negligence to foresee means of installing equipment into position inside structures.

42.3 No Work defective in construction or quality, or deficient in meeting any requirement of the Contract Drawings and Specifications, will be acceptable regardless of Owner's failure to discover or to point out defects or deficiencies during construction; nor will the presence of field representatives at the Work or the satisfaction of the Work meeting applicable code requirements relieve Construction Manager from responsibility for the quality and securing progress of Work as required by the Contract Documents. The Owner shall notify the Construction Manager of defective or unacceptable Work if the Owner discovers such. Defective Work revealed within the time required by warranties (whether expressed or implied) shall be remedied in accordance with the GENERAL CONDITIONS Section entitled, WARRANTY. No payment, whether partial or final, shall be construed as an acceptance of defective Work or improper materials.

42.4 Construction Manager shall waive "common practice" and "common usage" as construction criteria wherever details and specifications or governing codes and ordinances require greater quantity or better quality than common practices and common usage would require. Construction Manager shall order and schedule delivery of materials in reasonable time to avoid delays in construction. Delays in delivery of equipment or material purchased by the Construction Manager or its Trade Contractors shall not be considered as a cause for an adjustment of the Contract Time or a basis for damages or compensation. The Construction Manager shall be fully responsible for the timely ordering, scheduling, expediting, delivery, and installation of all equipment and materials. If an item is found to be unavailable, Construction Manager shall notify Owner immediately of recommended substitute(s) to permit Owner's selection of a suitable substitute.

42.5 Owner will exercise sole authority for determining conformance of workmanship, materials, equipment and systems with the requirements of the Contract. Review and approval of all items proposed by Construction Manager for incorporation into the Work will be by Owner. This function by Owner will apply both to approvals for the Contract

as initially signed, and to approvals for changes to Contract by modifications during progress of the Work. Reference to manufacturers' names, brands and models is to establish the type and quality desired. Substitutions may be permitted unless specifically noted otherwise and in accordance with GC 43 below.

42.6 When materials, equipment, or systems are specified by performance only, without reference to specific manufacturer's brands or models, Construction Manager shall submit its own choice for Owner's review and approval, supported by sufficient evidence of conformity with the Contract Documents.

GC 43 SUBSTITUTIONS

43.1 Prior to proposing any substitute item, Construction Manager shall satisfy itself that the item proposed is, in fact, equal or better to that specified, that such item will fit into the space allocated, that such item affords comparable ease of operation, maintenance and service, that the appearance, longevity and suitability for the climate are comparable, and that by reason of cost savings, reduced construction time, or similar demonstrable benefit, the substitution of such item will be in Owner's interest, and will in no way impact detrimentally upon the Project completion date and schedule.

43.2 The burden of proof of equality of a proposed substitution for a specified item shall be upon Construction Manager prior to Owner's decision on such substitution. Construction Manager shall support its request with sufficient test data and other means to permit Owner to make a fair and equitable decision on the merits of the proposal. Construction Manager shall submit drawings, samples, data, certificates, and additional information as may be required by the Owner for proposed substitute items as required by GC 46 CONSTRUCTION MANAGER FURNISHED DRAWINGS, DATA & SAMPLES.

43.3 Any item by a manufacturer other than those specified or of brand name or model number or of generic species other than those specified will be considered a substitution. Owner will be the sole judge of whether or not the substitution is equal in quality, utility and economy to that specified. Construction Manager shall allow an additional 7 days for Owner's review of substitution. All requests for substitutions with submittal data must be made at least fourteen (14) days prior to the time Construction Manager must order, purchase, or release for manufacture or fabrication. Materials and methods proposed as substitutions for specified items shall be supported by certification of their approval for use by all governmental agencies having jurisdiction over use of specific material or method. Substitutions may not be permitted in those instances where the products are designed to match artistic design, specific function or economy of maintenance. Approval of a substitution shall not relieve Construction Manager from responsibility for compliance with all requirements of the Contract. Construction Manager shall coordinate the change with all trades and bear the expense for any changes in other parts of the Work caused by any substitutions.

43.4 If Owner rejects Construction Manager's substitute item on the first submittal, Construction Manager may make only one additional request for substitution in the same category. On the second request, and all future requests, the Construction Manager shall be invoiced the expenses (including Owner's and Design Professionals' cost and overhead) involved in reviewing submittal data.

GC 44 EXPEDITING

44.1 The equipment and material furnished under this Contract may be subject to expediting by Owner, at Owner's expense. Owner shall be allowed reasonable access to the shops, factories, and other places of business of the Construction Manager and its subcontractors and suppliers, for expediting purposes. As required by Owner, Construction Manager shall supply schedules and progress reports for Owner's use in expediting and Construction Manager shall cooperate with Owner and require its subcontractors and suppliers to cooperate with Owner in such expediting. Any expediting performed by Owner shall not relieve Construction Manager of its sole and primary responsibility for timeliness of delivery of the equipment and material to be furnished under this Contract.

GC 45 FIELD LAYOUT OF WORK

45.1 All Work under this Contract shall be constructed in accordance with the lines and grades shown on the Contract Drawings or as approved by the Owner in writing. Elevation of existing ground, structures and appurtenances are believed to be reasonably correct but are not guaranteed to be absolute and therefore are presented only as an approximation.

45.2 All survey work for construction control purposes shall be made by a land surveyor registered in the State of Florida, with demonstrated experience in the Project area, and who shall be employed by the Construction Manager at Construction Manager's expense. The Construction Manager shall establish all base lines for the location of the principal component parts of the Work together with permanent benchmarks and temporary bench marks adjacent to the Work. Based upon the information provided by the Contract Drawings, the Construction Manager's surveyor shall develop and make all detail surveys necessary for construction including establishment or construction of grid coordinates as shown on the Contract Drawings, location of property boundaries, stakes for all working points, lines and elevations. Owner shall provide surveys necessary for utility easements.

45.3 The Construction Manager shall have the responsibility to carefully preserve all bench marks, reference points and stakes. In case of destruction thereof by the Construction Manager resulting from his negligence, or for any other reason, it shall be held liable for any expense and damage resulting therefrom and shall be responsible for any mistakes that may be caused by the unnecessary loss or disturbance of such bench marks, reference points and stakes. Existing or new control points, property markers, and monuments that will be established or are destroyed during the normal course of construction shall be re-established by the Construction Manager, and all reference ties recorded therefor shall be

furnished to the Owner. All computations necessary to establish the exact position of the Work shall be made and preserved by the Construction Manager.

GC 46 CONSTRUCTION MANAGER FURNISHED DRAWINGS, DATA AND SAMPLES

46.1 Review and permission to proceed by Owner as stated in this Contract does not constitute acceptance or approval of design details, calculations, analyses, test methods, certificates or materials developed or selected by the Construction Manager and does not relieve Construction Manager from full compliance with contractual obligations. Drawings, samples, catalogues, data and certificates required shall be submitted to the Owner for review.

46.2 All correspondence from the Construction Manager to the Owner shall be numbered sequentially and the submittal number shall be referenced. Submittal drawings (shop, erection or setting diagrams) and schedules, required for work of various trades, shall be checked before submission by technically qualified employees of Construction Manager for accuracy, completeness and compliance with Contract requirements. These drawings and schedules shall be stamped and signed by Construction Manager certifying to such check. The certification stamp shall read as follows:

"I certify that I have checked this submittal for accuracy, completeness and compliance with Contract requirements, and it has been coordinated with all other submittals and Contract Documents."

_____ _____

SIGN DATE

_____

46.3 Drawings

46.3.1 Where drawings are required for (a) fabrication of Construction Manager furnished equipment; (b) installing Construction Manager furnished material or equipment; or (c) planning and performance of the Work under Contract; such drawings shall be originally generated and submitted by and at the expense of the Construction Manager before fabrication, installation or performance is commenced. Each submittal shall be made not less than fourteen (14) calendar days prior to the time that the drawings are required in accordance with the schedule. Allow at least seven (7) calendar days for review by the Engineer. Such drawings shall include, but not be limited to, matchmarks, erection diagrams and other details, such as field connections for proper installation, erection of the equipment, and performance of the Work.

46.3.2 For drawings greater in size than 11" x 17", one reproducible and four copies shall be submitted to the Owner by and at the expense of the Construction Manager. The Owner will be the sole judge of the adequacy of the quality of the reproducible and prints and may reject reproducibles and/or prints on the basis of quality alone. Such drawings will

not be folded, but will be transmitted in mailer rolls manufactured expressly for that purpose. The reproducible with the Owner's review comments will be returned to the Construction Manager. A reproducible copy of drawings equal to or less than 11" x 17" is not necessary, but five copies of the unfolded drawings must be transmitted to the Design Professional and Owner.

46.3.3 If drawings show variations from the Contract requirements, the Construction Manager shall describe such variations in writing, separate from the drawings, at the time of submission. If the Owner approves any such variation(s), it will issue an appropriate Contract modification, except that, if the variation is minor and does not involve a change in price or in time of performance, a modification need not be issued.

46.3.4 Drawings of a specific piece of equipment shall identify components with the manufacturer's part number or reference drawing clearly indicated. If reference drawing numbers are used, the review date of such drawings shall be included. Drawings shall indicate design dimensions, maximum and minimum allowable operating tolerances on all major wear fits, i.e. - rotating, reciprocating or intermittent sliding fits between shafts or stems and seals, guides and pivot pins. The sequence of submission of all drawings shall be such that all information is available for reviewing each drawing when it is received.

46.3.5 All drawings submitted by the Construction Manager shall be certified and dated by the Construction Manager on the face of each drawing to be correct, accurate and shall be furnished in accordance with requirements of the Specifications. The Design Professional and Owner will conduct a review of Construction Manager's drawings and a drawing marked with one of the following review comments will be returned to the Construction Manager:

1. No exceptions taken.
2. Make corrections noted. No resubmittal.
3. Not required for review.

46.3.6 The Construction Manager must incorporate the changes indicated, resubmit and obtain a Code 1 or 2 notation before release for shipment can be granted.

46.4 Samples.

46.4.1 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged. Samples of all items of related systems (i.e., adjacent surfaces requiring similar colors but manufactured of different materials) must be submitted in the same time frame before the approval process can begin.

46.4.2 Where samples are required, they shall be submitted by and at the expense of the Construction Manager. Such submittal shall be made not less than thirty five (35)

calendar days prior to the time that the materials represented by such samples need to be ordered for incorporation into any Work in accordance with the schedule. Allow at least five (5) calendar days for Owner's review. Materials represented by such samples shall not be manufactured, delivered to the site or incorporated into any Work without such review. Each sample shall bear a label showing the Construction Manager's name, date submitted, Project name, name of the item, manufacturer's name, brand name, model number, supplier's name, and reference to the appropriate drawing, Technical Specification section and paragraph number, all as applicable.

46.4.3 Samples that have been reviewed may, at Design Professional 's and Owner's option, be returned to the Construction Manager for incorporation into the Work.

46.5 Catalogues, Data and Certificates.

46.5.1 Where catalogues, data or certificates are required, five (5) copies of each shall be submitted by and at the expense of the Construction Manager. Such submittal shall be made not less than fourteen (14) calendar days prior to the time that the materials represented by such catalogues, data or certificates must be ordered for incorporation into any Work in accordance with the approved Bar Chart schedule. Allow at least 7 calendar days for Design Professional and Owner's review. Material represented by such shall not be fabricated, delivered to the site or incorporated into any Work without such review.

46.5.2 Certificates shall clearly identify the material being certified and shall include but not be limited to providing the following information: Construction Manager's name, Project name, name of the item, manufacturer's name, and reference to the appropriate drawing, Technical Specification section and paragraph number all as applicable. All catalogues, data and certificates submitted by the Construction Manager shall be certified and dated by the Construction Manager on the face of each catalogue, data and certificate to be correct and shall be furnished in accordance with these requirements and the requirements of the Technical Specifications. Design Professional and Owner will conduct a review of Construction Manager's catalogues, data, and certificates and one copy marked with the review comments listed in paragraph 46.3.5, above, will be returned to the Construction Manager.

GC 47 CONSTRUCTION SCHEDULE

47.1 Within ten (10) days after the date of the Owner's issuance of a Notice to Proceed, the Construction Manager shall prepare and submit to the Owner a CPM construction schedule in graphically depicting the activities contemplated to occur as a necessary incident to performance of the Work required to complete the Project, showing the sequence in which the Construction Manager proposes for each such activity to occur and duration (dates of commencement and completion, respectively) of each such activity. The Owner's initial approval for the purposes of this GC 47.1, and any other provisions in the Contract Documents related to the Construction Manager's responsibility to

prepare and submit schedules shall be limited to a determination that the activities, durations and logic are reasonable.

47.1.1 The construction schedule shall be complete in all respects, covering, in addition to activities and interfaces with other Construction Managers at the site of the Work, offsite activities such as design, fabrication, an allowance for weather delays, submittals, procurement and jobsite delivery of Construction Manager furnished material and equipment. The schedule shall be a Bar Chart drawn to a time scale using arrow or precedence type diagramming. The construction schedule activities shall mirror the payment application breakdown.

47.1.2 The construction schedule shall include the following:

a. Brief description of each activity.
b. All submittals, samples, approvals, fabrication, and deliveries for equipment and materials. Allow no more than 60 days float between submittal approval and beginning of fabrication.
c. Activities showing scheduled start and finish, late start and finish, and float.
d. Relations between activities.
e. Duration of activities. No activity should be scheduled for more than 20 workdays.
f. Contractual and other major milestones including phasing.
g. Schedule activities to include labor and material.
h. An allowance for delays due to weather. Contract Time extensions for weather delays will be granted only when all of the conditions and criteria for evaluation of time extensions have been met pursuant to the General Conditions.

47.1.3 Upon acceptance of the original Bar Chart Schedule, the Early Start and Early Finish dates for all activities shall be fixed as Planned Start and Planned Finish dates. Any further revisions to the schedule must be submitted in writing and approved by the Owner.

47.1.4 The detailed Bar Chart schedule submittal shall include five (5) color copies of the following:

a) Time Scaled Diagram.
b) Bar Chart in the following formats:
c) Sorted by activity.
d) NOT USED.
e) Sorted by early start.
f) Precedence and Successor report.
g) Narrative report.
h) Computer diskette. (One copy)
i) Submittals shall be organized under Standard CSI format.

47.1.5 The detailed Bar Chart Schedule shall be updated monthly and submitted along with an updated CD accompanied by an Application for Payment. Construction Manager shall meet with the Owner and Design Professional of Record to review and verify:

a) Actual start and finish dates for completed activities.
b) Remaining duration required to complete each activity started, scheduled to start, but not completed.
c) Logic and time, for change orders that are to be incorporated into the schedules.
d) Percentage for completed and partially completed activities.

47.2 Following development and submittal of the construction schedule as aforesaid, the Construction Manager shall, at the end of each calendar month occurring thereafter during the period of time required to finally complete the Project, or at such earlier intervals as circumstances may require, update and/or revise the construction schedule to show the actual progress of the Work performed and the occurrence of all events which have affected the progress of performance of the Work already performed or will affect the progress of the performance of the Work yet to be performed in contrast with the planned progress of performance of such Work, as depicted on the original construction schedule and all updates and/or revisions thereto as reflected in the updated and/or revised construction schedule last submitted prior to submittal of each such monthly update and revision.

47.3 The Construction Manager shall prepare and incorporate into the schedule data base, at the required intervals, the following schedules:

a. Subcontractor Construction (Subnetworks) - Upon the award of each subcontract, the Construction Manager shall jointly with the subcontractor, develop a schedule which is more detailed than the pre-bid schedule included in the Specifications, taking into account the Work schedule of the other subcontractors. The construction schedule shall include as many activities as necessary to make the schedule an effective tool for construction planning and for monitoring the performance of the subcontractor. The construction schedule shall also show pertinent activities for material purchase orders, manpower supply, shop drawing schedules and material delivery schedules.

b. Occupancy Schedule - The Construction Manager shall jointly develop with the Engineer and Owner a detailed plan, inclusive of punch lists, final inspections, maintenance training and turn-over procedures, to be used for ensuring accomplishment of a smooth and phased transition from construction to Owner occupancy. The Occupancy Schedule shall be produced and updated monthly from its inception through final Owner occupancy.

47.4 The Construction Manager shall submit a written narrative report as a part of his monthly review and update in a form agreed upon by the Construction Manager and the Owner. The narrative report shall include a description of problem areas; current and anticipated

delaying factors and their estimated impact on performance of other activities and completion dates; and an explanation of corrective action taken or proposed.

47.5 The Construction Manager shall have in its employ for the length of this Project, at least one qualified scheduling specialist whose responsibility as to this Contract will be to prepare, plan and draft the construction schedules, monitor the construction progress, analyze scheduling problems for resolution, update the Construction Schedule as required in the Contract, and maintain updated information as required regarding the interface with other contracts. The costs associated herewith, and all scheduling activities, are included in the Lump Sum.

47.6 The Construction Manager agrees that whenever it becomes apparent from the current progress review meeting or the computer produced calendar dated schedule that the Contract completion date will not be met, the Construction Manager shall execute some or all of the following remedial actions at Construction Manager's sole cost and expense:

a) Increase construction manpower in such quantities and crafts as necessary to eliminate the backlog of Work.

b) Increase the number of working hours per shift, shifts per working day, working days per week, the amount of construction equipment, or any combination of the foregoing to eliminate the backlog of Work.

c) Reschedule the Work in conformance with the specification requirements.

47.7 Prior to proceeding with any of the above actions, the Construction Manager shall notify the Owner of the proposed schedule changes. Such actions shall be incorporated by the Construction Manager into the diagram before the next update, at no additional cost.

GC 48 RESPONSIBILITY FOR WORK SECURITY

48.1 Construction Manager shall, at its expense, at all times conduct all operations under the Contract in a manner to avoid the risk of loss, theft or damage by vandalism, sabotage or other means to any property. Construction Manager shall promptly take all reasonable precautions which are necessary and adequate against any conditions which involve a risk of loss, theft or damage to its property, at a minimum. Construction Manager shall continuously inspect all its Work, materials, equipment and facilities to discover and determine any such conditions and shall be solely responsible for discovery, determination and correction of any such condition.

48.2 Construction Manager shall prepare and maintain accurate reports of incidents of loss, theft or vandalism and shall furnish these reports to Owner within three days of each incident.

GC 49 PROTECTION OF WORK IN PROGRESS, MATERIALS AND EQUIPMENT

49.1 Construction Manager shall be responsible for and shall bear any and all risk of loss or damage to Work in progress, all materials delivered to the site, and all materials and equipment involved in the Work until completion and final acceptance of Work under this Contract. Excluded from Construction Manager's responsibility is any loss or damage which results from acts or omissions of the Owner or its representatives or other contractors.

49.2 Permanent openings or thoroughfares for the introduction of work and materials to the structure and construction site shall be protected so that upon completion, the entire Work will be delivered to the Owner in proper, whole and unblemished condition.

GC 50 PROTECTION OF EXISTING PROPERTY

50.1 Construction Manager shall so conduct its operations as not to damage, close, or obstruct any utility installation, highway, road or other property until permits therefore have been obtained. If facilities are closed, obstructed, damaged or rendered unsafe by Construction Manager's operations, Construction Manager shall, at its expense, make such repairs and provide temporary guards, lights and other signals as necessary or required for safety and the welfare of persons on the jobsite and the general public.

50.2 Construction Manager shall conduct its operation so as not to damage any existing buildings or structures. The Construction Manager shall verify that means and methods of construction used inside, adjacent to, under or over existing buildings will not cause damage. The Construction Manager shall provide protection methods which insure the safety of persons on the jobsite and the general public.

50.3 Unless otherwise specifically provided in the Contract, Construction Manager shall not do any Work that would disrupt or otherwise interfere with the operation of any pipeline, telephone, electric, radio, gas, transmission line, ditch or other structure, nor enter upon lands in their natural state until approved by Owner. Thereafter, and before it begins such Work, Construction Manager shall give due notice to Owner of its intention to start such Work. Construction Manager shall not be entitled to any extension of time or any extra compensation on account of any postponement, interference, or delay cause by any such line, ditch or structure on or adjacent to the site of the Work. If Construction Manager has exercised due diligence, such as, but not limited to, conducting soft digs, securing utility locates, as well as other activities both during its Pre-Con performance and thereafter, +Construction Manager shall not be held responsible for any damages caused to any lines, cables, pipes, or pipelines which are not depicted on the surveys, studies, reports, investigations and legal descriptions of the site supplied to the Construction Manager.

50.4 Construction Manager shall preserve and protect all cultivated and planted areas and vegetation such as trees, plants, shrubs and grass on or adjacent to the Project, which, as determined by Owner, do not reasonably interfere with the performance of this Contract.

50.5 Construction Manager shall be responsible for damage to any such areas and vegetation and for unauthorized cutting of trees and vegetation, including, without limitation, damage arising from the performance of its work through operation of equipment or stockpiling of materials. All cost in connection with any repairs or restoration necessary or required by reason of any such damage or unauthorized cutting shall be borne by Construction Manager.

GC 51 LABOR

51.1 Construction Manager shall employ only competent and skilled personnel to perform the Work. Construction Manager shall, if requested to do so by Owner, remove from the jobsite any personnel of Construction Manager whom Owner determines unfit or acting or working in violation of any provision of this Contract.

51.2 Work assignments and the settlement of jurisdictional disputes shall conform with either the Rules, Regulations and Procedures of the Plan for Settlement of Jurisdictional Disputes in the Construction Industry, and any successor agreement thereto, or any other mutually established method of determining work assignments and settling jurisdictional disputes.

51.3 Construction Manager shall comply with and shall cooperate with Owner in enforcing jobsite conditions and job work rules which directly affect the performance of the Work including, but not limited to, starting and quitting time, smoking regulations, check-in and check-out procedures, job site safety regulations and security regulations, emergency plans and procedures, and daily clean-up.

51.4 The Construction Manager and subcontractors shall be bound by and comply with all Federal, State and local laws with regard to minimum wages, overtime work, hiring, and discrimination. All work necessary to be performed after regular working hours, on Saturdays, legal and Town holidays, shall be performed without additional expense to the Owner. The Construction Manager shall comply with the Copeland Anti-Kick Back Act (19 U.S.C. 874) as supplemented in the Department of Labor Regulations (29 CFR Part 3). This act provides that each Construction Manager or subcontractor shall be prohibited from inducing by any means, any person employed in the construction, completion or repair of public work, to give up any part of the compensation to which he is otherwise entitled.

51.5 Construction Manager shall complete "Construction Manager's Daily Report" (Appendix "A") for each day work is accomplished. Reports shall be made available to Owner upon its request.

GC 52 EQUAL EMPLOYMENT OPPORTUNITY

52.1 During the performance of this Contract, the Construction Manager agrees as follows:

A. The Construction Manager will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, or national origin. The Construction Manager will take affirmative action to ensure that applicants and employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Construction Manager agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Owner setting forth provisions of this nondiscrimination clause.

B. The Construction Manager will, in all solicitations or advertisements for employees placed for, by, or on behalf of the Construction Manager, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, or national origin.

C. The Construction Manager will send to each labor union or representatives of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the Owner, advising the labor union or workers' representative of the Construction Manager's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

D. The Construction Manager will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

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

F. In the event of the Construction Manager's noncompliance with the nondiscrimination clauses of this Contract or with any of such rules, regulations, or orders, this Contract may be cancelled, terminated or suspended in whole or in part and the Construction Manager may be declared ineligible for further contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

G. The Construction Manager will include the provisions of paragraphs A through F in every subcontract or purchase unless exempted by rules, regulations, or orders of the

Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Construction Manager will take such action with respect to any subcontractor or purchase order as may be directed to the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the Construction Manager becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Construction Manager may request the United States to enter into such litigation to protect the interest of the United States.

H. All regulations, guidelines, and standards lawfully adopted under the governing statutes.

GC 53 SAFETY & PROTECTION OF PERSONS & PROPERTY

53.1 RESPONSIBILITY FOR SAFETY AND HEALTH

53.1.1 The Construction Manager shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work to be performed under the terms of the Contract ("Work"). The Construction Manager shall take all precautions and follow all procedures for the safety of, and shall provide all protection to prevent injury to, all persons involved in any way in the Work and all other persons, including, without limitation, the employees, agents, guests, visitors, invitees and licensees of the Owner and Users who may be affected thereby. The Construction Manager shall set forth in writing its safety precautions and programs in connection with the Work and submit the same to the Owner. The Owner may, but shall not be obligated to, make suggestions and recommendations to the Construction Manager with respect thereto.

53.1.2 All Work, whether performed by the Construction Manager, its Sub-Construction Managers or Sub-subcontractors, or anyone directly or indirectly employed by any of them, and all equipment, appliance, machinery, materials, tools and like items incorporated or used in the Work, shall be in compliance with, and conform to:

a. all applicable laws, ordinances, rules, regulations and orders of any public, quasi-public or other authority relating to the safety of persons and their protection against injury, specifically including, but in no event limited to, the Federal Occupational Safety and Health Act of 1970, as amended and all State, Local, City and County rules and regulations now or hereafter in effect; and

b. all codes, rules, regulations and requirements of the Owner and its insurance carriers relating thereto. In the event of conflicting requirements, the more stringent shall govern.

53.1.3 Should the Construction Manager fail to provide a safe area for the performance of the Work or any portion thereof, the Owner shall have the right, but not the obligation, to

suspend Work in the unsafe area. All costs of any nature resulting from the suspension, by whomsoever incurred, shall be borne by the Construction Manager.

53.1.4 The Construction Manager shall provide, or cause to be provided, to each worker on the Job Site the proper safety equipment for the duties being performed by that worker and will not permit any worker on the Job Site who fails or refuses to use the same. The Owner shall have the right, but not the obligation, to order the Construction Manager to send a worker home for the day or to discharge a worker for his or her failure to comply with safe practices, with which order the Construction Manager shall promptly comply.

53.1.5 The Construction Manager shall defend, indemnify and hold the Owner, the Owner's Representative and their respective officers, directors, agents, employees and assigns, harmless from and against any and all liability, public or private, penalties, contractual or otherwise, losses, damages, costs, reasonable attorneys' fees, expenses, causes of action, claims or judgments to the extent resulting from any failure of the Construction Manager, its subcontractors or sub-subcontractors or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, to comply with the provisions of this General Condition.

53.1.6 In any and all claims against those indemnified hereunder by any employee of the Construction Manager, any subcontractor or sub-subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Paragraph shall not be limited in any way to any limit(s) on the amount or type of damage, compensation or benefits payable by or for the Construction Manager or any subcontractor or sub-subcontractor under any workers' compensation acts, disability benefit acts or other employee benefit acts.

53.2 PROTECTION OF WORK AND PROPERTY; RESPONSIBILITY FOR LOSS

53.2.1 The Construction Manager shall, throughout the performance of the Contract, maintain adequate and continuous protection of all completed Work and temporary facilities against loss or damage from whatever cause, shall protect the property of the Owner and third parties from loss or damage from whatever cause arising out of the performance of the Contract and shall comply with the requirements of the Owner and its insurance carriers and with all applicable laws, codes, rules and regulations with respect to the prevention of loss or damage to the property. The Owner, their representatives or insurance carriers may, but shall not be required to, make periodic patrols of the Job Site as a part of its normal safety, loss control and security programs. In such event, however, the Construction Manager shall not be relieved of its aforesaid responsibilities and the Owner shall not assume, nor shall it be deemed to have assumed, any responsibility otherwise imposed upon the Construction Manager by this Contract.

53.2.2 Until final acceptance of the Work by the Owner pursuant to GC 72 of this Contract, the Construction Manager shall have full and complete charge and care of and, except as otherwise provided in this subparagraph or elsewhere in this Contract, shall bear all risk

of loss of, and injury or damage to, the Work or any portion thereof (specifically including Owner furnished supplies, equipment or other items to be utilized in connection with, or incorporated in, the Work) from any cause whatsoever, except to the extent caused by Owner, its representatives, or contractors.

53.2.3 The Construction Manager shall rebuild, repair, restore and make good all losses of, and injuries or damages to, the Work or any portion thereof (specifically including Owner furnished supplies, equipment or other items to be utilized in connection with, or incorporated in, the Work) before final acceptance of the Work. Such rebuilding, repair or restoration shall be at the Construction Manager's sole cost and expense unless the loss, injury or damage requiring such rebuilding, repair or restoration:

A. Is directly due to errors in the Contract Documents which were not discovered by the Construction Manager and which the Construction Manager could not have discovered through the exercise of due diligence;

B. Is caused by the agents or employees or contractors of the Owner (unless (1) the Construction Manager has waived its rights of subrogation against the Owner on account thereof as provided in the Contract Documents, or (2) such loss or damage would be covered by any policy or policies of insurance which the Construction Manager is required to maintain hereunder, whether the Construction Manager actually maintains such insurance or not, or (3) is otherwise covered by a policy or policies of insurance maintained by the Construction Manager, whether or not required hereunder).

53.3 SURFACE AND SUBSURFACE WATER

53.3.1 Surface or subsurface water or other fluid shall not be permitted to accumulate in excavations or under or in the structures. Should such conditions develop or be encountered, the water or other fluid shall be controlled and suitably disposed of by means of temporary pumps, piping, drainage lines and ditches, dams or other methods approved by the Owner in writing. The proposed location and coordination of temporary channels and conduits conducting accumulated water from the Job Site shall be permitted by the proper regulatory agency and submitted to the Owner for its prior written approval. All such Work shall be done at the sole expense of the Construction Manager.

53.4 EMERGENCIES

53.4.1 In any emergency affecting the safety of persons or property, or in the event of a claimed violation of any federal or state safety or health law or regulation, arising out of or in any way connected with the Work or its performance, the Construction Manager shall act immediately to prevent threatened damage, injury or loss to remedy said violation, whichever is applicable. Failure by Construction Manager to take necessary emergency action shall entitle the Owner to take whatever action it deems reasonably necessary, including, but not limited to, suspending the Work as provided in GC 23.

53.4.2 The Owner may offset any and all costs or expenses of whatever nature, including reasonable attorneys' fees, paid or incurred by the Owner in taking such emergency action against any sums then or thereafter due to the Construction Manager. The Construction Manager shall defend, indemnify and hold the Owner harmless against any and all costs or expenses pursuant to this GC 53.4.2, by whomsoever incurred. If the Construction Manager shall be entitled to any additional compensation or extension of time claimed on account of emergency work which is not due to the fault or neglect of the Construction Manager or its subcontractors or sub-subcontractors, it shall be handled as provided in GC 65.

53.5 OWNER'S STANDARDS

53.5.1 The Owner reserves the right, but assumes no duty, to establish and enforce standards, and to change the same from time to time, for the protection of persons and property, with which the Construction Manager shall comply, and to review the efficacy of all protective measures taken by the Construction Manager. The exercise of or failure to exercise any or all of these rights by the Owner shall not relieve the Construction Manager of its duties and responsibilities under this Contract, and the Owner shall not thereby assume, nor be deemed to have assumed, any such duties or responsibilities of the Construction Manager.

GC 54 PROJECT SITE PROTECTION

54.1 Construction Manager, at its expense, shall maintain such protection as provided in General Conditions Section (GC 53) titled SAFETY & PROTECTION OF PERSONS & PROPERTY in a satisfactory condition until removal is authorized by Owner. Construction Manager, at its expense, shall make all necessary repairs to property damaged by construction operations. Repairs shall be made in a manner satisfactory to Owner. The Construction Manager will provide parking for its employees within the designated work areas. Construction Manager employees will not be allowed to park in areas which are used by any facilities which remain in operation.

GC 55 FIRE PREVENTION

55.1 Construction Manager shall, at its expense, conform to all Federal, State, and local laws and regulations pertaining to burning, fire prevention and control within or adjacent to the Project. Necessary precautions to avoid and eliminate fire hazards shall be the responsibility of the Construction Manager. This includes keeping the Contract Work area clear of all trash at all times.

55.2 All tarpaulins used for any purpose during construction of any Work shall be made of material resistant to fire, water and weather and shall bear UL labels. Lighting of any fires on premises is strictly forbidden. Controlled burning shall be with the consent of the Owner. Construction Manager shall provide portable fire extinguishers properly labeled, located and compatible with the hazard of each work area and shall instruct its personnel

in their use. Wherever welding and burning are conducted, inflammable materials shall be protected and a fire watch shall be provided by Construction Manager to be present during the burning and welding operation to ensure that protective measures are taken and that no fires result from such operation. The fire watch shall have fire extinguisher equipment readily available and know-how for proper use.

GC 56 ILLUMINATION

56.1 When any work is performed at night or where daylight is shut off or obscured, Construction Manager shall, at its expense, provide artificial light sufficient to permit work to be carried on efficiently, satisfactorily and safely, and to permit thorough inspection. During such time periods the access to the place of work shall also be clearly illuminated. All wiring for electric light and power shall be installed and maintained in a first-class manner, securely fastened in place at all points, and shall be kept as far as possible from telephone wires, signal wires, and wires used for firing blasts.

GC 57 BEST MANAGEMENT PRACTICES

57.1 Construction Manager shall be responsible for evaluating the site before construction is initiated to determine if any site conditions may pose particular problems for the handling of any Regulated Substances. For example, handling Regulated Substances in the proximity of water bodies or wetlands may be improper.

57.2 Regulated Substances are substances that are known to cause significant harm to human health and the environment (including surface and groundwater). The Unified Land Development Code (ULDA) Section 9.3, Wellfield Protection, regulates the storage, handling, use and production of Regulated Substances within wellfield zones which may impair present and future drinking water suppliers. In addition, the ULDC, Section 9.6, Excavation, requires that Best Management Practices for the Construction industries be followed for Agricultural Area, TYPE II, TYPE IIIA and TYPE IIIB excavation activities.

57.3 If any Regulated Substances are stored on the construction site, they shall be stored in a location and manner which will minimize any possible risk of release to the environment. Any storage container of 55 gallons, or 440 pounds, or more containing Regulated Substances shall have constructed below it an impervious containment system constructed of materials of sufficient thickness, density and composition that will prevent the discharge to the land, ground waters, or surface waters, of any pollutant which may emanate from said storage container or containers. Each containment system shall be able to contain 150% of the contents of all storage containers above the containment system.

57.4 Construction Manager shall familiarize itself with the manufacturer's safety data sheet supplied with each material containing a Regulated Substance and shall be familiar with procedures required to contain and clean up any releases of the Regulated Substance.

Any tools or equipment necessary to accomplish same shall be available in case of a release.

57.5 Upon completion of construction, all unused and waste Regulated Substances and containment systems shall be removed from the construction site and shall be disposed of in a proper manner as prescribed by law.

GC 58 DUST CONTROL

58.1 The Construction Manager, for the duration of the Contract, shall, at its expense, maintain all excavations embankments, haul roads, access roads, plant sites, waste disposal areas, borrow areas, and all other work areas free from dust. Industry-accepted methods of dust control suitable for the area involved and approved by Owner will be permitted.

GC 59 WATER POLLUTION

59.1 Construction Manager shall, at its expense, provide suitable facilities to prevent the introduction of any substance or materials into any stream, river, lake or other body of water which may pollute the water or constitute substances or materials deleterious to fish and wildlife.

GC 60 AIR POLLUTION

60.1 The Construction Manager shall, at its expense, so perform its work as not to discharge into the atmosphere from any source whatever smoke, dust, or other air contaminants in violation of the laws, rules and regulations of all Federal, State and local air and water pollution requirements including, but not limited to: Registering with the Palm Beach County Health Department, Air Pollution Board, any equipment requiring operating permits by said Board; Adhering to all Palm Beach County Air Pollution Board Regulations.

GC 61 EXPLOSIVES & HAZARDOUS MATERIALS

61.1 Construction Manager shall obtain all required Federal, State and local permits and licenses and shall be responsible for the safe and proper handling, labeling, transporting, storage and use of any explosive or hazardous materials brought onto or encountered within the site, and at its expense, make good any damage caused by its handling, transporting, storage and use. The Construction Manager will notify the Owner immediately if explosive or hazardous materials are encountered on the site. Transporting explosive or hazardous materials onto the site will require prior written approval from the Owner. The Construction Manager shall maintain and post as necessary Material Hazard Data Sheets for all applicable Hazardous Materials used in the course of his work.

61.2 In the event that hazardous material is improperly handled or stored by the Construction Manager, its subcontractors, any sub-subcontractors, or any employee or agent of any of the aforementioned which results in contamination of the site, Construction Manager shall immediately notify the Owner and the appropriate governmental authority and shall take whatever action is necessary or desirable to remediate the contamination at the Construction Manager's sole cost and expense. Further, Construction Manager shall indemnify and hold harmless from any and all cost, expense, action, or liability whatsoever resulting from such contamination and/or remedial activities. If without negligence on the part of the Construction Manager or anyone for whom it is responsible, Construction Manager is held liable for the cost of remediation of a hazardous material or substance solely by reason of performing the Work as required by the Contract Documents, the Owner shall pay for the directs costs of remediation as approved beforehand by Owner, in writing, which shall be paid from the Contingency Fund.

GC 62 INSPECTION: REJECTION OF MATERIALS AND WORKMANSHIP

62.1 All materials and equipment furnished and work performed shall be properly inspected by Construction Manager, at its expense, and shall at all times be subject to quality surveillance, observations or quality audit by Owner. Construction Manager shall provide safe and adequate facilities and all samples, drawings, lists and documents necessary for such quality surveillance, observation or quality audit. For this purpose Owner shall be afforded full and free access to the shops, factories or places of business of Construction Manager and its subcontractors and suppliers for such quality surveillance, observation or quality audit and to determine the status of the Work. If Construction Manager covers all or any portion of the Work prior to any quality surveillance or test by Owner, the cost of any necessary uncovering and replacing shall be borne by Construction Manager. Neither the failure to make such quality surveillance, observance or quality audit, nor to discover defective workmanship, materials, or equipment, nor acceptance of or payment to Construction Manager for such work, materials or equipment shall prejudice the rights of Owner thereafter to correct or reject the same as hereinafter provided.

62.2 If any material, equipment or workmanship is determined by Owner, either during performance of the Work or on final quality surveillance, or during any applicable warranty period (expressed or implied), to be defective or not complying with the requirements of this Contract, Owner shall notify Construction Manager in writing that such material, equipment or work is rejected and the Owner reserves the right to withhold payment on any such item. Thereupon, Construction Manager shall, at its own expense, immediately remove and replace or correct such defective material, equipment or work by making the same comply strictly with all requirements of the Contract.

GC 63 TESTING

63.1 Unless otherwise provided in the Contract, Drawings and Specifications shop testing of materials or work shall be performed by the Construction Manager and in accordance

with the Technical Specifications. Field testing of materials or work shall be performed by Owner. Should tests in addition to those required by the Specifications be desired by Owner, Construction Manager will be advised in reasonable time to permit such testing. Such additional tests will be at Owner's expense unless such additional tests are required due to Construction Manager's work or materials having failed any initial test. In this event, such additional (re-test) tests shall be at Construction Manager's expense. Construction Manager shall furnish samples as requested and shall provide reasonable assistance and cooperation as necessary to permit tests to be performed on materials or work in place including reasonable stoppage of work during testing. Construction Manager shall provide reasonable and accurate notice of when construction activities which require Owner's testing services are required. Construction Manager shall be responsible for stand-by and other costs associated with the testing agency if that construction activity is delayed or canceled.

GC 64 PROGRESS

64.1 Construction Manager shall give Owner full information in advance as to its plans for performing each part of the Work. If at any time during the progress of work, Construction Manager's actual progress is inadequate to meet the requirements of the Contract, Owner may so notify Construction Manager who shall thereupon take such steps as may be necessary to improve its progress. If within a reasonable period as determined by Owner, Construction Manager does not improve performance to meet the currently approved Contract construction schedule, Owner may require an increase in Construction Manager's labor force, the number of shifts, overtime operations, additional days of work per week and an increase in the amount of construction plant; all without additional cost to Owner. Neither such notice by Owner nor Owner's failure to issue such notice shall relieve Construction Manager of its obligation to achieve the quality of work and rate of progress required by the Contract.

64.2 Failure of Construction Manager to comply with the reasonable instructions of Owner may be grounds for determination by Owner that Construction Manager is not prosecuting its work with such diligence as will assure completion within times specified. Upon such determination, Owner may terminate Construction Manager's right to proceed with the performance of the Contract, or any separable part thereof, in accordance with the applicable provisions of this Contract.

GC 65 CHANGES

65.1 Owner may, at any time, without invalidating the Contract and without notice to the Surety(ies), make changes in the Work by issuing Change Orders, as well as Contingency Fund Change Orders addressed elsewhere in the Contract Documents (and which are not subject to this GC 64 and its subparts).

65.2 Owner will issue written orders to Construction Manager for any changes, except that in the event of an emergency which Owner determines immediately endangers life or

property, Owner may issue oral orders to Construction Manager for any work required by reason of such emergency. Such orders will be confirmed in writing as soon as practicable. Such orders, whether written or oral, may be accompanied by drawings and data as are necessary to show the extent of such ordered work.

65.3 Construction Manager shall commence such changed work so that all dates set forth in Construction Manager's current construction schedule, as accepted by Owner, will be met. In the event of an emergency which Owner determines immediately endangers life or property, Construction Manager shall immediately commence such changes as required by Owner in order to mitigate or remove the emergency condition. Failure to commence any such change in timely fashion shall entitle Owner to invoke the provisions of section GC 25 entitled TERMINATION FOR DEFAULT.

65.4 Unless otherwise required, Construction Manager shall, within twenty-one (21) calendar days following receipt of a written Change request from Owner, submit in writing to Owner a Contract Change Proposal for accomplishing such change, which proposal shall reflect the increase or decrease, if any, in cost to Owner of performing the change under the Contract in comparison to what the cost would have been, had such change not been offered.

65.5. The proposal shall state the Construction Manager's added and/or deleted compensation in detail, including, but not limited to:

a. Material quantities and unit prices;
b. Labor man-hours and wages by craft;
c. Equipment type and size and rental rate;
d. Overhead, profit, and bond allowance of 5% for those portions subcontracted, and 15% of those portions that are self-performed by the Construction Manager;
e. Subcontract costs with back-up detail as specified (in items a), b), c), and a markup for Subcontractor overhead and profit not to exceed 10% in the aggregate;
f. Time extension, if any;
g. A detailed description of any impacts this change will have on any activities on the Critical Path which would effect any of the Milestone Dates;
h. Proof of payment of any tax liability resulting from a specific change (if requested by Owner);
i. General Condition costs: provided however, that said costs shall be compensable *only in the event that the Change Order results in an extension in excess of thirty (30) calendar days of the Substantial Completion Date, as extended by Change Orders, if any,* and at a daily rate that shall be extrapolated from the amount of the General Conditions items specifically applicable to the Change Order.

65.6 Under no circumstances shall Construction Manager apply for or be entitled to recover extended home office overhead costs associated with a change in the Work, whether or not calculated in accordance with the Eichleay Formula. The Parties may agree, if justified in accordance with GC 27, to an extension of time in connection with any changes to the Work. Any time extension request submitted after the twenty-one (21) calendar day time period noted above, will not be considered and deemed waived by the Construction Manager.

65.7 If Construction Manager does not propose the method of compensation for such change, or any part thereof, within the time required, or if any proposed method is not acceptable to Owner, or if a method of compensation for such change, or any part thereof cannot be agreed upon, Construction Manager shall proceed upon direction ("Construction Change Directive") with such change.

65.8 A Construction Change Directive (CCD) is a written order prepared by the Design Professional of Record and signed by the Owner, directing a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both. A CCD may be used in the absence of total agreement on the terms of Change Order or to complete work which, if not accomplished, could adversely affect a critical path activity. Upon receipt of the CCD, the Construction Manager shall promptly proceed with the change in the Work involved and advise the Design Professional of Record of the Construction Manager's agreement or disagreement with the method, if any, provided in the CCD for determining the proposed adjustment in the Contract Sum or Contract Time. When the Owner and Construction Manager agree with the determination made by the Design Professional of Record concerning the adjustments in the Contract Sum and/or Time, or otherwise reach agreement upon the adjustments, such agreement shall be recorded by the preparation of a Change Order. The Construction Manager shall not seek payment for work performed pursuant to a CCD until it has been converted to a Change Order.

65.8.1 If, at any time after Construction Manager commences such change, and a method of compensation other than verifiable cost of the changed Work plus the markups allowed in GC 65.5 is agreed upon, such compensation will be made in accordance with such agreement. In any event, Construction Manager shall keep accurate records of the actual cost to Construction Manager for such change. Costs for which Construction Manager shall be entitled to compensation on a cost of the changed Work plus markup basis as described above, are as follows:

a. Direct Labor Cost - Payment will be made for all manual classifications up to and including foremen, but shall not include superintendents, assistant superintendents, general foremen, office personnel, time-keepers and maintenance mechanics, and those personnel categorized in the Lump Sum. The time charged to changes will be subject to the daily approval of Owner, and no charges shall be accepted unless evidence of such approval is submitted by Construction Manager with its billing.

Labor rates used to calculate the direct labor costs shall be those rates in effect during the accomplishment of the change, excluding those employees catalogued above In addition to the direct payroll costs, the direct labor costs shall include payroll taxes and insurance, vacation allowance, subsistence, travel time and overtime premium and any other payroll additives required to be paid by Construction Manager by law or collective bargaining agreements, excluding those employees catalogued I (a) above. Copies of certified pertinent payrolls shall be submitted to Owner.

b. Equipment Costs - Payment for the rental and operation of the equipment furnished and used by Construction Manager shall be made for all construction and automotive equipment or tools with a new cost at point of origin of one thousand dollars or less each. Equipment time charged to changes will be subject to daily written approval of Owner and no charges will be accepted unless evidence of such approval is submitted with Construction Manager's billing.

The equipment rental and operation rates include costs for rental, fuel, oil, grease, repair parts, service and maintenance of any kind, and necessary attachments. Such charges do not include costs for operating labor and transportation to and from the location of the change. Equipment rental rates for Construction Manager-owned equipment used in this Contract shall be those contained in the RENTAL RATE BLUE BOOK as published by K-III Directory Corporation, 1735 Technology Drive, Suite 410, San Jose, California 95110-1313, (800-669-3282) and current at the time that work for any specific Change is performed, less 30%. When equipment is used for cost of the workchanges which do not reasonably resemble adjusted Blue Book rental rates, the rental rate shall be negotiated and agreed upon in writing.

If Construction Manager-owned equipment is not available and equipment is rented from outside sources, payment will be computed on the basis of actual invoice cost. Rental rates for non-owned equipment must be approved in advance by Owner.

When the operated use of equipment is infrequent and, as determined by Owner, such equipment need not remain at the site of the Work continuously, payment shall be limited to actual hours of use. Equipment not operating but retained at the location of changes at Owner's direction shall be paid for at a standby rate.

Unless otherwise provided in the Contract, all equipment rental rates shall be agreed upon in writing before commencing any change. When a specific piece of rental equipment, normally used to perform unchanged Contract Work is used for cost of the Work Changes, the applicable rental rate shall be the actual rate paid by the Construction Manager at the time the Work is performed.

Transportation costs for bringing equipment to the jobsite and for returning equipment to the point of origin, exclusively for use on time and material work,

will be reimbursed to Construction Manager based on invoices, provided that prior written approval has been given to Construction Manager.

Overtime shall be paid as per Method 2 described in said RENTAL RATE BLUE BOOK.

No compensation will be made to the Construction Manager for equipment repair, equipment maintenance or idle equipment time.

c. Material Costs - Payment for the cost of materials furnished by Construction Manager for use in performing the change will be made, provided such furnishing and use of materials was as specifically authorized and the actual use was verified by Owner. Payment will be the net cost to Construction Manager delivered at the job and vendor's invoice shall accompany the billing along with the verification by Owner of such use of such materials.

d. Contract and Outside Service Costs - Payment for work and services subcontracted by Construction Manager in the performance or completion of the change will be made only when both the subcontractor and the terms of payment to such subcontractor have been approved in writing by Owner before the subcontractor starts to work on the change.

e. Tools and Equipment - Payment will be made for tools and equipment with a new cost of One Thousand Dollars, or less, each, only upon approval by the Owner.

65.9 For any changes involving deductive items, the following shall apply to the amount of allowable overhead, profit and bond allowance:

a. For deductive changes only (those which contain no additive items), there will be no reduction in overhead and profit and, likewise, no addition by the Construction Manager for processing.

b. For changes containing both additions and deductions covering related work or substitutions, the overhead and profit shall be figured on the net increase if any, with respect to that change, plus nine (9) percent thereof covering overhead, profit, and bond allowance.

65.10 No change order or CCD shall be valid until approved and signed by the Owner. The Design Professional of Record is not authorized to bind the Owner to changes relative to changes in Contract cost and or time. The Design Professional may only recommend acceptance or rejection. If a proposed change is deemed beneficial to the Project and is within the limits set forth in the Contract, the Owner may cause to be issued an appropriate change order to the Contract with or without the Construction Manager's signature.

65.11 The Design Professional of Record will have the authority to order minor changes in the Work which do not involve adjustment to the GMP or Time and are not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Owner and Construction Manager. The Construction Manager shall carry out such written orders promptly, and the Construction Manager shall receive no additional compensation therefore, nor shall there be any change in the Contract Time. The Design Professional shall immediately provide notices of all minor changes in the Work to the Owner.

65.12 Execution of a change order acknowledges final settlement of, and releases, all claims for costs and time associated, directly or indirectly, with the stated modification(s), including all claims for cumulative delays or disruptions resulting from, caused by, or incident to such modification(s), and including any claim that the modification(s) constitutes, in whole or part, a cardinal change to the Contract.

GC 66 RECORD DRAWINGS AND SPECIFICATIONS

A. Drawings:

1. Conformed Documents - Prior to the first application for payment, Construction Manager shall show proof of conformed documents with all Bid addenda identified on the record drawings and on his field set of drawings. Supplemental information following the bid shall be included and updated monthly for review with the application for payment.

2. Progress Records - During construction, Construction Manager shall keep a marked-up and up-to-date set of drawings showing as-built conditions on the site as an accurate record of all deviations between work as shown and work as installed. These drawings shall be available to Owner for inspection at any time.

3. Final Records - The Construction Manager shall furnish to Owner a complete set of marked-up as-builts with RECORD clearly printed on each sheet. Owner, at its expense, will furnish Construction Manager with drawings for mark-up by Construction Manager. Construction Manager shall, by use of professional draftsman, accurately and neatly transfer all deviations from progress as-builts to final as-builts.

B. Specifications:

1. Progress Records - During construction, Construction Manager shall keep a marked-up and up-to-date set of Specifications showing as-is conditions on the site annotated to clearly indicate all substitutions that are incorporated into the Work. Where selection of more than one product is specified, annotation shall show which product was installed. These Specifications shall be available to Owner for inspection at any time.

2. Final Records - The Construction Manager shall furnish to Owner a complete set of marked-up as-built Specifications with RECORD clearly printed on cover. Owner, at its expense, will furnish Construction Manager a set of Specifications for mark-up by Construction Manager. Construction Manager shall accurately and neatly transfer all annotations from progress as-builts to final as-builts.

C. Manuals:

1. Manuals - As a condition precedent to Substantial Completion, the Construction Manager shall furnish to Owner three complete sets of manuals and applicable operating instructions as referenced in Technical Specifications.

2. Unless otherwise specified, manuals to be bound in 3-ring binder with contents clearly indicated on outside cover.

D. Endorsement:

1. Construction Manager shall sign each final record drawing and the cover of the record Specifications and shall note thereon that deviations and annotations are complete and accurate.

2. The Construction Manager shall provide a signed and notarized affidavit indicating that no asbestos containing materials were used or installed during the course of construction as a condition precedent to Final Acceptance.

E. Fixed Asset Equipment and Fixture Information:

1. Construction Manager shall provide the Owner with a list (in electronic format and hard copy) of each piece of equipment having an individual value greater than $500.00 prior to Final Acceptance. The list shall include, at a minimum; a) the name, make and model number, b) the quantity installed, and 3) the value of the equipment.

GC 67 MEASUREMENT OF AND PAYMENT FOR WORK

67.1 Estimates and all support data shall be prepared by Construction Manager and submitted in writing for Owner's approval on or about the end of each month covering the amount and value of work satisfactorily performed by Construction Manager up to the date of such estimate. Such estimates shall be based on the construction schedule completed activity cost, as approved, and may be confirmed by actual measurement of the Work in place. Estimates shall be based on cumulative total quantities of work performed. Estimates may include materials or equipment not incorporated into the Work provided the requirements set forth below are met. A format for such estimates shall be determined by the Owner according to type of Contract Work and shall be agreed upon prior to, or no later than, application for the first progress payment.

The quantity of work to be paid for under any item for which a unit price is fixed in the Contract shall be the amount or number, approved by Owner, of units of work satisfactorily completed with the Contract and computed in accordance with applicable measurement for payment provisions of the Contract.

67.2 Partial payments may be made to the extent of the delivered cost of materials to be incorporated in the Work, provided such materials meet the requirements of this Contract, plans, and Specifications and are delivered to acceptable locations at the Project Site or to other sites in Palm Beach County that are acceptable to the Owner (bonded warehouse). Such material must be stored in a secure manner, acceptable to the Owner, and in accordance with any manufacturer's recommendations.

67.3 Delivered cost of such stored or stockpiled materials may be included in any subsequent payment request once the Construction Manager meets the following conditions:

a. An applicable purchase order or supplier's invoice is provided listing the materials in detail, cost of materials and identifying this specific Contract, by name.
b. The material is insured against loss or damage (from whatever source) or disappearance prior to incorporation into the Work.
c. Once any stored material is paid for by Owner, it shall not be removed from the designated storage area except for incorporation into the Work.
d. Evidence that Construction Manager has verified quantity and quality of materials delivered (verified packing list).

67.4 It is further agreed between the parties that the transfer of title and the Owner's payment for any stored or stockpiled materials pursuant to this General Condition shall in no way relieve the Construction Manager of the responsibility of ensuring the correctness of those materials and for furnishing and placing such materials in accordance with the requirements of this Contract, plans and Specifications. Construction Manager shall make all surveys necessary for determining all quantities of work to be paid for under the Contract. Copies of field notes, computations, and other records made by Construction Manager for the purpose of determining quantities shall be furnished to Owner upon

request. Construction Manager shall notify Owner prior to the time such surveys are made. Owner, at its discretion, may arrange to have its representative witness and verify all surveys made by Construction Manager for determining quantities of work to be paid for under the Contract. Measurements and computations shall be made by such methods as Owner may consider appropriate for the class of work measured.

67.5 The dividing limits, lines or planes between adjacent items or classes of excavation, concrete, or other types of work where not definitely indicated on the drawings or in the Specifications, shall be determined by Owner.

67.6 No payments of invoices (or portions thereof) shall at anytime constitute approval or acceptance of the Work under this Contract, nor be a waiver by Owner of any of the terms contained herein.

GC 68 PROGRESS PAYMENT PROCEDURES

68.1 The Construction Manager shall prepare a schedule of values by phases of work to show a breakdown of the Contract Sum corresponding to the payment request breakdown and progress schedule line items. The schedule of values must also show dollar value for each unit of work scheduled. Change Orders shall be added as separate line items. The schedule of values shall be submitted to the Owner and Design Professional of Record for review and approval prior to "Commencement of Work."

68.2 The Construction Manager will prepare and submit three (3) original copies of monthly invoices for work completed during the one month period. Pay Applications shall be submitted in the format of the sample form given to the Construction Manager at the Pre-Construction meeting. All information must be completed for the pay application to be accepted. Owner's account number(s) for the Project will be given at the Pre-Construction meeting and will be placed at the top right hand corner of each application. These payment applications will be reviewed by all parties in attendance at the monthly pay application meetings. Prior to formal submission of the Application the Construction Manager shall submit a rough draft plus two extra copies for the Owner and Design Professional of Record to review. Submit final approved copies (3) to: the Design Professional of Record, whose approval is required prior to submission to the Owner.

68.3 If the pay estimate and support data are not approved, the Construction Manager is required to submit new, revised or missing information according to the Owner's instructions. Otherwise, the Construction Manager shall prepare and submit to Owner an invoice in accordance with the estimate as approved. Owner will pay Construction Manager, in accordance with Florida Prompt Payment Act (FS 218.70). Retainage, in the amount of 10%, will be withheld on the calculated value of any work, with the exception of stored materials which may be paid at the supplier's invoiced cost. After 50% completion of the Work has been achieved, the Owner may, at its sole discretion and with consent of Surety, implement a reduction in retainage. However, in no instance can the amount retained be less than the value of the Work the Owner determines remains to be put in place or required to be performed as remedial activities.

68.4 Each application for payment shall be accompanied by the following:

a. A notarized "Affidavit of Disbursement of Previous Periodic Payments to subcontractors" from the Construction Manager for the portion of work up to the date of that particular pay application.
b. An Owner approved construction schedule update.

68.5 If one or more "Notice of Non-Payment" is received by the Owner, no further payments will be approved until non-payment(s) have been satisfied and a "Release of Claim" for each "Notice" has been submitted to the Owner. Upon request, Construction Manager shall furnish acceptable evidence that all such claims or liens have been satisfied. On bonded projects only, the Owner may allow, with consent of Surety and indemnification of the County against any claims, payment for work which there is an outstanding Notice of Non-Payment.

68.6 Any amount otherwise payable under the Contract may be withheld, in whole or in part, if:

a. Any claims are filed against Construction Manager by Owner or third parties; or if reasonable evidence indicates the probability of filing any such claim; or'
b. Construction Manager is in default of any Contract condition; or
c. There is reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum
d. Damage to the Owner or a separate contractor;
e. Reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay
f. Defective work or material is not remedied; or
g. Construction Manager repeatedly fails to carry out the Work in accordance with the Contract Documents; or
h. Construction Manager fails to timely submit an owner-approved updated Schedule with each Application for Payment.

68.7 If claims or liens filed against Construction Manager or property of Owner connected with performance under this Contract are not promptly removed by Construction Manager after receipt of written notice from Owner to do so, Owner may remove such claims or liens and all costs in connection with such removal shall be deducted from withheld payments or other monies due, or which may become due, to Construction Manager. Construction Manager shall have no less than thirty (30) days to remove or bond off such lien after notice. If the amount of such withheld payments or other monies due Construction Manager under the Contract is insufficient to meet such cost, or if any claim or lien against Construction Manager is discharged by Owner after final payment is

made, Construction Manager and its surety or sureties shall promptly pay Owner all costs (including attorneys' fees) incurred thereby regardless of when such claim or lien arose.

68.8 Following issuance, by the Design Professional of Record, of a Certificate of Substantial Completion, Construction Manager may submit special payment request, provided the following have been completed:

a. Obtain permits, certificates of inspection and other approvals and releases by governing authorities, required for the Owner's occupancy and use of the Project.
b. Complete final cleaning of the Work.
c. Submit record documents (record drawings).
d. Submit listing of work to be completed before final acceptance.
e. Settle liens and other claims.
f. Obtain Consent of Surety for partial release of retainage.
g. Settle Liquidated Damages due to Owner, if any.

68.9 Upon receipt by Owner of Construction Manager's written Notice of Final Completion of its work under this Contract, in accordance with GC 72, Owner shall verify all work has been completed on the Project. When all work has been verified as complete, and the Construction Manager completes and submits the items listed below, the Construction Manager may submit a final invoice.

a. Complete work listed as incomplete at the time of Substantial Completion and obtain Design Professional certification of completed Work.
b. Submit proof of payment on fees, taxes or similar obligations.
c. Transfer operational, access, security and similar provisions to Owner; remove temporary facilities, tools and similar items.
d. Obtain Consent of Surety for final payment and/or partial release of retainage.
e. All information required by GC 66.
f. Obtain certification of as-built (record) drawings from Design Professional of Record.

GC 69 USE OF COMPLETED PORTIONS OF WORK

69.1 Whenever, as determined by Owner, any portion of work performed by Construction Manager is in a condition suitable for use, Owner may initiate certificate of Substantial Completion (Partial Utilization) for that portion and take possession of or use such portion. Such use by Owner shall in no case be construed as constituting final acceptance, and shall neither relieve Construction Manager of any of its responsibilities under the Contract, nor act as a Waiver by Owner of any of the conditions thereof, provided, that Construction Manager shall not be liable for the cost of repairs, rework, or renewals which may be required due to ordinary wear and tear resulting from such use. However, if such use increases the cost or delays the completion of remaining portions of work, Construction Manager shall be entitled to an equitable adjustment in its compensation and/or schedule under this Contract.

69.2 If, as a result of Construction Manager's failure to comply with the provisions of the Contract, such use proves to be unsatisfactory to Owner, Owner shall have the right to continue such use until such portion of work can, without injury to Owner, be taken out of service for correction of defects, errors, omissions, or replacement of unsatisfactory materials or equipment, as necessary for such work to comply with the Contract; provided that the period of such operation or use pending completion of appropriate remedial action shall not exceed twelve months unless otherwise mutually agreed upon in writing between the parties.

69.3 Construction Manager shall not use any permanently installed equipment unless such use is approved by Owner in writing. Where Construction Manager's written request is granted for the use of certain equipment, Construction Manager shall properly use and maintain, and upon completion of its use, and at its expense, recondition such equipment to the satisfaction of Owner. If Owner furnishes an operator for such equipment, such operator's services shall be performed under the complete direction and control of Construction Manager and shall be considered Construction Manager's employee for all purposes other than the payment of such operator's wages, workmen's compensation or other benefits paid directly or indirectly by Owner.

GC 70 ALLOWANCES AND UNIT PRICES

70.1 Construction Manager has included in the GMP all unit prices and allowances. Items covered by unit prices shall be supplied for such amounts as the Owner may direct.

70.2 Unit prices shall apply to revisions to the Work as applicable. Unit Prices are "all inclusive", including labor, material, supervision, tools, equipment, insurance taxes, fringe benefits, coordination, engineering, overhead, profit, performance and payment bonds, and all other things necessary.

GC 71 SUBSTANTIAL COMPLETION

71.1 The date of Substantial Completion is the date established by the Design Professional and approved by the Owner when the Project is sufficiently complete to permit the Owner to use it for its intended purpose and the items listed below in 71.4 are complete. Liquidated damages shall be assessed from the date of substantial completion of the entire Project.

71.2 The Construction Manager shall notify the Design Professional, in writing, when the Construction Manager considers the Project Substantially Complete and attach a comprehensive list of incomplete work and items needing correction with dates indicating when the items listed will be completed.

71.3 Once the Design Professional has received notice from the Construction Manager, the Design Professional will promptly inspect the Work. The Design Professional may

refuse to inspect the Work if the Work is obviously not substantially complete or when the Construction Manager's list is not complete.

71.4 The following items shall be completed prior to a request by the Construction Manager for inspection for Substantial Completion of a particular phase of the Project

a. Temporary Certificate(s) of Completion shall be obtained from the proper Building Official.

b. All general construction completed.

c. All electrical work complete, equipment and fixtures in place, connected, cleaned and ready for use.

d. All electrical circuits shall be scheduled in panels, and all panels and disconnect switches properly labeled.

e. Project site shall be cleared of the Construction Manager's excess equipment, storage shacks, trailers, and/or building supplies. All temporary construction shall be removed.

f. All electrical systems shall be complete, fully functional, and demonstrated to the Owner.

g. All operations and maintenance manuals for all equipment shall have been submitted.

h Manufacturers' certifications and warranties shall be delivered to Owner.

i. All operations and maintenance training related literature, software and back-up disks shall have been provided. A video tape of the training shall be provided.

j. All required spare parts as well as any special tools shall have been provided.

k. The Project record Drawings and Specifications shall be submitted in accordance with GC 66.

71.5 If Substantial Completion is not obtained at the inspection, called by the Construction Manager, for reasons which are the fault of the Construction Manager, the cost of any subsequent inspections requested by the Construction Manager for the purpose of determining Substantial Completion shall be the responsibility of the Construction Manager and shall be assessed against the final payment application.

71.6 Punch list items recorded as a result of inspections for Substantial Completion are to be corrected by the Construction Manager within fourteen (14) calendar days and in any event prior to any request for Final Inspection and Acceptance.

GC 72 FINAL INSPECTION AND ACCEPTANCE

72.1 When the Construction Manager considers that all work under the Contract is complete as previously referenced in GC 71, Construction Manager shall so inform Owner and Design Professional, in writing. In addition, when items on the punch list as recorded at the Substantial Completion inspection have been corrected and the Owner is satisfied that all work under the Contract is completed and is in accordance with the requirements of this Contract, Owner shall notify Construction Manager in writing of final acceptance of its work under this Contract.

72.2 The Owner will make final payment to the Construction Manager of the amount remaining after deducting all prior payments and all amounts to be kept or retained under the provisions of the Contact Documents, including the following items, for which a Change Order will be issued:

1. Liquidated Damages, as applicable.

2. At the discretion of the Owner, one hundred and fifty percent (150%) of the value of outstanding items, corrective Work, or "punch list" items indicated on the Certificate of Substantial Completion, "final punch list", or any other "punch list" as being yet uncompleted or uncorrected, as applicable. All such Work shall be completed or corrected to the satisfaction of the Owner within the time stated on the Certificate of Substantial Completion, or on the "final punch list", or any other "punch list", otherwise the Construction Manager does hereby waive any and all claims to all monies withheld by the Owner to cover the value of all such uncompleted or uncorrected items.

72.3 Neither final acceptance of the Work, nor payment therefor, nor any provision of the Contract Documents shall relieve the Construction Manager of responsibility for defective or deficient materials or work. If, within one (1) year or as provided for elsewhere in the General Conditions or Technical Specifications after Substantial Completion, any of the Work is found to be defective, deficient or not in accordance with the Contract Documents, the Construction Manager shall correct, remove and replace it promptly after receipt of a written notice from the Owner and correct and pay for any damage to other Work resulting in therefrom.

GC 73 DISPOSAL OF MATERIAL OUTSIDE PROJECT LIMITS

73.1 The Construction Manager shall make his own arrangements for disposal of materials outside the Project limits and shall pay all costs involved. The Owner reserves the right to retain any salvage material or equipment scheduled for removal. Should the Owner elect to retain salvaged materials or equipment, the Construction Manager will provide

appropriate on-site storage and protection. The Owner will be responsible for transporting from the site any materials or equipment it has elected to retain. Off-site disposal of any items not retained by the Owner shall be the responsibility of the Construction Manager.

73.2 When any material is to be disposed of outside the Project limits, the Construction Manager shall first obtain a written permit from the property owner on whose property the disposal is to be made and he shall file in writing with the Owner said permit or the certified copy thereof together with a written release from the property owner absolving the agency of any and all responsibility in connection with the disposal of material on said property.

73.3 When material is disposed of as above provided and the disposal location is visible from the Project, the Construction Manager shall dispose of the material in a neat and uniform manner to the satisfaction of the Owner.

GC 74 IDENTITY OF INTEREST WITH SUBCONTRACTORS/SUPPLIERS

74.1 The Construction Manager represents to the Owner that neither the Construction Manager, nor any officer, director, partner or shareholder who holds ten percent (10%) or more of the outstanding stock of the Construction Manager, has any financial interest in, or as an officer, director, partner or ten percent (10%) plus shareholder of any firm, person or entity which has been or may be contracted with to furnish labor, material, equipment or professional services in connection with the construction or the Project. Construction Manager agrees to give written notification and obtain the approval of the Owner before entering into any Contract on this Project with any subcontractor or material supplier where there exists any identity of interest.

GC 75 CLEANING UP

75.1 Construction Manager shall, at all times, at its expense, keep its work areas in a neat, clean and safe condition. Upon completion of any portion of the Work, Construction Manager shall, within 48 hours, remove all of its equipment, construction plant, temporary structures and surplus materials not to be used at or near the same location during later stages of work.

GC 76 PROJECT SIGNS

76.1 Construction Manager, shall construct a Project job sign as indicated and described on Site Sign Detail. Construction Manager shall coordinate location of sign with Owner's representative and install within 21 days after Owner's issuance of "Notice to Proceed". Any deletion/addition of lettering during the life of the Project will be at the Construction Manager's expense. Construction Manager will remove and properly dispose of sign at final acceptance of project. With the exception of the right reserved by the Owner to

erect a sign in connection with the Project and unless otherwise provided in the Contract Documents, Construction Manager shall not display or permit to be displayed on or about the Project, any sign, trademark, poster or other advertising or identifying device, without prior written approval of Owner.

GC 77 PERFORMANCE AND PAYMENT BONDS/CHAPTER 558 OPT OUT

77.1 Within ten (10) calendar days following the Owner's action to approve this Contract, Construction Manager shall furnish Performance and Payment Bonds in form as set forth in Exhibits "F" and "G," written by a surety company acceptable to Owner. It is the Construction Manager's obligation to record a copy of the statutory Payment Bond in the Public Records of Broward County, Florida, and to otherwise comply with all applicable Florida laws.

77.2 Both Owner and Construction Manager hereby expressly opt out of the provisions of Chapter 558, F.S., and elect not to be governed by its terms and provisions.

EXHIBIT C

Insurance Requirements

ACORD

BURKH-3 OP ID: RAL

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 10/02/2015

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 EPRESENTATIVE 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
Brown & Brown of Florida, Inc.
1201 W Cypress Creek Rd # 130
P.O. Box 5727
Ft. Lauderdale, FL 33310-5727
Ken E Willits, CPCU, CFP, CRIS

CONTACT NAME:
PHONE (A/C, No, Ext): 954-776-2222 FAX (A/C, No): 954-776-4446
E-MAIL ADDRESS:

INSURED
Burkhardt Construction, Inc.
1400 Alabama Avenue, Suite 20
West Palm Beach, FL 33401-7048

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : Amerisure Insurance Company	19488
INSURER B : Amerisure Mutual Ins. Company	23396
INSURER C : North River Insurance Company	21105
INSURER D : Lloyd's of London	15792
INSURER E :	
INSURER F :	

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 INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
B	X COMMERCIAL GENERAL LIABILITY						EACH OCCURRENCE	$ 1,000,000
	CLAIMS-MADE X OCCUR			GL2089641	10/01/2015	10/01/2016	DAMAGE TO RENTED PREMISES (Ea occurrence)	$ 100,000
							MED EXP (Any one person)	$ 5,000
							PERSONAL & ADV INJURY	$ 1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	$ 2,000,000
	POLICY X PRO-JECT LOC						PRODUCTS - COMP/OP AGG	$ 2,000,000
	OTHER:							$
A	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	$ 1,000,000
	X ANY AUTO			CA2089542	10/01/2015	10/01/2016	BODILY INJURY (Per person)	$
	ALL OWNED AUTOS / SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	HIRED AUTOS / NON-OWNED AUTOS						PROPERTY DAMAGE (Per accident)	$
								$
C	UMBRELLA LIAB X OCCUR			5811059709	10/01/2015	10/01/2016	EACH OCCURRENCE	$ 4,000,000
	EXCESS LIAB CLAIMS-MADE						AGGREGATE	$ 8,000,000
	DED X RETENTION $ 0							$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						PER STATUTE / OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) 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	$
D	Professional Liab			B0621P0028087001	07/22/2015	07/22/2016	Per Claim	1,000,000
	Claims-Made			RETENTION:$15,000			Aggregate	1,000,000

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

Certificate holder and Pompano Beach CRA listed as additional insured as respects General Liability if required by written contract.

APPROVED
RISK MANAGEMENT
DATE: 10/29/15
BY: JM

CERTIFICATE HOLDER

POMPABC

City of Pompano Beach
100 W. Atlantic Blvd. Rm276
Pompano Beach, FL 33060

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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ATTACHMENT 1

GMP Proposal

Hillsboro Inlet Dock Addition

& Cable Railing Improvements

City of Pompano Beach

Hillsboro Inlet Dock Addition and Cable Railing

From:	**Burkhardt Construction, Inc.** Attn: Marc Kleisley, Vice President of Operations 1400 Alabama Ave., #20 West Palm Beach, FL 33401 Ph: (561) 659-1400 Fax: (561) 659-1402
Owner:	**City of Pompano Beach** Attn: Hal Beard 1190 N.E. 3rd Ave. Pompano Beach, FL 33060 TEL: (954) 786-4031 FAX: (954) 786-4011
Architect/ Engineer:	N/A
Project:	**Hillsboro Inlet Dock Addition and Cable Railing** Pompano Beach, FL
Plans:	N/A
Location:	Hillsboro Inlet Pompano Beach, FL
Date:	December 18, 2015

Direct Construction Costs	$	49,530.44
General Conditions	$	3,896.00
Construction Phase Management Fee	$	5,520.00
Profit	$	4,000.00
Contingency	$	3,000.00
Preconstruction Services	$	2,000.00
Total Guaranteed Maximum Price (G.M.P.)	$	67,946.44

BURKHARDT CONSTRUCTION, INC.

City of Pompano Beach

Hillsboro Inlet Dock Addition and Cable Railing

GENERAL CONDITIONS

From: **Burkhardt Construction, Inc.**
Attn: Marc Kleisley, Vice President of Operations
1400 Alabama Ave., #20
West Palm Beach, FL 33401
Ph: (561) 659-1400
Fax: (561) 659-1402

Owner: **City of Pompano Beach**
Attn: Hal Beard
1190 N.E. 3rd Ave.
Pompano Beach, FL 33060
TEL: (954) 786-4031
FAX: (954) 786-4011

Engineer: **N/A**

Project: **Hillsboro Inlet Dock Addition and Cable Railing**
Pompano Beach, FL

Plans: N/A

Location: Hillsboro Inlet Pompano Beach, FL

Proposal Date: December 18, 2015

Item Description					Amount
	BASED ON A	2 MONTH DURATION			
MOBILIZATION (move-in, move-out)					$0.00
TRANSPORT	$65.00 /	Hr	x	0	$0.00
EQUIPMENT	$35.00 /	Hr.	x	0	$0.00
SUBCONTRACTOR MOBILIZATION(S)					

BURKHARDT CONSTRUCTION, INC.

PROJECT FIELD OFFICE					$1,300.00
OFFICE	$1,000.00 /	mo.	x	2	$0.00
YARD	$1,000.00 /	mo.	x	2	$0.00
EMPLOYEE PARKING FEES	$500.00 /	mo.	x	2	$0.00
WORK PLATFORM FOR YARD	$200.00 /	mo.	x	2	$0.00
TEMPORARY FENCING FOR YARD	$500.00 /	mo.	x	2	$0.00
CONSTRUCTION YARD LIGHTING	$0.00 /	mo.	x	2	$0.00
OFFICE FURNISHINGS	$500.00 /	mo.	x	2	$0.00
COMPUTERS	$300.00 /	mo.	x	2	$0.00
PROCORE MANAGEMENT SOFTWARE	$500.00 /	mo.	x	2	$0.00
SUBMITTAL SOFTWARE	$4,000.00 /	ls	x	1	$0.00
COPY MACHINE	$350.00 /	mo.	x	2	$0.00
FAX MACHINE	$100.00 /	mo.	x	2	$0.00
INTERNET SERVICE	$150.00 /	mo.	x	2	$0.00
CELLULAR TELEPHONE	$500.00 /	mo.	x	2	$0.00
TELEPHONE	$150.00 /	mo.	x	2	$0.00
FEDERAL EXPRESS MAILINGS	$100.00 /	mo.	x	2	$0.00
POSTAGE	$50.00 /	mo.	x	2	$0.00
PHOTOGRAPHS					
AERIAL PHOTOS	$110.00 /	mo.	x	2	$0.00
JOB PHOTOS	$50.00 /	wk	x	2	$100.00
PRE-CONSTRUCTION VIDEO	$1,000.00 /	ls	x	1	$1,000.00
PLAN REPRODUCTION COST/PRINTING	$200.00 /	set	x	2	$0.00
OFFICE SUPPLIES	$50.00 /	mo.	x	2	$100.00
FIRST AID SUPPLIES	$50.00 /	mo.	x	2	$100.00
WATER SERVICE	$35.00 /	mo.	x	2	$0.00
SANITARY SERVICE	$50.00 /	mo.	x	2	$0.00
ELECTRIC SERVICE	$200.00 /	mo.	x	2	$0.00
GARBAGE SERVICE	$25.00 /	mo.	x	2	$0.00
CONSTRUCTION WATER	$500.00 /	mo.	x	2	$0.00
JOHN DEERE GATOR (1)	$500.00 /	mo.	x	2	$0.00
ICE	$275.00 /	mo.	x	2	$0.00
BONDS					$850.00
GENERAL BOND	$68,000.00		x	1.25%	$850.00
SUBCONTRACTORS BONDS					
PARTNERING INITIATIVES					$0.00
NOTICES, LETTERS, INFORMATION MEETINGS					
INSURANCE					$1,496.00
GENERAL INSURANCE	$68,000.00		x	2.20%	$1,496.00
Commercial General Liability					
Comprehensive Automobile Liability					
Owner Idemnification					
Professional (Errors/Omissions) Liability					
Excess/Umbrella Liability					
Over Water Liability Insurance					
ADD'L INSUREDS	$100.00 /	ea.	x	0	$0.00
ADDED INSURANCES					NOT INCLUDED
Railroad protective Liability Ins.					NOT INCLUDED
Builders Risk Insurance					NOT INCLUDED
Installation Floater					NOT INCLUDED
Flood Insurance					NOT INCLUDED
SUBCONTRACTORS' INSURANCE					INCLUDED IN THEIR DIRECT COSTS
SANITARY SERVICES					$250.00
JOB TOILET (1ea.)	$125.00 /	mo.	x	2	$250.00

BURKHARDT CONSTRUCTION, INC.

TESTING COSTS					$0.00
DENSITIES					
PRESSURE					
PROCTORS					
BACTERIOLOGICAL					
CONCRETE CYLINDERS					
ENGINEERING & REPORTING					
TV'ING OF INSTALLED LINES					
FEES					$0.00
COH BUILDING DEPT. PERMIT/REVISION FEES	NOT INCLUDED		x	2.00%	NOT INCLUDED
PERMIT SUBMISSION AND EXPEDITING					NOT INCLUDED
FDOT GENERAL USE PERMITS					NO FEE ANTICIPATED
SURVEYING					$0.00
LAYOUT & ASBUILTS			x	1.50%	$0.00
ALLOWANCE FOR RESTAKING & DRAFTING	/	LS	x	1	$0.00
SMALL HAND TOOLS/EQUIPMENT RENTAL					$0.00
ALLOWANCE (GENERAL)					
HANDLING, STORAGE, UN-LOADING OF OWNER DIRECT PURCHASE MATERIALS					
GENERAL CONDITIONS TOTAL					$3,896.00

BURKHARDT CONSTRUCTION, INC.

City of Pompano Beach

Hillsboro Inlet Dock Addition and Cable Railing

CONSTRUCTION PHASE MANAGEMENT FEE

From:	**Burkhardt Construction, Inc.** Attn: Marc Kleisley, Vice President of Operations 1400 Alabama Ave., #20 West Palm Beach, FL 33401 Ph: (561) 659-1400 Fax: (561) 659-1402
Owner:	**City of Pompano Beach** Attn: Hal Beard 1190 N.E. 3rd Ave. Pompano Beach, FL 33060 TEL: (954) 786-4031 FAX: (954) 786-4011
Engineer:	**N/A**
Project:	**Hillsboro Inlet Dock Addition and Cable Railing** Pompano Beach, FL
Plans:	N/A
Location:	Hillsboro Inlet Pompano Beach, FL
Proposal Date:	December 18, 2015

BURKHARDT
CONSTRUCTION, INC.

Item Description	Quantity	(Hrs./Week)	Wks.	Rate/Hr.	Amount
Project Principal	0	Hrs./Wk.	8	$ 150.00	$ -
Senior Project Manager	0	Hrs./Wk.	8	$ 150.00	$ -
Project Manager	2	Hrs./Wk.	8	$ 120.00	$ 1,920.00
Assistant Project Manager	0	Hrs./Wk.	8	$ 75.00	$ -
Construction Field Manager	4	Hrs./Wk.	8	$ 100.00	$ 3,200.00
Merchant/Resident Liaison	0	Hrs./Wk.	8	$ 75.00	$ -
Project Accountant	0	Hrs./Wk.	8	$ 90.00	$ -
Administrative Assistant	1	Hrs./Wk.	8	$ 50.00	$ 400.00
Field Office Clerk	0	Hrs./Wk.	8	$ 45.00	$ -
	Total Construction Phase Management Fee				**$ 5,520.00**

BURKHARDT
CONSTRUCTION, INC.

City of Pompano Beach

Hillsboro Inlet Dock Addition and Cable Railing

DIRECT CONSTRUCTION COSTS

Prepared by Burkhardt Construction, Inc.

Item Description	Quantity	U/M	Unit Price	Amount
DOCK ADDITION				$3,495.00
FURNISH AND INSTALL APPROX. 6' X 12' DOCK ADDITION USING EXISTING CONCRETE PILINGS, LUMBEROCK COMPOSITE DECKING, NEW WOOD FRAMING, AND STAINLESS STEEL HARDWARE	1	LS	$3,495.00	$ 3,495.00
S.S. CABLE RAILING				$46,035.44
FURNISH AND INSTALL STAINLESS STEEL CABLE RAILING PER APPROVED ENGINEERED DRAWINGS ALONG SEAWALL CAP AND NEW DOCK ADDITION	229	LF	$183.53	$ 42,028.40
5' WIDE SEAWALL STAINLESS STEEL HINGED AND LOCKABLE GATE	1	EA	$4,007.04	$ 4,007.04

Total Direct Construction Costs **$49,530.44**

BURKHARDT CONSTRUCTION, INC.

City of Pompano Beach

Hillsboro Inlet Dock Addition and Cable Railing

Exceptions & Clarifications

1) Scope of work and quantities are based on an onsite meeting with the City of Pompano Beach that took place on 10/12/15.

2) GMP includes a 6% Owner contingency.

3) GMP does not include costs for removal/remediation of any cement asbesots pipe.

4) GMP is based on a 2 month construction duration.

5) GMP does not include any permit fees, capital improvement fees, connection fees, or impact fees.

6) GMP does not include a subsurface soils report. The cost estimate does not include removal or replacement of any unsuitable subsoils.

7) GMP is based on assumption of the existing temporary fence can be used during construction. Signage and/or any other Maintenance of Traffic is not included.

8) Daily access to the park and pier shall be provided to pedestrians.

9) Engineered drawings for the cable railing is included in the GMP.

10) GMP does not include any concrete, asphalt, and paver brick work.

11) GMP does not include premium time/overtime work hours.

12) GMP does not include additional insurance premium for naming individual property owners as "additional insured."

13) GMP is based on the assumption that all permits required to perform the work are issued prior to commencement of the project. In addition, all Construction easements shall be executed prior to commencement of the project.

14) GMP does not include cleaning of existing storm drainage lines.

15) The project will require free and unlimited jobsite access for workmen and deliveries during all authorized work hours.

16) Burkhardt Construction, Inc. (BCI) is not liable for failure to perform such work or any damages that occur if such failure is as a result of Acts of God (including fire, flood, earthquake, storm, hurricane or other natural disaster). If BCI asserts Force Majeure as the reason for failure to perform such work or such damages occur as a result of any Act of God, then BCI must prove that they took reasonable steps to minimize delay or damages caused by unforseeable events, that BCI substantially fulfilled all obligations, and that the owner was timely notified of the likelihood or actual occurrence of the event described as an Act of God (Force Majeure). Any construction related damages that took place as a result, shall be repaired or removed and replaced at the same contract unit prices and shall be paid out of the contingency.

17) In the event that the terms and provisions of all attached Exhibits conflict with or are omitted from the terms and provisions of this Contract, the terms and provisions of the attached Exhibits shall govern with respect to the performance of the work.

18) GMP does not include any franchise utility work (electric, telephone, cable tv, gas).

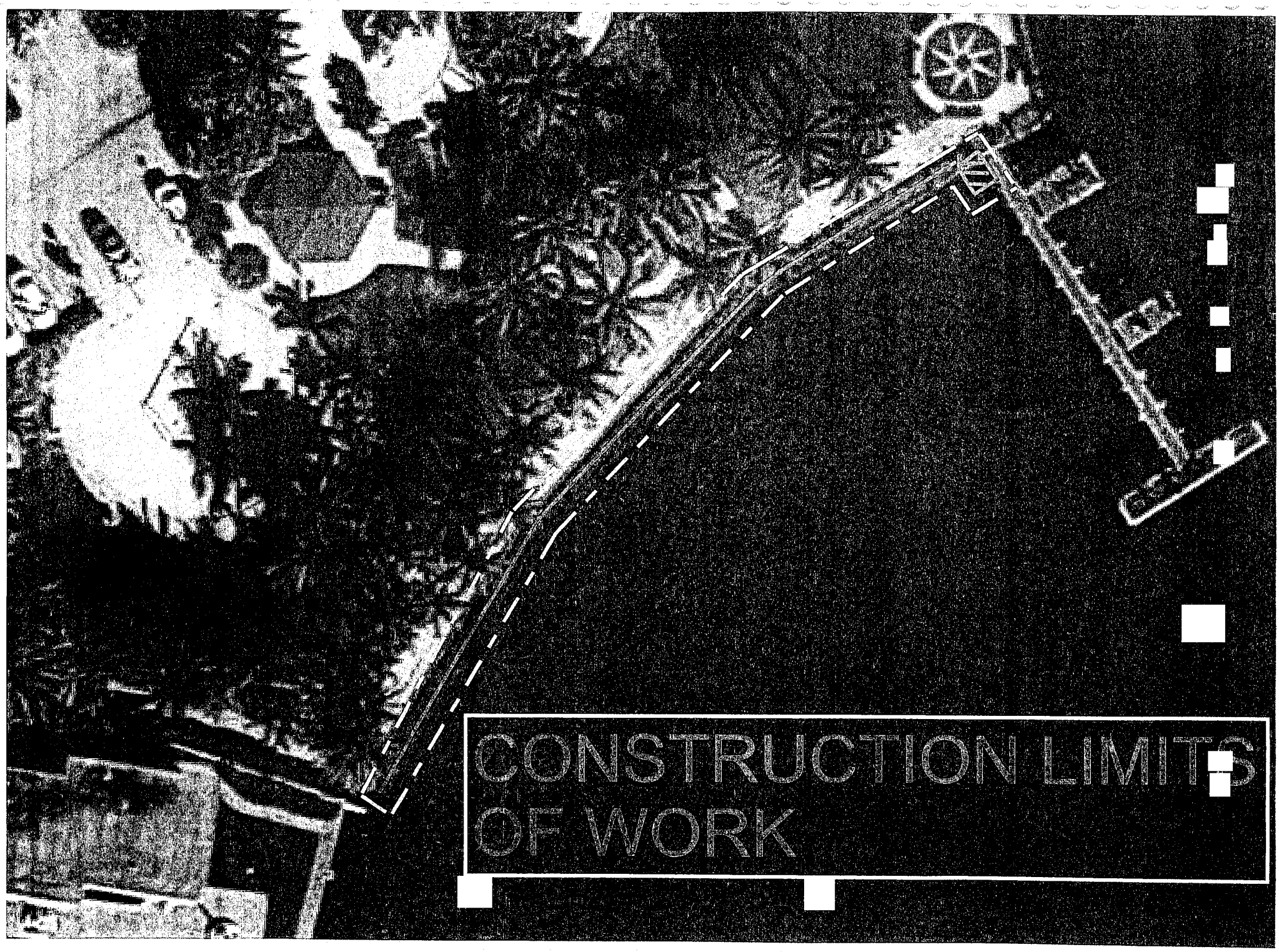
19) GMP does not include landscaping

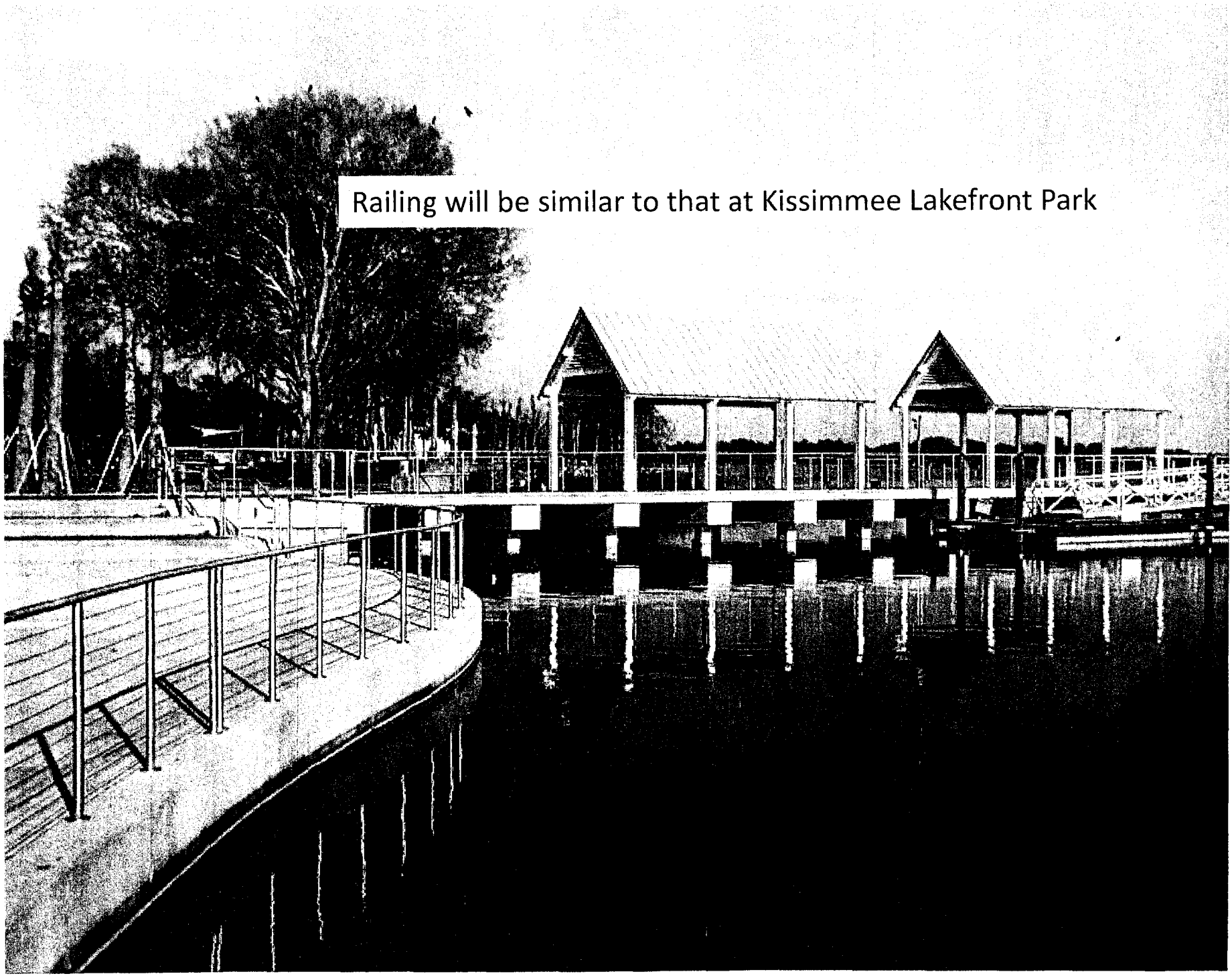
20) GMP does not include any electrical or lighting.

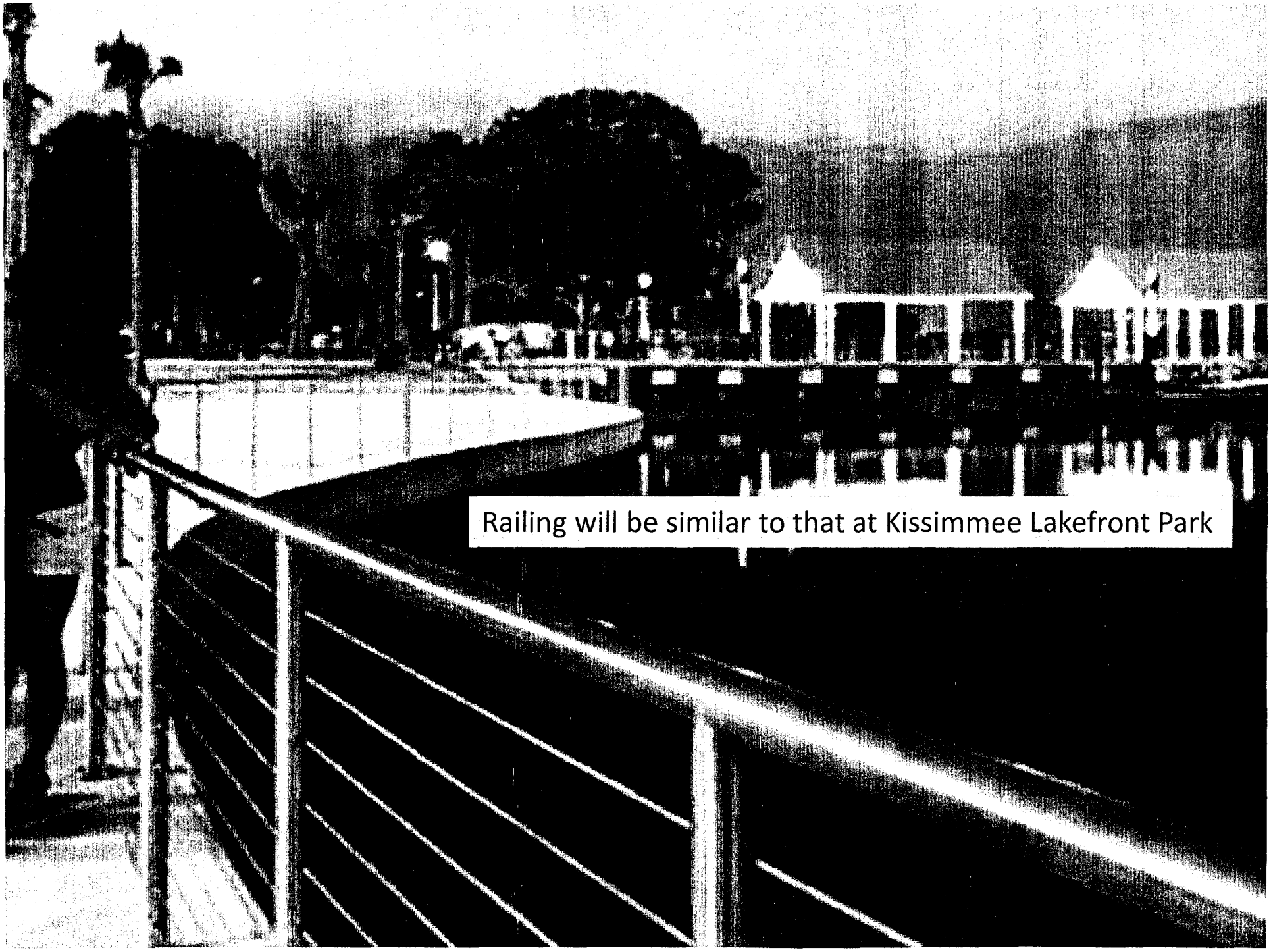
21) GMP includes a stainless steel hinged and lockable gate. Exact placement of this gate is to be determined by the City of Pompano.

22) GMP includes sketch of the construction limits of work. BCI is not to responsible for any construction or liability outside these limits.

BURKHARDT CONSTRUCTION, INC.


CONSTRUCTION LIMITS
OF WORK


Railing will be similar to that at Kissimmee Lakefront Park


Railing will be similar to that at Kissimmee Lakefront Park

BURKHARDT CONSTRUCTION, INC.

Vincent G. Burkhardt
President

Hillsboro Inlet Dock Addition and Cable Railing

Scope of Work: Furnish and Install Approx. 6x12 Dock Addittion Using Vinyl Decking
and Furnish and Install approx. 229 LF of Stainless Steel Cable Railing and Gate on Seawall Cap and Dock Addition

12/16/2015

DOCK ADDITION

COMPANY	CONTACT	DOCK TOTAL
ALL POWER MARINE BOATLIFTS & DOCKS, INC. 2840 NE 7th Ave. POMPANO BEACH, FL 33064	**MATTHEW** 954-942-5559 954-942-5539 (FAX)	**$3,495.00**
BROWARD DOCK AND SEAWALL, INC. 4430 NE 1st Terr. POMPANO BEACH, FL 33064	**JERRY WOOTEN** 954-557-3775 954-975-9691 (FAX)	$3,600.00
RANCO CONSTRUCTION CORP. 2514 Hollywood Blvd. Suite 501 Hollywood, FL 33020	**BILL ROCHE** 954-920-3350 954-920-4434 (FAX)	$7,990.00
QUALMANN MARINE/ AMERICAN SEAWALL 2860 NE 16th St. Pompano Beach, FL 33062	**RAY QUALMANN** 954-941-0132	DECLINED BID OPPORTUNITY
SEATECH CONSTRUCTION, INC. 1649 SW 1st Way Deerfield Beach, FL 33441	**NORMA GENE** 954-480-2607	DECLINED BID OPPORTUNITY

S.S. CABLE RAILING

COMPANY	CONTACT	RAILING TOTAL
AMAZON METAL FABRICATORS, INC. 600 Cox Rd. Unit C COCOA, FL 3292	**DON** 321-631-7574 321-631-2799 (FAX)	**$46,035.44**
THE MODERN FORGE 110 NE 47th Ct. Oakland Park, FL 33334	**BOB CUCCO** 954-614-8784	$55,250.00
RANCO CONSTRUCTION CORP. 2514 Hollywood Blvd. Suite 501 Hollywood, FL 33020	**BILL ROCHE** 954-920-3350 954-920-4434 (FAX)	$84,890.00
REICH METALS 5405 Webster Ave. West Palm Beach, FL 33405	**JOHN CHILDS** 561-585-7300 561-585-0064 (FAX)	DECLINED BID OPPORTUNITY
COMET FENCE 1341 NW 13th Ave Pompano Beach, FL 33069	**SHAWN EGHBALI** 954-975-6401 954-975-6403 (FAX)	DECLINED BID OPPORTUNITY
D & D WELDING 222 SW 21st Terr Ft. Lauderdale, FL 33312	**RAMON** 954-791-3385	NO RESPONSE

FROM	
	All Power Marine Boatlifts & Docks, Inc. Matthew C. Klenner CBC # 1257177 2840 NE 7th Ave. Pompano Beach, FL 33064 www.marineboatlifts.com matthew@marineboatlifts.com (954)942-5559 Office (954)942-5339 fax

PROPOSAL

PROPOSAL SUBMITTED TO:	DATE 11/16/14 ROUGH DRAFT	
NAME BRANDON RHODES/BURKHARDT CONSTRUCTION, INC	JOB NAME HILLSBORO INLET PARK	
STREET 1400 ALABAMA AVENUE, SUITE 20	STREET	
CITY WEST PALM BEACH, FL 33401	CITY	STATE FL
STATE FL	PHONE 561-659-1400 BRANDON@BURKHARDTCONSTRUCTION.COM	

We hereby submit specifications and estimate for:

1. Permits extra cost.

2. Park dock framing with cut back to piles under dock.

3. Install new framing joining concrete piles and deck with matching Composite Deck.

Total $3,495.00

✓ Lumber ok?

RECEIVED

BURKHARDT CONSTRUCTION, INC.

By brandon at 3:36:08 PM, 11/16/2015

We hereby propose to furnish labor and materials--complete in accordance with the above specifications, for the sum of Three Thousand Four Hundred Ninety five Dollars ($3,495.00) with payments to be made as follows:
To be determined

All material is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from above specifications involving extra costs will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accident or delays beyond our control. This proposal subject to acceptance within 14 days and it is void thereafter at the option of the undersigned.

Authorized Signature _____

ACCEPTANCE OF PROPOSAL

The above prices, specifications and conditions are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

ACCEPTED:

Signature _____

DATE _____ Signature _____

© E-Z CONTRACTORS FORMS FORM NO. PROP23

BOAT DOCKING PROTECTION ?
SHOWING TO NORTH SIDE ?
11/24/15 YES!

DOT RAILING.COM

Amazon Metal Fabricators,Inc.
600 Cox Rd.
Unit C
COCOA, FL 32926

Voice: 321-631-7574
Fax: 321-631-2799
Email; sales@dotrailing.com
Web site; www.dotrailing.com

QUOTATION

Quote Number: 6608
Quote Date: Nov 3, 2015
Page: 1

RECEIVED
BURKHARDT CONSTRUCTION, INC.
By brandon at 8:58:20 AM, 11/8/2015

Quoted To:

Burkhardt Construction Inc
1400 Alabama Avenue
Ste 20
West Palm Beach, FL 33401

Customer ID	Good Thru	Payment Terms	Sales Rep
BURKH	12/3/15	Deposit with order	

Quantity	Item	Description	Unit Price	Amount
		S.S. Cable Rail at Hillsboro Inlet Attention Brandon Rhodes Scope of Work Site measure for +/- 229 LF of Stainless Steel pipe Cable railing installed on Sea wall. Preparation of shop drawings for approval by Customer Provide professional Engineered sealed prints. Fabricate and install railing in core drilled holes. Portion of project with wood dock will require floor mounting base plate. Material Specifications Top cap rail 1 1/2"schedule 40 type 316 stainless steel pipe. Tension posts 1 1/2" schedule 80 type 316 stainless steel pipe End post stiffener & intermediate posts 1 1/2" schedule 40 type 316 stainless steel pipe Undrilled raised stainless steel post floor covers (type 304 stainless steel)e mounted base plates. Stainless steel finish to a 180 grit. 3/16" diameter type 316 stainless steel 1 x 19 construction cable, with hydraulically swaged type 316 S/steel end fittings. Post grout non metallic portland cement based non shrink grout.		

Subtotal	Continued
Sales Tax	Continued
TOTAL	**Continued**

For all your D.O.T. Railing needs, visit us at
www.dotrailing.com
FDOT Facility ID: AF-FL-010

DOT RAILING.COM

Amazon Metal Fabricators,Inc.
600 Cox Rd.
Unit C
COCOA, FL 32926

Voice: 321-631-7574
Fax: 321-631-2799
Email; sales@dotrailing.com
Web site; www.dotrailing.com

QUOTATION

Quote Number: 6608
Quote Date: Nov 3, 2015
Page: 2

RECEIVED
BURKHARDT CONSTRUCTION, INC.
By brandon at 8:58:37 AM, 11/8/2015

Quoted To:

Burkhardt Construction Inc
1400 Alabama Avenue
Ste 20
West Palm Beach, FL 33401

Customer ID	Good Thru	Payment Terms	Sales Rep
BURKH	12/3/15	Deposit with order	

Quantity	Item	Description	Unit Price	Amount
		Deposit with order.		
		.		
229.00		Stainless steel cable rail materials	86.00	19,694.00
229.00		Shop labor to fabricate stainless steel cable system	24.00	5,496.00
229.00		install cable railing system	63.00	14,427.00
1.00		Provide project sealed Engineers prints	900.00	900.00

Subtotal	40,517.00
Sales Tax	1,511.40
TOTAL	**42,028.40**

For all your D.O.T. Railing needs, visit us at
www.dotrailing.com
FDOT Facility ID: AF-FL-010

AMAZON METAL FABRICATORS, INC.
600 Cox Rd.
Unit C
COCOA, FL 32926

Voice: 321-631-7574
Fax: 321-631-2799
Email; sales@amazonmetal.com
Web site; www.amazonmetal.com

QUOTATION

Quote Number: 6635
Quote Date: Dec 16, 2015
Page: 1

RECEIVED
BURKHARDT CONSTRUCTION, INC.
By brandon at 3:49:19 PM, 12/16/2015

Quoted To:
Burkhardt Construction Inc
1400 Alabama Avenue
Ste 20
West Palm Beach, FL 33401

Customer ID	Good Thru	Payment Terms	Sales Rep
BURKH	1/15/16	deposit & C.O.D.	

Quantity	Item	Description	Unit Price	Amount
		S.S. Cable Rail at Hillsboro Inlet Attention Brandon Rhodes Scope of Work- Seawall railing gate. Provision of one 60" railing opening & Pad lockable hinged gate (lock not included) Preparation of shop drawings for approval by Customer Fabricate and install railing gate and hinge posts in core drilled holes. Material Specifications Top cap rail 1 1/2"schedule 40 type 316 stainless steel pipe. Tension posts 1 1/2" schedule 80 type 316 stainless steel pipe Undrilled raised stainless steel post floor covers (type 304 stainless steel)e mounted base plates. Stainless steel finish to a 180 grit. 3/16" diameter type 316 stainless steel 1 x 19 construction cable, with hydraulically swaged type 316 S/steel end fittings. Guardian Stainless steel hinges, rated 1000 lbs each. Deposit with order. .		
1.00		materials Stainless steel 60" wide gate, with	1,544.00	1,544.00
			Subtotal	Continued
			Sales Tax	Continued
			TOTAL	**Continued**

AMAZON METAL FABRICATORS, INC.
600 Cox Rd.
Unit C
COCOA, FL 32926

Voice: 321-631-7574
Fax: 321-631-2799
Email; sales@amazonmetal.com
Web site; www.amazonmetal.com

QUOTATION

Quote Number: 6635
Quote Date: Dec 16, 2015
Page: 2

RECEIVED
BURKHARDT CONSTRUCTION, INC.
By brandon at 3:49:28 PM, 12/16/2015

Quoted To:

Burkhardt Construction Inc
1400 Alabama Avenue
Ste 20
West Palm Beach, FL 33401

Customer ID	Good Thru	Payment Terms	Sales Rep
BURKH	1/15/16	deposit & C.O.D.	

Quantity	Item	Description	Unit Price	Amount
		hinges and pad lock brackets, installed.		
1.00		Fabricate gate & posts	1,340.00	1,340.00
1.00		Install	950.00	950.00
			Subtotal	3,834.00
			Sales Tax	173.04
			TOTAL	**4,007.04**

Meeting Date: March 8, 2016 Agenda Item 8

REQUESTED COMMISSION ACTION:

X	Consent		Ordinance	X	Resolution		Consideration/ Discussion		Presentation

SHORT TITLE

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, ADOPTING THE 2015 UPDATE OF THE "UNIFIED REGIONAL SEA LEVEL RISE PROJECTION FOR THE SOUTHEAST FLORIDA" AS THE BASIS FOR SEA LEVEL RISE ADAPTATION PLANNING ACTIVITIES; PROVIDING FOR DISTRIBUTION; PROVIDING AN EFFECTIVE DATE.

Summary of Purpose and Why

The Southeast Florida Regional Climate Change Compact's Sea Level Rise Work Group prepared an updated "Unified Sea Level Rise Projection for Southeast Florida" (October 2015). In 2009, the City proclaimed October 24, 2009 as "International Climate Action Day". In 2013, via Resolution 2013-134, the City Commission affirmed its endorsement of the Mayor's Climate Action Pledge and the City's support for the Southeast Florida Regional Climate Change Compact (copy enclosed). Therefore by adopting this resolution the City Commission re-affirms its support for addressing issues related to sea level rise and its impact on the City. A copy of the updated "Unified Sea Level Rise Projection for Southeast Florida" (October 2015) is attached.

(1) Origin of request for this action: Development Services Dept.
(2) Primary staff contact: Robin M. Bird/ Karen Friedman KBF Ext. 7792
(3) Expiration of contract, if applicable: N/A
(4) Fiscal impact and source of funding: N/A

DEPARTMENTAL COORDINATION	DATE	DEPARTMENTAL RECOMMENDATION	DEPARTMENTAL HEAD SIGNATURE
Dev. Services	2/26/16	Approval	
City Attorney	2/27/16		
X City Manager			

Ordinance Workshop		Resolution		Consideration	
1st Reading		1st Reading		Results:	Results:
2nd Reading					

G:\Planning\Sustainability\Resolution Sea Level Rise\CC Agenda sheet_Reso.doc

City Attorney's Communication #2016-495
February 8, 2016

TO: Dennis W. Beach, City Manager

FROM: Mark E. Berman, City Attorney

RE: Resolution Adopting the 2015 Update of the "Unified Regional Sea Level Rise Projection for Southeast Florida"

As requested, attached please find the following Resolution addressing the above-referenced matter:

> **A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, ADOPTING THE 2015 UPDATE OF THE "UNIFIED REGIONAL SEA LEVEL RISE PROJECTION FOR SOUTHEAST FLORIDA" AS THE BASIS FOR SEA LEVEL RISE ADAPTATION PLANNING ACTIVITIES; PROVIDING FOR DISTRIBUTION; AND PROVIDING AN EFFECTIVE DATE.**

Please do not hesitate to contact me if I may be of further assistance.

MARK E. BERMAN

/jrm
l:cor/mgr/2016-495

Attachment

RESOLUTION NO. 2016-_____

CITY OF POMPANO BEACH
Broward County, Florida

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, ADOPTING THE 2015 UPDATE OF THE "UNIFIED REGIONAL SEA LEVEL RISE PROJECTION FOR SOUTHEAST FLORIDA" AS THE BASIS FOR SEA LEVEL RISE ADAPTATION PLANNING ACTIVITIES; PROVIDING FOR DISTRIBUTION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, sea level rise in Southeast Florida increases the risk of coastal inundation, compromises the function of drainage and flood control systems, and compounds saltwater intrusion of the Biscayne Aquifer and potable water wells; and

WHEREAS, sea level rise, if unaddressed, increases the risk for flood-related losses and service disruptions with broad socio-economic implications; and

WHEREAS, sea level in Southeast Florida has already risen nine inches over the last 100 years, including three inches in the last 23 years, and the rate of rise is expected to continue to accelerate with time; and

WHEREAS, a working group of researchers, senior scientists, and lead engineers from federal and regional agencies and local universities convened by the Southeast Florida Regional Climate Change Compact ("Compact") authored an initial Unified Sea Level Rise Projection for Southeast Florida in April 2011; and

WHEREAS, the Compact reconvened this Sea Level Rise Work Group in 2014 to develop an Updated Unified Sea Level Rise Projection for Southeast Florida ("Updated Projection"), which the Work Group released in 2015; and

WHEREAS, the Updated Projection and associated guidance document were designed to be applied across the four counties of the Compact (Broward, Palm Beach, Miami-Dade and Monroe) to ensure that all major infrastructure projects throughout Southeast Florida have a common basis for design and construction relative to expected future sea levels; and

WHEREAS, the Updated Projection, incorporating both lower and upper boundaries based on global trends and local conditions, is considered appropriate guidance for the majority of land use and infrastructure planning decision and investments in the region; and

WHEREAS, the Updated Projection presents a sea level rise of six to ten inches by 2030 and 14 to 26 inches by 2060, above the 1992 baseline, and also includes sea level rise projections for 2100, as well as a third, higher curve for long-term, risk-intolerant investments; and

WHEREAS, successful implementation of the community-wide Broward County Climate Action Plan, the Southeast Florida Regional Climate Action Plan, and specific efforts to reduce risk and bolster community and economic resilience requires significant action to address sea level rise within the near-term planning horizon (through 2060); and

WHEREAS, the Broward County Board of County Commissioners adopted the Updated Projection on November 10, 2015, and directed County staff to use the Updated Projection as the basis for sea level rise adaptation planning and project design; and

WHEREAS, the Unified Sea Level rise Projection for Southeast Florida shall be updated by the Compact Sea Level Rise Work Group, as warranted, based on scientific advancements, and shall be transmitted to the governing bodies of the counties and municipalities of Southeast Florida for acceptance following each revision; and

WHEREAS, consistent planning across the region and levels of government is essential for resilient development and adaptation across our communities; now, therefore,

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA:

SECTION 1. The 2015 Update of the Unified Sea Level Rise Projection for Southeast Florida ("Updated Projection") is hereby adopted for use in the City of Pompano Beach, and municipal staff shall use the Updated Projection as the basis for sea level rise adaptation planning activities.

SECTION 2. The Updated Projection shall be considered in agency planning and decision-making, project plans, and infrastructure design.

SECTION 3. The City Commission agrees to fully consider future revisions of the Unified Sea Level Projection for Southeast Florida for adoption and use in the city.

SECTION 4. The City Clerk is directed to distribute this resolution to the Broward County Board of County Commissioners.

SECTION 5. This Resolution shall become effective upon passage.

PASSED AND ADOPTED this _____ day of _____, 2016.

_____

LAMAR FISHER, MAYOR

ATTEST:

_____

ASCELETA HAMMOND, CITY CLERK

:jrm
2/8/16
l:reso/2016-130

UNIFIED SEA LEVEL RISE PROJECTION

SOUTHEAST FLORIDA

REGIONAL COMPACT

October 2015

Prepared by the

Sea Level Rise Work Group

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Recommended Citation

Southeast Florida Regional Climate Change Compact Sea Level Rise Work Group (Compact). October 2015. *Unified Sea Level Rise Projection for Southeast Florida.* A document prepared for the Southeast Florida Regional Climate Change Compact Steering Committee. 35 p.

EXECUTIVE SUMMARY

The Southeast Florida Regional Climate Change Compact reconvened the Sea Level Rise Work Group for the purpose of updating the unified regional projection based on global projections, guidance documents and scientific literature released since the original regional projection in 2011 (Compact, 2011). The objective of the unified sea level rise projection for the Southeast Florida region remains consistent that the projection is for use by the Climate Compact Counties and partners for planning purposes to aid in understanding of potential vulnerabilities and to provide a basis for developing risk informed adaptation strategies for the region. For the 2015 update, the starting point for all sea level rise projections has been shifted from 2010 to 1992. This allows for direct use of local tide station information to convert projections into local water surface elevations for flood vulnerability studies, and is consistent with current guidance from the U.S. Army Corps of Engineers (USACE) and the National Oceanographic and Atmospheric Agency (NOAA). The Unified Sea Level Rise projection for Southeast Florida has also been extended to 2100 in recognition of the need for longer range guidance for major infrastructure and other long term investments now being planned.

In the short term, sea level rise is projected to be 6 to 10 inches by 2030 and 14 to 26 inches by 2060 (above the 1992 mean sea level). In the long term, sea level rise is projected to be 31 to 61 inches by 2100. For critical infrastructure projects with design lives in excess of 50 years, use of the upper curve is recommended with planning values of 34 inches in 2060 and 81 inches in 2100. The National Aeronautics and Space Administration Jet Propulsion Laboratory (2015) has reported the average global sea level has risen almost 3 inches between 1992 and 2015 based on satellite measurements. Sea level rise in South Florida has been of similar magnitude over the same period (NOAA, 2015) but is anticipated to outpace the global average due to ongoing variations in the Florida Currents and Gulf Stream.

Projected sea level rise, especially by 2060 and beyond, has a significant range of variation as a result of uncertainty in future greenhouse gas emissions and their geophysical effects, the incomplete quantitative understanding of all geophysical processes that might affect the rate of sea level rise in climate models and the limitations of current climate models to predict the future. As such, the Work Group recommends that the unified sea level rise projection include three curves, in descending order, the NOAA High Curve, the USACE High Curve and a curve corresponding to the median of the IPCC AR5 RCP8.5 scenario, with specific guidance as to how and when they should be used in planning. This guidance document describes the recommended application of the projection as it relates to both high and low risk projects and short and long-term planning efforts. Also, the Work Group recommends that this guidance be updated every

five to seven years because of the ongoing advances in scientific knowledge related to global climate change and potential impacts.

INTRODUCTION

WHO SHOULD USE THIS PROJECTION AND GUIDANCE DOCUMENT?

The Unified Sea Level Rise Projection for Southeast Florida is intended to be used for planning purposes by a variety of audiences and disciplines when considering sea level rise in reference to both short and long-term planning horizons and infrastructure design in the Southeast Florida area.

HOW SHOULD THE REGIONAL PROJECTION BE APPLIED?

The projection (*Unified Sea Level Rise Projection for Southeast Florida)* contains a graph and table describing the rise in sea level from 1992 through the turn of the current century. The projection can be used to estimate future sea level elevations in Southeast Florida and the relative change in sea level from today to a point in the future. *Guidance for Application* contains directions and specific examples of how the projection can be used by local governments, planners, designers and engineers and developers. This regional projection is offered to ensure that all major infrastructure projects throughout the Southeast Florida region have the same basis for design and construction relative to future sea level.

WHAT ARE THE IMPACTS ASSOCIATED WITH SEA LEVEL RISE?

The consequences associated with sea level rise include direct physical impacts such as coastal inundation of inland areas, increased frequency of flooding in vulnerable coastal areas, increased flooding in interior areas due to impairment of the region's stormwater infrastructure i.e. impacts to gravity drainage systems and features in the regional water management canal system, saltwater intrusion into the aquifer and local water supply wells, and contamination of the land and ocean with pollutants and debris and hazardous materials released by flooding. Consequences also include cascading socio-economic impacts such as displacement, decrease in property values and tax base, increases in insurance costs, loss of services and impaired access to infrastructure. The likelihood and extent to which these impacts will occur is dependent upon the factors influencing the rate of sea level rise such as the amount of greenhouse gases emitted globally, rate of melting of land-based ice sheets, the decisions and investments made by communities to increase their climate resilience and the many interconnected processes described in the *Appendix B: State* of Science Update. One of the values of this sea level rise projection is the ability to perform scenario testing to better understand the potential impacts and timeline of sea level rise within the Southeast Florida community.

WHO DEVELOPED THE UNIFIED SEA LEVEL RISE PROJECTION FOR SOUTHEAST FLORIDA?

In 2010, the Southeast Florida Regional Climate Change Compact Steering Committee organized the first Regional Climate Change Compact Technical Ad hoc Work Group (Work Group). Their objective was to develop a unified sea level rise projection for the Southeast Florida region for use by the Climate Compact Counties and partners. Its primary use was for planning purposes to aid in understanding of potential vulnerabilities and to provide a basis for outlining adaptation strategies for the region. The Work Group reviewed existing projections and scientific literature and developed a unified regional projection for the period from 2010 to 2060 (Compact, 2011). The projection highlighted two planning horizons: 1) by 2030, sea level rise was projected to be 3 to 7 inches above the 2010 mean sea level and 2) by 2060, sea level rise was projected to be 9 to 24 inches above the 2010 mean sea level. In anticipation of the release of the United Nations Intergovernmental Panel on Climate Change Fifth Assessment Report (IPCC, 2013), the Sea Level Rise Work Group recommended a review of the projection four years after its release in 2011.

In September 2014, the Sea Level Rise Work Group was reconvened for the purpose of updating the unified regional projection based on projections and scientific literature released since 2011. This report released in October 2015 contains a summary of the projections and publications reviewed and discussed, the methodology for deriving the projection, the recommended unified regional projection and additional recommendations from the Sea Level Rise Work Group.

UNIFIED SEA LEVEL RISE PROJECTION FOR SOUTHEAST FLORIDA

PROJECTION AND SUMMARY

This Unified Sea Level Rise projection for Southeast Florida updated in 2015 projects the anticipated range of sea level rise for the region from 1992 to 2100 (Figure 1). The projection highlights three planning horizons:

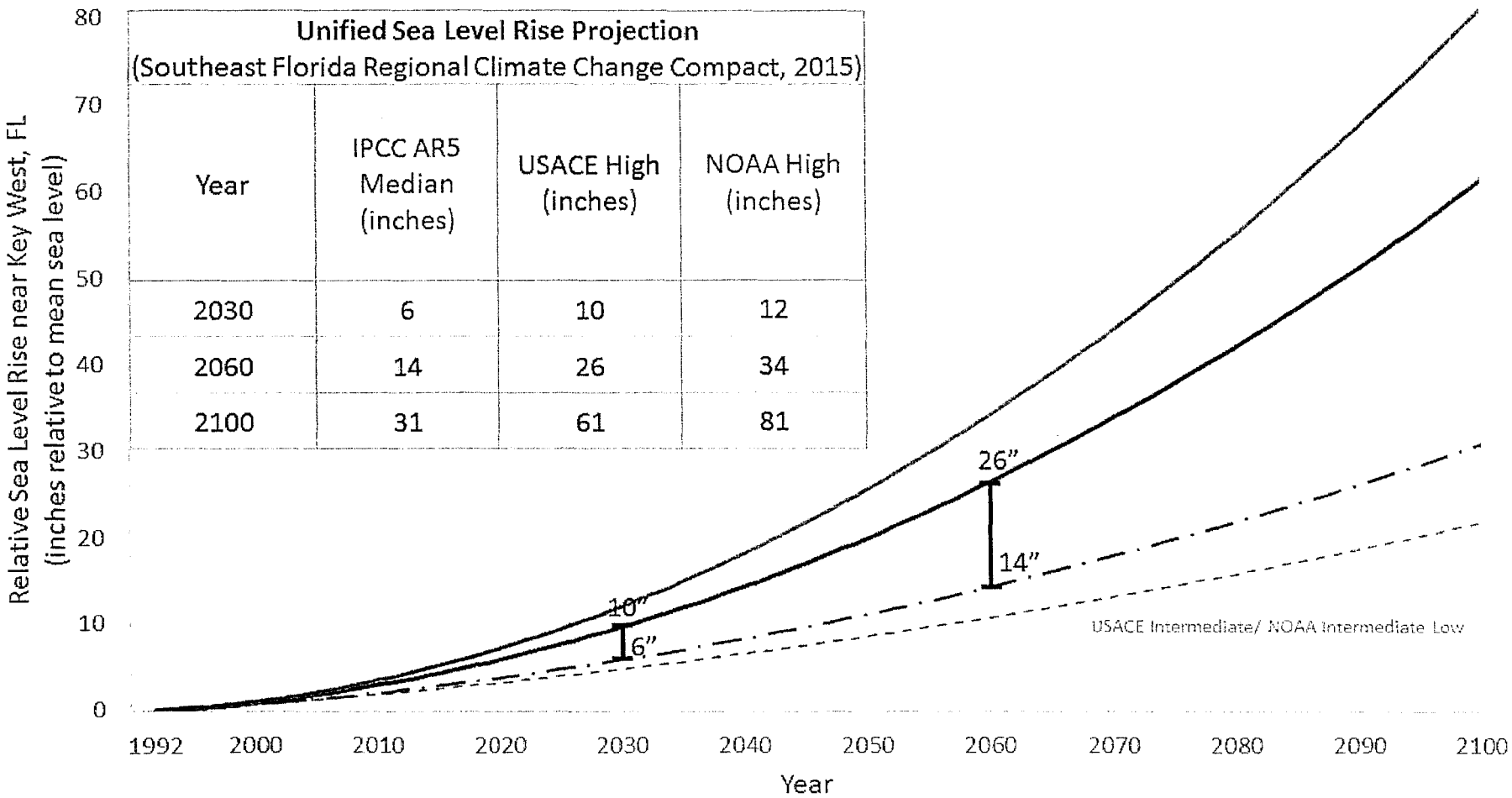
1) short term, by 2030, sea level is projected to rise 6 to 10 inches above 1992 mean sea level,

2) medium term, by 2060, sea level is projected to rise 14 to 34 inches above 1992 mean sea level,

3) long term, by 2100, sea level is projected to rise 31 to 81 inches above 1992 mean sea level.

Projected sea level rise in the medium and long term has a significant range of variation as a result of uncertainty in future greenhouse gas emissions and their geophysical effects, the incomplete quantitative understanding of all geophysical processes affecting the rate of sea level rise in climate models and current limitations of climate models to predict the future. As such, the Work Group recommends that the unified sea level rise projection include three global mean sea level rise curves regionally adapted to account for the acceleration of sea level change observed in South Florida. The titles of the global mean sea level rise curves were retained for simplicity of referencing source but the curves have been adjusted from the global projections to reflect observed local change. The projection consists of the NOAA High Curve, the USACE High Curve (also known as the NOAA Intermediate- High) and the median of the IPCC AR5 RCP8.5 scenario, with specific guidance as to how and when they should be used in planning.

- The lower boundary of the projection (blue dashed line) can be applied in designing low risk projects that are easily replaceable with short design lives, are adaptable and have limited interdependencies with other infrastructure or services.
- The shaded zone between the IPCC AR5 RCP8.5 median curve and the USACE High is recommended to be generally applied to most projects within a short -term planning horizon. It reflects what the Work Group projects will be the most likely range of sea level rise for the remainder of the 21st Century.
- The upper curve of the projection should be utilized for planning of high risk projects to be constructed after 2060 or projects which are not easily replaceable or removable, have a long design life (more than 50 years) or are critically interdependent with other infrastructure or services.



Unified Sea Level Rise Projection
(Southeast Florida Regional Climate Change Compact, 2015)

Year	IPCC AR5 Median (inches)	USACE High (inches)	NOAA High (inches)
2030	6	10	12
2060	14	26	34
2100	31	61	81

Figure 1: Unified Sea Level Rise Projection. These projections are referenced to mean sea level at the Key West tide gauge. The projection includes three global curves adapted for regional application: the median of the IPCC AR5 RCP8.5 scenario as the lowest boundary (blue dashed curve), the USACE High curve as the upper boundary for the short term for use until 2060 (solid blue line), and the NOAA High curve as the uppermost boundary for medium and long term use (orange solid curve). The incorporated table lists the projection values at years 2030, 2060 and 2100. The USACE Intermediate or NOAA Intermediate Low curve is displayed on the figure for reference (green dashed curve). This scenario would require significant reductions in greenhouse gas emissions in order to be plausible and does not reflect current emissions trends.

PROJECTION UPDATE

The key components of the methodology used to develop the unified sea level rise projection are as follows:

- *Planning Horizon of 2100:* In response to the release of climate scenarios extending to year 2100 from the Intergovernmental Panel on Climate Change (IPCC), projections through year 2100 by federal agencies including the US Army Corps of Engineers (USACE) and the National Oceanographic and Atmospheric Administration (NOAA) and the need for planning for infrastructure with design lives greater than 50 years, the unified sea level rise projection time scale has been extended to 2100.

- *Starting in 1992*: The year 1992 has been selected as the initial year of the projection because it is the center of the current mean sea level National Tidal Datum Epoch of 1983-2001. A tidal datum epoch is a 19 year period adopted by the National Ocean Service as the official time segment over which tide observations are used to establish tidal datums such as mean sea level, mean high water etc. The National Tidal Datum Epoch is revised every 20-25 years to account for changing sea levels and land elevations.

- *Tide gauge selection:* The Key West gauge (NOAA Station ID 8724580) was maintained as the reference gauge for calculation of the regional projection as was used in the original projection. In addition, appropriate conversion calculations are provided in Section 4: Guidance for Application in order to reference the projection to the Miami Beach gauge (NOAA Station ID 8723170) or the Lake Worth Pier gauge (NOAA Station ID 8722670). The Key West gauge has recorded tidal elevations since 1913. Tidal records from Miami Beach and Lake Worth Pier are available since 2003 and 1996, respectively.

- *Review of existing projections:* Global projections released since 2011 were reviewed and considered for interpretation for the unified sea level rise projection including those developed by USACE (2011; 2013), NOAA (Parris et al., 2012), IPCC (IPCC, 2013), Bamber and Aspinall (2013), Horton et al. (2014), Jevrejeva et al. (2014), and Kopp et al. (2014). Review criteria included comprehensiveness of datasets and models used to develop the projections, standing in the scientific community, and applicability to the Southeast Florida region.

Summaries of the existing global projections are included below:

- *USACE Guidance: There was no update to the projections since 2011 (USACE, 2011). The range of global mean sea level change projected by USACE was approximately 0.2 to 0.6 meters (9 to 25 inches) by 2060 and 0.5 to 1.5 meters (20 to 59 inches) by 2100. Existing guidance and the online USACE Sea Level Change Calculator were used to adapt the global mean sea level change curves for the unified South Florida projection.*
- *IPCC AR5 Projections: The 5th Assessment Report (AR5) included four scenarios based on predicted greenhouse gas concentration trajectories (Regional Concentration Pathways, RCPs). The global mean sea level change projected in these scenarios ranged from 0.17 to 0.38 meters (7 to 15 inches) by years 2046 to 2065 and 0.26 to 0.82 meters (10 to 32 inches) by 2081 to 2100.*
- *NOAA Projections produced for the National Climate Assessment (NCA): For the 2014 NCA, four global mean sea level rise scenarios were defined in a manner allowing the user to select the appropriate curve based on risk of concern, uncertainty tolerance and type of application. The global mean sea level rise projected in these scenarios ranges from 0.2 meters to 2 meters (8 to 80 inches) by 2100.*
- *Recent Probabilistic Projections: Recently, several authors have quantitatively and qualitatively approached determining the likelihood or percent chance that the global mean sea level rise projections will occur by 2100. For example, based on a probability density function, Jevrejeva et al. (2014) concluded that there is only a 5% chance global mean sea level rise will be larger than 1.8 meters (71 inches) by 2100. Using an alternate method, Kopp et al. (2014) concluded there is only a 5% chance global mean sea level rise will be larger than 1.76 meters (69 inches). These studies represent examples of possible methods of further explaining applicability of projections for future use.*
- *Science Community Polling: Several polls have been conducted amongst groups within the scientific community to understand the experts' opinions on the level of uncertainty associated with existing global mean sea level rise projections. These surveys have yielded reported likely ranges of global mean sea level rise of 0.4 to 1.2 m (16 to 42 inches) depending on warming scenarios (Horton et al., 2014) and 0.29 m to 0.84 m (11 to 33 inches) (Bamber and Aspinall, 2013) by 2100.*

Projection confidence: The understanding of past sea level changes has improved since the Work Group's last review due to additional observations and analyses of processes driving thermal expansion, loss of ice from ice sheets and glaciers and terrestrial water storage by the scientific community. Despite this improved understanding, the development of complex climate models is evolutionary and many processes and responses are yet to be incorporated. The numerous ice melt accelerating feedbacks not in the models are especially of concern as they are speeding up ice melt and sea level rise well beyond model projections. Models do continue to offer useful approximations of trends and order of magnitude of rates of change and acceleration based on climate data input and are suitable for determining projected future ranges for planning and design efforts. Additionally, as noted in Parris et al. (2012), the quadratic curves comprising the projection were selected by the some of the scientific community for simplicity. Sea level will not rise in the smooth manner illustrated by the quadratic curves but, may be punctuated by faster and slower rates (Parris et al., 2013).

GUIDANCE FOR APPLICATION

INCREASE IN RECURRENT FLOODING AND REDUCED DRAINAGE CAPACITY

Recent analyses of tide gauge records acquired along the US Atlantic coast indicate a rapid acceleration in the rate of sea level rise since 2000, which was attributed to possible slowing down of the Atlantic Meridional Overturning Circulation (AMOC) (Ezer et al., 2013; Sallenger et al., 2012; Yin et al., 2009). The higher sea level resulted in increasing flooding frequency in several coastal communities, e.g., Boston, Norfolk, and Miami Beach (Ezer et al., 2013; Kirshen et al., 2008; Kleinosky et al., 2007; Wdowinski et al., 2015). These frequent flood events, often termed "nuisance flooding", occur mainly due to heavy rain during high tide conditions but sometimes occur due to high tide alone and are termed "King tides", "lunar flooding" or "sunny sky flooding". Recently, Ezer and Atkinson (2014) used tide gauge data to calculate accumulated flooding time in twelve locations along the Atlantic coast and showed a significant increase in flooding duration over the past twenty years. They suggested that flood duration is a reliable indicator for the accelerating rate of sea level rise, which is often difficult to estimate on a regional-scale.

On the national scale, NOAA (2014) published an assessment of nuisance flooding finding that the duration and frequency of these events are intensifying around the United States. Subsequently, Sweet and Park (2014) demonstrated that coastal areas are experiencing an increased frequency of flood events (an acceleration) over the last few decades, and that this acceleration in flood occurrence will continue regardless of the specific rate of sea level rise.

A detailed analysis of nuisance flooding occurrence in Miami Beach was conducted by Wdowinski et al. (2015), who used a variety of data sources (tide gauge, rain gauge, media reports, insurance claims, and photo records) from the past 16 years (1998-2013). They found that most flooding events occur after heavy rain (> 80 mm, 3 inches) during high tide conditions, but also after the fall equinox tides regardless of rain events. An analysis of flooding frequency over the past 16 years revealed that since 2006, rain-induced events increased by 33% and tide-induced events quadrupled, from 2 events during 1998-2005 to 8-16 events in 2006-2013. Wdowinski et al. (2015) also analyzed the nearby Virginia Key tide gauge record and found a significant acceleration in the rate of sea level rise since 2006. The average rate of regional sea level rise since 2006 is 9±4 mm/yr, significantly higher than the global average rate of 2.8±0.4 mm/yr estimated from in-situ data (Church and White, 2011). Although the Work Group notes that continued analysis of changes in trends over time is necessary to determine long-term significance of this recently observed uptrend, studies have already begun to correlate the regional sea level rise to the slowing down of the Gulfstream. A comparison between sea level variations near Miami with high-resolution global climate model simulations (Kirtman et al., 2012) revealed a strong correlation between increasing sea level rise in the Miami area and a

weakening of the Florida Current-Gulf Stream system. This finding confirmed concurs with other studies that relate sea level rise acceleration along the US Atlantic coast with weakening of the Gulf Stream (e.g., Ezer et al., 2013; Park and Sweet, 2015).

STORM SURGE AND SEA LEVEL RISE

Storm surge and sea level rise are independent coastal processes that when occurring simultaneously lead to compounded impacts. Sea level rise will increase the inland areal extent inundated by surges, the depth of flooding and power of the surge and the extent and intensity of damage associated with storm surge and waves. As a result, severe storms of the future will cause more damage than storms of equal intensity occurring at today's sea level. Tebaldi et al. (2012) estimate a 100-year magnitude surge flooding (by today's standards) will begin to occur every 20 years at the projected mean sea level in 2050. Regional hazard mapping does not yet include the combined effects of sea level rise and surge but the impacts are anticipated to be significant.

Historically, the sea level extremes have increased along with the increase in mean sea level at locations along the coasts. Using this as the basis, one can relate the sea level extremes to mean sea level which allows the determination of future extremes and return periods (Obeysekera and Park, 2013). Another approach is to use the non-tidal residuals (component of storm surge and waves above the tidal variations), NTR, and determine their probabilistic characteristics. Assuming future sea level rise scenarios and the tidal variations, one can then superimpose extreme storm surge of NTR for a given return period to determine total sea level extreme for a given time epoch in the future. Return period for a given scenario can be determined using methods outlined in Salas and Obeysekera (2014). Both approaches assume there is no change in future "storminesss" although with higher sea levels, magnitude of storm surge may change at some locations along the coasts.

NATURAL RESOURCE DEGRADATION

As sea level rise increasingly inundates coastal areas, there is the potential for degradation of natural resources and loss of their services to the surrounding environment. Ecosystems will transition either by retreat and migration, adaptation, or elimination of functions and certain species. Shallow water habitats may transition to open water, forcing ecological changes in coastal wetlands and estuaries affecting nesting, spawning and feeding locations and behavior. Intrusion of saltwater inland, into inland water bodies and within the aquifer is negatively impacting freshwater resources, and these impacts will worsen or accelerate with further sea level rise. Inundation of shorelines will increase the extent and severity of beach erosion and

previously stable coastal areas. In combination, these impacts will cascade throughout the region's ecosystems even if they are not immediately adjacent to open water areas.

Natural infrastructure is critical to the resilience of the urban environment, in that it provides many benefits related to storm protection, water and air purification, moderating urban heat effects, and socio-economics. South Florida's tourist economy is heavily dependent on these natural resources. The region must prioritize providing space for habitat transitions and focus on reducing anthropogenic pressures that would compound the degrading effects of sea level rise.

GUIDANCE IN APPLYING THE PROJECTIONS

AUDIENCES

The Unified Sea Level Rise Projection for Southeast Florida is intended to be used for planning purposes by a variety of audiences and disciplines when considering sea level rise in reference to both short and long-term planning horizons as well as infrastructure siting and design in the Southeast Florida area. Potential audiences for the projections include, but are not limited to, elected officials, urban planners, architects, engineers, developers, resource managers and public works professionals.

One of the key values of the projection is the ability to associate specific sea level rise scenarios with timelines. When used in conjunction with vulnerability assessments, these projections inform the user of the potential magnitude and extent of sea level rise impact at a general timeframe in the future. The blue shaded portion of the projection provides a likely range for sea level rise values at specific planning horizons. Providing a range instead of a single value may present a challenge to users such as engineers who are looking to provide a design with precise specifications. Public works professionals and urban planners need to work with the engineers and with policy makers to apply the projection to each project based on the nature, value, interconnectedness, and life cycle of the infrastructure proposed.

Finally, elected officials should use the projections to inform decision making related to issues such as adaptation policies, budget impacts associated with design features which address planning for future sea level rise, capital improvement project needs especially those associated with drainage and shoreline protection, and land use decisions.

APPLYING PROJECTION CURVES TO INFRASTRUCTURE SITING AND DESIGN

When determining how to apply the projection curves, the user needs to consider the nature, value, interconnectedness, and life cycle of the existing or proposed infrastructure. The blue

shaded portion of the projection can be applied to most infrastructure projects, especially those with a design life expectancy of less than 50 years. The designer of a type of infrastructure that is easily replaced, has a short lifespan, is adaptable, and has limited interdependencies with other infrastructure or services must weigh the potential benefit of designing for the upper blue line with the additional costs. Should the designer opt for specifying the lower curve, she/he must consider the consequences of under-designing for the potential likely sea level condition. Such consequences may include premature infrastructure failure. Additionally, planning for adaptation should be initiated in the conceptual phase. A determination must be made on whether or not threats can be addressed mid-life cycle via incremental adaptation measures, such as raising the height of a sluice gate on a drainage canal..

Forward thinking risk management is critical to avoiding loss of service, loss of asset value and most importantly loss of life or irrecoverable resources. An understanding of the risks that critical infrastructure will be exposed to throughout its life cycle such as sea level rise inundation, storm surge and nuisance flooding must be established early on in the conceptual phase. If incremental adaptation is not possible for the infrastructure proposed and inundation is likely, designing to accommodate the projected sea level rise at conception or selection of an alternate site should be considered. Projects in need of a greater factor of safety related to potential inundation should consider designing for the upper limit of the blue-shaded zone. Examples of such projects may include evacuation routes planned for reconstruction, communications and energy infrastructure and critical government and financial facilities.

Due to the community's fundamental reliance on major infrastructure, existing and proposed critical infrastructure should be evaluated using the upper curve of the projection, the orange curve (Figure 1, NOAA High). Critical projects include those or projects which are not easily replaceable or removable, have a long design life (more than 50 years), or are interdependent with other infrastructure or services. If failure of the critical infrastructure would have catastrophic impacts, it is considered to be high risk. Due of the community's critical reliance on major infrastructure, existing and proposed high risk infrastructure should be evaluated using the upper curve of the projection, the orange curve (Figure 1, NOAA High). Examples of high risk critical infrastructure include nuclear power plants, wastewater treatment facilities, levees or impoundments, bridges along major evacuation routes, airports, seaports, railroads, and major highways.

For low risk infrastructure projects, the lowermost curve of the projection (Figure 1, IPCC AR5 RCP8.5 curve) may be applied. Low risk projects include infrastructure expected to be constructed and then replaced within the next 10 years, projects that are easily replaceable and

adaptable or projects with limited interdependencies and limited impacts when failure occurs. An example of such a project may be a small culvert in an isolated area.

Additionally, planning for adaptation should be initiated in the conceptual phase. A determination must be made on whether or not risk can be addressed mid-life cycle via incremental. If incremental adaptation is not possible for the type of high risk infrastructure proposed and inundation is likely, designing to accommodate the projected sea level rise at conception or selection of an alternate site should be considered. To ensure an appropriately conservative design approach is used, the upper limit of the projection (Figure 1, NOAA High) should be used for projects with design lives of more than 50 years.

AVAILABLE VULNERABILITY ASSESSMENTS

The Southeast Florida Regional Climate Change Compact and the individual Compact Counties have developed region-wide and county-wide sea level rise inundation vulnerability assessments available for public use (Compact, 2012). These assessments spatially delineate areas of inundation correlating to 1 foot, 2 feet and 3 feet of sea level rise. In addition, the Compact website hosts a multitude of sources of information, tools and links in support of adaptation and mitigation planning for use by the Compact communities.

SUMMARY

The Work Group recommends the use of the NOAA High Curve, the USACE High Curve (USACE, 2015) and the median of the IPCC AR5 RCP8.5 scenario (IPCC, 2013) as the basis for a Southeast Florida sea level rise projection for the 2030, 2060 and 2100 planning horizons. In the short term, sea level rise is projected to be 6 to 10 inches by 2030 and 14 to 26 inches by 2060 (above the 1992 mean sea level). Sea level has risen 3 inches from 1992 to 2015. In the long term, sea level rise is projected to be 31 to 61 inches by 2100. For critical infrastructure projects with design lives in excess of 50 years, use of the upper curve is recommended with planning values of 34 inches in 2060 and 81 inches in 2100. Sea level will continue to rise even if global mitigation efforts to reduce greenhouse gas emissions are successful at stabilizing or reducing atmospheric CO_2 concentrations; however, emissions mitigation is essential to moderate the severity of potential impacts in the future. A substantial increase in sea level rise within this century is likely and may occur in rapid pulses rather than gradually.

The recommended projection provides guidance for the Compact Counties and their partners to initiate planning to address the potential impacts of sea level rise on the region. The shorter term planning horizons (through 2060) are critical to implementation of the Southeast Florida Regional

Climate Change Action Plan, to optimize the remaining economic life of existing infrastructure and to begin to consider adaptation strategies. As scientists develop a better understanding of the factors and reinforcing feedback mechanisms impacting sea level rise, the Southeast Florida community will need to adjust the projections accordingly and adapt to the changing conditions. To ensure public safety and economic viability in the long run, strategic policy decisions will be needed to develop guidelines to direct future public and private investments to areas less vulnerable to future sea level rise impacts.

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APPENDIX A: STAND ALONE GUIDANCE DOCUMENT AND PROJECTION

The Southeast Florida Regional Climate Change Compact's 2015 Unified Sea Level Rise Projection is presented below showing the anticipated range of sea level rise for the region from 1992 to 2100 (Figure 1). The projection highlights three planning horizons:

1) Short term, by 2030, sea level rise is projected to be 6 to 10 inches above 1992 mean sea level;

2) Medium term, by 2060, sea level rise is projected to be 14 to 26 inches above 1992 mean sea level with the less likely possibility of extending to 34 inches;

3) Long term, by 2100, sea level rise is projected to be 31 to 61 inches above 1992 mean sea level with the less likely possibility of extending to 81 inches.

The Unified Sea Level Rise Projection for Southeast Florida include three curves, named after the global sea level rise curves from which they were derived: the NOAA High Curve (orange solid), the USACE High Curve (blue solid) and the median of the IPCC AR5 scenario (blue dashed). The blue shaded area represents the *likely* range of sea level rise for our region. The orange curve represents a condition that is possible but less likely. The USACE Intermediate or NOAA Intermediate Low curve is displayed on the figure for reference (green dashed curve). This scenario would require significant reductions in greenhouse gas emissions in order to be plausible and does not reflect the impact on sea level from the current emissions trends.

When determining how to apply the projection curves, the user needs to consider the nature, value, interconnectedness, and life cycle of the infrastructure in question. The following guidance is provided for using the projection.

- The shaded zone between the IPCC AR5 median curve and the USACE High is recommended to be generally applied to most projects within a short to long-term planning horizon, especially those with a design life expectancy of less than 50 years. The designer of a type of infrastructure that is easily replaced, has a short lifespan, is adaptable, and has limited interdependencies with other infrastructure or services must weigh the potential benefit of designing for the upper blue line with the additional costs. Should the designer opt for specifying the lower curve, he must consider the consequences of under designing for the potential likely condition.
- The uppermost boundary of the projection (orange curve) should be utilized for planning of critical infrastructure to be constructed after 2060 or projects with a long design life (more than 50 years) as a conservative estimate of potential sea level rise. Critical projects include those which are not easily replaceable or removable, have a long design life (more than 50 years), or are interdependent with other infrastructure or services. If failure of the infrastructure would have catastrophic impacts on the economy, community or environment, it should be considered critical.

To reference the projection to the current year i.e. 2015, simply subtract the values listed in the table below from the projected sea level rise. For example, based on the projection, sea level rise in 2030 will be 6 to 10 inches above 1992 mean sea level. In order to determine how much rise will occur relative to the current year, 2015, the values listed in the table below for the IPCC AR5 median and USACE High curves can be subtracted from the projected range i.e. 6-3=3 inches for the lower end of the range and 10-4.3=5.6 inches for the upper end of the range, respectively. The projection can be restated as such: sea level will rise 3 to 5.6 inches from this year (2015) to 2030.

Current Year	IPCC AR5 Median (Blue Dashed Line)	USACE High (Blue Solid Line)	NOAA High (Orange Line)
2015	3	4.3	5.3
2016	3.1	4.7	5.6
2017	3.4	4.9	6
2018	3.5	5.3	6.4
2019	3.7	5.5	6.8

To convert local relative sea level rise datum from mean sea level to a topographic reference point used in surveying land elevations (NAVD 88), add the number listed in the table below to projected sea level rise:

	To convert relative sea level rise datum from mean sea level to feet NAVD 88*, add the number below to value from projection	To convert relative sea level rise datum from mean sea level to inches NAVD 88, add the number below to value from projection	Mean High Water (MHW)	Mean Low Water (MLW)
Key West	-0.87	-10.4	-5.6	-14.2
Vaca Key	-0.83	-10	-5.6	-14.2
Miami Beach	-0.96	-11.5	3.0	-26.5
Lake Worth Pier	-0.95	-11.4	4.9	-27.8

*North American Vertical Datum of 1988 (NAVD 88) is the topographic reference point used in surveying land elevations. By definition it is the vertical control datum of orthometric height established for vertical control surveying in the United States of America based upon the General Adjustment of the North American Datum of 1988.

Alternatively, the USACE Sea Level Change Curve Calculator (Version 2018.88) (USACE, 2015) found at this website http://www.corpsclimate.us/ccaceslcurves.cfm can be used to change datums, reference years and tide gauge locations. The projection curves were generated using this tool.

The equations used for the curves comprising the unified sea level rise projection are as follows:

- NOAA High Curve (Parris, 2012) and USACE High Curve (USACE, 2013):

$$E(t_2) - E(t_1) = a(t_2 - t_1) + b(t_2^2 - t_1^2)$$

where $E(t_2) - E(t_1)$ = Eustatic sea level change (m) with reference year of 1992;

t_1 = difference in time between current year or construction date and 1992 e.g. 2015-1992 = 23 years;

t_2 = difference in time between future date of interest and 1992 i.e. 2060-1992 = 68 years;

where *a* is a constant equal to 0.0017 mm/yr, representing the rate of global mean sea level change,

and b is a variabe equal to 1.56×10^{-4} for the NOAA High Curve; 1.13×10^{-4} for the USACE high curve, representing the acceleration of sea level change.

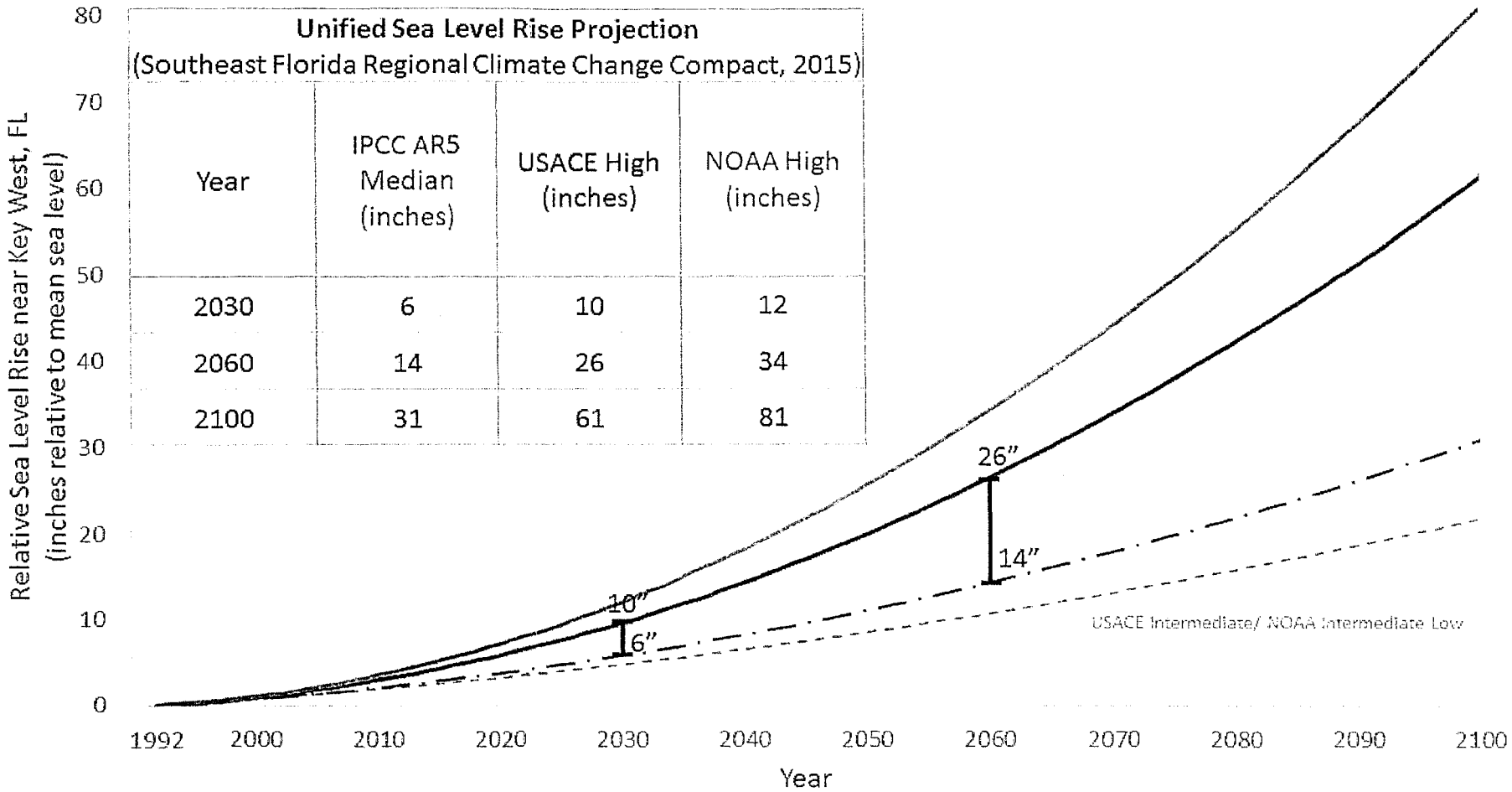
- IPCC AR5 RCP8.5 Median Curve (IPCC, 2013):

$$E(t_2) - E(t_1) = 0.0017(t_2 - t_1) + (4.684499 \times 10^{-5})(t_2^2 - t_1^2)$$

- The NOAA Intermediate Low/ USACE Low curve that is not part of the projection but included on the graph for reference (green dashed line) can be derived as follows:

$$E(t_2) - E(t_1) = 0.0017(t_2 - t_1) + (2.71262 \times 10^{-5})(t_2^2 - t_1^2)$$

The equations above are global mean sea level rise projections. In order to adapt the curves for regional use, the average rate of mean sea level rise or "a" value is adjusted. For example, to reference the above equations to the Key West tide gauge, a equals 0.0022 mm/yr.



Unified Sea Level Rise Projection
(Southeast Florida Regional Climate Change Compact, 2015)

Year	IPCC AR5 Median (inches)	USACE High (inches)	NOAA High (inches)
2030	6	10	12
2060	14	26	34
2100	31	61	81

Figure A-1: Unified Sea Level Rise Projection. These projections are referenced to mean sea level at the Key West tide gauge. The projection includes three global curves adapted for regional application: the median of the IPCC AR5 scenario as the lowest boundary (blue dashed curve), the USACE High curve as the upper boundary for the short term for use until 2060 (solid blue line), and the NOAA High curve as the uppermost boundary for medium and long term use (orange solid curve). The incorporated table lists the projection values at years 2030, 2060 and 2100. The USACE Intermediate or NOAA Intermediate Low curve is displayed on the figure for reference (green dashed curve). This scenario would require significant reductions in greenhouse gas emissions in order to be plausible and does not reflect current emissions trends.

APPENDIX B: STATE OF SCIENCE UPDATE

ACCELERATION OF SEA LEVEL RISE

A statistically significant acceleration of sea level rise has been documented in the latter half of the 20th century continuing through recent years (Church and White, 2011; Calafat and Chambers, 2013; Hay et al. 2015; IPCC, 2013; Watson et al., 2015). Hay et al. (2015) reported the global sea level rise rate from 1901 to 1990 to be 1.2 +/- 0.2 mm/yr (a value which had been overestimated in previous studies). Since 1993, an increase in the average global mean sea level rise rate has been observed (Hay et al., 2015; Watson et al., 2015). Watson et al. (2015) has most recently reported the average global mean sea level rise rate to be more than double the rate of the previous century, indicating an acceleration; the observed rate was 2.6+0.4 mm/yr from 1993 to 2015 with an acceleration of 0.04 mm/yr^2. This acceleration indicates sea level will rise more rapidly in the future than it has historically. The global and regional processes driving sea level rise and its acceleration are discussed in the following sections.

FACTORS INFLUENCING SEA LEVEL RISE

GLOBAL PROCESSES

In 2011, the Work Group noted studies describing a variety of reinforcing (positive) feedbacks that are accelerating ice sheet melt in Greenland and Antarctica and also accelerating Arctic pack ice melt, permafrost thaw and organic decay, and methane hydrate release from the warming Siberian Shelf, in addition to other global processes affecting sea level rise i.e. increasing greenhouse gas concentrations, changes in volcanic forcing and tropospheric aerosol loading (Compact, 2011). Since then, numerous additional reinforcing feedbacks have been documented and previously recognized feedbacks have intensified.

ACCELERATION OF ICE MELT

Accelerated melting of the ice sheets on Greenland and Antarctica (Rignot et al., 2011; Talpe et al., 2014) is expected to be the predominant factor affecting sea level rise acceleration during the 21st Century. Melting is caused by increasing temperatures and warming of the atmosphere, warm currents moving along the coast of Greenland, and warm ocean water moving under and up into ice sheets through deep outlet glacial fjords in Antarctica. Recent observations have indicated ice sheets are more vulnerable to melting than previously realized due to the extent of deep valleys within the ice sheets connecting warmer ocean water to the internal areas of the ice sheets thus causing rapid melting and peripheral thinning (Jenkins et al., 2010; Jacobs et al., 2011; Morlighem et al., 2014; Rignot et al., 2014; Greenbaum et al., 2015). Accelerated melting results in large discharges of fresh water which raises the local sea level near the ice sheets (8

inches around Antarctica over past 20 years) (Rye et al., 2014). This release of freshwater has resulted in a seasonal increase in the amount of sea ice in the Antarctic (Bintanja et al., 2013; Rye et al., 2014) and slower circulation of North Atlantic surface water, also known as Atlantic Meridional Overturning Circulation (Rahmstorf et al., 2015). The slowdown in circulation may contribute to increased local sea level rise along the Florida coast, as discussed in the ***Regional/ Local Processes*** section. The IPCC projections do not include the factors related to acceleration of ice melting processes described above, and as a result are likely an underestimate of future sea level rise (Rignot et al., 2011).

ICE SHEET DISINTEGRATION

Indicators of ice sheet disintegration include retreat of the ice sheet's outer boundary and rapid thinning. Lateral flow of the Greenland Ice Sheet margin, the outer boundary, has dramatically accelerated in the past two decades in response to surface melt waters penetrating fractures in the ice and warming and softening the ice (Bell et al., 2014). In addition to retreat, the ice sheets have initiated a rapid thinning process due to basal melt (Pritchard et al., 2012), signaling the initiation of prolonged ice sheet degradation based on historic analysis (Johnson et al., 2014). Joughin et al. (2011) have used numerical models to look at the sensitivity of the outlet glaciers of the West Antarctic Ice Sheet to ocean water melt and have concluded that the West Antarctic Ice Sheet collapse is already underway; the extent of the collapse in the future is not yet known. As part of the Gravity Recovery and Climate Experiment (GRACE) satellite monitoring program, ice sheet mass loss has been quantified as 280±58 gigatons per year (Gt/yr) from Greenland and up to 180±10 Gt/yr in Antarctica (Velicogna et al., 2014). As a reference for the magnitude of a gigaton, one could estimate one gigaton to equal the mass of over one hundred million elephants. In addition, significant recent work was completed to verify the estimated contribution of ice sheet disintegration to sea level rise using satellite data (Jacob et al., 2012; King et al., 2012; Gardner et al., 2013) with the conclusion that ice sheet melt accounted for 29±13% of sea level rise from 2003 to 2009 (Gardner, 2013). In order to further refine the estimates and projections of the magnitude of ice sheet degradation and their contribution to sea level rise, the complex dynamics driving ice sheet melt need to be better understood, in particular the mechanisms driving interactions between ice sheets and warm currents.

WARM CURRENTS

In 2011, the Work Group acknowledged the effects of warm ocean water currents accelerating summer pack ice melt and causing melting beneath the outlet glaciers. Recent work has further clarified the compounding mechanisms driving the flow and temperature changes of warm currents. Spence et al. (2014) analyzed the poleward shift in direction of the southern hemisphere westerly winds since the 1950's and simulated the intense warming of coastal waters

associated with such a shift in order to explain and forecast the significant temperature increase in ocean waters interacting with the base of ice sheets and floating ice shelves. This study serves to validate the projection of the persistence of this wind trend and the resulting melting due to warm current interaction. Separate from wind forcing, an increase in ocean surface stress due to thinning of the formerly consolidated sea-ice cover near Antarctica is proposed to result in a redirection of warm ocean currents into submarine glacial troughs and further expediting melting of the deep ice-shelf base based on ocean-ice modeling (Hellmer et al., 2012). Ice sheet melt as a result of interaction with warm currents is one of the dominant factors contributing to recent global sea level rise (IPCC, 2013); however, as discussed in the next section, land based contributions to global warming may further exacerbate sea level rise in the future.

THAWING PERMAFROST

The potential for significant additional emissions of carbon dioxide and methane from thawing permafrost and the rate of occurrence continues to be investigated. The intricate feedback mechanisms associated with permafrost are not well understood; as such, the IPCC did not include permafrost thaw in its projections (Collins et al., 2013). This deficiency was criticized publicly due to the theorized potential for permafrost carbon emissions to exceed emissions from fossil fuel use. Schuur et al. 2013 conducted a survey of experts to quantify permafrost change in response to four global warming scenarios and found despite risk for significant contributions of emissions from thawing, fossil fuel combustion was likely to remain the main source of emissions and climate forcing until 2100 based on the proposed warming scenarios.

Following the release of the IPCC (2013) report, demand for research to understand the dynamics of the physical and chemical permafrost processes has increased in order to confirm the estimates of emissions from thawing. As an initial step, the occurrence of significant submarine permafrost thawing was confirmed by Overduin et al. (2014) when 8 to 10°C of warming within the permafrost layer was observed in less than 1,000 years, resulting in a degradation of ice-bearing permafrost at the rate of 3 cm/yr. In addition, seawater seeping through soil pores was identified as the source of sulfate necessary to oxidize methane in the upper layer of the thawing permafrost. Although site specific, studies such as Overduin et al. (2014) will begin to provide the information necessary to incorporate permafrost thawing into models and projections in the near future.

REGIONAL/ LOCAL PROCESSES

VERTICAL LAND MOVEMENT

Vertical earth movements, which regionally and locally modify the globally averaged rate of sea level change, result in a relative rate of change that varies from one location to another. These

land motions have been inferred from historical tide data and geodesic measurements. When added to projected rates of global mean sea level rise, they result in a perceived change ranging from increased rise in regions of subsidence (e.g., New Orleans) to falling sea levels where the land is being uplifted (e.g., along the northern border of the Gulf of Alaska). Other regions are geologically stable and have only small differences with respect to the global rate of change. In South Florida, in general, coastal land elevations are considered to be relatively stable meaning that the land is not experiencing significant uplift nor subsidence. It is also important to note, the vertical land movement that is occurring is non-uniform across South Florida and movement measured at specific monitoring stations sites may not reflect vertical land movement in adjacent areas.

The Continuously Operating Reference (COR) network of permanent Global Positioning System (GPS) receivers provides precise measurements of vertical land movement in four locations throughout Southeast Florida (Key West, Virginia Key, Pompano Beach, and Palm Beach) over periods of nine to eleven years. Additional continuous GPS measurements have been acquired in eight other sites in the region over various time periods (two to eleven years). Precise analysis of these data reveals negligible vertical movements at most stations (less than 1 mm/yr) (Snay et al., 2007; Santamaría-Gómez et al., 2012; NGL, 2015). However, some stations show 1 to 6 mm/yr of subsidence, reflecting mostly local unstable conditions of the GPS antenna monument (e.g., local building movements) (e.g., Bock et al., 2012).

National Geodetic Survey has operated continuous GPS stations at Key West, Fort Lauderdale, Miami and Palm Beach Gardens. The GPS data of these sites were processed by the Nevada Geodetic Laboratory, who presents the results at GPS time series (http://geodesy.unr.edu/index.php). The rates of vertical land movement at these stations are shown in Table 1 (Blewitt et al., 2015). It should be noted vertical land movement is non-uniform across South Florida as a result of geology variations and the non-uniform compaction of fill placed during development of the region. Subsidence at tide stations is closely monitored to ensure the accuracy of sea level rise measurements. The regional rate of sea level rise is affected by such localized subsidence and is accounted for in the regional sea level rise acceleration variable incorporated in the projections adapted for the region.

Table 1: Continuous GPS Operation in Southeast Florida (Blewitt et al., 2015)

Site	Location	Duration	Vertical rate (mm/yr)
KYW1	Boca Chica Key	1997-2008	-0.5 ± 0.1
KYW5	Boca Chica Key	2007-present	0.1 ± 0.1
KYW6	Boca Chica Key	2007-present	1.0 ± 0.1 (uplift)
KWST	Key West airport	2003-present	-1.5 ± 0.1
CHIN	Key West, 500 m south of tide gauge	2008-presnt	-1.6 ± 0.5
LAUD	Fort Lauderdale Executive Airport	2005-2014; 2014-2015	-0.5± 1.1
ZMA1	Miami Airport	2004-2008; 2008-present	0.2± 0.9
FLC6	Florida City	2009-present	-1.8± 1.2
PBCH	North Palm Beach County Airport	2005-present	1.0± 1.0 (uplift)

Additionally, in some regions, the effects of changing ocean currents can further modify the relative local rate of sea level rise. Such is the case of the east coast of Florida, as is discussed in the next section, **Ocean Dynamics, Gulfstream/ Circulation**

OCEAN DYNAMICS, GULFSTREAM/ CIRCULATION

Ocean circulation has changed little during the current period of scientific observation, but in the future it can considerably alter the relative rate of sea level rise in some regions, including Southeast Florida. A slowing of the Florida Current and Gulf Stream will result in a more rapid sea level rise along the east coast of North America. By 2100, these circulation changes could contribute an extra 8 inches of sea level rise in New York and 3 inches in Miami according to Yin et al. (2009). Most of the global climate models used by the IPCC (IPCC, 2007; 2013) project a 20-30% weakening of the Atlantic Meridional Overturning Circulation (AMOC), of which the Gulf Stream and Florida Current are a part. Measurements of the AMOC have yet to conclusively detect the beginning of this change, however there has been a report of a recent decline in AMOC strength by Smeed et al. (2014) that coincides with the mid-Atlantic hotspot of sea level rise reported by Ezer et al. (2013) and Rahmstorf et al. (2015). Recent analysis of the Florida Current transport has detected a decrease in circulation over the last decade, which appears to account

for 60% of South Florida sea level rise over the decade and contribute to a positive acceleration (Park and Sweet, 2015). If a long-term slowdown of the AMOC and Florida Current. Rahmstorf et al. (2015) use a proxy method also suggesting that a slowdown of the AMOC has begun. If a long-term slowdown of the AMOC does occur, sea level rise along the Florida east coast could conceivably be as much as 20 cm (8 inches) greater than the global value by 2100.

According to the most recent estimates by the IPCC (IPCC 2013, FigureB-1), the combined differential due to regional ocean heating and circulation change along the Southeast Florida coast would be in the range of 10%-20% greater than the globally averaged rise by 2090. For a median (50% probability) sea level rise of one meter by 2100, this would give about 10-20 cm (4-8 inches) of additional rise along the Southeast Florida coast, which is within the range of estimates by Yin et al. (2009). However, the IPCC models do not have the horizontal resolution required to effectively estimate these changes at the scale of the Florida Current and more research with higher resolution ocean models will be required. As such, it is prudent to add ~15% to the global mean sea level rise values projected by the IPCC in order to use them for Southeast Florida planning. This adjustment is accounted for in the regional sea level rise coefficients incorporated in the projections adapted for the region.

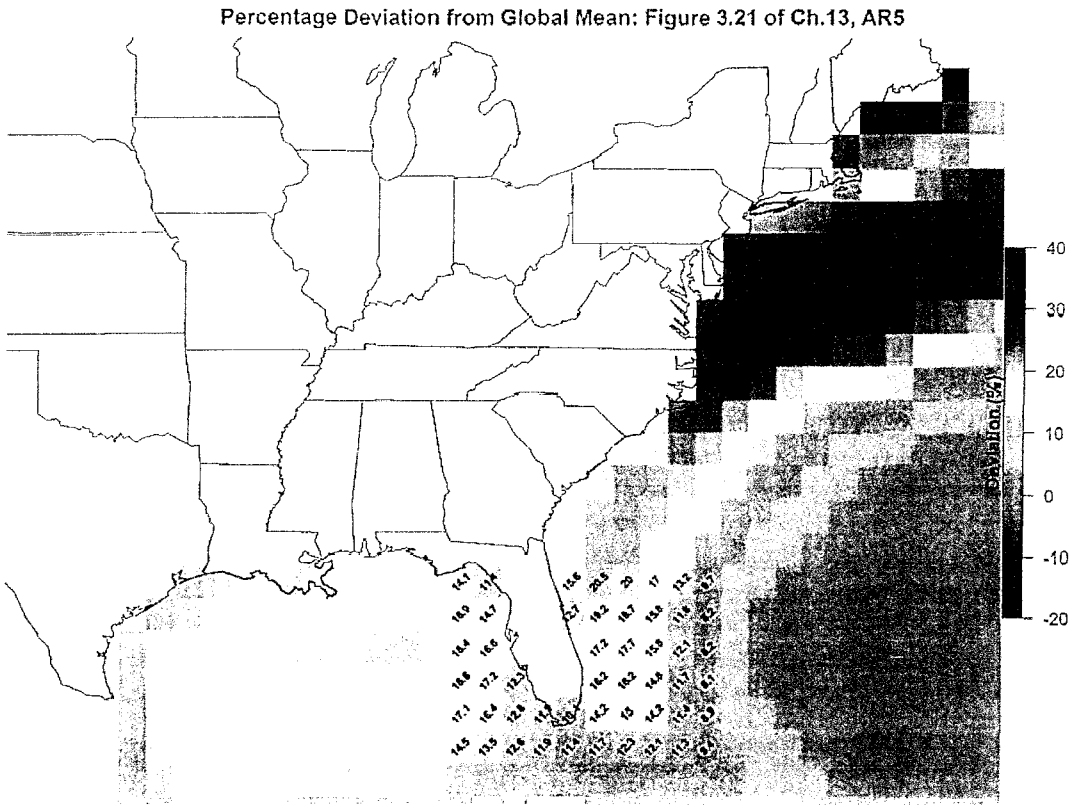


Figure B-1. Percentage of the deviation of the ensemble mean regional relative sea level change between 1986-2005 and 2081-2100 from the global mean value, based on Figure 13.21, IPCC (2013). The figure was computed for RCP4.5, but to first order is representative for all Representative Concentration Pathways (RCP). RCPs are the four greenhouse gas concentration trajectories adopted by the IPCC for its fifth Assessment Report (AR5).

APPENDIX C: WORKGROUP COMMENTARY AND RECOMMENDATIONS

The following are recommendations made by the Work Group for consideration by the Southeast Florida Regional Climate Compact Steering Committee to be used by the Compact Counties as part of the implementation of the Regional Climate Change Action Plan.

a. The unified SE FL sea level rise projection will need to be reviewed as the scientific understanding of ice melt dynamics improves. The projection should be revised within five years of final approval of this document by the Southeast Regional Climate Change Compact Steering Committee. This timing is consistent with the release of Intergovernmental Panel on Climate Change Sixth Assessment Report which will provide a synthesis of the major findings in climate science to date.

b. Users of the projection should be aware that at any point of time, sea level rise is a continuing trend and not an endpoint.

c. The planet is currently on a high emissions trajectory for which committed sea level rise is probably near the high end of the ranges. It should also be noted that the attenuation of impacts through mitigation will not likely be sufficient to overcome the inertia of the climate system prior to 2060.

d. Full and complete transparency of the projection and its implications should be promoted across the communities in order to encourage and guide effective and realistic planning, obtain realistic economic realities for maintaining functional infrastructure, insuring social and economically sound further development, and necessary adaptation.

e. Further work to develop projections for the occurrence of extreme events in tandem with sea level rise may be necessary to assist communities in planning for storm drainage adaptation.

APPENDIX D: ACKNOWLEDGEMENT OF PARTICIPANTS

The Southeast Florida Regional Climate Change Compact Counties (Monroe, Miami-Dade, Broward and Palm Beach Counties) and their partners wish to acknowledge the Work Group participants and members of the SE FL Regional Climate Change Compact Steering Committee for participating in meetings to support the development of the Unified Sea Level Rise Projection and the guidance document. The following members contributed to the development and refinement of the projection:

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Van Leer, John, Ph.D.

Wanless, Hal, Ph.D.

Wdowinski, Shimon, Ph.D.

APPENDIX E: DEVIATION FROM 2011 PROJECTION

The updated unified sea level rise projection includes the range projected by the 2011 unified sea level rise projection with three enhancements. As described in previous paragraphs, the yearthe projection begins was shifted from 2010 to 1992. Since the projection now references the sea level rise that has occurred since 1992 instead of 2010, the values in the projection are larger as a result of the sea having 8 more years to rise. For example, at the lower boundary of the projection, by 2030, sea level rise is projected to be 5 inches above the where mean sea level was in 1992. This is the exact same projected elevation as 3 inches above where the mean sea level was in 2010, just a different elevation datum. Table 1 shows the adjustment of values from the 2011 Unified Projection with a reference (starting) year of 1992. Please note the lower boundary is the same in both the 2011 and 2015 projections. The second enhancement to the projection was the extension of the projection past 2060 continuing to 2100. The third enhancement to the projection was the addition of the NOAA High Curve as the upper boundary after Year 2060. For critical infrastructure projects with design lives in excess of 50 years, use of the upper curve is recommended with planning values of up to 34 inches in 2060 and up to 81 inches in 2100.

Table 2: Comparison of Unified Projection in 2011 and 2015 at Key West

Year	2011 Unified Projection (referenced to Year 2010) (inches above msl)		2011 Unified Projection (adjusted to reference Year 1992) (inches above msl)		2015 Proposed Unified Projection (referenced to Year 1992) (inches above msl)			
	NRC Curve I (1987)	NRC Curve III (1987)	NRC Curve I (1987)	NRC Curve III (1987)	NOAA Int.- Low	IPCC AR5 Median	USACE High	NOAA High
[illegible]			0	0	0	0	0	-
2030	3	7	**5**	**10**	**5**	6	**10**	-
[illegible]					6	7	12	-
2060	9	24	**11**	**26**	**11**	14	**26**	34
[illegible]					15	20	38	49
2100					22	31	61	81

RESOLUTION NO. 2013- 134

CITY OF POMPANO BEACH
Broward County, Florida

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, ENDORSING THE MAYORS' CLIMATE ACTION PLEDGE, AFFIRMING SUPPORT FOR THE SOUTHEAST FLORIDA REGIONAL CLIMATE CHANGE COMPACT, AGREEING TO CONSIDER IMPLEMENTING THE REGIONAL CLIMATE ACTION PLAN IN WHOLE OR IN PART AS APPROPRIATE FOR THE CITY OF POMPANO BEACH, AND URGING ALL MAYORS OF BROWARD COUNTY TO SUPPORT THE MAYORS' CLIMATE ACTION PLEDGE; PROVIDING AN EFFECTIVE DATE.

WHEREAS, Florida is considered one of the most vulnerable areas of the country to the consequences of global climate change with Southeast Florida being at the frontline to experience the impacts of a changing climate, especially sea level rise; and

WHEREAS, in recognition of the need for immediate, coordinated and visionary action to address the impacts of a changing climate and provide for economic and environmental resilience in Southeast Florida, in 2010 the counties of Palm Beach, Broward, Miami-Dade and Monroe (Compact Partners) entered into the Southeast Florida Regional Climate Change Compact (Compact); and

WHEREAS, further recognizing the role of State water managers and local governments in this regional initiative, the South Florida Water Management District and one municipal representative from each participating county were invited to participate in this early phase; and

WHEREAS, in accordance with the Compact commitment and through a two year collaborative process involving nearly 100 subject matter experts representing public and private sectors, universities, and not-for-profit organizations, the Compact Partners developed the Regional Climate Action Plan (RCAP); and

WHEREAS, the RCAP offers recommendations that provide the common integrated framework for a stronger and more resilient Southeast Florida, including:

- Providing the common framework for Sustainable Communities and Transportation Planning to be aligned across the region;
- Recognizing the need to protect and address vulnerable Water Supply, Management, and Infrastructure and preserve fragile Natural Systems and Agricultural resources;
- Providing steps to move towards resilience and reducing emissions through exploring alternatives and decreasing the use of Energy and Fuel;
- Building upon strength as effective emergency responders and integrating climate change hazards in Risk Reduction and Emergency Management Planning; and
- Providing for effective Public Outreach initiatives to educate the public on the consequences of climate change and providing guidance for developing and influencing Public Policies related to climate change.

WHEREAS, recognizing that there are more than 100 municipalities within the region that will play an important role in the implementation of the RCAP, the Compact Partners included municipalities in the development of the RCAP; and

WHEREAS, municipalities individually have been working to achieve sustainability, and the RCAP presents an opportunity to align these individual local efforts with the regional framework and vision; and

WHEREAS, municipalities and Leagues of Cities play a key role in the annual Regional Climate Leadership Summits, participated in RCAP Working Groups and now is the time to solidify local government support to advance the RCAP; and

WHEREAS, the RCAP does not provide a mandate but rather serves as a living document (guidance) with options that each regional and local government may align to their own plans and adopt and utilize based on their interests and vision for the future; and

WHEREAS, the willingness of counties and municipalities to jointly develop and advocate for mutually beneficial agreements, policies and strategies intended to influence regional, state and national resilience efforts advances "Good Neighbor" relationships; and

WHEREAS, in 2005 the U.S. Conference of Mayors adopted the U.S. Mayors' Climate Protection Agreement (Mayors' Agreement) that became a national model for effective collaboration and the framework for more than 1,000 municipalities throughout the nation to take actions to reduce global warming and address the impacts of a changing climate (climate disruption); and

WHEREAS, in 2007 more than 22 Mayors representing municipalities within Broward County speaking on behalf of more than two-thirds of Broward County endorsed the Mayors' Agreement; and

WHEREAS, in 2012 the need exists for Mayors within the region of Southeast Florida to collaborate on a renewed agreement that will advance regional climate action planning within Southeast Florida efforts while continuing to advance the national goals of the U.S. Mayors' Agreement; and

WHEREAS, utilizing the U.S. Mayors' Agreement as a model for influencing regional climate policies and effective public outreach, all municipalities throughout the Southeast Florida region are invited to sign on to the 2012 South Florida Mayor's Climate Action Pledge and to collaborate on implementation of the RCAP starting today and for tomorrow; now, therefore,

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA:

SECTION 1. That the City Commissioners of the City of Pompano Beach, Florida, endorses the Mayors' Climate Action Pledge.

SECTION 2. The City of Pompano Beach affirms support for the Southeast Florida Regional Climate Change Compact.

SECTION 3. The City of Pompano Beach agrees to consider integrating the Regional Climate Action Plan framework in whole or in part as appropriate for the city into existing and future municipal sustainability action plans, comprehensive plans and/or climate action plans where and when appropriate and financially feasible.

SECTION 4. The City of Pompano Beach urges all Mayors within Broward County to join the Mayors' Climate Action Pledge.

SECTION 5. This Resolution shall become effective upon passage.

PASSED AND ADOPTED this 12th day of February, 2013.

LAMAR FISHER, MAYOR

ATTEST:

MARY L. CHAMBERS, CITY CLERK

GBL/jrm
1/23/13
l:reso/2013-136

Meeting Date: March 8, 2016 Agenda Item 9

REQUESTED COMMISSION ACTION:

X Consent	Ordinance	X Resolution	Consideration/ Discussion	Presentation

SHORT TITLE A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A DISTRICT FOUR (4) AMENDMENT NUMBER TWELVE (12) TO LANDSCAPE INCLUSIVE MAINTENANCE MEMORANDUM OF AGREEMENT BETWEEN THE CITY OF POMPANO BEACH AND THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION FOR ADDITIONAL LANDSCAPE IMPROVEMENTS ON STATE ROAD 834 (SAMPLE ROAD); FROM MILE POST 9.435 TO MILE POST 9.478; PROVIDING AN EFFECTIVE DATE. (NO COST)

Summary of Purpose and Why:

This twelfth amendment to the FDOT MOA commits the city to maintaining the landscape and irrigation enhancements proposed in the WaWa Full Service Project, impacting approximately 230 linear feet along north side of Sample Road. These improvements will be maintained to FDOT standards ensuring landscaping will be aesthetically pleasing and safely maintained such that motorists' visibility is not obstructed and vertical clearance is maintained for pedestrian, bicyclist, and truck traffic.

(1) Origin of request for this action: FDOT, District 4
(2) Primary staff contact: Rob McCaughan Ext. 786-4507
(3) Expiration of contract, if applicable: N/A
(4) Fiscal impact and source of N/A

DEPARTMENTAL COORDINATION	DATE	DEPARTMENTAL RECOMMENDATION	DEPARTMENTAL HEAD SIGNATURE
Public Works	2/25/2016	Approve	Robert McCaughan
Finance	2/26/16	Approval	
Budget	2/29/16		
City Attorney			

___ Advisory Board
___ Planning Director
___ Public Works Director
X City Manager

ACTION TAKEN BY COMMISSION:

Ordinance Workshop	Resolution	Consideration
1st Reading	1st Reading	Results: Results:
2nd Reading		

City Attorney's Communication #2016-540
February 24, 2016

TO: Robert A. McCaughan, Public Works Director

FROM: Jill R. Mesojedec, FRP, Paralegal

VIA: Mark E. Berman, City Attorney

RE: Amendment No. 12 to Landscape Inclusive Maintenance Memorandum of Agreement

As requested in your memorandum dated February 22, 2016, Public Works Department Memorandum No. 2016-18, I have prepared and attached the following captioned resolution:

> **A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A DISTRICT FOUR (4) AMENDMENT NUMBER TWELVE (12) TO LANDSCAPE INCLUSIVE MAINTENANCE MEMORANDUM OF AGREEMENT BETWEEN THE CITY OF POMPANO BEACH AND THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION FOR ADDITIONAL LANDSCAPE IMPROVEMENTS ON STATE ROAD 834 (SAMPLE ROAD) FROM MILE POST 9.435 TO MILE POST 9.478; PROVIDING AN EFFECTIVE DATE.**

Please attach the proper city signature page to the agreement prior to presentation to the City Commission.

JILL R. MESOJEDEC

/jrm
l:cor/pw/2014-540

Attachment

RESOLUTION NO. 2016- _____

CITY OF POMPANO BEACH
Broward County, Florida

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A DISTRICT FOUR (4) AMENDMENT NUMBER TWELVE (12) TO LANDSCAPE INCLUSIVE MAINTENANCE MEMORANDUM OF AGREEMENT BETWEEN THE CITY OF POMPANO BEACH AND THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION FOR ADDITIONAL LANDSCAPE IMPROVEMENTS ON STATE ROAD 834 (SAMPLE ROAD) FROM MILE POST 9.435 TO MILE POST 9.478; PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA:

SECTION 1. That an Amendment Number Twelve (12) between the City of Pompano Beach and the State of Florida Department of Transportation, a copy of which Agreement is attached hereto and incorporated by reference as if set forth in full, is hereby approved.

SECTION 2. That the proper City officials are hereby authorized to execute said Agreement between the City of Pompano Beach and the State of Florida Department of Transportation.

SECTION 3. This Resolution shall become effective upon passage.

PASSED AND ADOPTED this _____ day of _____, 2016.

_____
LAMAR FISHER, MAYOR

ATTEST:

_____
ASCELETA HAMMOND, CITY CLERK

MEB/jrm
2/24/16
l:reso/2016-142

SECTION NO: **86020**
S.R. NO.(S): **834**
COUNTY: **Broward**
PERMIT NO.: **2015-L-491-0005**

DISTRICT FOUR (4) AMENDMENT NUMBER TWELVE (12) TO STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION LANDSCAPE INCLUSIVE LANDSCAPE MAINTENANCE MEMORANDUM OF AGREEMENT

This is Amendment Number Twelve (12) to the Agreement dated December 5, 2007, made and entered into this _____day of _____ 20__ by and between the State of Florida Department of Transportation hereinafter called the "**DEPARTMENT**" and the **CITY OF POMPANO BEACH**, a municipal corporation of the State of Florida, hereinafter called the "**AGENCY**".

WHEREAS, the parties entered into the Inclusive Landscape Maintenance Memorandum of Agreement dated December 5, 2007 for the purpose of maintaining the landscape improvements by the AGENCY on various State Road(s) including State Road 834 (Sample Road); and

WHEREAS, the DEPARTMENT and the AGENCY have agreed to add additional landscape improvements to be installed on State Road 834 (Sample Road) in accordance with the above referenced Agreement;

NOW THEREFORE, for and in consideration of mutual benefits that flow each to the other, the parties covenant and agree as follows:

1. Pursuant to paragraph one (1) page one (1) of Amendment Number Six (6) Inclusive Landscape Maintenance Memorandum of Agreement for State Road 834 (Sample Road) dated August 9, 2013, the DEPARTMENT will allow an adjacent property owner to construct additional landscape improvements or to modify an improvement located as indicated in **Exhibit "A"**, State Road 834 (Sample Road) from (M.P.9.435) to (M.P. 9.478) in accordance with the plans dated January 5, 2016 attached as **Exhibit "B"**.

2. The AGENCY shall agree to maintain the additional landscape improvements in the Agreement described above according the **Exhibit "C"** Maintenance Plan, attached to this Amendment.

Except as modified by this Amendment, all terms and conditions of the AGEEMENT shall remain in full force and effect.

Exhibits
Exhibit "A: - LANDSCAPE IMPROVEMENTS LIMITS AND MAINTENANCE BOUNDARIES
Exhibit "B" - LANDSCAPE IMPROVEMENT PLANS
Exhibit "C"- Maintenance Plan Landscape Improvements

In Witness whereof, the parties hereto have executed with this Amendment effective the _____day _____ year written and approved.

CITY OF POMPANO BEACH
a municipal corporation.

BY:

_____
City Manager or Designee

Attest: _____ _____
Deputy City Clerk Date

Legal Review

_____ _____
Attorney Date

State of Florida
Department of Transportation

BY:

_____
Transportation Development Director

Attest: _____(Seal)
Executive Secretary

Legal Review

_____ _____
Office of General Counsel Date

" CITY":

WITNESSES:

CITY OF POMPANO BEACH

_____

By: _____
LAMAR FISHER, MAYOR

_____

By: _____
DENNIS W. BEACH, CITY MANAGER

Attest:

(SEAL)

By: _____
Asceleta Hammond
CITY CLERK

Approved As To Form:

_____
Mark E. Berman
CITY ATTORNEY

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instruments were acknowledged before me this _____ day of _____, 2015, by LAMAR FISHER as Mayor, DENNIS W. BEACH as City Manager and ASCELETA HAMMOND, City Clerk of the City of Pompano Beach, Florida, a municipal corporation, who are personally known to me.

NOTARY'S SEAL

_____
NOTARY PUBLIC, STATE OF FLORIDA

_____
(Name of Acknowledger Typed, Printed or Stamped)

_____
Commission Number

SECTION NO:	**86020**
S.R. NO.(S):	**834**
COUNTY:	**Broward**
PERMIT NO.:	**2015-L-491-0005**

EXHIBIT A

LANDSCAPE IMPROVEMENTS LIMITS AND MAINTENANCE BOUNDARIES

I. PERMIT PROJECT LOCATION:

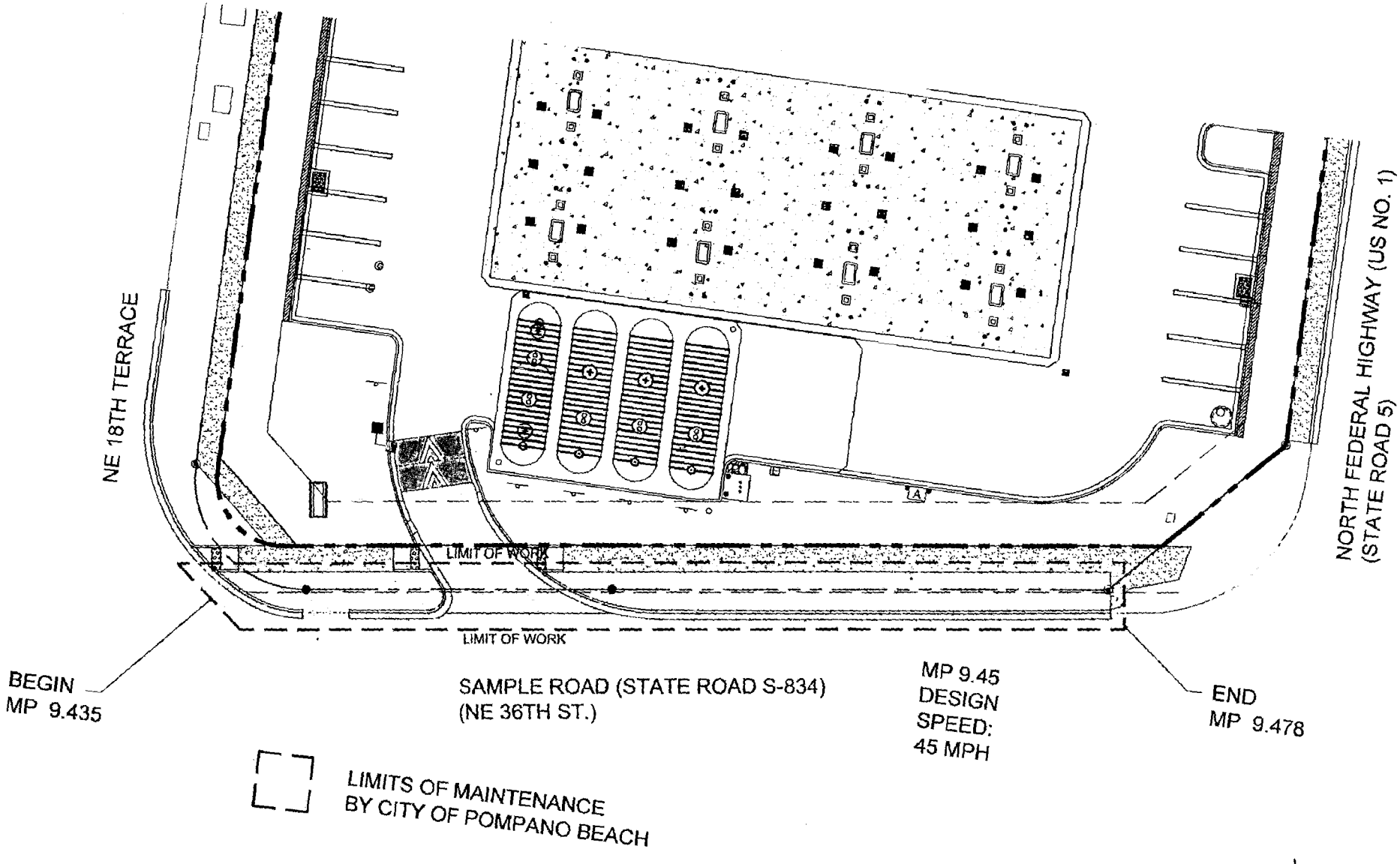
State Road 834 (Sample Road) from (M.P. 9.435) to (M.P. 9.478)

II. INCLUSIVE LANDSCAPE MEMORANDUM OF AGREEMENT LIMITS OF LANDSCAPE IMPROVEMENTS MAINTENANCE BOUNDARIES FOR THE ROADWAY:

State Road 834 (Sample Road) from (M.P. 5.030) (Florida Turnpike) to (M.P. 9.481) (State Road 5)

(All maintenance boundaries of original agreement apply)

See attached map



LANDSCAPE MAINTENANCE IMPROVEMENTS MAP

CITY OF POMPANO BEACH

SECTION NO: 86020
S.R. NO.(S): 5
COUNTY: Broward
PERMIT NO.: 2015-L-491-0005

EXHIBIT B

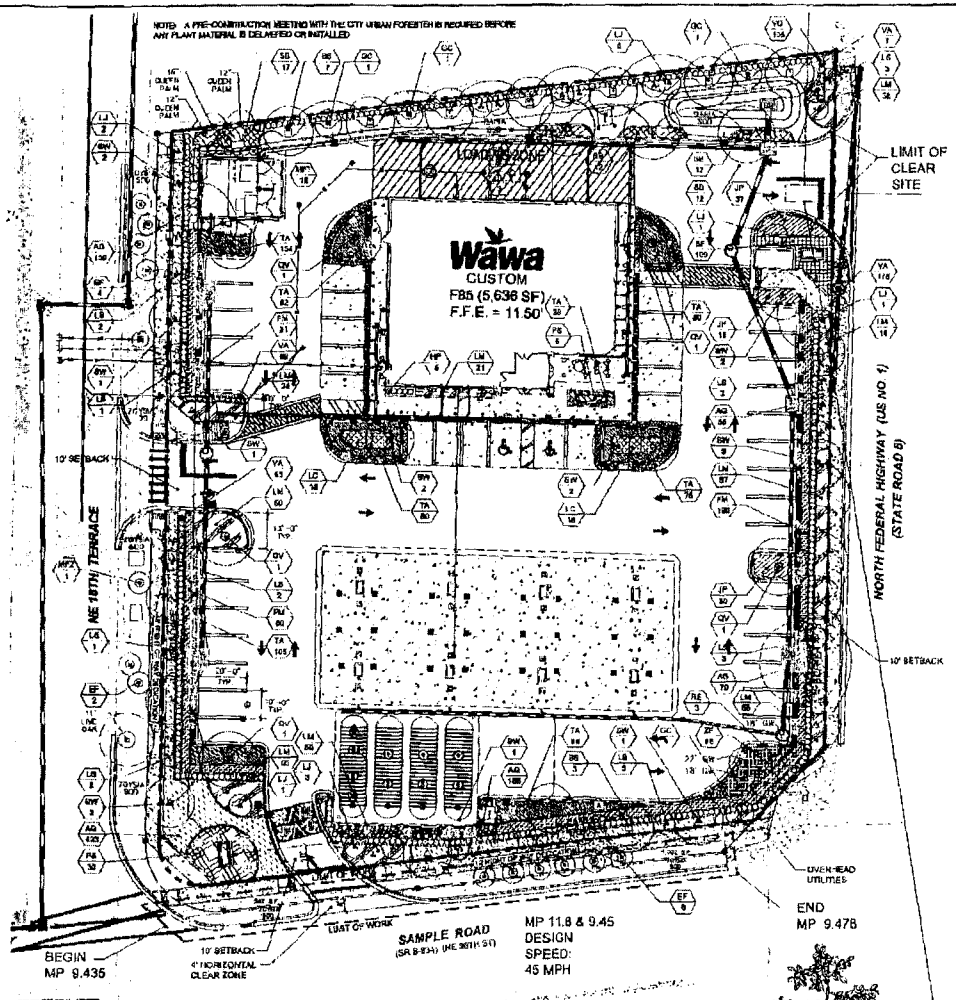
LANDSCAPE IMPROVEMENT PLANS

The Agency agrees to install the Project in accordance with the plans and specifications attached hereto and incorporated herein.

Please see attached plans prepared by: Greg A. Reynolds, RLA
Aloha Pacifica LLC Planning & Landscape Architecture

Dated: January 5, 2016

Sheets LA 1-4



GENERAL LANDSCAPING REQUIREMENTS:

LANDSCAPE REQUIREMENTS BY ZONING DISTRICT

MINIMUM 25% OF GROSS SITE AREA SHALL BE DEVOTED TO LANDSCAPE PERVIOUS AREA
MINIMUM 1 TREE & 5 SHRUBS PER 3,000 SF OF SITE AREA

USE COVERAGE CALCULATIONS

TOTAL SITE AREA 70,656 SF X 25% = 14,000 SF LANDSCAPE PERVIOUS AREA REQUIRED
= 14,000 SF LANDSCAPE PERVIOUS AREA PROVIDED

TOTAL SITE AREA 70,656 SF / 3,000 SF = 23 TREES & 207 SHRUBS REQUIRED
23 TREES & 207 SHRUBS PROVIDED

VEHICULAR USE AREAS - TYPE B BUFFER REQUIRED

MINIMUM 10' WIDE - 6' FENCE, 1 CANOPY TREE PER 30 L.F. CONTINUOUS 36" HEDGE ON EXTERIOR SIDE OF FENCE & 1 SHRUB PER 10 L.F. ON THE INTERIOR SIDE OF FENCE

N.E. 18th TERRACE:

240 LF / 30 = 8 CANOPY TREES & 20 INTERIOR SHRUBS REQUIRED
8 CANOPY TREES & 20 INTERIOR SHRUBS PROVIDED

NORTH FEDERAL HWY / SR 5:

254 LF / 30 = 8 CANOPY TREES & 20 INTERIOR SHRUBS REQUIRED
8 CANOPY TREES & 20 INTERIOR SHRUBS PROVIDED

SAMPLE RD / N.E. 36th ST / SR 814:

237 LF / 30 = 8 CANOPY TREES & 20 INTERIOR SHRUBS REQUIRED
8 CANOPY TREES & 20 INTERIOR SHRUBS PROVIDED

NORTH PROPERTY LINE:

236 LF / 30 = 8 CANOPY TREES & 20 INTERIOR SHRUBS REQUIRED
8 CANOPY TREES & 20 INTERIOR SHRUBS PROVIDED

INTERIOR LANDSCAPED

COLONIAL BLVD. (SR 814):

MINIMUM 10% OF VEHICULAR USE AREA SHALL BE LANDSCAPED

43,342 SF X 10% = 4,334 SF LANDSCAPE REQUIRED
4,334 SF LANDSCAPE PROVIDED

BUILDING PERIMETER LANDSCAPING TABLE

FACADE	FACADE LENGTH (LF)	REQUIRED 8'-0" FOUNDATION PLANTING (SF)	LANDSCAPE PROVIDED
EAST	70	560	60
SOUTH	80	640	760
WEST	70	560	60
NORTH	N/A	N/A	1,660

NOTE: ADDITIONAL TREES AND LANDSCAPING HAVE BEEN ADDED TO THE MINIMUM MEA TO ACCOMMODATE FOR THE DEVIATION IN FOUNDATION PLANTING SQUARE FOOTAGE

STREET TREES

1 CANOPY TREE PER 40 LF REQUIRED

N.E. 18th TERRACE:

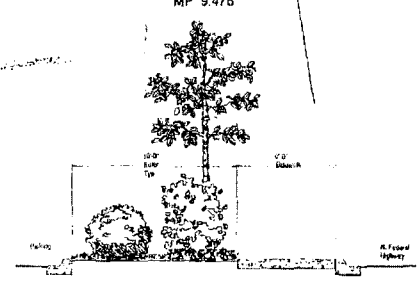
240 LF / 40 = 6 CANOPY TREES REQUIRED
2 UNDERSTORY TREES PROVIDED (WITHIN FPL EASEMENT)

SAMPLE RD / N.E. 36th ST / SR 814:

237 LF / 40 = 6 CANOPY TREES REQUIRED
6 UNDERSTORY TREES PROVIDED (WITHIN FPL EASEMENT)

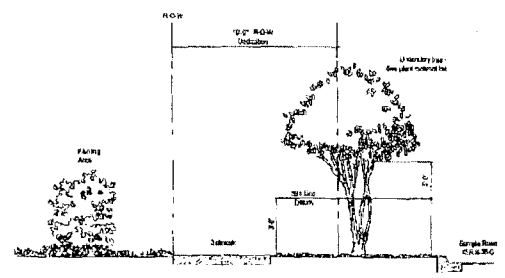
LANDSCAPE PLANT MATERIALS

QTY.	SYM	BOTANICAL / COMMON NAME	SIZE & REMARKS
TREES / PALMS			
3	CD	CEDRUS DEODARA / DEODAR CEDAR	25 GAL., 8' CALIPER, 14' HT., 6.5'-8' SPD., B&B
7	CC	CERCIS CANADENSIS / CANADA REDBUD	30 GAL., 3" CALIPER, 10' HT., 3.5' SPD., B&B, MULTI-STEM
12	LI	LAGERSTROEMIA INDICA / CRAPE MYRTLE	30 GAL., 3" CALIPER, 10' HT., 4.5' SPD., 3' CLEAR TRUNK, B&B
14	LJ	LIGUSTRUM JAPONICUM / JAPANESE TREE	7GAL/CONT, 10' HT., 4.5' SPD., MULT.-TRUNK, MATURE
52	LS	LAGERSTROEMIA INDICA X FAURIEI 'FANTASY' / FANTASY CRAPE MYRTLE	45 GAL., 3" CALIPER, 14' HT., 6.5' SPD., MULTI-TRUNK, MATURE
8	QV	QUERCUS VIRGINIANA / LIVE OAK	65 GAL., 4" CALIPER, 16' HT., 6.5'-8' SPD., B&B
3	RE	ROYSTONEA REGIA / CUBAN PALM	15 GALLON, 14'-22' BOOT/WOOD, 8.5'-10' SPD., FULL TO GROUND
14	SB	SABAL PALMETTO / BLUE MAJESTY PALM	25 GAL., 8' SCARFIA, 12' HT., 6.5'-8' SPD., B&B
SHRUBS / GROUNDCOVERS			
863	AF	ACACIA FARNESIANA 'COLONIAL' / PERFUMED WONDER	1 GAL., MIN. 24" HT. x 18" SPD., 30" O.C.
308	BP	BUXUS MICROPHYLLA JAPONICA 'GREEN GEM'	1 GAL., MIN. 10" HT., 10" SPD., 30" O.C.
297	HI	ILEX X 'NELLIE R. STEVENS' / NELLIE R. STEVENS HOLLY	3 GAL., MIN. 24" HT., 18" SPD., 30" O.C.
3	HP	HAMELIA PATENS / FIREBUSH	3 GAL., MIN. 18" HT., 18" SPD., 30" O.C.
49	JF	JUNIPERUS CHINENSIS / BLUE PFITZER JUNIPER	3 GAL., MIN. 18" HT., 18" SPD., 30" O.C.
18	LG	LIGUSTRUM JAPONICUM 'TEXANUM' / WAX LEAF LIGUSTRUM	3 GAL., MIN. 18" HT., 18" SPD., 30" O.C.
392	LM	LIRIOPE MUSCARI 'SPICATA' / BLUE LILY TURF	1 GAL., MIN. 12" HT., FULL, 24" O.C.
16	MT	MYRTUS TARENTINA / MYRTLE TUDOR	3 GAL., MIN. 30" HT., 24" SPD., 36" O.C.
15	PS	PENNISETUM SETACEUM 'RUBRUM' / RED FOUNTAIN GRASS	3 GAL., MIN. 18" HT., 18" SPD., 30" O.C.
50	RS	ROSMARINUS OFFICINALIS 'SAVIO' / ROSEMARY	3 GAL., MIN. 24" HT., 24" SPD., 36" O.C.
324	TA	TRACHELOSPERMUM ASIATICUM / ASIAN JASMINE	1 GAL., MIN. 6" HT., 24" SPD., 18" O.C.
101	VA	VIBURNUM ODORATUM / SWEET VIBURNUM	7 GAL., MIN. 18"-24" HT., 24" SPD., 36" O.C.
106	VO	VIBURNUM ODORATUM / WALTER'S VIBURNUM	3 GAL., MIN. 24" HT., 18" SPD., 24" O.C.
26	F	FICUS NITIDA / GREEN TIGER	1 GAL., MIN. 12" HT., 18" SPD., 30" O.C.
51	SOD	TIFGRAND BERMUDA / BAHIA GRASS	SF DETERMINED BY CONTRACTOR, SOD IN ONLY
51	SOD	PETITA ST. AUGUSTINE / BAHIA GRASS	SF DETERMINED BY CONTRACTOR, SOD ONLY FOR LOCATIONS
S.Y.	MULCH	MULCHED GROUND AREAS, LOCATED OFF THE BUILDING	3" DEEP IN ALL PLANTING AREAS, EXCEPT PADDING SLOPE
		SOIL TOPSOIL (SOD)	
C.Y.	SOIL	SOIL MIXED: 1/3 P. TO 2/3 SAND MIXED WITH	MIX 1 PART SOIL TO 2 PARTS SAND PER MANUFACTURER RECOMMENDATIONS
			SOIL TEST REQUIRED



1 LANDSCAPE BUFFER SECTION– N. FEDERAL HIGHWAY

NOT TO SCALE



2 LANDSCAPE BUFFER SECTION– SAMPLE ROAD

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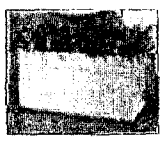


BOULEVARD SERIES PLANTER BY ALICO WOVEN PRODUCTS, LLC. MODELL #ALCEP 482424

NOT APPROVED FOR CONSTRUCTION

811 KNOW WHAT'S BELOW ALWAYS CALL 811 BEFORE YOU DIG

www.call811.com

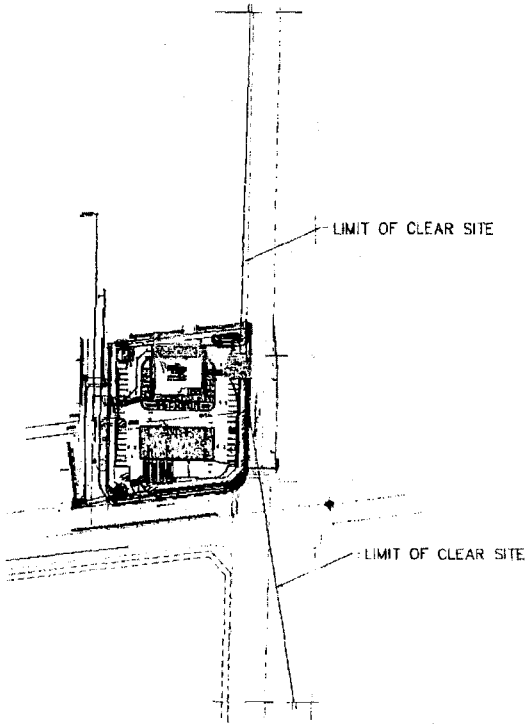
Alpha Pacifica LLC

LANDSCAPE PLAN

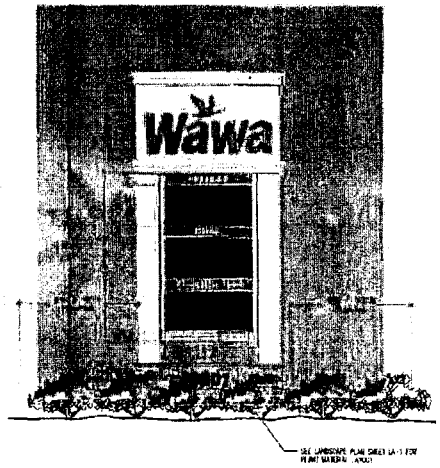
WAWA
N.W.C. 3601 N. FEDERAL HWY.
POMPANO BEACH, FLORIDA

DATE 3/30/15
PROJECT NO

SHEET NUMBER
LA-1



1 LIMIT OF CLEAR SITE



2 MONUMENT SIGN LANDSCAPING

NOT TO SCALE

3 OUTDOOR ADVERTISING AERIAL

NOT TO SCALE

NOT APPROVED
FOR CONSTRUCTION

811 KNOW WHAT'S BELOW ALWAYS CALL 811 BEFORE YOU DIG!
www.callsunshine.com

No.	DESCRIPTION	DATE	BY
1	PER FDOT COMMENTS	11/6/13	

Aloha Pacifica LLC

1-5-14

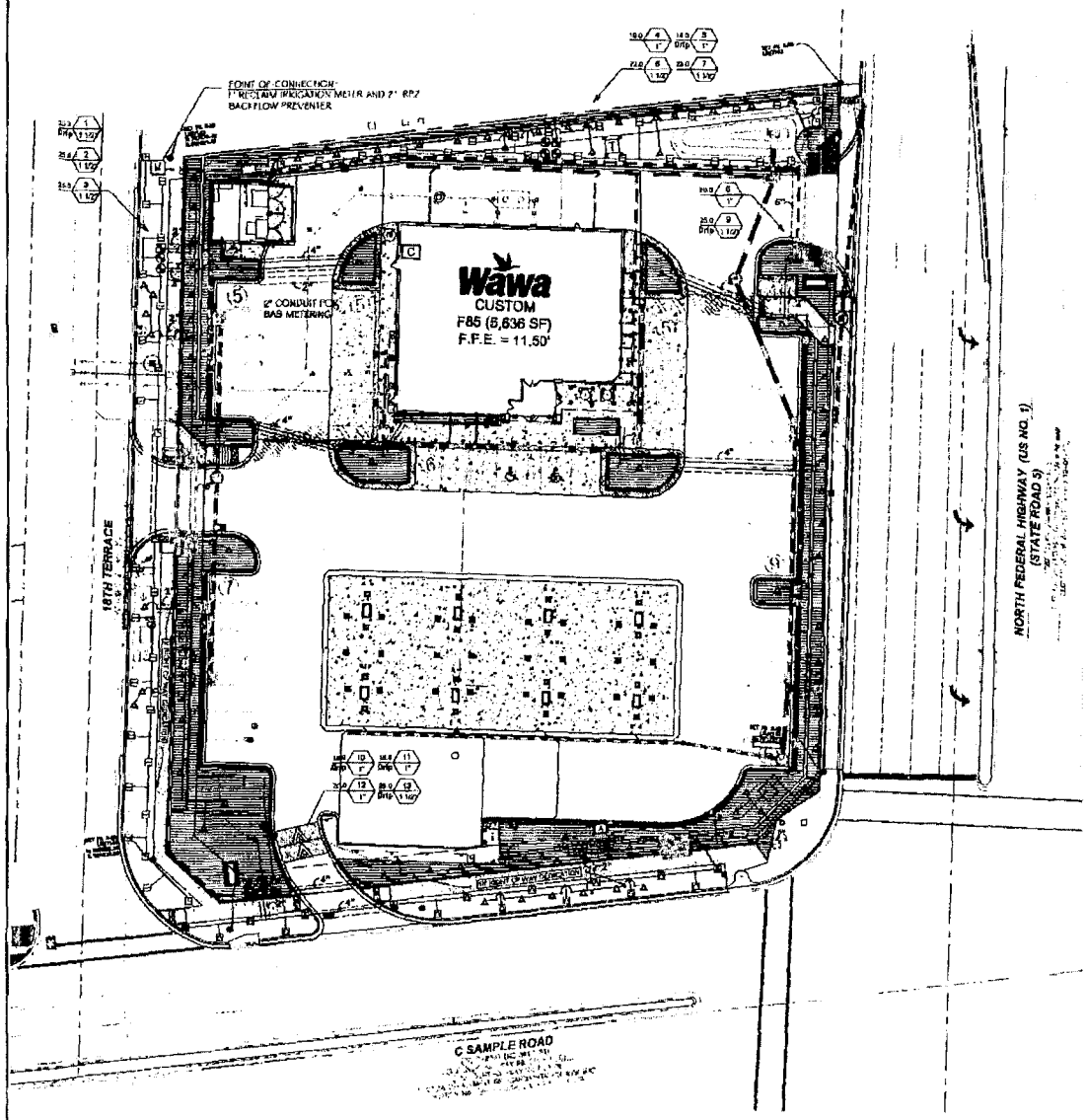
SCALE AS NOTED
DESIGNED BY
DRAWN BY
CHECKED BY

LANDSCAPE DETAILS

WAWA, INC.
N.W.C. 3601 N. FEDERAL HWY.
POMPANO BEACH, FLORIDA

DATE 10/25/13
PROJECT NO.

SHEET NUMBER
LA-2



IRRIGATION SCHEDULE

SYMBOL	MANUFACTURER/MODEL/DESCRIPTION
	Rain Bird 1806 R Strip Series. Turf Spray 6.0" Pop-Up Sprinkler with Co-Molded Wiper Seal. Side and Bottom Inlet. 1/2" NPT Female Threaded Inlet.
	Rain Bird 1806 12 Series HPR. Turf Spray 6.0" Pop-Up Sprinkler with Co-Molded Wiper Seal. Side and Bottom Inlet. 1/2" NPT Female Threaded Inlet.
	Rain Bird 1806 ADJ. Turf Spray 6.0" Pop-Up Sprinkler with Co-Molded Wiper Seal. Side and Bottom Inlet. 1/2" NPT Female Threaded Inlet.
	Rain Bird 1806-4400 Flood. Flood Bubbler 6.0" popup

SYMBOL	MANUFACTURER/MODEL/DESCRIPTION	RADIUS
	Rain Bird 8005A-HPR. Turf Rotor, 4.0" Pop-Up, Plastic Riser, Matched Precipitation Rotor (HPR nozzle), Arc and Radius as per Symbol, 25 Nozzle, 50 N-green, 25N-beige.	25'

SYMBOL	MANUFACTURER/MODEL/DESCRIPTION
	Rain Bird XCZ-100-PRF. Medium Flow Drip Control Kit, 1" DV valve, 1" pressure regulating filter, 40psi pressure regulator. 8gpm - 8gpm.
	Area to Receive Dripline - Netafim TLCV-CR-18 (18) Techline Pressure Compensating Landscape Dripline with Check Valve. 0.9GPH emitters at 18.0" O.C. Dripline laterals spaced at 18.0" apart, with emitters offset for triangular pattern. Plan.

SYMBOL	MANUFACTURER/MODEL/DESCRIPTION
	Rain Bird PEB-PRS-D. 1" / 1 1/2" Plastic Industrial Valves. Low Flow Operating Capability, Globe Configuration, With Pressure Regulator Module.
C	Rain Bird ESP8LXME with (20) ESP-LX-SM4 16-Station Commercial Controller. Mounted on a Plastic Wall Mount.
	Rain Bird ARC-RPS. Wireless Rain/Freeze Sensor.
M	Meter Meter 1"
	Nibco 2" Isolation Valve

Irrigation Lateral Line, PVC Class 200 SDR 21 PVC Class 200 irrigation pipe.

Irrigation Mainline, 2" PVC Schedule 40 PVC Schedule 40 irrigation pipe.

Pipe Sleeves SCH 40 PVC

Valve Callout

- Valve Number
- Valve Flow
- Valve Size

GENERAL NOTES:

1) REFER TO THE LANDSCAPE PLAN WHEN TRENCHING TO AVOID TREES AND SHRUBS.

2) ALL MAINLINE PIPING SHALL BE BURIED TO A MINIMUM DEPTH OF 18" OF COVER. ALL LATERAL PIPING SHALL BE BURIED TO A MINIMUM DEPTH OF 12" OF COVER.

3) ALL POP-UP ROTORS AND SPRAY HEADS SHALL BE INSTALLED USING AN 18" P.V.C. FLEX PIPE CONNECTION. DO NOT USE FLEXIBLE PIPE.

4) ADJUST ALL NOZZLES TO REDUCE WATER WASTE ON HARD SURFACES AND BUILDING WALLS.

5) THROTTLE ALL VALVES ON SHORT LINES AS REQUIRED TO PREVENT FOGGING.

6) ALL RISERS SHALL BE PAINTED BLACK.

7) ALL RISERS SHALL BE STAKED WITH A STEEL ANGLE AND SECURED WITH ULTRA-VIOLET LIGHT PROTECTED P.V.C. CLAMPS.

8) ALL CONTROL WIRE SPLICES SHALL BE MADE IN VALVE BOXES USING SNAP-TITE CONNECTORS AND SEALANT.

9) THE CONTRACTOR SHALL PROVIDE AN AS-BUILT DRAWING ON A REPRODUCIBLE PAPER (BOND OR VELLUM) SHOWING ALL INSTALLED IRRIGATION. A MYLAR OR SEPIA OF THE ORIGINAL PLAN MAY BE OBTAINED FROM THE LANDSCAPE ARCHITECT FOR A FEE. THE DRAWING SHALL LOCATE ALL MAINLINE AND VALVES BY PROVIDING EXACT MEASUREMENTS FROM HARD SURFACES.

10) ALL VALVES, GATE VALVES AND QUICK COUPLERS SHALL BE INSTALLED IN VALVE BOXES.

11) ANY PIPING SHOWN OUTSIDE THE PROPERTY LINE OR RUNNING OUTSIDE A LANDSCAPE AREA IS SHOWN THERE FOR CLARITY ONLY. ALL LINES SHALL BE INSTALLED ON THE PROPERTY AND INSIDE THE LANDSCAPE AREAS.

12) ALL RISERS SHALL BE INSTALLED 15" FROM ANY WALL AND A MINIMUM OF 36" FROM ANY SIDEWALK, PATIO OR ROAD.

13) THE EXACT HEIGHT OF ANY 12" POP-UP THAT IS SHOWN IN A SHRUB BED SHALL BE DETERMINED BY THE LANDSCAPE ARCHITECT IN THE FIELD.

14) THE CONTRACTOR SHALL EXERCISE CARE SO AS NOT TO DAMAGE ANY EXISTING UTILITIES. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE IMMEDIATE REPAIR AND COST OF ANY DAMAGE CAUSED BY HIS WORK.

15) ALL WORK SHALL BE GUARANTEED FOR ONE YEAR FROM THE DATE OF FINAL ACCEPTANCE AGAINST ALL DEFECTS IN MATERIALS AND WORKMANSHIP.

16) CONTRACTOR TO USE MIN. OF 10 GAUGE WIRE FOR ALL COMMON WIRES AND 14 GAUGE WIRE FOR ALL CONTROL WIRES. CONTRACTOR ALSO TO PROVIDE 3 SPARE CONTROL WIRES FOR ANY FUTURE USE.

17) CONCRETE THRUST BLOCKS ARE TO BE UTILIZED AT ALL MAINLINE DIRECTION CHANGES.

18) ALL IRRIGATION SHOWN ON PLANS IS SCHEMATIC AND DOES NOT REFLECT ALL FITTINGS AND APPURTENANCES WHICH SHALL BE REQUIRED TO PROVIDE A FULLY FUNCTIONAL IRRIGATION SYSTEM CAPABLE OF PROVIDING 100 PERCENT COVERAGE WITH A 50 PERCENT OVERLAP.

19) CONTRACTOR SHALL PROVIDE RIGHT DISTRICT OPERATIONS MANAGER WITH A SET OF "AS-BUILT" INFORMATION.

20) SLEEVING MUST BE 24" BELOW THE ROADWAY.

21) PERMITTEE'S REPRESENTATIVE AND AN FDOT INSPECTOR MUST BE ON-SITE DURING ALL BORING ACTIVITIES. UPON COMPLETION OF THE BORING ACTIVITIES, PERMITTEE SHALL PROVIDE ALL DOCUMENTATION TO FDOT IN ACCORDANCE WITH FDOT STANDARD SPECIFICATIONS.

NOT APPROVED
FOR CONSTRUCTION

811 KNOW WHAT'S BELOW ALWAYS CALL 811 BEFORE YOU DIG
It's free. It's easy. It's the law.
www.callsunshine.com

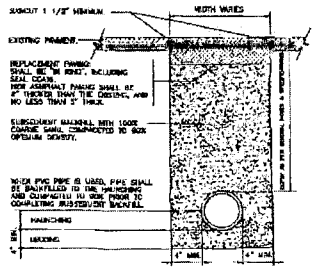
Aloha Pacifica

REVISIONS		
1	FDOT COMMENTS	11/3/15

IRRIGATION PLAN

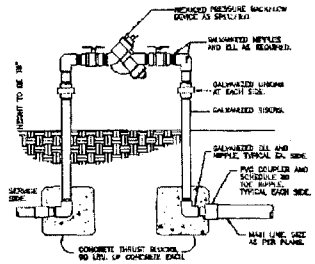
WAWA, INC.
N.W.C. 3601 N. FEDERAL HWY.
POMPANO BEACH FLORIDA

DATE 3/30/15
PROJECT NO.
SHEET NUMBER LA-3



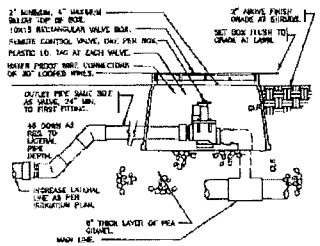
1 TRENCH DETAIL AT ASPHALT PAVING

NOT TO SCALE



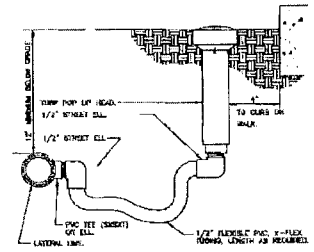
2 REDUCED PRESSURE BACKFLOW DEVICE

NOT TO SCALE



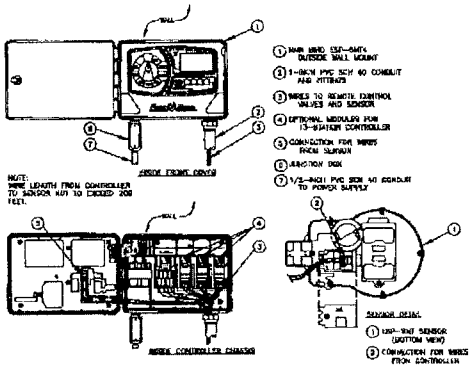
3 ELECTRIC REMOTE CONTROL VALVE

NOT TO SCALE



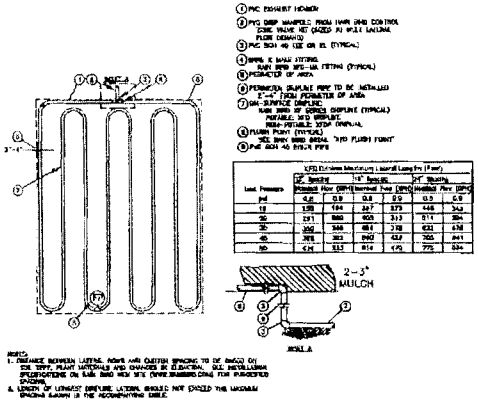
4 TURF SPRAY FLEX ASSEMBLY

NOT TO SCALE

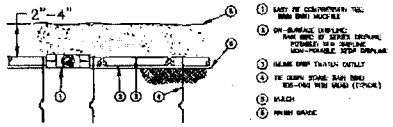


5 ESP-SMT SMART CONTROL SYSTEM

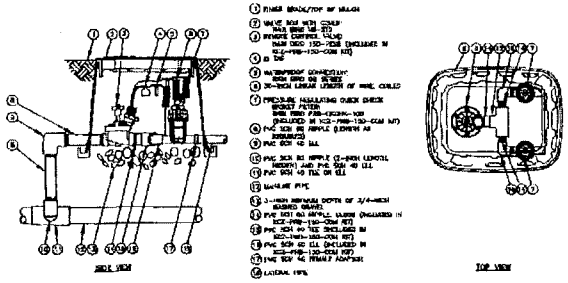
NOT TO SCALE



6 XFD Dripline Layout



7 XDF Dripline Connection



8 XCZ-PRB-150-com 1.5" Commercial Control Kit

NOT APPROVED FOR CONSTRUCTION

811 KNOW WHAT'S BELOW ALWAYS CALL 811 BEFORE YOU DIG

Aloha Pacifica

1	PRE. FOR COMMENTS	1/25/15	BW
NO.	REVISIONS	DATE	BY

SCALE AS NOTED

DESIGNED BY GS

DRAWN BY BW

CHECKED BY GS

IRRIGATION DETAILS

WAWA, INC.
N.W.C. 3601 N. FEDERAL HWY.
POMPANO BEACH FLORIDA

DATE 3/30/15

PROJECT NO. —

SHEET NUMBER LA-4

SECTION NO:	**86020**
S.R. NO.(S):	**834**
COUNTY:	**Broward**
PERMIT NO.:	**2015-L-491-0005**

EXHIBIT C

LANDSCAPE MAINTENANCE PLAN

This Exhibit forms an integral part of the DISTRICT FOUR (4) LANDSCAPE MAINTENANCE MEMORANDUM OF AGREEMENT between the State of Florida, Department of Transportation and the AGENCY.

See attached

MAINTENANCE PLAN
Landscape Improvements

Project State Road No(s): **5 (US 1) from MP. 9.435 to M.P. 9.478**
Permit No(s): **2015-L-491-0005**
Maintaining Agency: **City of Pompano Beach**
RLA of Record: **Greg A. Reynolds**
Date: **January 5, 2016**

II. SPECIFIC PROJECT SITE MAINTENANCE REQUIREMENTS AND RECOMMENDATIONS:

Spanish Stopper (street tree) is perfectly adapted to open, sunny locations where it will flourish with little care once it becomes established. It requires minimal maintenance in regards to pruning. Trees should be pruned to maintain a clean, natural growth habit.

With proper maintenance the plantings will thrive and provide a clean and orderly appearance that will be aesthetically pleasing for the surrounding area.

REFERENCES

This reference list is provided as a courtesy. The list may not contain the most current websites. The most current references must be accessed for up to date information.

Accessible Sidewalk (ADA)
http://www.access-board.gov/guidelines-and-standards/streets-sidewalks

Americans with Disabilities Act (ADA) (ADAAG)
http://www.ada.gov/2010ADAstandards_index.htm

American National Standard Institute, *ANSI A300, (Part 1) for Tree Care Operations – Trees, Shrub, and Other Woody Plant Maintenance – Standard Practices (Pruning)*, available for purchase
http://webstore.ansi.org

Florida Department of Agriculture and Consumer Services, Division of Plant Industry, *Florida Grades and Standards for Nursery Plants*
http://www.freshfromflorida.com/Divisions-Offices/Plant-Industry/Bureaus-and-Services/Bureau-of-Plant-and-Apiary-Inspection/Plant-Inspection#pubs

Florida Department of Community Affairs (DCA), *Florida Board of Building Codes & Standards, 2010 Florida Building Code, Chapter 11 Florida Accessibility Code for Building Construction Part A*
http://www2.iccsafe.org/states/florida_codes/

Florida Department of Transportation, *FDOT Design Standards for Design, Construction, Maintenance and Utility Operations on the State Highway System, Index 544 Landscape Installation*
http://www.dot.state.fl.us/rddesign/DS/15/IDx/00544.pdf

Florida Department of Transportation, *FDOT Design Standards for Design, Construction, Maintenance and Utility Operations on the State Highway System, Index 546 Sight Distance at Intersections*
http://www.dot.state.fl.us/rddesign/DS/15/IDx/00546.pdf

Florida Department of Transportation, *FDOT Design Standards for Design, Construction, Maintenance and Utility Operations on the State Highway System, Index 600 Traffic Control through Work Zones*
http://www.dot.state.fl.us/rddesign/DS/15/IDx/00600.pdf

Florida Department of Transportation, *FDOT Design Standards for Design, Construction, Maintenance and Utility Operations on the State Highway System, Index 700 Roadside Offsets*
http://www.dot.state.fl.us/rddesign/DS/15/IDx/00700.pdf

Florida Department of Transportation, *FDOT Plans Preparation Manual (PPM) Vol. I*
Chapter 2.11 Lateral Offset
Table 2.11.5 Lateral Offset Clearance to Trees
Table 2.11.11 Recoverable Terrain

http://www.dot.state.fl.us/rddesign/PPMManual/2014PPM.shtm

Florida Department of Transportation, *FDOT Standard Specifications for Road and Bridge Construction, Section 580 Landscape Installation*
http://www.dot.state.fl.us/specificationsoffice/Maintenance/Jul14/Files/SS5800000.doc

http://www.dot.state.fl.us/specificationsoffice/Implemented/Workbooks/JulWorkbook2014/Files/SP5800000FA.pdf

Florida Department of Transportation, Landscape Architecture Website
www.MyFloridaBeautiful.com

Florida Department of Transportation, *Maintenance Rating Program Handbook*
http://www.dot.state.fl.us/statemaintenanceoffice/MaintRatingProgram.shtm

Florida Department of Transportation Outdoor Advertising Database
http://www2.dot.state.fl.us/rightofway/

Florida Exotic Pest Plant Council Invasive Plant Lists
http://www.fleppc.org/list/list.htm

Florida Irrigation Society
http://www.fisstate.org

Florida Power and Light (FPL), *Plant the Right Tree in the Right Place*
http://www.fpl.com/residential/trees/right_tree_right_place.shtml

A Guide to Roadside Vegetation Management
http://www.dot.state.fl.us/statemaintenanceoffice/DOT%20Final%20(3)Turf%20Management%20Guide%20UF.pdf

Interlocking Concrete Pavement Institute (ICPI)
http://www.icpi.org/

International Society of Arboriculture (ISA)
www.isa-arbor.com

UF IFAS: *Selecting Tropical and Subtropical Tree Species for Wind Resistance*
http://edis.ifas.ufl.edu/pdffiles/FR/FR17500.pdf

UF IFAS: *Fertilization of Field-grown and Landscape Palms in Florida*
http://edis.ifas.ufl.edu/ep261

U.S. Department of Transportation, Federal Highway Administration, *Manual on Uniform Traffic Control Devices*
http://www.mutcd.fhwa.dot.gov

Meeting Date: March 8, 2016

Agenda Item 1D
Memorandum No. 16-088

REQUESTED COMMISSION ACTION:

x Consent ____ Ordinance x Resolution ____ Consideration ____ Workshop

SHORT TITLE OR MOTION: A RESOLUTION ASSESSING AS A LIEN THE CITY'S COST TO ABATE PUBLIC NUISANCES ON REAL PROPERTIES IN THE TOTAL AMOUNT OF $13,712.68.

Summary of Purpose and Why:

The Code Compliance Division had **23** parcels cleared of nuisance violations through the Nuisance Abatement Program. In that the respective owners have failed to pay for the costs and administrative fees, it is necessary to place a lien against the property. In order to place these liens the City Commission is required by section 96.32 of the City Code of Ordinances to adopt the attached resolution.

QUESTIONS TO BE ANSWERED BY ORIGINATING DEPARTMENT:

(1) Origin of request for this action: Development Services Department
(2) Primary staff contact: Miguel A. Núñez / Robin M. Bird Ext. 7774 / 4634
(3) Expiration of contract, if applicable: N/A
(4) Fiscal impact and source of funding: N/A

DEPARTMENTAL COORDINATION	DATE	DEPARTMENTAL RECOMMENDATION	DEPARTMENTAL HEAD SIGNATURE OR ATTACHED MEMO NUMBER
			See Attached Resolution
Building Division	02/22/16	Approval	
Dev. Services	02/22/16	Approval	
City Attorney	02/22/16	Approval	

__ Advisory Board
x City Manager

ACTION TAKEN BY COMMISSION:

Ordinance	Resolution	Consideration	Workshop
1st Reading	1st Reading	Results:	Results:
2nd Reading			

RESOLUTION NO. 2016-_____

CITY OF POMPANO BEACH
Broward County, Florida

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH PURSUANT TO CHAPTER 96 OF THE CITY'S CODE OF ORDINANCES, ASSESSING THE CITY'S COSTS FOR ABATING PUBLIC NUISANCE CONDITIONS ON REAL PROPERTY(IES) IN THE CITY AND PROVIDING THAT UPON THE RECORDING OF THIS RESOLUTION SAID ASSESSMENT, INCLUDING ADMINISTRATION AND INSPECTION COSTS, SHALL BE A LIEN AGAINST THE PROPERTY(IES) WHICH SHALL BEAR INTEREST AS SET FORTH IN SECTION 55.03, FLORIDA STATUTES, AND BE CO-EQUAL WITH LIENS OF AD VALOREM TAXES; DIRECTING THE CITY CLERK TO RECORD A CERTIFIED COPY OF THE RESOLUTION AND TO PROVIDE OWNER(S) WITH A NOTICE OF LIEN; PROVIDING AN EFFECTIVE DATE.

WHEREAS, pursuant to Chapter 96 of the Code of Ordinances of the City of Pompano Beach (the "Code") entitled "Health and Safety", the City Manager or the City Manager's agent or assigns (the "City's Designated Representative") declared that a public nuisance existed on the real property(ies) described in the list attached hereto and made a part hereof; and

WHEREAS, as provided by § 96.28 of the Code, the City's Designated Representative inspected said property(ies) and determined that a public nuisance as defined by § 96.26 of the Code existed, and thereafter provided the respective property owner(s) with written notice that described the subject nuisance(s) and advised if the owner(s) did not abate the nuisance(s) within seven (7) days or file a written request for a hearing within five (5) days, the City of Pompano Beach (the "City") would proceed to correct the public nuisance condition(s) and the cost thereof, including inspection, administration and collection costs would be levied as an assessment against the property(ies); and

WHEREAS, the property owner(s) failed to timely abate the nuisance(s) existing upon the property(ies) or request a hearing pursuant to § 96.30 of the Code, or the property owner(s) did request and receive a hearing which resulted in a determination that public nuisance conditions existed on the property(ies) and the owner(s) thereafter failed to timely abate said public nuisance(s); and

WHEREAS, the City, through agents or contractors, did therefore enter upon the property(ies) and incur costs to abate the public nuisance(s); and

WHEREAS, pursuant to § 96.32 of the Code, the City Commission desires to assess the City's costs to abate the subject public nuisance(s), including inspection and administration, which shall serve as a lien against the property(ies) described in the exhibit to this Resolution co-equal with liens of ad valorem taxes and prior in dignity to any other lien, including mortgages, irrespective of the date of recording of the lien or the date of recording any mortgage or other lien on the property, and such lien shall survive any action to foreclose such inferior lien; and

WHEREAS, such assessment, pursuant to Section 96.32 of the Code, shall bear interest as set forth in F. S. § 55.03 and if collection proceedings are necessary, property owner(s) would be assessed to pay the costs of such proceeding, including attorney's fees; now, therefore

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA:

SECTION 1. That assessments for the City's costs of abating nuisances in the individual amount(s) set forth in the attached exhibit are hereby levied against the subject property(ies) described therein and shall serve as a lien against the said property(ies) which shall be co-equal with liens of ad valorem taxes and prior in dignity to any other lien, including mortgages, irrespective of

the date of recording of the lien or the date of recording any mortgage or other lien on the property, and such lien shall survive any action to foreclose such inferior lien

SECTION 2. That said assessments shall be legal, valid and binding obligations on the subject property(ies).

SECTION 3. That the City Clerk is directed to record a certified copy of this Resolution in the Public Records of Broward County and simultaneously send a Notice of Lien as prescribed in § 96.32 of the Code to the property owner(s).

SECTION 4. Upon the date and time of recording of the certified copy of this Resolution in the Public Records, a lien shall become effective on the property(ies) to secure the cost of abatement, including inspection and administration. Interest on said lien shall accrue at the per annum rate prescribed by § 55.03, Florida Statutes, as now enacted or as may hereafter be amended.

SECTION 5. If collection proceeds are necessary and instituted, the cost of such proceeding, including reasonable attorney's fees, shall be assessed against the property owner(s).

SECTION 6. That this Resolution shall become effective immediately from the date of adoption.

PASSED AND ADOPTED this _____ day of _____, 2016.

_____
LAMAR FISHER, MAYOR

ATTEST:

_____
ASCELETA HAMMOND, CITY CLERK

MEB/jrm
2/10/16
l:reso/2016-131

NOTICES OF PUBLIC NUISANCE/NOTICE OF ASSESSMENT BATCH REPORT

Resolution No. 3/8/2016

Date Issue	Case	Owner Info	Address/Folio/Legal Desc	Date Abated
3/23/2015	76659	SOVEREIGN BANK FSB PO BOX 12646 READING, PA 19612	200 NE 18 St POMPANO BEACH, FL 33060 484226061920 KENDALL GREEN SEC A 43-49 B LOT 6 BLK 11	4/16/2015

Book/Page	Contractor	Abatement	Admin Fee	Total	Payment	Balance
	SKKV PROPERTY MAINTENANCE	$315.00	$101.00	$416.00	$0.00	$416.00

Date Issue	Case	Owner Info	Address/Folio/Legal Desc	Date Abated
4/10/2015	78257	FLORIDA EAST COAST RAILWAY LLC 7411 FULLERTON ST STE 300 JACKSONVILLE, FL 32256	No Address #LYING E OF DIXIE HWY 484224000050 24-48-42 FEC RAILROAD R/W 100 FT WIDE IN THE SW1/4 & NW1/4 OF SEC 244842, LYING E OF DIXIE HWY	5/13/2015

Book/Page	Contractor	Abatement	Admin Fee	Total	Payment	Balance
	PRECISON CUTS LAWN CARE AND MAINTENANCE SERVICES, INC	$2,500.00	$101.00	$2,601.00	$0.00	$2,601.00

Date Issue	Case	Owner Info	Address/Folio/Legal Desc	Date Abated
5/6/2015	80041	COCHRAN,CHRISTOPHER R COCHRAN,ROBERT BALINE JR ETAL 5911 GRANDVILLE RD TAMPA, FL 33617	1200 NE 27 Ave POMPANO BEACH, FL 33062 484330230250 HARBOR VILLAGE SEC H 45-46 B LOT 13 BLK 3	6/19/2015

Book/Page	Contractor	Abatement	Admin Fee	Total	Payment	Balance
	R&A WOOD ENTERPRISES INC	$337.36	$101.00	$438.36	$0.00	$438.36

Date Issue	Case	Owner Info	Address/Folio/Legal Desc	Date Abated
5/8/2015	80228	7TH CAVALRY CORP % JOEL ISRAEL 2501 ANTIGUA TER APT E2 COCONUT CREEK , FL 33066-1017	MARTIN LUTHER KING Blvd POMPANO BEACH, FL 33060 484235220070 BEVILL & SAXONS ADD 3-2 B LOT 12 LESS N 8	6/19/2015

Book/Page	Contractor	Abatement	Admin Fee	Total	Payment	Balance

NOTICES OF PUBLIC NUISANCE/NOTICE OF ASSESSMENT BATCH REPORT

Resolution No. 3/8/2016

Date Issue	Case	Owner Info	Address/Folio/Legal Desc	Date Abated				
	R&A WOOD ENTERPRISES INC		$166.40	$101.00	$267.40	$0.00	$267.40	
5/8/2015	80224	TARPON IV LLC 18305 Biscayne Blvd #400 AVENTURA, FL 33160	141 NW 11 St POMPANO BEACH, FL 33060 484235320010 MONTICELLO PARK AMENDED PLAT 16-21 B LOT 1 BLK 1	6/19/2015				
Book/Page	**Contractor**		**Abatement**	**Admin Fee**	**Total**	**Payment**	**Balance**	
	R&R WOODS ENTERPRISES INC		$624.00	$101.00	$725.00	$0.00	$725.00	
5/28/2015	82076	POMPANO MASONRY CORP %JULIAN M BRESLOW 880 S ANDREWS AVE POMPANO BEACH, FL 33069	SW 8 St POMPANO BEACH, FL 33069 494202030850 FAIRVIEW AMENDED PLAT 10 -25 B LOT 10,11,12 LESS W 30 BLK 10	6/19/2015				
Book/Page	**Contractor**		**Abatement**	**Admin Fee**	**Total**	**Payment**	**Balance**	
	R & A WOODS ENTERPRISES INC		$745.20	$101.00	$846.20	$0.00	$846.20	
6/1/2015	82433	BROWARD COUNTY URBAN GROUP LLC PO BOX 53 DANIA BEACH, FL 33004	2801 NW 4 St POMPANO BEACH, FL 33069 484233045870 33-48-42 E 50 OF S1/5 OF SW1/4 OF NE1/4 OF SW1/4 LESS S 25 AKA 956 CC	7/1/2015				
Book/Page	**Contractor**		**Abatement**	**Admin Fee**	**Total**	**Payment**	**Balance**	
	IRF IRRIGATION LLC		$154.90	$101.00	$255.90	$0.00	$255.90	

NOTICES OF PUBLIC NUISANCE/NOTICE OF ASSESSMENT BATCH REPORT

Resolution No. 3/8/2016

Date Issue	Case	Owner Info	Address/Folio/Legal Desc	Date Abated
6/2/2015	82470	JEHS,JULIA 2789 EAGLE ROCK CIR UNIT 204 WEST PALM BEACH, FL 33411	3049 NW 4 St POMPANO BEACH, FL 33069 484233045660 33-48-42 W 50 OF E 485 OF S1/5 OF SE1/4 OF NW1/4 OF SW1/4 LESS S 25 AKA 935 CC	6/27/2015

Book/Page	Contractor	Abatement	Admin Fee	Total	Payment	Balance
	R&R HONEST LAWN SERVICES	$395.72	$101.00	$496.72	$0.00	$496.72

Date Issue	Case	Owner Info	Address/Folio/Legal Desc	Date Abated
6/2/2015	82501	RECONOR MIAMI LLC %GERARDO AMZEL PO BOX 546812 MIAMI BEACH , FL 33154-6812	690 HAMMONDVILLE Rd POMPANO BEACH, FL 33060 484235210210 NELSON PARK 2-95 PB LOT 24 LESS S 42	6/26/2015

Book/Page	Contractor	Abatement	Admin Fee	Total	Payment	Balance
	FLOYD ROBINSON LAWN & TREE SERVICES	$84.51	$101.00	$185.51	$0.00	$185.51

Date Issue	Case	Owner Info	Address/Folio/Legal Desc	Date Abated
6/2/2015	82505	RECONOR MIAMI LLC % GERARDO AMZEL PO BOX 546812 MIAMI BEACH , FL 33154-6812	236 NW 7 Ave POMPANO BEACH, FL 33060 484235210080 NELSON PARK 2-95 PB LOT 10 LESS N 8	6/26/2015

Book/Page	Contractor	Abatement	Admin Fee	Total	Payment	Balance
	FLOYD ROBINSON LAWN & TREE SERVICES	$166.41	$101.00	$267.41	$0.00	$267.41

Date Issue	Case	Owner Info	Address/Folio/Legal Desc	Date Abated
6/2/2015	82487	WILLIAMSON,GEORGE A EST 1111 SE 3 AVE FORT LAUDERDALE, FL 33316	NW 10 Ave POMPANO BEACH, FL 33060 #lot next 612 nw 10 ave 484235410120 SCOTTS PARK FIRST ADD 23-44 B LOT 5 BLK 2	6/25/2015

Book/Page	Contractor	Abatement	Admin Fee	Total	Payment	Balance

NOTICES OF PUBLIC NUISANCE/NOTICE OF ASSESSMENT BATCH REPORT

Resolution No. 3/8/2016

Date Issue	Case	Owner Info	Address/Folio/Legal Desc	Date Abated			
	CREATIVE LAWN MAINTENANCE, LLC		$385.88	$101.00	$486.88	$0.00	$486.88
6/2/2015	82485	MONTESTE,FEDLINE 3120 NW 99 ST MIAMI, FL 33141	504 NW 10 Ave POMPANO BEACH, FL 33060 484235400260 SCOTTS PARK 19-38 B LOT 15 BLK 2	6/25/2015			
Book/Page	**Contractor**		**Abatement**	**Admin Fee**	**Total**	**Payment**	**Balance**
	CREATIVE LAWN MAINTENANCE		$262.69	$101.00	$363.69	$0.00	$363.69
6/2/2015	82483	THALLER,SIVAN 191 BRIGHTON E BOCA RATON , FL 33434	508 NW 10 Ave POMPANO BEACH, FL 33060 484235400270 SCOTTS PARK 19-38 B LOT 16 BLK 2	6/25/2015			
Book/Page	**Contractor**		**Abatement**	**Admin Fee**	**Total**	**Payment**	**Balance**
	CREATIVE LAWN MAINTENANCE LLC		$252.69	$101.00	$353.69	$0.00	$353.69
6/2/2015	82529	KING,F & EMMA L 613 NW 15 AVE POMPANO BEACH, FL 33069	109 NW 16 Ave POMPANO BEACH, FL 33069 484234030740 SEABOARD HIGHLANDS ADDITION 19-13 B LOT 14 BLK 6	6/24/2015			
Book/Page	**Contractor**		**Abatement**	**Admin Fee**	**Total**	**Payment**	**Balance**
	SKKV PROPERTY MAINTENANCE		$305.19	$101.00	$406.19	$0.00	$406.19

NOTICES OF PUBLIC NUISANCE/NOTICE OF ASSESSMENT BATCH REPORT

Resolution No. 3/8/2016

Date Issue	Case	Owner Info	Address/Folio/Legal Desc	Date Abated
6/2/2015	82473	NANAN,CLANCY 4848 SW 25 AVE FORT LAUDERDALE, FL 33312	NW 6 St POMPANO BEACH, FL 33060 #Across from 607 NW 8TH AVE 484235030060 35-48-42 N 82.84 OF S 107.84 OF E 141.5 OF E1/2 OF NW1/4 OF NW1/4 OF SW1/4	6/25/2015

Book/Page	Contractor	Abatement	Admin Fee	Total	Payment	Balance
	CREATIVE LAWN MAINTENANCE	$392.87	$101.00	$493.87	$0.00	$493.87

Date Issue	Case	Owner Info	Address/Folio/Legal Desc	Date Abated
6/3/2015	82650	HICKS,IDA L 1478 NEW HOPE ROAD SNEEDVILLE, TN 37869	NW 8 St POMPANO BEACH, FL 33069 #VACANT LOT EAST OF 1870 NW 8 ST 484234040630 HUNTER'S MANOR 19-27 B LOT 9 E 50 LESS N 25 & LESS S 150 BLK 11	6/25/2015

Book/Page	Contractor	Abatement	Admin Fee	Total	Payment	Balance
	SKKV PROPERTY MAINTENANCE	$315.00	$101.00	$416.00	$0.00	$416.00

Date Issue	Case	Owner Info	Address/Folio/Legal Desc	Date Abated
6/3/2015	82652	CANION,RANDOLPH EST % CANION,AUDREY 470 E MCNAB RD APT 3 POMPANO BEACH, FL 33060-9335	NW 7 St POMPANO BEACH, FL 33069 #LOT SE OF 1870 NW 8 ST 484234040650 HUNTER'S MANOR 19-27 B LOT 9 N 50 OF S 150 OF E 50 BLK 11	6/25/2015

Book/Page	Contractor	Abatement	Admin Fee	Total	Payment	Balance
	SKKV PROPERTY MAINTENANCE	$320.63	$101.00	$421.63	$0.00	$421.63

NOTICES OF PUBLIC NUISANCE/NOTICE OF ASSESSMENT BATCH REPORT

Resolution No. 3/8/2016

Date Issue	Case	Owner Info	Address/Folio/Legal Desc	Date Abated
6/3/2015	82653	CANION,RANDOLPH EST % CANION,AUDREY 470 E MCNAB RD APT 3 POMPANO BEACH, FL 33060-9335	NW 7 St POMPANO BEACH, FL 33069 #LOT SOUTH OF 1870 NW 8 ST 484234040660 HUNTER'S MANOR 19-27 B LOT 9 W 50 OF N 50 OF E 100 OF S 150 BLK 11	6/25/2015

Book/Page	Contractor	Abatement	Admin Fee	Total	Payment	Balance
	SKKV PROPERTY MAINTENANCE	$320.63	$101.00	$421.63	$0.00	$421.63

Date Issue	Case	Owner Info	Address/Folio/Legal Desc	Date Abated
6/3/2015	82655	TAULBERT,MOSES EST %TAULBERT,CLIFTON 7802 S LOUISVILLE AVE TULSA , OK 74136	NW 23 Ave POMPANO BEACH, FL 33069 #lot behind 2270 NW 2ND ST 484233054280 33-48-42 N1/5 OF SW1/4 OF SE1/4 OF SE1/4 E OF C/L NW 21 AVE LESS W 25 AKA TR 1-A	6/26/2015

Book/Page	Contractor	Abatement	Admin Fee	Total	Payment	Balance
	R&R HONEST MAN LAEN SERVICE	$1,318.92	$101.00	$1,419.92	$0.00	$1,419.92

Date Issue	Case	Owner Info	Address/Folio/Legal Desc	Date Abated
6/4/2015	82712	JOHNSON,DEMEKO & JOHNSON,VINCE 3102 BAYBERRY WAY MARGATE, FL 33063	NW 5 St POMPANO BEACH, FL 33069 #LOT WEST OF 3019 NW 5 ST 484233044440 33-48-42 W 50 OF E 285 OF N1/5 OF SE1/4 OF NW1/4 OF SW1/4 LESS S 25 FOR ST AKA 787 CC	6/23/2015

Book/Page	Contractor	Abatement	Admin Fee	Total	Payment	Balance
	PRECISON CUTS LAWN CARE AND MAINTENANCE SERVICES, INC	$464.22	$101.00	$565.22	$0.00	$565.22

NOTICES OF PUBLIC NUISANCE/NOTICE OF ASSESSMENT BATCH REPORT

Resolution No. 3/8/2016

Date Issue	Case	Owner Info	Address/Folio/Legal Desc	Date Abated
6/4/2015	82694	TAYLOR,EVERLINE EST % TYRONE L TAYLOR 730 NE 25 ST POMPANO BEACH, FL 33064	2432 NW 8 St POMPANO BEACH, FL 33069 484233050350 33-48-42 E 60 OF W 330 OF N1/2 OF S2/5 OF SE1/4 OF SW1/4 OF NE1/4 LESS N 25 FOR ST AKA 1199 CC	6/26/2015

Book/Page	Contractor	Abatement	Admin Fee	Total	Payment	Balance
	R&R HONESTMAN LAWN SERVICE	$472.68	$101.00	$573.68	$0.00	$573.68

Date Issue	Case	Owner Info	Address/Folio/Legal Desc	Date Abated
6/4/2015	82715	IQ INVESTMENTS LLC 5079 N DIXIE HWY #270 OAKLAND PARK, FL 33334	NW 6 Ct POMPANO BEACH, FL 33069 #lot next 3040 nw 6 ct 484233120040 COLLIER CITY ADD NO 2 74-14 B LOT 779 W 1.1158	6/25/2015

Book/Page	Contractor	Abatement	Admin Fee	Total	Payment	Balance
	R&R HONEST MAN LAWN SERVICE	$325.32	$101.00	$426.32	$0.00	$426.32

Date Issue	Case	Owner Info	Address/Folio/Legal Desc	Date Abated
7/20/2015	86015	SOVEREIGN BANK FSB PO BOX 12646 READING, PA 19612	200 NE 18 St POMPANO BEACH, FL 33060 484226061920 KENDALL GREEN SEC A 43-49 B LOT 6 BLK 11	8/18/2015

Book/Page	Contractor	Abatement	Admin Fee	Total	Payment	Balance
	CREATIVE LAWN MAINTENANCE	$763.46	$101.00	$864.46	$0.00	$864.46

NOTICES OF PUBLIC NUISANCE/NOTICE OF ASSESSMENT BATCH REPORT

Resolution No. 3/8/2016

Date Issue	Case	Owner Info	Address/Folio/Legal Desc	Date Abated

Total Cases for Nuisance Abatement	23
Total Cost of Abatement	$11,389.68
Total Administrative Cost	$2,323.00
Total Cost of Nuisance Abatement	$13,712.68
Total Payments	$0.00
Balance	$13,712.68

Meeting Date: March 8, 2016 Agenda Item 11

REQUESTED COMMISSION ACTION:

X	Consent		Ordinance	X	Resolution		Consideration/ Discussion		Presentation

SHORT TITLE A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A FIRST AMENDMENT TO THE AGREEMENT BETWEEN THE CITY OF POMPANO BEACH AND LANSING MELBOURNE GROUP, LL FOR OWNER'S REPRESENTATION FOR CONSTRUCTION OF THE PIER GARAGE; PROVIDING AN EFFECTIVE DATE.

Summary of Purpose and Why:

Staff is seeking City Commission authorization to execute a Resolution approving an amendment to the agreement with Lansing Melbourne LLC (LM). When approved, the amendment will increase the original contract by $55,560.96 (from $283,750.00 to $339,310.96). The amendment is necessary to offset the costs of additional 689 hours of professional services necessary due to significant increase in scope as the initial Owner's Rep agreement was approved prior to finalization of the overall scope for the pier parking garage project. The original contract award accounted for 3241 hours and the new amendment will add sufficient funding to compensate LM for 3930 hours, instead.

(1) Origin of request for this action: City Commission
(2) Primary staff contact: Horacio Danovich Ext. 786-4601
(3) Expiration of contract, if applicable:
(4) Fiscal impact and source of funding: $55,560.96 (account no. 473-7549-545-65-12) in support of CIP Project 15271 with the attached budget adjustment.

DEPARTMENTAL COORDINATION	DATE	DEPARTMENTAL RECOMMENDATION	DEPARTMENTAL HEAD SIGNATURE
City Attorney	2/24/2016	2016-545	
Budget	3/1/16	Approval	
Finance	3/1/16		
X Finance Director			
X City Manager			

ACTION TAKEN BY COMMISSION:

Ordinance		Resolution		Consideration	
Workshop					
1st Reading		1st Reading		Results:	Results:
2nd Reading					

pompano beach
Florida's Warmest Welcome

CITY MANAGER'S OFFICE
Horacio Danovich, CIP Manager
E: horacio.danovich@copbfl.com | P: 954.786.7834 | F: 954.786.7836

MEMORANDUM

February 25, 2016

TO: City Commission

THRU: Dennis Beach, City Manager
Greg Harrison, Assistant City Manager
Suzette Sibble, Finance Director

FROM: Horacio Danovich, CIP Manager

Issue

Staff is seeking City Commission approval to approve an amendment to the existing contract with Lansing Melbourne ("LM") to provide Owner's Rep services related to the Pier Parking Garage in the sum of $339,310.96 (an increase of $55,560.96).

Recommendation

Staff recommends Approval.

Background

Staff is seeking City Commission approval to execute a first Amendment to an existing contract with LM. Originally, LM was awarded a contract in the sum of $243,750.00 plus $40,000.00 for subconsultant services (testing and inspections). The original contract was based on the initial Pier Garage scope, and based on projected expenditures of roughly $12 million requiring 3241 hours of professional service. The project was later modified and the scope increased adding additional design elements. The extra efforts resulted in more professional hours (3930, or an increase of 689 extra hours of professional service).

LM's initial request was for $73,150.00. Staff negotiated reasonable compensation for the extra efforts resulting in an increase of $55,560.96, or a savings of $17,589.00.

Staff recommends approval.

City Attorney's Communication #2016-545
February 24, 2016

TO: Horacio Danovich, CIP Engineer

FROM: Carrie L. Sarver, Assistant City Attorney

RE: Resolution – First Amendment / Lansing Melbourne Group, LLC

Pursuant to your request, attached please find the following captioned resolution:

> **A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A FIRST AMENDMENT TO THE AGREEMENT BETWEEN THE CITY OF POMPANO BEACH AND LANSING MELBOURNE GROUP, LLC FOR OWNER'S REPRESENTATION FOR CONSTRUCTION OF THE PIER GARAGE; PROVIDING AN EFFECTIVE DATE.**

Please feel free to contact me if I may be of further assistance.

CARRIE L. SARVER

/jrm
l:cor/engr/2016-545

Attachment

RESOLUTION NO. 2016-_____

CITY OF POMPANO BEACH
Broward County, Florida

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A FIRST AMENDMENT TO THE AGREEMENT BETWEEN THE CITY OF POMPANO BEACH AND LANSING MELBOURNE GROUP, LLC FOR OWNER'S REPRESENTATION FOR CONSTRUCTION OF THE PIER GARAGE; PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA:

SECTION 1. That a First Amendment to the Agreement between the City of Pompano Beach and Lansing Melbourne Group, LLC for owner's representation for construction of the pier garage, a copy of which Amendment is attached hereto and incorporated by reference as if set forth in full, is hereby approved.

SECTION 2. That the proper City officials are hereby authorized to execute said Amendment between the City of Pompano Beach and Lansing Melbourne Group, LLC.

SECTION 3. This Resolution shall become effective upon passage.

PASSED AND ADOPTED this _____ day of _____, 2016.

_____
LAMAR FISHER, MAYOR

ATTEST:

_____
ASCELETA HAMMOND, CITY CLERK

CLS/jrm
2/24/16
l:reso/2016-139

FIRST AMENDMENT

THIS IS A FIRST AMENDMENT TO THE AGREEMENT dated the _____ day of _____, 2016, between:

> **LANSING MELBOURNE GROUP, LLC,** a Florida limited liability company, hereinafter referred to as "Consultant,"
>
> **and**
>
> **CITY OF POMPANO BEACH,** a municipal corporation of the State of Florida, whose address is 100 West Atlantic Boulevard, Pompano Beach, Florida 33060, hereinafter referred to as "Owner."

WHEREAS, the parties entered into a design build agreement to design and construct the Pier Parking Garage project ("Original Agreement"), a copy of which is attached hereto and made a part hereof, and approved by City Resolution No. 2014-271; and

WHEREAS, the parties now desire to amend certain terms and conditions to the agreement to amend the scope of work and fees associated with the Original Agreement; and

NOW, THEREFORE, in consideration of the mutual terms and conditions, promises, covenants, and payments hereinafter set forth, the parties agree as follows:

1. Each "WHEREAS" clause set forth above is true and correct and herein incorporated by this reference.

2. The Original Agreement shall remain in full force and effect except as specifically amended hereinbelow.

3. The attached Exhibit "3" is hereby substituted for, and in all references replaces, that Exhibit "3" which was attached to, referenced and made a part of the Original Agreement.

4. Section 5.1 of Article 5 to the Original Agreement is hereby amended to read as follows:

ARTICLE 5 COMPENSATION

§ 5.1 Compensation to Consultant for the services under this Agreement shall be the Lump Sum Amount of ~~$243,750~~ $299,310.96, payable in installments, as provided for elsewhere in the Agreement. This Lump Sum Amount includes, but is not limited to, all wages payroll burden, benefits, taxes, insurances, equipment, computers, software, cell phones, tools, licenses, permits, overhead and profits arising out of, or in connection with, performing the services associated with this Agreement. In the event that the Owner exercises the Add Alternate either at the time of executing this Agreement, or thereafter, the above Lump Sum Compensation shall be increased in an amount not to exceed an additional forty thousand ($40,000) to cover the actual cost of the subconsultant, including a markup for overhead and profit of ten percent (10%). In no event shall the Lump Sum Compensation, including the Add Alternate, if exercise by Owner, exceed the sum of ~~$283,750~~ $339,310.96, as adjusted by Changes in Service, if any.

. . .

5. All other terms and conditions of the said agreement shall remain in full force and effect as provided by the original agreement and any previous amendments and renewals thereto, unless earlier terminated pursuant to the provisions of the agreement.

6. That no other amendment to the terms of the said agreement shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

IN WITNESS WHEREOF, the parties have caused this Amendment to Agreement to be duly executed on the day and year first above written.

"CONSULTANT":

Witnesses:

Helena Kolenda

HELENA KOLENDA
Print Name

Shannon McGough

SHANNON McGOUGH
Print Name

LANSING MELBOURNE GROUP, LLC
a Florida Limited Liability Company

By: Peter Flotz
Peter Flotz, Managing Member

(SEAL)

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 25 day of February, 2016, by Peter Flotz, Managing Member of LANSING MELBOURNE GROUP, LLC, a Florida Limited Liability Company, on behalf of the company. He is personally known to me or who has produced _____ _____ (type of identification) as identification.

NOTARY'S SEAL:

Mirjam Sandau-Brooks
NOTARY PUBLIC, STATE OF FLORIDA

Mirjam Sandau-Brooks
(Name of Acknowledger Typed, Printed or Stamped)

Commission Number

MIRJAM SANDAU-BROOKS
MY COMMISSION #FF075743
EXPIRES December 11, 2017
(407) 398-0153 FloridaNotaryService.com

"OWNER":

Witnesses:

CITY OF POMPANO BEACH

_____

By:_____
Lamar Fisher, Mayor

_____

By:_____
Dennis W. Beach, City Manager

Attest:

_____
Asceleta Hammond, City Clerk

(SEAL)

Approved As To Form:

_____
Mark E. Berman, City Attorney

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instruments were acknowledged before me this _____ day of _____, 2016, by **LAMAR FISHER** as Mayor, **DENNIS W. BEACH** as City Manager and **ASCELETA HAMMOND** as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who are personally known to me.

NOTARY'S SEAL:

_____
NOTARY PUBLIC, STATE OF FLORIDA

_____
(Name of Acknowledger Typed, Printed or Stamped)

_____
Commission Number

CLS:jsm
2/24/16
l:agr/engr/2016-540

Memo to: Dennis Beach

Through: Greg Harrison
Chris Brown
Horacio Danovich
Suzette Sibble

From: Peter Flotz
Lansing Melbourne Group, LLC

Date: January 19, 2016

Re: Reconciliation of B142 Contract

This memo is presented to provide background and specific information as to the Owner's Representation Agreement between the City and Lansing Melbourne Group as it pertains to the Pier Parking Garage.

Selection Process

On March 31, 2014, the City issued a Request for Proposals for Owner's Representation in the development and construction of the new Pier Parking Garage. In order to conduct a fair selection process among potential owner's representatives, the RFP only discussed the project as a "500 car parking garage" and did not reveal any potential iconic design, site work, potential enlargement, Pier Street, or similar scope items.

On April 29, 2014 the City received proposals from five firms, and during a subsequent selection process, ranked LMG highest among the proposers by the selection committee on May 13, 2014. A contract was negotiated through outside counsel (Peter Brandt) and the CIP Manager (Mr. Danovich), and on June 26, 2014 a Notice to Proceed was issued to LMG by the City.

Concurrently, an RFP had been issued for design build services for the Parking Garage. On March 20, 2014 a pre bid meeting was held with potential bidders and on May 2, 2014 a short list of three bidders was announced. The City's intent was to receive proposals that included pricing and design later that month, and on June 24, 2014 the City authorized staff to enter into negotiations with Kaufman Lynn Construction.

Contract and Fee Negotiation

Because of the concurrent nature of these procurements, the contract presented by counsel to LMG included certain placeholders for project effort and budget that were consistent with the original RFP but necessarily ignored the ongoing procurement process with design build firms. In addition, the design and pricing

was rather fluid as the scope was varying widely with many options for the ultimate scope of the garage work.

City's legal counsel proposed, and LMG accepted, an adjustment mechanism in the American Institute of Architects form B142 Contract that states that "material changes in the scope of the project" (defined as changes in actual cost greater than 25% of the contracted project budget of $12,000,000) allow for "equitable" changes in the proposed fee for owner representation.

Determination of Project Scope

The changes that occurred in the scope of the construction fall into a number of areas, some of which change the work effort required (and therefore the corresponding fee) and some of which have no effect on the work effort. The following table summarizes the increases in the project budget and the effect on the scope of work.

Item	**Value**	**Effect on Scope**	**Add to Base**
Base Price	$ 1,099,747.00	Proportional	$1,099,747
Addition of Fifth Level	$ 2,365,319.00	Proportional	$2,365,319
Aesthetic	$ 1,614,615.00	None	$0
Environmental/Marine	$ 514,597.00	None, just higher costs	$0
Infrastructure/Roads	$ 2,133,497.00	Proportional	$2,133,497
Tourism Office	$ 25,585.00	Proportional	$ 25,585
Contingencies/Allowances	$ 2,103,000.00	Significant, includes lift station	$2,103,000
Financing/Admin	$ 1,638,640.00	None	$0
Base Price	$12,000,000.00	None, this was bid basis	$0
Total Project Budget	***$23,495,000.00***		

The total value of changes that affected the work effort is $7,727,148 as known today. This amounts to a 64.39% increase in the project budget represented by the City in the RFP and subsequent contract.

Effect on LMG Work Effort

The lump sum fee offered by LMG to the City in the response (section 5) to the original RFP (assuming a $12,000,000 project budget) was $243,750, which included 3241 man hours of effort over two and a half years and a ten thousand dollar allowance for third party costs. Attached to this memo is a recalculation of man hours required for the 79 individual tasks included in the LMG scope of work. This recalculation included deleting all the hours associated with tasks B.7.1

through B.7.17 which involved work during the contractor RFP process since this work was conducted by City staff prior to LMG's selection. In total the overall work effort increased to 3930 man hours. When hourly rates are applied to the individual staff members performing the work, the change in fee is $73,150, or 30.01% of the original value. *Subsequent to the preparation of this analysis, the CIP Engineer suggested that the calculation should be made using the original average hourly rates, which would result in a reduction of the request to $55,560.96.*

Requested Action

LMG respectfully requests that the City Manager direct staff to undertake a fee adjustment of $55,560.96 to the existing agreement as anticipated in Section 3.3 of the contract as executed (excerpt below).

§ 3.3.2 If any of the following circumstances substantially affects the Consultant's services for the Project, the Consultant shall be entitled to an appropriate adjustment in the Consultant's schedule and compensation:

.1 change in the instructions or approvals given by the Owner that necessitate (1) revisions in Instruments of Service, (2) changes to services previously performed, (3) changes in the manner of preparing Instruments of Service, or (4) changes to the performance of services not yet performed;

.2 enactment or revision of codes, laws or regulations or official interpretations which necessitate changes to previously prepared Instruments of Service or services previously performed or which will necessitate changes in the manner of preparation of Instruments of Service not yet prepared or the performance of services not yet performed;

.3 decisions or approvals of the Owner not rendered in a timely manner;

.4 significant change in the Project, including, but not limited to, size, quality, complexity, the Owner's schedule, overall budget or budget for the Cost of the Work, or procurement method;

.5 repeated failure of performance on the part of the Owner or the Owner's consultants, contractors, design-builders or others retained by the Owner;

.6 reviewing subsequent submittal(s) from the Owner's consultants, contractors, design-builders or others retained by the Owner due to the previous submittal's failure to conform to the Consultant's requirements;

.7 preparation for and attendance at a public meeting or hearing not originally included in the Consultant's scope of services; or

.8 substantial change in the information referred to in Article 1.

Pompano Beach Parking Enterprise Fund	LMG Average Hourly Rate		
Pier Garage Owner's Representation	$150	princ	
Detailed Billing Worksheet	$50	tech/clerical	

			AS PROPOSED - $12 MILLION PROJECT					AS MODIFIED - $22 MILLION PROJECT				
			Scheduled Value	LMG			Sub	Value	LMG			Sub
			Value	Prin Hrs	Tech Hrs	Fee	Fee	Value	Prin Hrs	Tech Hrs	Fee	Fee
		SCOPE OF OWNER REPRESENTATIVE BASIC SERVICES										
B.2		**Project Administration Services**										
	B.2.1	Project Administration	$10,500	30	120	$10,500		$10,500	30	120	$10,500	
	B.2.2	Discipline Coordination	$10,500	30	120	$10,500		$10,500	30	120	$10,500	
	B.2.3	Owner-Supplied Date Coordination	$3,200	8	40	$3,200		$3,200	8	40	$3,200	
	B.2.4	Agency Consultation/Review/Approval	$3,900	10	48	$3,900		$3,900	10	48	$3,900	
	B.2.5	Schedule Development/Monitoring	$7,200	8	120	$7,200		$7,200	8	120	$7,200	
	B.2.6	Submissions to Owner	$10,500	30	120	$10,500		$13,800	52	120	$13,800	
	B.2.7	Presentations	$18,000	80	120	$18,000		$18,000	80	120	$18,000	
B.3		**Data Gathering Services**	$0			$0		$0			$0	
	B.3.2	Extent and Detail	$1,200		24	$1,200		$1,200		24	$1,200	
	B.3.3	Additional Data, not required, but relevant	$600		12	$600		$600		12	$600	
	B.3.4	Preparation of Draft Data Gathering Report	$1,400	4	16	$1,400		$1,400	4	16	$1,400	
	B.3.5	Preparation of Final Data Gathering Report	$1,400	4	16	$1,400		$1,400	4	16	$1,400	
	B.3.13	Identification of Reviewing Agencies/Groups	$1,800	4	24	$1,800		$1,800	4	24	$1,800	
	B.3.14	Identification of Applicable Regulations	$800		16	$800		$800		16	$800	
B.4		**Programming and Planning Services**	$0	0		$0		$0	0		$0	
	B.4.2	Review of Planning & Programming Req's.	$3,200	16	16	$3,200		$3,200	16	16	$3,200	
	B.4.3	Preparation of Draft Program Document	$1,400	8	4	$1,400		$1,400	8	4	$1,400	
	B.4.4	Preparation of Final Program Document	$2,400	8	24	$2,400		$2,400	8	24	$2,400	
	B.4.10	Other Programming & Planning Services	$1,600	8	8	$1,600		$1,600	8	8	$1,600	
B.5		**Project Criteria Development Services**	$0	0		$0		$0	0		$0	
	B.5.1	Preparation of Draft Project Criteria Docs.	$800	4	4	$800		$800	4	4	$800	
	B.5.2	Preparation of Final Project Criteria Docs.	$1,000	4	8	$1,000		$1,000	4	8	$1,000	
	B.5.3	Revisions to Project Criteria Docs.	$1,600	8	8	$1,600		$1,600	8	8	$1,600	
	B.5.4	Narrative of Program Requirements/Objectives	$2,400	12	12	$2,400		$2,400	12	12	$2,400	
	B.5.5	Narrative of Design Goals & Objectives	$900	2	12	$900		$900	2	12	$900	
	B.5.6	Project Concept Diagrams & Docs.	$800	4	4	$800		$800	4	4	$800	
	B.5.7	Performance Specifications	$800	4	4	$800		$800	4	4	$800	
	B.5.8.1	Project Use	$400	2	2	$400		$400	2	2	$400	
	B.5.8.2	Project Space Requirements	$400	2	2	$400		$400	2	2	$400	
	B.5.8.3	Building System Requirements	$400	2	2	$400		$400	2	2	$400	
	B.5.8.4	Building Materials Requirements	$400	2	2	$400		$400	2	2	$400	
	B.5.8.5	Equipment Requirements	$400	2	2	$400		$400	2	2	$400	
	B.5.8.6	Project Schedule	$400	2	2	$400		$400	2	2	$400	
	B.5.8.7	Project Phasing	$1,000	6	2	$1,000		$1,000	6	2	$1,000	
	B.5.8.9	Project Expandability Requirements	$1,000	6	2	$1,000		$1,000	6	2	$1,000	
B.6		**Budgeting And Cost Estimating Services**	$0			$0		$0			$0	
	B.6.2	Contingencies Regarding Cost	$600	4		$600		$600	4		$600	
	B.6.3	Adjustment For Changes see:B.2.5	$1,800	2	30	$1,800		$7,500	40	30	$7,500	
	B.6.4	Preliminary Estimate	$2,700	8	30	$2,700		$2,700	8	30	$2,700	
	B.6.5	Updated Estimate	$2,400	8	24	$2,400		$4,800	12	60	$4,800	
	B.6.6	Advise on Adjustments to Previous Estimates	$1,500	2	24	$1,500		$7,950	45	24	$7,950	
	B.6.9	Budget Development Services	$1,500	2	24	$1,500		$4,200	20	24	$4,200	
B.7		**Design-Build Procurement Services**	$0			$0		$0			$0	

	B.7.1	Advise on Selection Process/Evaluation Criteria	$1,000	4	8	$1,000		$0	0	0	$0	
	B.7.2	Advise on Contract Type	$600	4		$600		$300	2		$300	
	B.7.3	Advise on Contract Form and Conditions	$600	4		$600		$0	0		$0	
	B.7.6	Evaluations of Proposers	$1,200	8		$1,200		$0	0		$0	
	B.7.7	Recommendation of Selected Proposers	$3,600	16	24	$3,600		$0	0	0	$0	
	B.7.8	Determination of Proposal Submission Requirements	$100		2	$100		$0		0	$0	
	B.7.9	Preparation of Request For Proposals	$100		2	$100		$0		0	$0	
	B.7.10	Reproduction and Distribution of Proposal Docs	$100		2	$100		$0			$0	
	B.7.11	Maintain Distribution/Deposit/Retrieval Log	$1,200		24	$1,200		$0	0	0	$0	
	B.7.12	Respond to Questions Regarding Criteria Intent	$4,200	8	60	$4,200		$0	0		$0	
	B.7.13	Evaluate Requests for Project Criteria Modifications	$3,200	8	40	$3,200		$0	0	0	$0	
	B.7.14	Preparation/Distribution of Addenda	$1,500	2	24	$1,500		$0	0	0	$0	
	B.7.15	Attend Proposers Conference	$2,400	8	24	$2,400		$0	0	0	$0	
	B.7.16	Evaluation of Proposals	$2,400	8	24	$2,400		$0	0	0	$0	
	B.7.17	Recommendation of Selected Proposal	$900	2	12	$900		$0	0	0	$0	
	B.7.18	Design-Build Contract Award	$5,600	24	40	$5,600		$11,000	60	40	$11,000	
B.8		**Consulting Services/Final Design Docs by Design-Builder**	$0			$0		$0			$0	
	B.8.1	Respond to Questions regarding Criteria Intent of Docs.	$700	2	8	$700		$2,800	12	20	$2,800	
	B.8.2	Review Docs Prepared by Design-Builder	$1,800	8	12	$1,800		$1,800	8	12	$1,800	
	B.8.3	Recommendations for Payment	$400	2	2	$400		$400	2	2	$400	
	B.8.4	Advise and Consult with the Owner	$700	4	2	$700		$700	4	2	$700	
	B.8.5	Attend and Participate at Project Meetings	$1,600	8	8	$1,600		$1,600	8	8	$1,600	
B.9		**Consulting Services re: Construction Docs Prepared by D/B**	$0			$0		$0			$0	
	B.9.1	Respond to Questions regarding Intent of Criteria docs	$250	1	2	$250		$250	1	2	$250	
	B.9.2	Review Docs Prepared by Design-Builder	$1,000	4	8	$1,000		$1,000	4	8	$1,000	
	B.9.3	Recommendations for Payment	$1,000	4	8	$1,000		$1,000	4	8	$1,000	
	B.9.4	Advise and Consult with the Owner	$1,600	8	8	$1,600		$1,600	8	8	$1,600	
	B.9.5	Attend and Participate at Project Meetings	$1,600	8	8	$1,600		$1,600	8	8	$1,600	
B.10		**Consulting Services in connection with Construction of Project**	$0			$0		$0			$0	
	B.10.1	Respond to Questions	$3,300	2	60	$3,300		$6,000	20	60	$6,000	
	B.10.2	Review Docs Prepared by Design-Builder previously reviewed	$2,100	4	30	$2,100		$8,200	28	80	$8,200	
	B.10.3	Site Visits for Selected Purposes	$6,500	10	100	$6,500		$48,000	240	240	$48,000	
	B.10.4	Recommendations for Payment	$19,200	48	240	$19,200		$30,000	80	360	$30,000	
	B.10.5	Substantial Completion and Final Completion Inspections	$5,500	10	80	$5,500		$5,500	10	80	$5,500	
	B.10.6	Recommendation for Final Payment	$3,200	8	40	$3,200		$3,200	8	40	$3,200	
	B.10.7	Advise and Consult with the Owner	$4,600	4	80	$4,600		$10,900	36	110	$10,900	
	B.10.8	Attend and Participate at Project Meetings	$21,000	60	240	$21,000		$31,500	110	300	$31,500	
B.11		**Post Contract Completion**	$0			$0		$0			$0	
	B.11.1	Attend Meetings	$1,600	8	8	$1,600		$1,600	8	8	$1,600	
	B.11.2	Administer Remedial Work of Design-Builder	$2,300	2	40	$2,300		$2,300	2	40	$2,300	
	B.11.3	Warranty Review Services	$2,300	2	40	$2,300		$2,300	2	40	$2,300	
	B.11.4	Post-Contract Completion Evaluation Services	$400	2	2	$400		$400	2	2	$400	
	B.11.5	Advise and Consult with the Owner	$3,600	16	24	$3,600		$3,600	16	24	$3,600	
B.12		**Other Services**	$0			$0		$0			$0	
	B.12.2	Tenant-Related Services	$7,500	30	60	$7,500		$7,500	30	60	$7,500	
	B.12.3	Project Promotion/Public Relations	$8,500	30	80	$8,500		$8,500	30	80	$8,500	
	B.12.12	Model Construction (Update existing model)(now office rental)	$10,000			$0	$ 10,000	$0			$0	$0
		Grand total schedule of Values	**$243,750.00**	**717**	**2,524**	**$233,750**	**$10,000**	**$316,900.00**	**1,204**	**2,726**	**$316,900**	**$0**
			TOTAL HOURS	3,241				HOURS	3,930			
			AVG Cost	$75.21				**AVG Cost**	$80.64	Delta	$73,150	30.01%

RESOLUTION NO. 2014-271

CITY OF POMPANO BEACH
Broward County, Florida

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE AN AGREEMENT BETWEEN THE CITY OF POMPANO BEACH AND LANSING MELBOURNE GROUP, LLC IN THE AMOUNT OF $243,750.00 PLUS AN ALLOWANCE OF $40,000.00 FOR OWNER'S REPRESENTATION FOR CONSTRUCTION OF THE PIER GARAGE; PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA:

SECTION 1. That an Agreement between the City of Pompano Beach and Lansing Melbourne Group, LLC for owner's representation for construction of the pier garage, a copy of which Agreement is attached hereto and incorporated by reference as if set forth in full, is hereby approved.

SECTION 2. That the proper City officials are hereby authorized to execute said Agreement between the City of Pompano Beach and Lansing Melbourne Group, LLC.

SECTION 3. This Resolution shall become effective upon passage.

PASSED AND ADOPTED this 24th day of June, 2014.

LAMAR FISHER, MAYOR

ATTEST:

MARY L. CHAMBERS, CITY CLERK

GBL/jrm
6/17/14
I:reso/2014-308

AIA® Document B142™ – 2004

Standard Form of Agreement Between Owner and Consultant where the Owner contemplates using the design-build method of project delivery

Revision 2 (06-17-2014)

AGREEMENT made as of the 27 day of June in the year 2014
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status, address and other information)

The City of Pompano Beach, a political subdivision of the State of Florida
100 West Atlantic Boulevard
Pompano Beach, Florida 33060

Attention: Dennis Beach, City Manager

and the Consultant:
(Name, legal status, address and other information)

Lansing Melbourne Group, LLC
2805 East Oakland Park Blvd., #185
Fort Lauderdale, Florida 33306

for the following Project:
(Name, location and detailed description)

Design/Build Services for the Pier Garage

The Owner and Consultant agree as follows:

Performance of the services to be provided by Consultant shall not commence until Owner issues a written Notice to Proceed to Consultant, and shall continue for the ensuing nine hundred thirteen (913) calendar days thereafter, unless the Agreement is extended in writing and/or terminated during the course of performance, as provided for elsewhere herein. A failure by the Owner to authorize work under this Agreement or to issue a Notice to Proceed shall not be deemed a breach of this Agreement.

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

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TABLE OF ARTICLES

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2 RESPONSIBILITIES OF THE PARTIES

3 TERMS AND CONDITIONS

4 SCOPE OF AGREEMENT

5 COMPENSATION

TABLE OF EXHIBITS

A INITIAL INFORMATION

B CONSULTANT'S SERVICES

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the information and assumptions contained in Exhibit A of this Agreement, and as addressed in Request for Proposals T-36-14 ("RFP"), and Consultant's Proposal bearing the submittal date of April 29, 2014 ("Consultant's Proposal"), Exhibits "1" and "2", respectively, which are attached hereto and made a part hereof. By its execution of this Agreement, Consultant warrants and represents that it has visited the Project site, reviewed and is familiar with the contents and Project concepts and criteria set forth in Design/Build Request for Proposals T-16-14 (Step 2) (Design/Build Services for Construction of Beach Parking Garage), and has correlated personal observations and said review with its Consultant's Proposal and prior to entering into this Agreement.

ARTICLE 2 RESPONSIBILITIES OF THE PARTIES

§ 2.1 The Owner and the Consultant shall cooperate with one another to fulfill their respective obligations under this Agreement. Both parties shall endeavor to maintain good working relationships among all members of the Project Team. Time is of the essence with respect to performance under this Agreement.

§ 2.2 OWNER

§ 2.2.1 The Owner's Designated Representative is authorized to act on the Owner's behalf with respect to the Project.

§ 2.2.2 The Owner shall provide full and timely information regarding requirements for and limitations on the Project and shall render decisions in a timely manner so as to avoid delay in the Consultant's performance of its services.

§ 2.2.3 The Owner shall periodically review and, if appropriate, update the overall budget for the Project, including that portion allocated to the Cost of the Work, and shall promptly notify the Consultant thereof in writing. If the overall budget, or that portion allocated to the Cost of the Work, including any contingencies included therein, is materially increased or decreased, then the Owner and Consultant shall agree upon, as appropriate, corresponding changes in the Project scope, quality and schedule. For purposes of this Agreement, "materiality" shall mean and increase or decrease in the Cost of the Work exceeding or reducing the Cost of the Work by twenty-five percent (25%) of the Project Budget.

§ 2.2.4 The Owner, at its discretion, may furnish the services of consultants other than those designated as being furnished by the Consultant in Exhibit A or shall authorize the Consultant to furnish them as a Change in Services when such services are reasonably required by the scope of the Project.

§ 2.2.5 The Owner shall provide prompt written notice to the Consultant if the Owner becomes aware of any errors, omissions or inconsistencies in the Consultant's services or in the services or information furnished by the Owner.

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§ **2.2.6** Services provided by parties retained by the Owner, if any, whether such services are performed directly by such parties or by sub-consultants retained by such parties, shall be performed by qualified professionals licensed as may be required by applicable law to perform such services in the jurisdiction in which the Project is located.

§ **2.2.7** The Owner shall require the Design-Builder to obtain from each of the Design-Builder's design professionals certifications with respect to the documents and services provided by such professionals (a) that, to the best of their knowledge, information and belief, the documents or services to which such certification relates (i) are consistent with the criteria set forth in the Project Criteria documents prepared by the Consultant pursuant to Article B.5 of Exhibit B, except to the extent specifically identified in such certificate, (ii) comply with applicable professional practice standards, and (iii) comply with applicable laws, ordinances, codes, rules and regulations governing the design of the Project; and (b) that the Owner and its consultants shall be entitled to rely upon the representations and statements contained in such certifications.

§ 2.3 CONSULTANT

§ **2.3.1** The Consultant's Designated Representative is authorized to act on the Consultant's behalf with respect to the Project.

§ **2.3.2** The services the Consultant and its sub-consultants, if any, shall provide are designated in Exhibit B of this Agreement.

§ **2.3.3** The Consultant shall perform its services in accordance with applicable standards of professional skill and care. When applicable law requires that services be performed by licensed professionals, the Consultant shall provide those services through the performance of qualified persons or entities duly licensed to practice their professions, which costs are included in Consultant's compensation, Article 5 below.

§ **2.3.4** The Consultant shall submit for the Owner's approval a schedule for the performance of the Consultant's services which initially shall be consistent with the time periods established in Exhibit A and which shall be adjusted as necessary as the Project proceeds. This schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants and, if applicable, for approval of authorities having jurisdiction over the Project. Time limits established by this schedule and any adjustments thereto approved by the Owner shall not, except for reasonable cause, be exceeded by the Consultant or the Owner.

§ **2.3.5** The Consultant shall maintain the confidentiality of information specifically designated by the Owner in writing as confidential, unless withholding such information would violate the law, create the risk of significant harm to the public or prevent the Consultant from establishing a claim or defense in an adjudicatory proceeding. The Consultant shall require similar agreements from its sub-consultants. Unless exempted under Chapter 119, F.S. (Florida Public Records Act), all communications and work product arising out of, or in connection with, this Agreement are subject to review by members of the public. § **2.3.6** Except with the Owner's knowledge and written consent, the Consultant shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Consultant's professional judgment with respect to the Projec; and, additionally, during the term of this Agreement, Consultant shall not perform consulting work for any developer, tenant or landowner with properties within a one-half mile radius of the Project that would in any way conflict or compete with the Project

§ **2.3.7** The Consultant shall be entitled to rely on the accuracy, timeliness and completeness of services and information furnished by the Owner. The Consultant shall provide prompt written notice to the Owner if the Consultant becomes aware of any errors, omissions or inconsistencies in such services or information.

§ **2.3.8** Consultant is to review submittals of the Design-Builder as part of the Consultant's services under this Agreement.Such review by the Consultant shall be for the limited purpose of evaluating conformance with the information given and the design concept expressed in the Design-Build Documents. By undertaking such review, the Consultant does not have or assume responsibility to coordinate design performed or information provided by multiple design professionals engaged by the Design-Builder and/or its trade contractors.

§ **2.3.9** Consultant is to review submittals of the Design-Builder as part of the Consultant's services under this Agreement. The Owner shall require that prior to transmission to the Consultant for the Consultant's review, all final design documents, construction documents, Shop Drawings, Product Data, Samples and other submittals of the Design-Builder or its trade contractors shall first be reviewed and approved in writing by the Design-Builder and its

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design professionals as conforming to the information given and the design concept expressed in the Design-Build Documents The Consultant shall be entitled to rely upon such approvals.

§ 2.3.10 Evaluations of the Owner's overall Project budget and budget for the Cost of the Work and preliminary estimates and updated estimates thereof represent the Consultant's professional judgment. It is recognized, however, that neither the Consultant nor the Owner has control over the cost of labor, materials or equipment, over the Design-Builder's methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the Consultant cannot and does not warrant or represent that Design-Build proposals or negotiated prices will not vary from the Owner's overall Project budget or budget for the Cost of the Work or from any evaluation or estimate thereof.

§ 2.3.11 By performing the services under this Agreement the Consultant does not assume any responsibility for the preparation, adequacy, suitability, performance, quality and completeness of the final design, or for the construction of the Work in accordance with the approved final design. The Consultant shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs of the Project.

§ 2.3.12 Services, if any, performed by the Consultant during the construction of the Project are undertaken and performed by the Consultant in the sole interest and for the exclusive benefit of the Owner.

(Paragraph deleted)

ARTICLE 3 TERMS AND CONDITIONS

§ 3.1 COST OF THE WORK

§ 3.1.1 The Project Cost of the Work includes all costs, charges and expenses to be paid by the Owner to the Design-Builder in connection with the Project, including, but not limited to, the Design-Builder's fee, costs of tests, evaluations and reports required for the execution of the Work, and all fees and expenses of design professionals retained by the Design-Builder, and the cost of construction of the Work.

§ 3.1.2 The Project Cost of the Work does not include the compensation of the Consultant and the Consultant's sub-consultants, if any, the costs of the land, rights-of-way and financing or other costs that are the responsibility of the Owner.

§ 3.2 INSTRUMENTS OF SERVICE

§ 3.2.1 Consultant hereby irrevocably assigns to Owner the exclusive ownership of the property rights, as well as copyrights, of all documents, drawings, specifications, electronic data, budgets, and information (hereafter collectively "Documents") prepared, provided or procured by the Consultant and its sub-consultants, if any, in connection with this Agreement.

§ 3.2.2

(Paragraphs deleted)

§ 3.3.2 If requested by Owner, Consultant shall periodically provide Owner all documents generated in connection with this Agreement in an electronic format AutoCAD, PDF and hard copy.

§ 3.3 CHANGE IN SERVICES

§ 3.3.1 Consultant and Owner acknowledge that the scope of services included in this Agreement do not delineate every detail and minor work task required to by performed by Consultant in connection with the Project. If, during the course of the performance of the services included in this Agreement, Consultant determines that work should be performed to complete the Project which, in the Consultant's opinion, is outside the level of effort originally anticipated, Consultant shall notify the Owner in writing in a timely manner and agree to an adjustment, in writin, before proceeding with the work, If Consultant proceeds with said work without so notifying the Owner, said work shall be deemed to be within the scope of services included in this Agreement, and Consultant thereby waives any entitlement to additional compensation.

§ 3.3.2 If any of the following circumstances substantially affects the Consultant's services for the Project, the Consultant shall be entitled to an appropriate adjustment in the Consultant's schedule and compensation:

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.1 change in the instructions or approvals given by the Owner that necessitate (1) revisions in Instruments of Service, (2) changes to services previously performed, (3) changes in the manner of preparing Instruments of Service, or (4) changes to the performance of services not yet performed;

.2 enactment or revision of codes, laws or regulations or official interpretations which necessitate changes to previously prepared Instruments of Service or services previously performed or which will necessitate changes in the manner of preparation of Instruments of Service not yet prepared or the performance of services not yet performed;

.3 decisions or approvals of the Owner not rendered in a timely manner;

.4 significant change in the Project, including, but not limited to, size, quality, complexity, the Owner's schedule, overall budget or budget for the Cost of the Work, or procurement method;

.5 repeated failure of performance on the part of the Owner or the Owner's consultants, contractors, design-builders or others retained by the Owner;

.6 reviewing subsequent submittal(s) from the Owner's consultants, contractors, design-builders or others retained by the Owner due to the previous submittal's failure to conform to the Consultant's requirements;

.7 preparation for and attendance at a public meeting or hearing not originally included in the Consultant's scope of services; or

.8 substantial change in the information referred to in Article 1.

§ 3.4 DISPUTE RESOLUTION, INDEMNIFICATION, AND WAIVER OF TRIAL BY JURY

§ 3.4.1 If the parties do not resolve their dispute through mediation pursuant to Section 3.4.2, the method of binding dispute resolution shall be the following:

(If the parties do not select a method of binding dispute resolution, then the method of binding dispute resolution shall be by litigation in a court of competent jurisdiction.)

(Check one.)

[ ] Arbitration pursuant to Section 3.4.3 of this Agreement

[X] Litigation in a court of competent jurisdiction

[ ] Other *(Specify.)*

§3.4.1.1 To the fullest extent permitted by law, and more specifically, §725.06 (2) and (3), F.S., Consultant shall indemnify, defend and hold harmless the Owner, its employees, managers, and elected officials ("Indemnitees") from and against all liability, claims, damages, losses and expenses, including, but not limited to, reasonable attorneys' fees, expert witness fees and other consulting fees, to the extent such claims, damages, loss or expense arise out of, relate to or result from the negligence, recklessness, or intentional wrongful misconduct in the performance of the services for the Project by Consultant, its employees and subconsultants, if any, and anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

§ 3.4.1.2 This indemnification provision is not intended to provide indemnification to the Owner for its own negligence, recklessness, or intentional wrongful misconduct. The Consultant shall promptly remedy all damage or loss to any property caused in whole or in part by the Consultant, any subconsultant, or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. The foregoing obligations of the Consultant are in addition to its other obligations under this Agreement. The provisions of §3.4.1.1 §3.4.1.2 shall survive the termination or expiration of this Agreement, and are hereby substituted for Article 9 of the RFP in the event of conflict therewith.

§ 3.4.1.3 THE PARTIES HERETO EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EACH MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF EITHER

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PARTY TO THIS AGREEMENT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE OWNER AND THE CONSULTANT TO ENTER INTO THIS AGREEMENT.

§ 3.4.2 MEDIATION

§ 3.4.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to arbitration or the institution of legal, equitable or other proceedings by either party.

§ 3.4.2.2 The Owner and Consultant shall endeavor to resolve claims, disputes and other matters in question between them by mediation, which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect at the time of the mediation. Request for mediation shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. The request may be made concurrently with the institution of legal, equitable or other proceedings but, in such event, mediation shall proceed in advance of such proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

§ 3.4.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

(Paragraphs deleted)

§ 3.5 CLAIMS FOR CONSEQUENTIAL DAMAGES

§ 3.5 Limited Waiver of Consequential Damages. Consultant and Owner waive certain claims against each other for consequential damages arising out of or relating to this Agreement but only to the extent as specifically set forth in this paragraph. The Owner and Consultant agree to limit their right to recover for those specified consequential damages being waived against the other party to those consequential damages available under any insurance polices procured by Owner and Consultant in connection with this Agreement and the Project. This waiver shall not be construed to limit rights of recovery for those waived consequential damages otherwise available under any Worker's Compensation, General Liability, Excess Liability Insurance, Builder's Risk insurance, and Professional Liability policies, each party agreeing to waive its rights of subrogation against the other for such consequential damages covered by insurance. This waiver of consequential damages includes:

.1 damages incurred by Owner for excess operating and staff costs, lost rental income, lost profits, loss of management or employee productivity or the services of such persons; and business interruption; and

.2 damages incurred by Consultant for principal office expenses, lost business opportunities, lost profit from those business opportunities, losses of financing, lost professional reputation, lost productivity, and lost home-office personnel, expenses, and associated overhead.

This Limited Waiver of Consequential Damages is applicable to such consequential damages due to termination by either party as provided for elsewhere in this Agreement.

§ 3.6 MISCELLANEOUS PROVISIONS

§ 3.6.1 This Agreement shall be governed by the law of the State of Florida, and venue for any litigation shall be in Broward County, Florida.

§ 3.6.2 Terms not defined in this Agreement shall have the same meaning as those in the edition of AIA Document A141-2004, Agreement Between Owner and Design-Builder, Exhibit A, Terms and Conditions. Modifications to those definitions in the A141-2004 executed by the Owner and Design-Builder shall be enforceable under this Agreement only to the extent that they are consistent with this Agreement or approved in writing by the Consultant.

§ 3.6.3 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 Owner or Consultant.

§ 3.6.3.1 Consultant is an independent contractor under this Agreement. Services provided by Consultant shall be subject to the supervision of Consultant, exclusively. In providing the services, Consultant or its agents shall not be acting, and shall no be deemed as acting as employees or agents of the Owner. This Agreement shall not constitute or

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make the parties a partnership or joint venture, or create any other joint relationship. The Owner does not extend to Consultant or sub-consultants, if any, any authority of any kind to bind the Owner in any respect whatsoever.

§ **3.6.4** Unless explicitly provided otherwise in this Agreement, the Consultant and its sub-consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of, or for the exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ **3.6.5** The Owner and Consultant, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither the Owner nor the Consultant shall assign this Agreement without the written consent of the other.

§ **3.6.6** Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statute of limitations shall commence to runas provided for, and governed by, applicable Florida law.

§ **3.6.7** In its contract with the Design-Builder, the Owner shall require the Design-Builder to study carefully and to compare the various documents, materials and other information provided to the Design-Builder by the Owner; to take field measurements of any existing conditions related to the Work; to observe any conditions at the site affecting the Work; and to report promptly in writing to the Owner any errors, omissions or inconsistencies discovered by the Design-Builder.

§ **3.6.8** The Owner shall provide the Consultant with a copy of the executed agreement between the Owner and the Design-Builder.

(Paragraph deleted)

§ **3.6.9** This Agreement is the joint product of the parties, and shall not , solely as a matter of judicial construction, be construed more strictly against any party.

§ **3.6.10** If there is a conflict or inconsistency between any term, statement, requirement, or provision in an Exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference, and a term, statement, requirement or provision set forth in this Agreement, the term, statement, requirement, or provision set forth in this Agreement shall govern and prevail.

§ **3.6.11** Multiple copies of this Agreement may be executed by all parties, each of which, bearing original signatures, shall have the force and effect of an original document.

§ 3.7 TERMINATION OR SUSPENSION

§ **3.7.1** If the Owner fails to make payments to the Consultant in accordance with this Agreement, such failure shall be considered substantial non-performance and cause for termination or, at the Consultant's option, cause for suspension of performance of services under this Agreement. Prior to suspension or termination of services, the Consultant shall give seven days' written notice to the Owner. The Consultant shall have no liability to the Owner for delay or damage caused to the Owner because of such suspension or termination of services. In the event of suspension of services, and before resuming services, the Consultant shall be paid for all sums due prior to suspension and any direct, reasonable and documented expenses incurred in the interruption and resumption of the Consultant's services.

§ **3.7.2** If the Owner suspends the Projcet or the Consultant's services, the Consultant shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Consultant shall be compensated for any direct, reasonable and documented expenses incurred in the interruption and resumption of the Consultant's services.

§ **3.7.3** If the Project is suspended or the Consultant's services are suspended for more than 90 cumulative days, the Consultant may terminate this Agreement by giving not less than seven days' written notice.

§ **3.7.4** This Agreement may be terminated by either party upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ **3.7.5** This Agreement may be terminated by the Owner upon not less than seven days' written notice to the Consultant for the Owner's convenience and without cause. In such event, Consultant shall be entitled only to

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payment for services performed prior to said termination, together with direct, reasonable and documented expenses associated with the termination, if any. In no event shall Consultant be entitled to any other damages, direct, indirect or consequential.

(Paragraph deleted)

§ 3.7.6 If the Owner terminates Consultant for cause and it is later determined by a Court that the termination was not justified, then in such event, such termination for cause shall be automatically be converted to a termination for convenience as set forth above.

§ 3.7.7 To the extent that the provisions of this Article 3.7 and subparagraphs conflict with the provisions in the RFP, this Article 3.7 and subparagraphs shall govern and take precedence.

§ 3.8 PAYMENTS TO THE CONSULTANT

§ 3.8.1 Payments on account of services rendered and for Reimbursable Expenses incurred shall be made monthly upon presentation of the Consultant's statement of services. No deductions shall be made from the Consultant's compensation on account of penalty, liquidated damages or other sums withheld from payments to contractors, design-builders or others or on account of the cost of changes to the Work other than those for which the Consultant has been adjudged to be liable; provided however, that such payment(s) shall not preclude Owner for asserting claims against Consultant's for any damages sustained by Owner associated with Consultant's performance hereunder.

§ 3.8.2 Certain Reimbursable Expenses are included in Consultant's Lump Sum Compensation. In addition to compensation for the Consultant's services and included Reimbursable Expenses, should other expenses that are incurred by the Consultant and its employees and sub-consultants directly related to the project for which Owner has agreed in writing prior to incurring same, and which are not included in the Lump Sum Compensation, shall be reimbursable, without markup, s identified in the following sub-sections:

- .1 transportation in connection with the Project, authorized out-of-town travel and subsistence, and electronic communications;
- .2 fees paid for securing approval of authorities having jurisdiction over the Project;
- .3 expense of overtime work requiring higher than regular rates if authorized in advance by the Owner;
- .4 renderings, models and mock-ups requested by the Owner;
- .5 the expense of additional insurance coverage or limits requested by the Owner in exeess of that set forth in the RFP;
- .6 Reimbursable Expenses as designated in Section 5.5; and

§ 3.8.3 Records of Reimbursable Expenses, of expenses pertaining to a Change of Services, and of services performed on the basis of hourly rates or a multiple of Direct Personnel Expense shall be available to the Owner or the Owner's authorized representative at mutually convenient times.

§ 3.8.4 Direct Personnel Expense is defined as the direct salaries of the Consultant's personnel engaged on the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.

ARTICLE 4 SCOPE OF AGREEMENT

§ 4.1 This Agreement represents the entire and integrated agreement between the Owner and the Consultant and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Consultant. This Agreement is comprised of the documents listed below:

- .1 AIA Document B142-2004, Standard Form of Agreement Between Owner and Consultant.
- .2 Exhibit A: AIA Document B142-2004, Exhibit A, Initial Information, or as follows:
  (List other documents, if any, delineating initial information and assumptions upon which this Agreement is based and attach to this Agreement as Exhibit A.)

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.3 Exhibit B: AIA Document B142-2004, Exhibit B, Standard Form of Consultant's Services, or as follows:
(List other documents, if any, delineating Consultant's scope of services and attach to this Agreement as Exhibit B.)

.4 Other documents, as follows:
(List other documents, if any, forming part of the Agreement.)

.1 Exhibit "1" RFP;

.2 Exhibit "2" Consultant's Proposal;

.3 Exhibit "3" Consultant's Revised Billing Worksheet, with add Alternate; and

.4 Exhibit "4Design/Build Request for Proposals T-16-14 (Step 2) (Design/Build Services for Construction of Beach Parking Garage),

§ 4.2 Special Terms and Conditions. Special terms and conditions that modify this Agreement are as follows:

NOT APPLICABLE

ARTICLE 5 COMPENSATION

§ 5.1 Compensation to Consultant for the services under this Agreement shall be the Lump Sum Amount of $243,750, payable in installments, as provided for elsewhere in this Agreement. This Lump Sum Amount includes, but is not limited to, all wages payroll burden, benefits, taxes, insurances, equipment, computers, software, cell phones, tools, licenses, permits, overhead and profits arising out of, or in connection with, performing the services associated with this Agreement. In the event that the Owner exercises the Add Alternate either at the time of executing this Agreement, or thereafter, the above Lump Sum Compensation shall be increased in an amount not to exceed an additional forty thousand ($40,000) to cover the actual cost of the subconsultant, including a markup for overhead and profit of ten percent (10%). In no event shall the Lump Sum Compensation, including the Add Alternate, if exercised by Owner, exceed the sum of $283,750, as adjusted by Changes in Service, if any.

§ 5.1.1 Exhibit "3" hereto attached is Consultant's line item estimate of the work activities and associated expenses. This estimate may have some influence on evaluating payment requisitions, but is not dispositive for such purposes. Services that are not expressly noted in the Exhibit, but are reasonably related and incidental thereto, and inferable therefrom, shall not be the basis for entitlement to additional compensation, unless they strictly qualify as a Change in Services, as provided for below. Moreover, if the estimated time for any activity noted on Exhibit 3 is exceeded, separately or in the aggregate, such additional time shall not be the basis for entitlement to additional compensation, unless such additional time strictly qualifies as a Change in Services.

§ 5.2 For a Change in Services as described in Section 3.3, the Consultant's compensation shall be adjusted as described below or, if no method of adjustment is indicated in this Section 5.2, in an equitable manner.
(Insert basis of compensation, including rates and multiples of Direct Personnel Expense for Principals and employees, and identify Principals and classify employees, if required. Identify specific services to which particular methods of compensation apply.)

§ 5.3 For a Change in Services of the Consultant's sub-consultants, compensation shall be computed, as follows: Consultant's hourly rate actually paid to personnel directly engaged on the Project, plus payroll taxes, insurance and fringe benefits, together with a combined overhead and profit added thereto in the amount of ten percent (10%) of said costs. If requested by Owner, Changes in Services are subject to audit by the Owner or its representatives.

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§ 5.4 For Reimbursable Expenses as described in Section 3.8.2 and for any other items included in Section 5.5 as Reimbursable Expenses, compensation shall be computed at cost, plus a markup of combined overhead and profit of ten percent (10%) of said costs. Except for those Reimbursable Expenses included in the Lump Sum Compensation, additional Reimbursables are subject to audit by Owner or its representatives.

§ 5.5 Other Reimbursable Expenses, if any are as follows:

NOT APPLICABLE

(Paragraphs deleted)
§ 5.5.1 Change in Services agreed to, in writing, preliminarily between Owner and Consultant that do not exceed, either individually or in the aggregate, ten percent (10%) of the Lump Sum Compensation may be approved at the City Manager level. All others are subject to approval of the Commission, at a regularly scheduled public meeting.

§ 5.76 Payments for services shall be made monthly and, where applicable, shall be in proportion to services performed on the basis set forth in this Agreement.

§ 5.8 Payments are due and payable within fifteen (15) calendar days from the date of the Consultant's invoice. Amounts unpaid thirty (30) calendar ( ) days after the invoice date shall bear interest at the rate entered below or, in the absence thereof, at the legal rate prevailing from time to time at the principal place of business of the Consultant. Unless other wise later agreed to by the parties, in writing, Consultant shall submit its invoices no later than the first day of each calendar month.
(Insert rate of interest agreed upon.)

six percent (6 %)

(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws, and other regulations at the Owner's and Consultant's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Specific legal advice should be obtained with respect to deletions or modifications and also regarding requirements such as written disclosures or waivers.)

§ 5.9 If the services covered by this Agreement have not been substantially completed by on or before nine hundred and thirteen (913) calendar days through no fault of the Consultant, extension of the Consultant's services beyond that time may entitle Consultant to be compensated as provided in Section 5.2. In the event of delays due to weather affecting the Design/Build construction phase services, Consultant shall be entitled to non-compensable extensions of time. In the event that non-weather extensions of time for which the Design/Build Contractor is assessed liquidated damages by the Owner, Consultant shall have entitlement to coextensive extensions of time, compensable as set forth in §5.2 and 5.3 above.

THIS SPACE NOT USED

This Agreement entered into as of the day and year first written above.

OWNER:

City of Pompano Beach, Florida Witnesses:

By:_____ _____

(Row deleted)

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Lamar Fisher, Mayor

By: _____

Dennis Beach, City Manager

Attest: _____

Mary Chambers, City Clerk

(SEAL)

Approved by: _____

Gordon B. Linn, City Attorney

(Row deleted)

Peter Flotz, Managing Member

(Printed name and title)

CONSULTANT:

Lansing Melbourne Group, LLC

By: _____

Its Managing Member

Shelley R. Bartholomew

Asceleta Hammond, Deputy City Clerk

(Printed name and title)

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"CITY":

Witnesses:

Signature

Signature

CITY OF POMPANO BEACH

By: _____
LAMAR FISHER
MAYOR

By: _____
DENNIS W. BEACH
CITY MANAGER

Attest:

MARY L. CHAMBERS
CITY CLERK

(SEAL)

Approved As To Form:

GORDON B. LINN
CITY ATTORNEY

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 27th day of June, 2014 by **LAMAR FISHER**, as Mayor; **DENNIS W. BEACH** as City Manager and **MARY L. CHAMBERS** as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who is personally known to me.

NOTARY'S SEAL:

KRYSTAL AARON
NOTARY PUBLIC
STATE OF FLORIDA
Comm# EE874865
Expires 2/14/2017

NOTARY PUBLIC, STATE OF FLORIDA

Krystal Aaron
(Name of Acknowledger Typed, Printed or Stamped)

Commission Number

Additions and Deletions Report for
AIA® Document B142™ – 2004

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

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PAGE 1

Revision 2 (06-17-2014)

AGREEMENT made as of the - __day of in the year 2014

...

(Name, legal status, address and other information)

The City of Pompano Beach, a political subdivision of the State of Florida
100 West Atlantic Boulevard
Pompano Beach, Florida 33060

Attention: Dennis Beach, City Manager

...

(Name, legal status, address and other information)

Lansing Melbourne Group, LLC
2805 East Oakland Park Blvd., #185
Fort Lauderdale, Florida 33306

...

Design/Build Services for the Pier Garage

...

Performance of the services to be provided by Consultant shall not commence until Owner issues a written Notice to Proceed to Consultant, and shall continue for the ensuing nine hundred thirteen (913) calendar days thereafter, unless the Agreement is extended in writing and/or terminated during the course of performance, as provided for elsewhere herein. A failure by the Owner to authorize work under this Agreement or to issue a Notice to Proceed shall not be deemed a breach of this Agreement.

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PAGE 2

§ 1.1 This Agreement is based on the information and assumptions contained in Exhibit A of this Agreement, and as addressed in Request for Proposals T-36-14 ("RFP"), and Consultant's Proposal bearing the submittal date of April 29, 2014 ("Consultant's Proposal"), Exhibits "1" and "2", respeetively, whieh are attached hereto and made a part hereof. By its execution of this Agreement, Consultant warrants and represents that it has visited the Project site, reviewed and is familiar with the contents and Project concepts and criteria set forth in Design/Build Request for Proposals T-16-14 (Step 2) (Design/Build Services for Construction of Beach Parking Garage), and has correlated personal observations and said review with its Consultant's Proposal and prior to entering into this Agreement.

...

§ 2.1 The Owner and the Consultant shall cooperate with one another to fulfill their respective obligations under this Agreement. Both parties shall endeavor to maintain good working relationships among all members of the Project Team. Time is of the essence with respect to performance under this Agreement.

...

§ 2.2.3 The Owner shall periodically review and, if appropriate, update the overall budget for the Project, including that portion allocated to the Cost of the Work, and shall promptly notify the Consultant thereof in writing. If the overall budget, or that portion allocated to the Cost of the Work, including any contingencies included therein, is materially increased or decreased, then the Owner and Consultant shall agree upon, as appropriate, corresponding changes in the Project scope, quality and schedule. For purposes of this Agreement, "materiality" shall mean and increase or decrease in the Cost of the Work exceeding or reducing the Cost of the Work by twenty-five percent (25%) of the Project Budget.

§ 2.2.4 The ~~Owner shall~~ Owner, at its diseretion, may furnish the serviees of consultants other than those designated as being furnished by the Consultant in Exhibit A or shall authorize the Consultant to furnish them as a Change in Services when such services are ~~requested by the Consultant or~~ reasonably required by the scope of the Project.

PAGE 3

§ 2.2.6 Serviees provided by parties retained by the Owner, if any, whether such services are performed directly by such parties or by sub-consultants retained by sueh parties, shall be performed by qualified professionals licensed as may be required by applicable law to perform such services in the jurisdiction in which the Project is located.

§ 2.2.7 The Owner shall require the Design-Builder to obtain from each of the Design-Builder's design professionals certifications with respect to the documents and services provided by such professionals (a) that, to the best of their knowledge, information and belief, the documents or services to which such certification relates (i) are consistent with the criteria set forth in the Project Criteria documents prepared by the Consultant pursuant to Article B.5 of Exhibit B, except to the extent specifically identified in such certificate, (ii) comply with applicable professional practice standards, and (iii) comply with applicable laws, ordinances, codes, rules and regulations governing the design of the Project; and (b) that the Owner and its consultants shall be entitled to rely upon the representations and statements contained in such certifications. ~~The Owner shall also include provisions similar to this Section 2.2.7 in the Project Criteria documents.~~

...

§ 2.3.2 The services the Consultant and its ~~sub-consultants~~ sub-consultants, if any, shall provide are designated in Exhibit B of this Agreement.

§ 2.3.3 The Consultant shall perform its services in accordance with applicable standards of professional skill and care. When applicable law requires that serviees be performed by licensed professionals, the Consultant shall provide those services through the performanee of qualified persons or entities duly licensed to practice their ~~professions.~~professions, which eosts are ineluded in Consultant's compensation, Article 5 below.

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...

§ 2.3.5 The Consultant shall maintain the confidentiality of information specifically designated by the Owner in writing as confidential, unless withholding such information would violate the law, create the risk of significant harm to the public or prevent the Consultant from establishing a claim or defense in an adjudicatory proceeding. The Consultant shall require similar agreements from its sub-consultants. Unless exempted under Chapter 119, F.S. (Florida Public Records Act), all communications and work product arising out of, or in connection with, this Agreement are subject to review by members of the public. § 2.3.6 Except with the Owner's knowledge and written consent, the Consultant shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Consultant's professional judgment with respect to ~~the Project.~~
the Projec; and, additionally, during the term of this Agreement, Consultant shall not perform consulting work for any developer, tenant or landowner with properties within a one-half mile radius of the Project that would in any way conflict or compete with the Project

...

§ 2.3.8 ~~If the~~ Consultant is to review submittals of the Design-Builder as part of the Consultant's services under this ~~Agreement, then such~~ Agreement.Such review by the Consultant shall be for the limited purpose of evaluating conformance with the information given and the design concept expressed in the Design-Build Documents. By undertaking such review, the Consultant does not have or assume responsibility to coordinate design performed or information provided by multiple design professionals engaged by the Design-Builder and/or its trade contractors.

§ 2.3.9 ~~If the~~ Consultant is to review submittals of the Design-Builder as part of the Consultant's services under this ~~Agreement, then the~~ Agreement. The Owner shall require that prior to transmission to the Consultant for the Consultant's review, all final design documents, construction documents, Shop Drawings, Product Data, Samples and other submittals of the Design-Builder or its trade contractors shall first be reviewed and approved in writing by the Design-Builder and its design professionals as conforming to the information given and the design concept expressed in the Design-Build Documents The Consultant shall be entitled to rely upon such approvals.

PAGE 4

§ 2.3.12 Services, if any, performed by the Consultant during the construction of the Project are undertaken and performed by the Consultant in the sole interest and for the exclusive benefit of the ~~Owner~~Owner.

~~§ 2.3.13 The Owner shall include in its agreement with the Design-Builder provisions similar to those set forth in Sections 2.3.8. through 2.3.12.~~

...

§ 3.1.1 The Project Cost of the Work includes all costs, charges and expenses to be paid by the Owner to the Design-Builder in connection with the Project, including, but not limited to, the Design-Builder's fee, costs of tests, evaluations and reports required for the execution of the Work, and all fees and expenses of design professionals retained by the ~~Design-Builder. The Cost of the Work shall also include the cost at current market rates of labor and materials to be furnished by the Owner and equipment to be designed, specified, selected or specially provided by parties preparing the construction documents, including the costs of management or supervision of construction or installation thereof, plus a reasonable allowance for overhead and profit. In addition, the Cost of the Work shall include a reasonable allowance for contingencies for market conditions and for changes in~~ Design-Builder, and the cost of construction of the Work.

§ 3.1.2 The Project Cost of the Work does not include the compensation of the Consultant and the Consultant's sub-consultants, if any, the costs of the land, rights-of-way and financing or other costs that are the responsibility of the Owner.

...

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§ 3.2.1 ~~Drawings, specifications, and other documents, including those in electronic form, prepared by the Consultant and its sub-consultants are Instruments of Service for use solely with respect to the Project. The Consultant and its sub-consultants shall be deemed the authors and owners of their respective Instruments of Service and shall retain all common law, statutory and other reserved rights, including copyrights.~~Consultant hereby irrevocably assigns to Owner the exclusive ownership of the property rights, as well as copyrights, of all documents, drawings, specifications, electronic data, budgets, and information (hereafter collectively "Documents") prepared, provided or procured by the Consultant and its sub-consultants, if any, in connection with this Agreement.

§ 3.2.2 ~~Upon execution of this Agreement, the Consultant grants to the Owner a non-exclusive license to reproduce and use the Consultant's Instruments of Service solely in connection with the Project, including the Project's further development by the Owner and others retained by the Owner for such purposes, including the Design-Builder and the Design-Builder's design professionals, provided that the Owner shall comply with all obligations, including prompt payment of all sums when due, under this Agreement. Subject to the Owner's compliance with such obligations, such license shall extend to those persons or entities retained by the Owner for such purposes. The Consultant shall obtain similar non-exclusive licenses from its sub-consultants consistent with this Agreement. No other license or right shall be deemed granted or implied under this Agreement. The Owner shall not otherwise assign or transfer any license herein to another party without the prior written agreement of the Consultant. Any unauthorized reproduction or use of the Instruments of Service by the Owner or others shall be at the Owner's sole risk and expense and without liability to the Consultant and its sub-consultants.~~

~~§ 3.2.3 Prior to any electronic exchange by the parties of the Instruments of Service or any other documents or materials to be provided by one party to the other, the Owner and the Consultant shall agree in writing on the specific conditions governing the format thereof, including any special limitations or licenses not otherwise provided in this Agreement and, if appropriate, on adjustments in the Consultant's compensation and schedule for performance of its services.~~

~~§ 3.2.4 Submission or distribution of the Consultant's documents to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the rights reserved in Section 3.2.1.~~

§ 3.3.2 If requested by Owner, Consultant shall periodically provide Owner all documents generated in connection with this Agreement in an electronic format AutoCAD, PDF and hard copy.

§ 3.3.1 ~~Change in Services of the Consultant, including services required of the Consultant's sub-consultants, may be accomplished after execution of this Agreement without invalidating this Agreement if mutually agreed in writing, if required by circumstances beyond the Consultant's control or if the Consultant's services are affected as described in Section 3.3.2. In the absence of mutual agreement in writing, the Consultant shall notify the Owner prior to providing such services. If the Owner deems that all or a part of such Change in Services is not required, the Owner shall give prompt written notice to the Consultant, and the Consultant shall have no obligation to provide those services. Except for a change due to the fault of the Consultant, a Change in Services of the Consultant shall entitle the Consultant to an adjustment in schedule and in compensation pursuant to Sections 5.2 and 5.3, and to any Reimbursable Expenses described in Section 3.8.2 and Sections 5.4 and 5.5.~~Consultant and Owner acknowledge that the scope of services included in this Agreement do not delineate every detail and minor work task required to by performed by Consultant in connection with the Project. If, during the course of the performance of the services included in this Agreement, Consultant determines that work should be performed to complete the Project which, in the Consultant's opinion, is outside the level of effort originally anticipated, Consultant shall notify the Owner in writing in a timely manner and agree to an adjustment, in writin, before proceeding with the work. If Consultant proceeds with said work without so notifying the Owner, said work shall be deemed to be within the scope of services included in this Agreement, and Consultant thereby waives any entitlement to additional compensation.

§ 3.3.2 If any of the following circumstances substantially affects the Consultant's services for the Project, the Consultant shall be entitled to an appropriate adjustment in the Consultant's schedule and compensation:

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.5 repeated failure of performance on the part of the Owner or the Owner's consultants, contractors, design-builders or others retained by the Owner;

...

.7 preparation for and attendance at a public meeting or hearing not originally included in the Consultant's scope of ~~services, a dispute resolution proceeding or a legal proceeding except where the Consultant is a party thereto; or~~services; or

.8 substantial change in the information referred to in Article 1.

§ 3.4 ~~DISPUTE RESOLUTION~~DISPUTE RESOLUTION, INDEMNIFICATION, AND WAIVER OF TRIAL BY JURY

...

[X] Litigation in a court of competent jurisdiction

[ ] Other *(Specify.)*

§3.4.1.1 To the fullest extent permitted by law, and more specifically, §725.06 (2) and (3), F.S., Consultant shall indemnify, defend and hold harmless the Owner, its employees, managers, and elected officials ("Indemnitees") from and against all liability, claims, damages, losses and expenses, including, but not limited to, reasonable attorneys' fees, expert witness fees and other consulting fees, to the extent such claims, damages, loss or expense arise out of, relate to or result from the negligence, recklessness, or intentional wrongful misconduct in the performance of the services for the Project by Consultant, its employees and subconsultants, if any, and anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

§ 3.4.1.2 This indemnification provision is not intended to provide indemnification to the Owner for its own negligence, recklessness, or intentional wrongful misconduct. The Consultant shall promptly remedy all damage or loss to any property caused in whole or in part by the Consultant, any subconsultant, or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. The foregoing obligations of the Consultant are in addition to its other obligations under this Agreement. The provisions of §3.4.1.1 §3.4.1.2 shall survive the termination or expiration of this Agreement, and are hereby substituted for Article 9 of the RFP in the event of conflict therewith.

§ 3.4.1.3 THE PARTIES HERETO EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EACH MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF EITHER PARTY TO THIS AGREEMENT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE OWNER AND THE CONSULTANT TO ENTER INTO THIS AGREEMENT.

PAGE 6

§ 3.4.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to arbitration or the institution of legal, equitable or other proceedings by either party. ~~If such matter relates to or is the subject of a lien arising out of the Consultant's services, the Consultant may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to conclusion of mediation.~~

...

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~~§ 3.4.3 ARBITRATION~~

~~§ 3.4.3.1 Claims, disputes and other matters in question between the parties arising out of or related to this Agreement that are not resolved by mediation and which are subject to arbitration pursuant to Section 3.4.1 shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect at the time of the arbitration. The demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association.~~

~~§ 3.4.3.2 A demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would have been barred by the applicable statute of limitations.~~

~~§ 3.4.3.3 No arbitration arising out of or relating to this Agreement shall include, by consolidation or joinder or in any other manner, an additional person or entity not a party to this Agreement, except by written consent containing a specific reference to this Agreement and signed by the Owner and Consultant and any other person or entity sought to be joined. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by the parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.~~

~~§ 3.4.3.4 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.~~

~~The Consultant and the Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Section 3.7.~~

§ 3.5 Limited Waiver of Consequential Damages. Consultant and Owner waive certain claims against each other for consequential damages arising out of or relating to this Agreement but only to the extent as specifically set forth in this paragraph. The Owner and Consultant agree to limit their right to recover for those specified consequential damages being waived against the other party to those consequential damages available under any insurance polices procured by Owner and Consultant in connection with this Agreement and the Project. This waiver shall not be construed to limit rights of recovery for those waived consequential damages otherwise available under any Worker's Compensation, General Liability, Excess Liability Insurance, Builder's Risk insurance, and Professional Liability policies, each party agreeing to waive its rights of subrogation against the other for such consequential damages covered by insurance. This waiver of consequential damages includes:

.1 damages incurred by Owner for excess operating and staff costs, lost rental income, lost profits, loss of management or employee productivity or the services of such persons; and business interruption; and

.2 damages incurred by Consultant for principal office expenses, lost business opportunities, lost profit from those business opportunities, losses of financing, lost professional reputation, lost productivity, and lost home-office personnel, expenses, and associated overhead.

This Limited Waiver of Consequential Damages is applicable to such consequential damages due to termination by either party as provided for elsewhere in this Agreement.

...

§ 3.6.1 This Agreement shall be governed by the law of the ~~Project's location, unless otherwise provided in Section 4.2.~~
State of Florida, and venue for any litigation shall be in Broward County, Florida.

...

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§ 3.6.3.1 Consultant is an independent contractor under this Agreement. Services provided by Consultant shall be subject to the supervision of Consultant, exclusively. In providing the services, Consultant or its agents shall not be acting, and shall no be deemed as acting as employees or agents of the Owner. This Agreement shall not constitute or make the parties a partnership or joint venture, or create any other joint relationship. The Owner does not extend to Consultant or sub-consultants, if any, any authority of any kind to bind the Owner in any respect whatsoever.

§ 3.6.5 ~~Subject to the confidentiality requirements of Section 2.3.5, the Consultant shall have the right to include in its promotional and professional materials photographic representations of the Project, copies of its Instruments of Service or any other materials prepared by the Consultant in connection with the Project. The Consultant shall be given reasonable access to the completed Project to make such photographic representations. The Owner shall provide professional credit to the Consultant in the Owner's promotional materials for the Project.~~
The Owner and Consultant, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither the Owner nor the Consultant shall assign this Agreement without the written consent of the other.
§ 3.6.6 ~~The Owner and Consultant, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither the Owner nor the Consultant shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to an institutional lender providing financing for the Project. In such event, the lender shall assume the Owner's rights and obligations under this Agreement, and the Consultant shall execute all reasonable consents facilitating such assignment, conditioned upon the Consultant's receipt of all amounts due as provided in this Agreement.~~
Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statute of limitations shall commence to runas provided for, and governed by, applicable Florida law.
§ 3.6.7 ~~Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statute of limitations shall commence to run not later than the date when the Consultant's services are substantially completed.~~In its contract with the Design-Builder, the Owner shall require the Design-Builder to study carefully and to compare the various documents, materials and other information provided to the Design-Builder by the Owner; to take field measurements of any existing conditions related to the Work; to observe any conditions at the site affecting the Work; and to report promptly in writing to the Owner any errors, omissions or inconsistencies discovered by the Design-Builder.

§ 3.6.8 ~~In its contract with the Design-Builder, the Owner shall require the Design-Builder to study carefully and to compare the various documents, materials and other information provided to the Design-Builder by the Owner; to take field measurements of any existing conditions related to the Work; to observe any conditions at the site affecting the Work; and to report promptly in writing to the Owner any errors, omissions or inconsistencies discovered by~~ The Owner shall provide the Consultant with a copy of the executed agreement between the Owner and the Design-Builder.

~~§ 3.6.9 The Owner shall provide the Consultant with a copy of the executed agreement between the Owner and the Design-Builder.~~

§ 3.6.9 This Agreement is the joint product of the parties, and shall not , solely as a matter of judicial construction, be construed more strictly against any party.

§ 3.6.10 If there is a conflict or inconsistency between any term, statement, requirement, or provision in an Exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference, and a term, statement, requirement or provision set forth in this Agreement, the term, statement, requirement, or provision set forth in this Agreement shall govern and prevail.

§ 3.6.11 Multiple copies of this Agreement may be executed by all parties, each of which, bearing original signatures, shall have the force and effect of an original document.

§ 3.7.1 If the Owner fails to make payments to the Consultant in accordance with this Agreement, such failure shall be considered substantial non-performance and cause for termination or, at the Consultant's option, cause for suspension

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of performance of services under this Agreement. Prior to suspension or termination of services, the Consultant shall give seven days' written notice to the Owner. The Consultant shall have no liability to the Owner for delay or damage caused to the Owner because of such suspension or termination of services. In the event of suspension of services, and before resuming services, the Consultant shall be paid for all sums due prior to suspension and any direct, reasonable and documented expenses incurred in the interruption and resumption of the Consultant's services. ~~The Consultant's compensation and schedule for the remaining services shall be equitably adjusted.~~

§ 3.7.2 If the Owner suspends the Project or the Consultant's services, the Consultant shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Consultant shall be compensated for any direct, reasonable and documented expenses incurred in the interruption and resumption of the Consultant's services. ~~The Consultant's compensation and schedule for the remaining services shall be equitably adjusted.~~

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§ 3.7.5 This Agreement may be terminated by the Owner upon not less than seven days' written notice to the Consultant for the Owner's convenience and without cause. In such event, Consultant shall be entitled only to payment for services performed prior to said termination, together with direct, reasonable and documented expenses associated with the termination, if any. In no event shall Consultant be entitled to any other damages, direct, indirect or consequential.

~~**§ 3.7.6** In the event of termination not the fault of the Consultant, the Consultant shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all expenses directly attributable to termination for which the Consultant is not otherwise compensated.~~

§ 3.7.6 If the Owner terminates Consultant for cause and it is later determined by a Court that the termination was not justified, then in such event, such termination for cause shall be automatically be converted to a termination for convenienee as set forth above.

§ 3.7.7 To the extent that the provisions of this Article 3.7 and subparagraphs conflict with the provisions in the RFP, this Article 3.7 and subparagraphs shall govern and take precedence.

§ 3.8.1 Payments on account of services rendered and for Reimbursable Expenses incurred shall be made monthly upon presentation of the Consultant's statement of services. No deductions shall be made from the Consultant's compensation on account of penalty, liquidated damages or other sums withheld from payments to contractors, design-builders or others or on account of the cost of changes to the Work other than those for which the Consultant has been adjudged to be ~~liable.~~liable; provided however, that such payment(s) shall not preclude Owner for asserting claims against Consultant's for any damages sustained by Owner associated with Consultant's performance hereunder.

§ 3.8.2 Certain Reimbursable Expenses are included in Consultant's Lump Sum Compensation. In addition to compensation for the Consultant's services and ~~include expenses~~ included Reimbursable Expenses, should other expenses that are incurred by the Consultant and its employees and sub-consultants directly related ~~to the project, as~~ to the project for which Owner has agreed in writing prior to incurring same, and which are not included in the Lump Sum Compensation, shall be reimbursable, without markup, s identified in the following sub-sections:

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~~.3 reproductions, plots, standard form documents, postage, handling, and delivery of Instruments of Service or other documents or materials;~~

~~.4~~ expense of overtime work requiring higher than regular rates if authorized in advance by the Owner;

~~.5~~ .4 renderings, models and mock-ups requested by the Owner;

~~.6 expense of professional liability insurance dedicated exclusively to this Project or~~ .5 the expense of additional insurance coverage or limits requested by the Owner in excess of that ~~normally carried by the Consultant and its sub-consultants;~~set forth in the RFP;

~~.7~~ .6 Reimbursable Expenses as designated in Section 5.5; and

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~~.8 other similar direct Project-related expenditures.~~

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.1 Exhibit "1" RFP;

.2 Exhibit "2" Consultant's Proposal;

.3 Exhibit "3" Consultant's Revised Billing Worksheet, with add Alternate; and

.4 Exhibit "4Design/Build Request for Proposals T-16-14 (Step 2) (Design/Build Services for Construction of Beach Parking Garage),

...

NOT APPLICABLE

...

§ 5.1 ~~For the Consultant's services under this Agreement, compensation shall be computed as follows: (Insert amount and/or basis of determining each component of compensation, including, where applicable, rates and multiples of Direct Personnel Expense for Principals and employees, and identify Principals and classify employees, if required.)~~Compensation to Consultant for the services under this Agreement shall be the Lump Sum Amount of $243,750, payable in installments, as provided for elsewhere in this Agreement. This Lump Sum Amount includes, but is not limited to, all wages payroll burden, benefits, taxes, insurances, equipment, computers, software, cell phones, tools, licenses, permits, overhead and profits arising out of, or in connection with, performing the services associated with this Agreement. In the event that the Owner exercises the Add Alternate either at the time of executing this Agreement, or thereafter, the above Lump Sum Compensation shall be increased in an amount not to exceed an additional forty thousand ($40,000) to cover the actual cost of the subconsultant, including a markup for overhead and profit of ten percent (10%). In no event shall the Lump Sum Compensation, including the Add Alternate, if exercised by Owner, exceed the sum of $283,750, as adjusted by Changes in Service, if any.

§ 5.1.1 Exhibit "3" hereto attached is Consultant's line item estimate of the work activities and associated expenses. This estimate may have some influence on evaluating payment requisitions, but is not dispositive for such purposes. Services that are not expressly noted in the Exhibit, but are reasonably related and incidental thereto, and inferable therefrom, shall not be the basis for entitlement to additional compensation, unless they strictly qualify as a Change in Services, as provided for below. Moreover, if the estimated time for any activity noted on Exhibit 3 is exceeded, separately or in the aggregate, such additional time shall not be the basis for entitlement to additional compensation, unless such additional time strictly qualifies as a Change in Services.

...

§ 5.3 For a Change in Services of the Consultant's sub-consultants, compensation shall be ~~computed as a multiple of ( ) times the amounts billed to the Consultant for such services.~~
computed, as follows: Consultant's hourly rate actually paid to personnel directly engaged on the Project, plus payroll taxes, insurance and fringe benefits, together with a combined overhead and profit added thereto in the amount of ten percent (10%) of said costs. If requested by Owner, Changes in Services are subject to audit by the Owner or its representatives.
§ 5.4 For Reimbursable Expenses as described in Section 3.8.2 and for any other items included in Section 5.5 as Reimbursable Expenses, compensation shall be computed ~~as a multiple of ( ) times the expenses incurred by the Consultant and the Consultant's employees and sub-consultants.~~at cost, plus a markup of combined overhead and profit of ten percent (10%) of said costs. Except for those Reimbursable Expenses included in the Lump Sum Compensation, additional Reimbursables are subject to audit by Owner or its representatives.

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~~§ 5.6 The rates and multiples for services of the Consultant and its sub-consultants as set forth in this Agreement shall be adjusted in accordance with their normal salary review practices.~~

~~§ 5.7 An initial payment of ($) shall be made upon execution of this Agreement and is the minimum payment made under this Agreement. It shall be credited to the Owner's account at final payment. Subsequent payments for services shall be made monthly and, where applicable, shall be in proportion to services performed on the basis set forth in this Agreement.~~

§ 5.5.1 Change in Services agreed to, in writing, preliminarily between Owner and Consultant that do not exceed, either individually or in the aggregate, ten percent (10%) of the Lump Sum Compensation may be approved at the City Manager level. All others are subject to approval of the Commission, at a regularly scheduled public meeting.

§ 5.76 Payments for services shall be made monthly and, where applicable, shall be in proportion to services performed on the basis set forth in this Agreement.

§ 5.8 Payments are due and payable ~~( )~~ within fifteen (15) calendar days from the date of the Consultant's invoice. Amounts unpaid thirty (30) calendar ( ) days after the invoice date shall bear interest at the rate entered below or, in the absence thereof, at the legal rate prevailing from time to time at the principal place of business of the Consultant. Unless other wise later agreed to by the parties, in writing, Consultant shall submit its invoices no later than the first day of each calendar month.

...

six percent (6 %)

...

§ 5.9 If the services covered by this Agreement have not been substantially completed by on or before nine hundred and thirteen (913) calendar days through no fault of the Consultant, extension of the Consultant's services beyond that time ~~shall~~ may entitle Consultant to be compensated as provided in Section 5.2. In the event of delays due to weather affecting the Design/Build construction phase services, Consultant shall be entitled to non-compensable extensions of time. In the event that non-weather extensions of time for which the Design/Build Contractor is assessed liquidated damages by the Owner, Consultant shall have entitlement to coextensive extensions of time, compensable as set forth in §5.2 and 5.3 above.

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This Agreement entered into as of the day and year first written above.

OWNER:

City of Pompano Beach, Florida

Witnesses:

By:

~~OWNER (Signature)~~

Lamar Fisher, Mayor

By:

Dennis Beach, City Manager

Attest:

Mary Chambers, City Clerk

(SEAL)

Approved by:

Gordon B. Linn, City Attorney

~~(Printed name and title)~~

~~CONSULTANT (Signature)~~

~~(Printed name and title)~~

Peter Flotz, Managing Member

(Printed name and title)

Asceleta Hammond, Deputy City Clerk

(Printed name and title)

CONSULTANT:

Lansing Melbourne Group, LLC

BY:

Its Managing Member

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"CITY":

Witnesses:

CITY OF POMPANO BEACH

By: _____
LAMAR FISHER, MAYOR

By: _____
DENNIS W. BEACH
CITY MANAGER

Attest:

_____
MARY L. CHAMBERS
CITY CLERK

(SEAL)

Approved As To Form:

_____
GORDON B. LINN
CITY ATTORNEY

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 27th day of June, 2014 by **LAMAR FISHER**, as Mayor, **DENNIS W. BEACH** as City Manager and **MARY L. CHAMBERS**, as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who are personally known to me.

NOTARY'S SEAL:

KRYSTAL AARON
NOTARY PUBLIC
STATE OF FLORIDA
Comm# EE874865
Expires 2/14/2017

_____
NOTARY PUBLIC, STATE OF FLORIDA

Krystal Aaron
(Name of Acknowledger Typed, Printed or Stamped)

_____
Commission Number

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Alan C. (Peter) Brandt, Jr., hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 10:25:46 on 06/17/2014 under Order No. 5788386019_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document B142™ – 2004, Standard Form of Agreement Between Owner and Consultant where the Owner contemplates using the design-build method of project delivery, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

Atty for City

(Title)

07-01-2014

(Dated)

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AIA® Document B142™ – 2004 Exhibit A

Initial Information

for the following PROJECT:
(Name and location or address)

Pier Garage Design/Build

THE OWNER:
(Name, legal status and address)
The City of Pompano Beach, a political subdivision of the State of Florida
100 West Atlantic Boulevard
Pompano Beach, Florida 33060

Attention: Dennis Beach, City Manager

THE CONSULTANT:
(Name, legal status and address)

Lansing Melbourne Group, LLC
2805 East Oakland Park Blvd., #185
Fort Lauderdale, Florida 33306

ADDITIONS AND DELETIONS:
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Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

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The Agreement is based on the following information and assumptions and the Owner and Consultant may reasonably rely upon them in determining the Consultant's Lump Sum compensation. Both parties recognize, however, that such information may change and, in such event, the Owner and Consultant shall, if warranted, negotiate appropriate adjustments in schedule, compensation or changes in services in accordance with Section 3.3 of this Agreement.
(Note the disposition of the following items by inserting the requested information or a statement such as "not applicable," "unknown at this time" or "to be determined later by mutual agreement.")

ARTICLE A.1 PROJECT PARAMETERS

§ A.1.1 The objectives and uses are as follows:
(Identify or describe, if appropriate, proposed uses or goals.)

See Request for Proposals T-36-14 ("RFP"), and Consultant's Proposal bearing the submittal date of April 29, 2014 ("Consultant's Proposal"), Exhibits "1" and "2", respectively, which are attached hereto and made a part hereof, and Design/Build Request for Proposals T-16-14 (Step 2) (Design/Build Services for Construction of Beach Parking Garage).

§ A.1.2 The physical parameters are as follows:
(Identify or describe, if appropriate, size, location, dimensions or other pertinent information, such as geotechnical reports; site, boundary and topographic surveys; traffic and utility studies; availability of public and private utilities and services; etc.)

See A.1.1 above. Consultant has visited the Project site, is familiar with local conditions, and limitations under with the Project is to be performed.

(Paragraphs deleted)

§ A.1.5 The financial parameters are as follows:

.1 Amount of the Owner's overall budget for the Project, including the Consultant's compensation, as follows:

Not Applicable

.2 Amount of the Owner's budget for the Cost of the Work, excluding the Consultant's compensation, as follows:

Twelve Million Dollars ($12,000,000

.3 The source(s) of the Owner's financing, and the schedule(s) of its(their) availability is(are):

Source	Schedule of availability
Not Applicable	

§ A.1.6 The schedule parameters are as follows:
(Identify, if appropriate, sequence, milestone dates, durations or fast-track scheduling.)

See, Design/Build Request for Proposals T-16-14 (Step 2) (Design/Build Services for Construction of Beach Parking Garage).

§ A.1.7 The Owner's contemplated procurement and delivery method for the Project is as follows:

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(Identify procurement method, such as negotiated or competitively bid, and identify delivery method, such as designer-led design-build, contractor-led design-build, developer-led design-build or single-purpose design-build entity.)

Procurement Method	Delivery Method
Request for Proposals	Contractor-led Design/Build

§ A.1.8 The insurance parameters are as follows:
(Identify types and limits of insurance coverage, deductible amounts, and other insurance requirements applicable to the Project.) See, Design/Build Request for Proposals T-16-14 (Step 2) (Design/Build Services for Construction of Beach Parking Garage).

Type of Insurance	Limit of Coverage	Deductible Amounts	Other Requirements

§ A.1.9 Other parameters are as follows:
(Identify special characteristics or needs of the project, such as energy, environmental, historic preservation or Design-Builder insurance requirements.)

Not applicable

ARTICLE A.2 PROJECT TEAM
§ A.2.1 The Owner's Designated Representative is as follows:
(List name, address and other information.)

Horacio Danovich
R.M.A. Director of Engineering Services for
Pompano Beach Community Redevelopment Agency (CRA)
100 West Atlantic Boulevard, Room 276
Pompano Beach, Florida 33060
T: (954) 786-7834 F: (954) 786-7836
E-mail: Horacio.Danovich@copbfl.com

§ A.2.2 The persons or entities, if any, in addition to the Owner's Designated Representative, who are required to review the Consultant's services and Instruments of Service are as follows:
(List name, address and other information.)

Unknown at this time.

§ A.2.3 The cost consultant to be retained by the Owner is as follows:
(If the Owner will retain a cost consultant, list name, legal status, address and other information.)

Budgeting and Cost Estimating Services are included in Consultant's Lump Sum Compensation

§ A.2.4 The Design-Builder to be retained by the Owner is as follows:

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(If known, list name, legal status, address and other information.)

Unknown at this time

§ **A.2.5** Other consultants, contractors or others to be retained by the Owner are as follows:
(List disciplines, and, if known, identify them by name and address.)

Unknown at this time

§ **A.2.6** The Consultant's Designated Representative is as follows:
(List name, address and other information.)

Peter Flotz
Managing Member
2805 East Oakland Park Blvd., #185
Fort Lauderdale, Florida 33306
321-302-2930
pflotz@lmgroup.us

§ **A.2.7** The cost sub-consultant, if any, to be retained at the Consultant's expense is as follows:
(If the Consultant will retain a cost sub-consultant, list name, address and other information.)

Not Applicable.

§ **A.2.8** Other sub-consultants to be retained at the Consultant's expense are as follows:
(List disciplines and, if known, identify them by name and address.)

Unknown at this time.

ARTICLE A.3 OTHER INITIAL INFORMATION

§ **A.3.1** Other initial information is as follows:
(Identify other initial information on which the Agreement is based.)

Not applicable.

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(1330672972)

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PAGE 1

Pier Garage Design/Build

...

The City of Pompano Beach, a political subdivision of the State of Florida
100 West Atlantic Boulevard
Pompano Beach, Florida 33060

Attention: Dennis Beach, City Manager

(Name, legal status and address)

Lansing Melbourne Group, LLC
2805 East Oakland Park Blvd., #185
Fort Lauderdale, Florida 33306

PAGE 2

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...

See Request for Proposals T-36-14 ("RFP"), and Consultant's Proposal bearing the submittal date of April 29, 2014 ("Consultant's Proposal"), Exhibits "1" and "2", respectively, which are attached hereto and made a part hereof, and Design/Build Request for Proposals T-16-14 (Step 2) (Design/Build Services for Construction of Beach Parking Garage).

...

See A.1.1 above. Consultant has visited the Project site, is familiar with local conditions, and limitations under with the Project is to be performed.

~~§ A.1.3 The program for the Project is as follows:~~
~~*(Identify documentation or state the manner in which the program will be developed.)*~~

~~§ A.1.4 The legal parameters are as follows:~~
~~*(Identify pertinent legal information, including, if appropriate, land surveys and legal descriptions and restrictions of the site, such as zoning and other public regulations governing use of the site; deed restrictions, covenants and other restraints; availability of public and private utilities and services, etc.)*~~

...

Not Applicable

...

Twelve Million Dollars ($12,000,000

...

Not Applicable

...

See, Design/Build Request for Proposals T-16-14 (Step 2) (Design/Build Services for Construction of Beach Parking Garage).

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...

(Identify types and limits of insurance coverage, deductible amounts, and other insurance requirements applicable to the Project.) See, Design/Build Request for Proposals T-16-14 (Step 2) (Design/Build Services for Construction of Beach Parking Garage).

...

Not applicable

...

Horacio Danovich
R.M.A. Director of Engineering Services for
Pompano Beach Community Redevelopment Agency (CRA)
100 West Atlantic Boulevard, Room 276
Pompano Beach, Florida 33060
T: (954) 786-7834 F: (954) 786-7836
E-mail: Horacio.Danovich@copbfl.com

...

Unknown at this time.

...

Budgeting and Cost Estimating Services are included in Consultant's Lump Sum Compensation

PAGE 4

Unknown at this time

...

Unknown at this time

...

Peter Flotz
Managing Member
2805 East Oakland Park Blvd., #185
Fort Lauderdale, Florida 33306
321-302-2930
pflotz@lmgroup.us

...

Not Applicable.

...

Unknown at this time.

...

Not applicable.

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AIA® Document B142™ – 2004 Exhibit B

Consultant's Services

for the following PROJECT:
(Name and location or address)

Pier Garage Design/Build

THE OWNER:
(Name, legal status and address)

The City of Pompano Beach, a political subdivision of the State of Florida
100 West Atlantic Boulevard
Pompano Beach, Florida 33060

Attention: Dennis Beach, City Manager

THE CONSULTANT:
(Name, legal status and address)

Lansing Melbourne Group, LLC
2805 East Oakland Park Blvd., #185
Fort Lauderdale, Florida 33306

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B.10 CONSULTING SERVICES in connection with the CONSTRUCTION OF THE PROJECT

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ARTICLE B.1 SCOPE OF SERVICES

§ B.1.1 The Consultant shall provide to the Owner only the services in this Exhibit B that are designated by a check or "X" in the box adjacent to the listed service.

(Designate the services the Consultant shall provide by placing a check or "X" in the box adjacent to the listed service. If necessary, provide expanded or modified descriptions of the designated services in the space provided or in Article B.13.)

ARTICLE B.2 PROJECT ADMINISTRATION SERVICES

[X] § B.2.1 **Project Administration:** Manage the Consultant's services and administer the Project to the point of design-build contract award, consult with the Owner during such period, attend Project meetings, communicate with members of the Project Team, and issue progress reports.

[X] § B.2.2 **Discipline Coordination:** Coordinate the services provided by the Consultant and the Consultant's sub-consultants with those services provided by the Owner and parties retained by the Owner.

[X] § B.2.3 **Owner-Supplied Data Coordination:** Coordinate information and data provided to the Consultant by the Owner with information and data developed by the Consultant in the performance of its services.

[X] § B.2.4 **Agency Consultation/Review/Approval:** Assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

[X] § B.2.5 **Schedule Development/Monitoring:** Prepare and periodically update the Project schedule in accordance with the schedule set forth in Section 2.3.4 of the Agreement which shall identify milestone dates for decisions and approvals required of the Owner, services furnished by the Consultant, completion of documentation provided by the Consultant, design-build proposal and contract award, completion of final design by the Owner's selected Design-Builder, commencement of construction and Substantial Completion of the Work.

[X] § B.2.6 **Submissions to Owner:** Submit appropriate documentation to the Owner at intervals appropriate to the Consultant's services for purposes of evaluation and approval by the Owner. The Consultant shall be entitled to rely on approvals received from the Owner in the further development of the Consultant's services.

[X] § B.2.7 **Presentations:** Present the Owner with an explanation of the Project and the progress of the Consultant's services.

[ ] § B.2.8 **Other Administration Services** *(Identify)*

ARTICLE B.3 DATA-GATHERING SERVICES

§ B.3.1 Data-Gathering Services are to provide appropriate and sufficient information and a reasonable basis for subsequent programming, planning and Project Criteria development.

[X] § B.3.2 Unless otherwise defined by the Owner in writing, determine the extent and detail of the data to be gathered by the Consultant.

[X] § B.3.3 In a timely manner, advise the Owner of any additional data not the responsibility of the Consultant which, in the judgment of the Consultant, is required in connection with the Project.

[X] § B.3.4 **Preparation of Draft Data Gathering Report:** Prepare and deliver to the Owner, upon completion of data gathering, a written draft Data-Gathering Report identifying data gathered by the Consultant or provided to it by the Owner.

[X] § B.3.5 **Preparation of Final Data Gathering Report:** Revise the draft Data-Gathering Report in response to the Owner's comments and provide the Owner with such number of copies of the final Data-Gathering

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Report incorporating such revisions as the Owner requests.

[ ] § B.3.6 Site Investigation

[ ] § B.3.7 Site Surveying

[ ] § B.3.8 Environmental Studies and Reports

[ ] § B.3.9 Geotechnical Studies and Reports

[ ] § B.3.10 Existing On-Site Utilities Survey

[ ] § B.3.11 Existing Off-Site Utilities Survey

[ ] § B.3.12 Existing Facilities Survey

[X] § B.3.13 Identification of Reviewing Agencies/Groups

[X] § B.3.14 Identification of Applicable Regulations

[ ] § B.3.15 Marketing Studies

[ ] § B.3.16 Economic Feasibility Studies

[ ] § B.3.17 Project Financing Studies

[ ] § B.3.18 Other Data-Gathering Services *(Identify)*

ARTICLE B.4 PROGRAMMING AND PLANNING SERVICES

§ B.4.1 After acceptance by the Owner of the Data-Gathering Report, if any, and based on the mutually agreed-upon schedule and Project cost budget and budget for the Cost of the Work, provide the Programming and Planning Services designated below. The purpose of providing such services is to establish and document requirements of the Project, including, but not limited to design objectives, site planning and design concepts, facility planning and design concepts, approximate gross facility areas and space requirements, space adjacencies, flexibility and expandability requirements, and identification of special equipment and systems.

[X] **§ B.4.2 Review of Planning and Programming Requirements:** Review planning and programming requirements with the Owner, identify and evaluate alternate concepts, and make recommendations to the Owner of those concepts which in the Consultant's judgment meet the Owner's requirements for the Project.

[X] **§ B.4.3 Preparation of Draft Program Document:** Prepare and deliver to the Owner a written draft Program Document documenting all programming and planning requirements identified as being the responsibility of the Consultant as set forth below and those, if any, provided to the Consultant by the Owner

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or others, identified alternate concepts, and those concepts recommended by the Consultant with the reasons therefor.

[X] § B.4.4 **Preparation of Final Program Document:** Revise planning and programming requirements in response to the Owner's comments and, based upon the Owner's selected alternative, provide to the Owner such number of copies of the final Program Document incorporating all such revisions as the Owner shall request.

[ ] § B.4.5 **Space Adjacencies/Flow Diagrams**

[ ] § B.4.6 **Site Analysis and Selection**

[ ] § B.4.7 **Site Development Planning**

[ ] § B.4.8 **Detailed Site Utilization Studies**

[ ] § B.4.9 **Off-Site Utility Studies**

[X] § B.4.10 **Other Programming and Planning Services** *(Identify)*

ARTICLE B.5 PROJECT CRITERIA DEVELOPMENT SERVICES

[X] § B.5.1 **Preparation of Draft Project Criteria Documents:** After acceptance by the Owner of the Program Document, if any, and based on a mutually agreed-upon program, schedule, and Project cost budget and budget for the Cost of the Work, prepare draft Project Criteria documents describing the detailed Project Criteria for the Project. Project Criteria documents are intended to show or describe the character, scope, relationships, forms, size and appearance of the Project; major materials and systems and, in general, their quality levels, performance standards, requirements or criteria; and major equipment layouts in such detail as necessary to solicit and evaluate either competitive Design-Build bids or negotiated Design-Build proposals. Project Criteria documents may consist of, as appropriate, textual narratives, diagrams, specifications, plans, sections, elevations, equipment layouts, and other drawings, documents and materials, including, but not limited to, models, perspective sketches, electronic modeling or combinations of these media.

[X] § B.5.2 **Preparation of Final Project Criteria Documents:** Revise the draft Project Criteria documents in response to the Owner's comments and provide to the Owner such number of copies of the final Project Criteria documents incorporating all such revisions as the Owner shall request.

[X] § B.5.3 **Revisions to Project Criteria Documents:** Revise the Project Criteria documents to reduce the estimated Project cost and/or the Cost of the Work after receipt of Design-Build proposals or negotiations to within the budget for the Cost of the Work identified in Section A.1.5.1.

.1 Provide not more than ( ) revisions over the duration of the Project.

[X] § B.5.4 **Narrative of Program Requirements/Objectives**

[X] § B.5.5 **Narrative of Design Goals and Objectives**

[X] § B.5.6 **Project Concept Diagrams and Documents**

Init.

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[X] § B.5.7 Performance Specifications

§ B.5.8 Detailed Criteria For:

[X] § B.5.8.1 Project Use

[X] § B.5.8.2 Project Space Requirements

[X] § B.5.8.3 Building Systems Requirements

[X] § B.5.8.4 Building materials Requirements

[X] § B.5.8.5 Equipment Requirements

[6] § B.5.8.6 Project Schedule

[7] § B.5.8.7 Project Phasing

[ ] § B.5.8.8 Project Performance Requirements

[X] § B.5.8.9 Project Expandability Requirements

[ ] § B.5.8.10 Project Flexibility Requirements

[ ] § B.5.8.11 Energy Requirements

[ ] § B.5.8.12 MBE/WBE/DBE/Other Similar Requirements

[ ] § B.5.8.13 Architectural Design

[ ] § B.5.8.14 Structural Design

[ ] § B.5.8.15 Mechanical Design

[ ] § B.5.8.16 Electrical Design

[ ] § B.5.8.17 Fire Protection Design

[ ] § B.5.8.18 Civil Design

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[ ] § B.5.8.19 **Landscape Design**

[ ] § B.5.8.20 **Interior Design**

[ ] § B.5.8.21 **Code Analysis**

[ ] § B.5.8.22 **Accessibility Analysis**

[ ] § B.5.8.23 **Other Detailed Criteria** *(Identify)*

[ ] § B.5.8.24 **Other Project Criteria Development Services** *(Identify)*

ARTICLE B.6 BUDGETING AND COST ESTIMATING SERVICES

§ **B.6.1** Budgeting and cost estimating services are intended to provide a basis upon which evaluations of the Project Criteria development to date may be evaluated against the Owner's overall Project budget and budget for the Cost of the Work.

§ **B.6.2** The Consultant, when preparing estimates of overall Project cost and of the Cost of the Work, shall include contingencies for design, bidding and/or negotiation, and price escalation.

§ **B.6.3** If the design-build contract award has not occurred within 90 days of the date shown on the schedule referred to in Section 2.5, above, the overall Project budget and the budget for the Cost of the Work shall each be adjusted to reflect changes in the general level or prices in the construction industry.

[X] § B.6.4 **Preliminary Estimate:** When Project Criteria requirements have been sufficiently identified, prepare a preliminary estimate of the overall Project cost and the Cost of the Work. This estimate may be based on information provided by the Owner and on current area, volume or similar estimating techniques.

[X] § B.6.5 **Updated Estimate:** As the Project Criteria requirements become more clearly articulated, update and refine the preliminary estimate of the overall Project cost and the Cost of the Work.

[X] § B.6.6 **Advise on Adjustments to Previous Estimates:** Advise the Owner of any adjustments to previous estimates of overall Project cost or the Cost of the Work indicated by changes or refinements in Project requirements or in general market conditions.

[ ] § B.6.7 **Recommendation to Adjust Project Parameters:** If estimates of the Project cost or the Cost of the Work exceed the Owner's budgets therefore, make appropriate recommendations to the Owner to adjust the Project's size, quality, budget or other parameters. The Owner shall cooperate in making such adjustments or in authorizing an increase in the Project cost budget and/or the budget for the Cost of the Work, as appropriate.

[ ] § B.6.8 **Cost Research/Advice**

[X] § B.6.9 **Budget Development Services**

[ ] § B.6.10 **Cost Plan Development**

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[ ] § B.6.11 Value Analysis Services

[ ] § B.6.12 Life Cycle Cost Analysis

[ ] § B.6.13 Other Budgeting/Cost Estimating Services *(Identify)*

ARTICLE B.7 DESIGN-BUILD PROCUREMENT SERVICES

[X] § B.7.1 Advise on Selection Process/Evaluation Criteria

[X] § B.7.2 Advise on Contract Type

[X] § B.7.3 Advise on Contract Form and Conditions

[ ] § B.7.4 Identify Proposer Criteria/Qualifications

[ ] § B.7.5 Proposer List

[X] § B.7.6 Evaluations of Proposers

[X] § B.7.7 Recommendation of Selected Proposers

[X] § B.7.8 Determination of Proposal Submission Requirements

[X] § B.7.9 Preparation of Request for Proposals

[X] § B.7.10 Reproduction and Distribution of Proposal Documents

[X] § B.7.11 Maintain Distribution/Deposit/Retrieval Log

[X] § B.7.12 Respond to Questions Regarding Project Criteria Intent

[X] § B.7.13 Evaluate Requests for Project Criteria Modifications

[X] § B.7.14 Preparation/Distribution of Addenda

[X] § B.7.15 Attend Proposers Conference

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[X] § B.7.16 **Evaluation of Proposals**

[X] § B.7.17 **Recommendation of Selected Proposal**

[X] § B.7.18 **Design-Build Contract Award**

[ ] § B.7.19 **Other Design-Build Procurement Services**

ARTICLE B.8 CONSULTING SERVICES in connection with FINAL DESIGN DOCUMENTS PREPARED BY DESIGN-BUILDER

[X] § B.8.1 **Respond to Questions:** Respond to questions regarding the intent of the Project Criteria documents.

[X] § B.8.2 **Review Documents Prepared by Design-Builder:** Review design documents prepared by the Design-Builder for the limited purpose of evaluating conformance with the information given and the design concept expressed in the Design-Build Documents.

[X] § B.8.3 **Recommendations for Payment:** Recommend to the Owner amounts due the Design-Builder on the basis of (1) the payment provisions of the Design-Build Contract, (2) the data comprising the Design-Builder's Application for Payment, and (3) an evaluation of the extent, on a percentage basis, of the Design-Builder's progress toward completion of the final design documents in accordance with the provisions of the Design-Build Contract. Such recommendation shall not constitute a representation that the Consultant has evaluated the Design-Builder's final design documents for their technical accuracy, conformance with applicable codes and regulations, or for any purpose other than as set forth above.

[X] § B.8.4 **Advise and Consult with the Owner**

[X] § B.8.5 **Attend and Participate at Project Meetings**

[ ] § B.8.6 **Other Consulting Services** *(Identify)*

ARTICLE B.9 CONSULTING SERVICES in connection with CONSTRUCTION DOCUMENTS PREPARED BY DESIGN -BUILDER

[X] § B.9.1 **Respond to Questions:** Respond to questions regarding the intent of the Project Criteria documents.

[X] § B.9.2 **Review Documents Prepared by Design-Builder:** Review construction documents prepared by the Design-Builder for the limited purpose of evaluating conformance with the information given and the design concept expressed in the Design-Build Documents.

[X] § B.9.3 **Recommendations for Payment:** Recommend to the Owner amounts due the Design-Builder based on (1) the payment provisions of the Design-Build Contract, (2) the data comprising the Design-Builder's Application for Payment, and (3) an evaluation of the extent, on a percentage basis, of the Design-Builder's progress toward completion of the construction documents in accordance with the provisions of the Design-Build Contract. Such recommendation shall not constitute a representation that the Consultant has evaluated the Design-Builder's construction documents for their technical accuracy, constructability, conformance with applicable codes and regulations, or for any purpose other than as set forth above.

[X] § B.9.4 **Advise and Consult with the Owner**

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[X] § B.9.5 Attend and Participate at Project Meetings

[ ] § B.9.6 Other Consulting Services *(Identify)*

ARTICLE B.10 CONSULTING SERVICES in connection with the CONSTRUCTION OF THE PROJECT

[X] § B.10.1 **Respond to Questions:** Respond to questions regarding the intent of the Project Criteria documents.

[X] § B.10.2 **Review Documents Prepared by Design-Builder:** Review submittals required by the Design-Build Documents previously reviewed and approved by the Design-Builder, such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of evaluating conformance with the information given and the design concept expressed in the Design-Build Documents.

[X] § B.10.3 **Site Visits for Selected Purposes:** Visit the site to review selected issues with the Owner and the Design-Builder, but only for the limited purpose of evaluating conformance of the Work with the Design-Build Documents.

[X] § B.10.4 **Recommendations for Payment:** Recommend to the Owner amounts due the Design-Builder on the basis of (1) the payment provisions of the Design-Build Contract, (2) the data comprising making up the Design-Builder's Application for Payment, and (3) an evaluation of the extent that the Work, on a percentage basis, has progressed to the point indicated in accordance with the provisions of the Design-Build Contract. Such recommendation shall not constitute a representation that the Consultant has (1) evaluated the quality of the Work or made exhaustive or continuous inspections to check the quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures. (3) reviewed copies of requisitions received from the Design-Builder's Contractor(s) and material suppliers and other data requested by the Owner to substantiate the Design-Builder's right to payment, or (4) ascertained how or for what purpose the Design-Builder has used money previously paid on account of the Contract Sum.

[X] § B.10.5 **Substantial Completion and Final Completion Inspections:** Conduct inspections to determine the date or dates of Substantial Completion and the date of Final Completion. Inspections shall be conducted with the Owner's Designated Representative to check conformance of the Work with the requirements of the Design-Build Documents and to verify the accuracy and completeness of the list submitted by the Design-Builder of Work to be completed or corrected.

[X] § B.10.6 **Recommendation for Final Payment:** Recommend to the Owner the final amount due the Design-Builder on the basis of (1) the payment provisions of the Design-Build Contract, (2) the data comprising making up the Design-Builder's final Application for Payment, and (3) a final inspection indicating the Work complies with the requirements of the Design-Build Contract. Such recommendation shall not constitute a representation that the party making the recommendation has (1) evaluated the quality of the Work or made exhaustive or continuous inspections to check the quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from the Design-Builder's Contractor(s) and material suppliers and other data requested by the Owner to substantiate the Design-Builder's right to payment, or (4) ascertained how or for what purpose the Design-Builder has used money previously paid on account of the Contract Sum.

[X] § B.10.7 Advise and Consult with the Owner

[X] § B.10.8 Attend and Participate at Project Meetings

[ ] § B.10.9 Other Consulting Services *(Identify)*

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ARTICLE B.11 POST-CONTRACT COMPLETION

[X] § B.11.1 **Attend Meetings:** Attend and participate at meetings subsequent to Substantial Completion of the Work.

[X] § B.11.2 **Administer Remedial Work of Design-Builder:** Administer and assist the Owner in coordinating remedial work required of the Design-Builder after Substantial Completion of the Project.

[X] § B.11.3 **Warranty Review Services:** Consult with the Owner during the duration of warranties in connection with inadequate performance of materials, systems and equipment under warranty; inspect selected materials, systems and equipment prior to expiration of the warranty period(s) to ascertain their adequacy of performance; and document defects or deficiencies and assist the Owner in preparing instructions to the Design-Builder for correction of noted defects.

[X] § B.11.4 **Post-Contract Completion Evaluation Services:** One year following Substantial Completion of the Project, conduct a Project evaluation, interview appropriate supervisory, operating and maintenance personnel of the Owner, and analyze operating costs and related cost data for evaluation of (1) the initial Project programming versus actual facility use, (2) functional effectiveness of planned spaces and relationships, and (3) the operational effectiveness of systems and materials installed.

[X] § B.11.5 **Advise and Consult with the Owner**

[ ] § B.11.6 **Other Post-Contract Completion Services** *(Identify)*

ARTICLE B.12 OTHER SERVICES

[ ] § B.12.1 **Special Studies**

[X] § B.12.2 **Tenant-Related Services**

[X] § B.12.3 **Project Promotion/Public Relations**

[ ] § B.12.4 **Leasing Brochures**

[ ] § B.12.5 **Special Furnishings Design**

[ ] § B.12.6 **Furniture, Fixtures and Equipment Services**

[ ] § B.12.7 **Special Disciplines Consultation**

[ ] § B.12.8 **Special Building Type Consultation**

[ ] § B.12.9 **Fine Arts and Crafts Consultation**

[ ] § B.12.10 **Graphic Design Services**

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[ ] § B.12.11 Renderings

[X] § B.12.12 Model Construction

[ ] § B.12.13 Still Photography

[ ] § B.12.14 Audio-Video Services

[ ] § B.12.15 Computer Animation Services

[ ] § B.12.16 Energy Studies

[ ] § B.12.17 Quantity Surveys

[ ] § B.12.18 Other Services *(Identify)*

ARTICLE B.13 DESCRIPTION OF SERVICES

(In the space below, provide expanded or modified descriptions of the services designated above, add other services as space permits, or refer to an exhibit attached to this document.)

Add Alternate (see Exhibit "3")

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PAGE 1

Pier Garage Design/Build

...

The City of Pompano Beach, a political subdivision of the State of Florida
100 West Atlantic Boulevard
Pompano Beach, Florida 33060

Attention: Dennis Beach, City Manager

...

Lansing Melbourne Group, LLC
2805 East Oakland Park Blvd., #185
Fort Lauderdale, Florida 33306

PAGE 3

[X] § B.2.1 **Project Administration:** Manage the Consultant's services and administer the Project to the point of design-build contract award, consult with the Owner during such period, attend Project meetings, communicate with members of the Project Team, and issue progress reports.

[X] § B.2.2 **Discipline Coordination:** Coordinate the services provided by the Consultant and the Consultant's sub-consultants with those services provided by the Owner and parties retained by the Owner.

[X] § B.2.3 **Owner-Supplied Data Coordination:** Coordinate information and data provided to the Consultant by the Owner with information and data developed by the Consultant in the performance of its services.

[X] § B.2.4 **Agency Consultation/Review/Approval:** Assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

[X] § B.2.5 **Schedule Development/Monitoring:** Prepare and periodically update the Project schedule in accordance with the schedule set forth in Section 2.3.4 of the Agreement which shall identify milestone dates for decisions and approvals required of the Owner, services furnished by the Consultant, completion of documentation provided by the Consultant, design-build proposal and contract award, completion of final design by the Owner's selected Design-Builder, commencement of construction and Substantial Completion

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of the Work.

[X] § B.2.6 **Submissions to Owner:** Submit appropriate documentation to the Owner at intervals appropriate to the Consultant's services for purposes of evaluation and approval by the Owner. The Consultant shall be entitled to rely on approvals received from the Owner in the further development of the Consultant's services.

[X] § B.2.7 **Presentations:** Present the Owner with an explanation of the Project and the progress of the Consultant's services.

...

[X] § B.3.2 Unless otherwise defined by the Owner in writing, determine the extent and detail of the data to be gathered by the Consultant.

[X] § B.3.3 In a timely manner, advise the Owner of any additional data not the responsibility of the Consultant which, in the judgment of the Consultant, is required in connection with the Project.

[X] § B.3.4 **Preparation of Draft Data Gathering Report:** Prepare and deliver to the Owner, upon completion of data gathering, a written draft Data-Gathering Report identifying data gathered by the Consultant or provided to it by the Owner.

[X] § B.3.5 **Preparation of Final Data Gathering Report:** Revise the draft Data-Gathering Report in response to the Owner's comments and provide the Owner with such number of copies of the final Data-Gathering Report incorporating such revisions as the Owner requests.

PAGE 4

[X] § B.3.13 **Identification of Reviewing Agencies/Groups**

...

[X] § B.3.14 **Identification of Applicable Regulations**

...

[X] § B.4.2 **Review of Planning and Programming Requirements:** Review planning and programming requirements with the Owner, identify and evaluate alternate concepts, and make recommendations to the Owner of those concepts which in the Consultant's judgment meet the Owner's requirements for the Project.

[X] § B.4.3 **Preparation of Draft Program Document:** Prepare and deliver to the Owner a written draft Program Document documenting all programming and planning requirements identified as being the responsibility of the Consultant as set forth below and those, if any, provided to the Consultant by the Owner or others, identified alternate concepts, and those concepts recommended by the Consultant with the reasons therefor.

[X] § B.4.4 **Preparation of Final Program Document:** Revise planning and programming requirements in response to the Owner's comments and, based upon the Owner's selected alternative, provide to the Owner such number of copies of the final Program Document incorporating all such revisions as the Owner shall request.

PAGE 5

[X] § B.4.10 **Other Programming and Planning Services** *(Identify)*

...

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[X] § B.5.1 **Preparation of Draft Project Criteria Documents:** After acceptance by the Owner of the Program Document, if any, and based on a mutually agreed-upon program, schedule, and Project cost budget and budget for the Cost of the Work, prepare draft Project Criteria documents describing the detailed Project Criteria for the Project. Project Criteria documents are intended to show or describe the character, scope, relationships, forms, size and appearance of the Project; major materials and systems and, in general, their quality levels, performance standards, requirements or criteria; and major equipment layouts in such detail as necessary to solicit and evaluate either competitive Design-Build bids or negotiated Design-Build proposals. Project Criteria documents may consist of, as appropriate, textual narratives, diagrams, specifications, plans, sections, elevations, equipment layouts, and other drawings, documents and materials, including, but not limited to, models, perspective sketches, electronic modeling or combinations of these media.

[X] § B.5.2 **Preparation of Final Project Criteria Documents:** Revise the draft Project Criteria documents in response to the Owner's comments and provide to the Owner such number of copies of the final Project Criteria documents incorporating all such revisions as the Owner shall request.

[X] § B.5.3 **Revisions to Project Criteria Documents:** Revise the Project Criteria documents to reduce the estimated Project cost and/or the Cost of the Work after receipt of Design-Build proposals or negotiations to within the budget for the Cost of the Work identified in Section A.1.5.1.

...

[X] § B.5.4 **Narrative of Program Requirements/Objectives**

...

[X] § B.5.5 **Narrative of Design Goals and Objectives**

...

[X] § B.5.6 **Project Concept Diagrams and Documents**

PAGE 6

[X] § B.5.7 **Performance Specifications**

...

[X] § B.5.8.1 **Project Use**

...

[X] § B.5.8.2 **Project Space Requirements**

...

[X] § B.5.8.3 **Building Systems Requirements**

...

[X] § B.5.8.4 **Building materials Requirements**

...

[X] § B.5.8.5 **Equipment Requirements**

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...

[6] § B.5.8.6 Project Schedule

...

[7] § B.5.8.7 Project Phasing

...

[X] § B.5.8.9 Project Expandability Requirements

PAGE 7

[X] § B.6.4 **Preliminary Estimate:** When Project Criteria requirements have been sufficiently identified, prepare a preliminary estimate of the overall Project cost and the Cost of the Work. This estimate may be based on information provided by the Owner and on current area, volume or similar estimating techniques.

[X] § B.6.5 **Updated Estimate:** As the Project Criteria requirements become more clearly articulated, update and refine the preliminary estimate of the overall Project cost and the Cost of the Work.

[X] § B.6.6 **Advise on Adjustments to Previous Estimates:** Advise the Owner of any adjustments to previous estimates of overall Project cost or the Cost of the Work indicated by changes or refinements in Project requirements or in general market conditions.

...

[X] § B.6.9 Budget Development Services

PAGE 8

[X] § B.7.1 Advise on Selection Process/Evaluation Criteria

...

[X] § B.7.2 Advise on Contract Type

...

[X] § B.7.3 Advise on Contract Form and Conditions

...

[X] § B.7.6 Evaluations of Proposers

...

[X] § B.7.7 Recommendation of Selected Proposers

...

[X] § B.7.8 Determination of Proposal Submission Requirements

...

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[X] § B.7.9 **Preparation of Request for Proposals**

...

[X] § B.7.10 **Reproduction and Distribution of Proposal Documents**

...

[X] § B.7.11 **Maintain Distribution/Deposit/Retrieval Log**

...

[X] § B.7.12 **Respond to Questions Regarding Project Criteria Intent**

...

[X] § B.7.13 **Evaluate Requests for Project Criteria Modifications**

...

[X] § B.7.14 **Preparation/Distribution of Addenda**

...

[X] § B.7.15 **Attend Proposers Conference**

PAGE 9

[X] § B.7.16 **Evaluation of Proposals**

...

[X] § B.7.17 **Recommendation of Selected Proposal**

...

[X] § B.7.18 **Design-Build Contract Award**

...

[X] § B.8.1 **Respond to Questions:** Respond to questions regarding the intent of the Project Criteria documents.

[X] § B.8.2 **Review Documents Prepared by Design-Builder:** Review design documents prepared by the Design-Builder for the limited purpose of evaluating conformance with the information given and the design concept expressed in the Design-Build Documents.

[X] § B.8.3 **Recommendations for Payment:** Recommend to the Owner amounts due the Design-Builder on the basis of (1) the payment provisions of the Design-Build Contract, (2) the data comprising the Design-Builder's Application for Payment, and (3) an evaluation of the extent, on a percentage basis, of the Design-Builder's progress toward completion of the final design documents in accordance with the provisions of the Design-Build Contract. Such recommendation shall not constitute a representation that the Consultant has evaluated the Design-Builder's final design documents for their technical accuracy, conformance with applicable codes and regulations, or for any purpose other than as set forth above.

[X] § B.8.4 **Advise and Consult with the Owner**

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...

[X] § B.8.5 **Attend and Participate at Project Meetings**

...

[X] § B.9.1 **Respond to Questions:** Respond to questions regarding the intent of the Project Criteria documents.

[X] § B.9.2 **Review Documents Prepared by Design-Builder:** Review construction documents prepared by the Design-Builder for the limited purpose of evaluating conformance with the information given and the design concept expressed in the Design-Build Documents.

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[X] § B.9.4 **Advise and Consult with the Owner**

PAGE 10

[X] § B.9.5 **Attend and Participate at Project Meetings**

...

[X] § B.10.1 **Respond to Questions:** Respond to questions regarding the intent of the Project Criteria documents.

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[X] § B.10.3 **Site Visits for Selected Purposes:** Visit the site to review selected issues with the Owner and the Design-Builder, but only for the limited purpose of evaluating conformance of the Work with the Design-Build Documents.

[X] § B.10.4 **Recommendations for Payment:** Recommend to the Owner amounts due the Design-Builder on the basis of (1) the payment provisions of the Design-Build Contract, (2) the data comprising making up the Design-Builder's Application for Payment, and (3) an evaluation of the extent that the Work, on a percentage basis, has progressed to the point indicated in accordance with the provisions of the Design-Build Contract. Such recommendation shall not constitute a representation that the Consultant has (1) evaluated the quality of the Work or made exhaustive or continuous inspections to check the quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures. (3) reviewed copies of requisitions received from the Design-Builder's Contractor(s) and material suppliers and other data requested by the Owner to substantiate the Design-Builder's right to payment, or (4) ascertained how or for what purpose the Design-Builder has used money previously paid on account of the Contract Sum.

[X] § B.10.5 **Substantial Completion and Final Completion Inspections:** Conduct inspections to determine the date or dates of Substantial Completion and the date of Final Completion. Inspections shall be conducted with the Owner's Designated Representative to check conformance of the Work with the requirements of the Design-Build Documents and to verify the accuracy and completeness of the list submitted by the

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Design-Builder of Work to be completed or corrected.

[X] § B.10.6 **Recommendation for Final Payment:** Recommend to the Owner the final amount due the Design-Builder on the basis of (1) the payment provisions of the Design-Build Contract, (2) the data comprising making up the Design-Builder's final Application for Payment, and (3) a final inspection indicating the Work complies with the requirements of the Design-Build Contract. Such recommendation shall not constitute a representation that the party making the recommendation has (1) evaluated the quality of the Work or made exhaustive or continuous inspections to check the quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from the Design-Builder's Contractor(s) and material suppliers and other data requested by the Owner to substantiate the Design-Builder's right to payment, or (4) ascertained how or for what purpose the Design-Builder has used money previously paid on account of the Contract Sum.

[X] § B.10.7 **Advise and Consult with the Owner**

...

[X] § B.10.8 **Attend and Participate at Project Meetings**

PAGE 11

[X] § B.11.1 **Attend Meetings:** Attend and participate at meetings subsequent to Substantial Completion of the Work.

[X] § B.11.2 **Administer Remedial Work of Design-Builder:** Administer and assist the Owner in coordinating remedial work required of the Design-Builder after Substantial Completion of the Project.

[X] § B.11.3 **Warranty Review Services:** Consult with the Owner during the duration of warranties in connection with inadequate performance of materials, systems and equipment under warranty; inspect selected materials, systems and equipment prior to expiration of the warranty period(s) to ascertain their adequacy of performance; and document defects or deficiencies and assist the Owner in preparing instructions to the Design-Builder for correction of noted defects.

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[X] § B.11.5 **Advise and Consult with the Owner**

...

[X] § B.12.2 **Tenant-Related Services**

...

[X] § B.12.3 **Project Promotion/Public Relations**

PAGE 12

[X] § B.12.12 **Model Construction**

...

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Add Alternate (see Exhibit "3")

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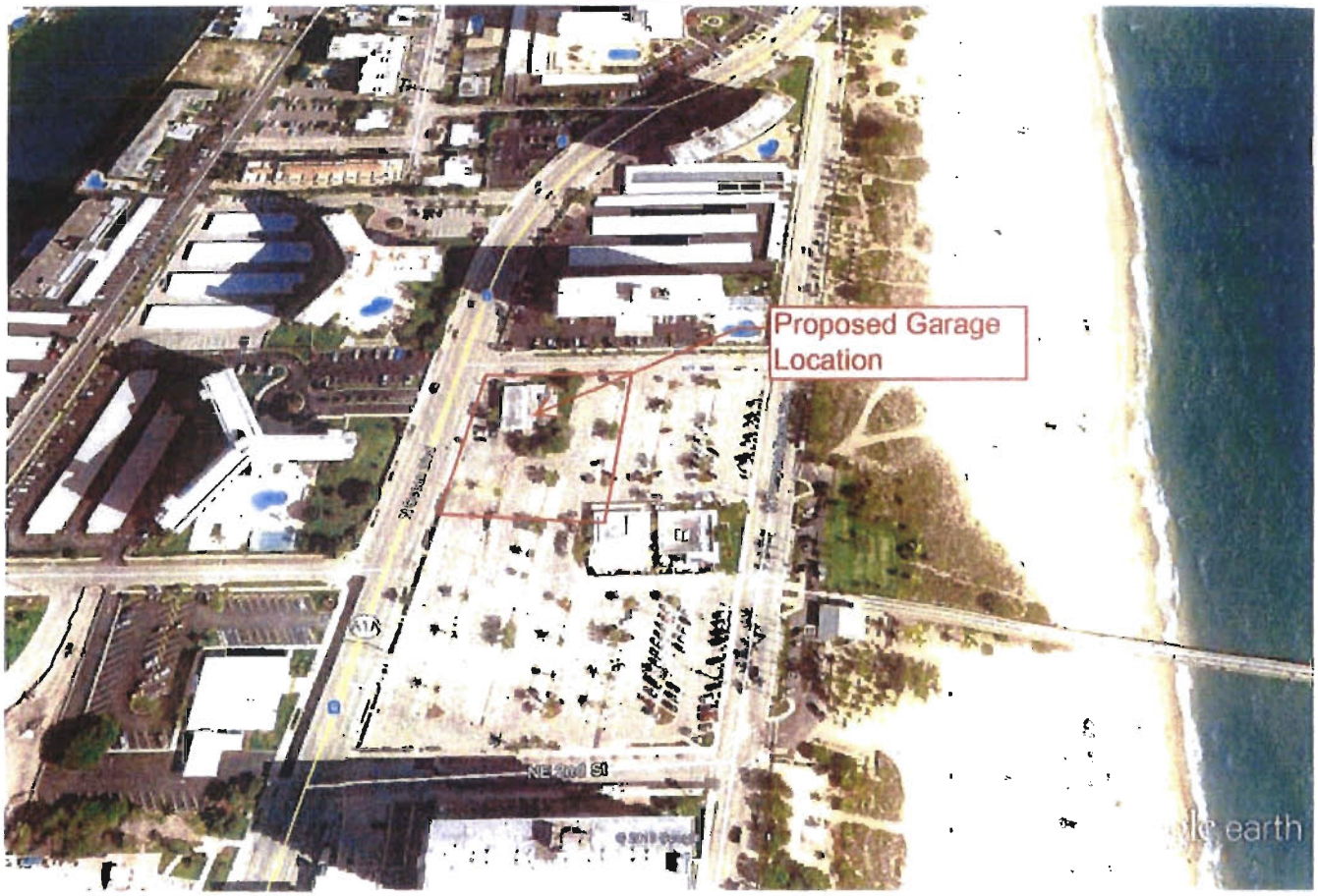
Location Map



Google earth

feet 600

meters 100

#11

#7

pompano beach
Florida's Warmest Welcome

CITY OF POMPANO BEACH
BUDGET ADJUSTMENT

ORIGINATING DEPT.: CIP

DATE: 2/29/16

ACCOUNT DESCRIPTION	FND	DP	DV	SUB	EL	OB	AVAILABLE FUNDS	CURRENT BUDGET	* INCREASE	* DECREASE	REVISED BUDGET
Pier Pkg. Garage (CIP 15271)	473	75	49	545	65	12	1,158,252	17,670,311	55,561		17,725,872
Pier Garage Contingency	473	75	49	545	65	20	585,343	585,343		55,561	
								TOTAL	55,561	55,561	

*** USE WHOLE DOLLARS ONLY**

REASON Funds necessary to offset contract amendment with Lansing Melbourne Group (owners Rep.). Amount absorbed from approved project contingency funds (Resolution 2015-439)

Department Head — Date: 2/29/16

Adjustment is within total budget of department - Yes ____ No ✓
Adjustment requires only City Manager approval - Yes ____ No ____
Adjustment requires City Commission approval - Yes ✓ No ____

Adjustment approved at City Commission Meeting of ____

Finance Director	Date	Budget Office	Date	City Manager	Date	AUDITED BY	INPUT BY	CONTROL NO.
J. Hebble	3/1/16					3/1/16		

PB 1330 (Revised 5/05)

Distribution By Finance: White Copy - Finance Yellow Copy - Department Pink Copy - Budget

Meeting Date: 3-8-16

Agenda Item 12

REQUESTED COMMISSION ACTION:

Consent	Ordinance	Resolution	Consideration/ Discussion	X Presentation
				X

SHORT TITLE A PRESENTATION OF THE ACTUARIAL VALUATION REPORT FOR THE CITY OF POMPANO BEACH GENERAL EMPLOYEES' RETIREMENT SYSTEM AS OF OCTOBER 1, 2015 BY BOARD ACTUARY JOSE FERNANDEZ OF CAVANAUGH MACDONALD CONSULTING, LLC.

Summary of Purpose and Why:

THIS ANNUAL PRESENTATION PROVIDES AN OVERVIEW OF THE ACTUARIAL VALUATION.

(1) Origin of request for this action: Madelene L. Klein, Pension Board Executive Director
(2) Primary staff contact: Dennis W. Beach, City Manager
(3) Expiration of contract, if applicable:
(4) Fiscal impact and source of funding: None

DEPARTMENTAL COORDINATION	DATE	DEPARTMENTAL RECOMMENDATION	DEPARTMENTAL HEAD SIGNATURE

X City Manager

ACTION TAKEN BY COMMISSION:

Ordinance	Resolution	Consideration	
Workshop			
1st Reading	1st Reading	Results:	Results:
2nd Reading			

Meeting Date: March 8, 2016 Agenda Item 13

REQUESTED COMMISSION ACTION: **QUASI-JUDICIAL**

Consent	X Ordinance	Resolution	Consideration/ Discussion	Presentation

SHORT TITLE AN ORDINANCE OF THE CITY OF POMPANO BEACH, FLORIDA, REZONING PROPERTY LYING SOUTHEAST OF THE I-95 NORTH-BOUND COPANS ROAD EXIT RAMP AND NORTH OF NW 21ST COURT, ADJACENT TO AND PART OF WHAT IS COMMONLY KNOWN AS 350 WEST COPANS ROAD FROM RS-4 (SINGLE-FAMILY RESIDENCE) AND B-2 (COMMUNITY BUSINESS) TO B-3 (GENERAL BUSINESS); PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

Summary of Purpose and Why:

This approximate 2.9974 acre property is located south of the Copans Road I-95/ramp and north of NW 21 Ct. The property is owned by AN Imports of Ft. Lauderdale, Inc. and Napleton Investment Partnership, LP. This is a request to rezone the subject property from Community Business (B-2) & Single Family Residential 4 (RS-4) to General Business (B-3). The portion currently zoned B-2 is approximately 2.67 acres and the portion zoned RS-4 is approximately .32 of an acre. The Land Use Designation for the entire parcel is Commercial (C) and therefore this request, if approved, would bring the RS-4 portion of the property into conformance with the Land Use designation. The applicant has a concurrent Plat request proposing to restrict the property to 15,000 square feet of commercial use. The Planning & Zoning Board recommended approval of this request in a 5-2 decision at the November 18, 2015 meeting.

TABLED FROM FEBRUARY 9, 2016 CITY COMMISSION MEETING

(1) Origin of request for this action: Linda C. Strutt Consulting, Inc. on behalf of AN Imports of Ft. L., Inc.
(2) Primary staff contact: Robin M. Bird/ Maggie Barszewski Ext. 7921
(3) Expiration of contract, if applicable: N/A
(4) Fiscal impact and source of funding: N/A

DEPARTMENTAL COORDINATION	DATE	DEPARTMENTAL RECOMMENDATION	DEPARTMENTAL HEAD SIGNATURE
Dev. Services	9/18/15 9/10/15	Approval	Memo#'s 15-618 & 15-498
City Attorney	01/11/16	See Memo	CAC# 2016-368

X Planning and Zoning Board Approval Memo #15-073 (12/04/15)
X City Manager

ACTION TAKEN BY COMMISSION:

Ordinance		Resolution		Consideration	
Workshop					
1st Reading Approved	1/26/16	1st Reading		Results:	Results:
2nd Reading	3/8/16				

g:\zoning 2009\rezonings & lupa's\2015\15-13000009 - mercedes rezoning\cc\agenda form 16-019.doc

City Attorney's Communication #2016-368
January 11, 2016

TO: Maggie Barszewski, AICP, Planner

FROM: Mark E. Berman, City Attorney

RE: Ordinance - Copans AMG/Mercedes Rezoning

As requested in your memorandum of December 28, 2015, Department of Development Services Memorandum #15-631, the following form of ordinance, relative to the above-referenced matter, has been prepared and is attached:

> **AN ORDINANCE OF THE CITY OF POMPANO BEACH, FLORIDA, REZONING PROPERTY LYING SOUTHEAST OF THE I-95 NORTH-BOUND COPANS ROAD EXIT RAMP AND NORTH OF NW 21ST COURT, ADJACENT TO AND PART OF WHAT IS COMMONLY KNOWN AS 350 WEST COPANS ROAD FROM RS-4 (SINGLE-FAMILY RESIDENCE) AND B-2 (COMMUNITY BUSINESS) TO B-3 (GENERAL BUSINESS); PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.**

Please feel free to contact me if I may be of further assistance.

MARK E. BERMAN

MEB/jrm
l:cor/dev-srv/2016-368

Attachment

ORDINANCE NO. 2016-_____

CITY OF POMPANO BEACH
Broward County, Florida

AN ORDINANCE OF THE CITY OF POMPANO BEACH, FLORIDA, REZONING PROPERTY LYING SOUTHEAST OF THE I-95 NORTH-BOUND COPANS ROAD EXIT RAMP AND NORTH OF NW 21ST COURT, ADJACENT TO AND PART OF WHAT IS COMMONLY KNOWN AS 350 WEST COPANS ROAD FROM RS-4 (SINGLE-FAMILY RESIDENCE) AND B-2 (COMMUNITY BUSINESS) TO B-3 (GENERAL BUSINESS); PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

WHEREAS, pursuant to law, ten (10) days' notice has been given by publication in a paper of general circulation in the City, notifying the public of this proposed ordinance and of a public hearing in the City Commission Chambers of the City of Pompano Beach, Florida; and

WHEREAS, in accordance with Section 155.2305.C, of the Pompano Beach Code of Ordinances, notice in accordance with said section has been mailed notifying residents within 500 feet of the subject property of two public hearings on this proposed Ordinance; and

WHEREAS, a public hearing before the City Commission was held pursuant to the aforesaid notice, at which hearing the parties in interest and all other citizens so desiring, had an opportunity to be, and were, in fact, heard; now, therefore,

BE IT ENACTED BY THE CITY OF POMPANO BEACH, FLORIDA:

SECTION 1. That the City Commission of the City of Pompano Beach, having considered the evidence and argument presented at the public hearing, finds that the Applicant has provided, as part of the record of the public hearing on the application, competent substantial evidence that the proposed amendment is consistent with the Future Land Use Category and any applicable goals, objectives and policies of the Comprehensive Plan and all other applicable city adopted plans.

SECTION 2. That the property more particularly described in Exhibit "A," attached hereto and made a part hereof ("Property), which Property is hereby rezoned from a present zoning classification of RS-4 (Single-Family Residence) and B-2 (Community Business) to B-3 (General Business) as said zoning classification is defined by Chapter 155 of the Code of Ordinances of the City of Pompano Beach, Florida.

SECTION 3. That the Development Services Director is hereby directed to mark the zoning provided for in this Ordinance on the Official Zoning Map of the City of Pompano Beach.

SECTION 4. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance that 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 5. This Ordinance shall become effective upon passage.

PASSED FIRST READING this _____ day of _____, 2016.

PASSED SECOND READING this _____ day of _____, 2016.

_____
LAMAR FISHER, MAYOR

ATTEST:

_____
ASCELETA HAMMOND, CITY CLERK

/jrm
1/11/16
l:ord/2016-93

Exhibit A

LEGAL DESCRIPTION

A Parcel of land lying in the northwest one-quarter, (N.W. 1/4), of Section 26, Township 48 South, Range 42 East, being more particularly described as follows:

BEGIN at the most westerly southwest corner of Parcel 'A', **COPANS CENTER**, according to the Plat thereof as recorded in Plat Book 135, Page 37, of the Public Records of Broward County, Florida; thence recorded in Plat Book 61, Page 32 along the North Plat boundary of **"LIBERTY PARK ESTATES SECTION 3",** according to the Plat thereof as, of the Public Records of Broward County, Florida, South 88°28'38" West, 315.57 feet; thence continue along said North Plat boundary, North 1°20'12" West, 20.00 feet to a point along a line being 2 feet North of and parallel to said North Plat boundary; thence along said line and its westerly extension thereof, South 88°28'38" West, 557.34 feet to a point on the Easterly Limited Access Right-of-Way line of State Road No. 9 (Interstate 95), as shown on the Florida Department of Transportation Right-of-Way Map Section 86070-2524, Sheet 14 of 15, approved date December 3, 2013, (said point being on the arc of a non-tangent curve with a radial line through said point bearing North 22°32'21" West); thence along said Right-of-Way line and northeasterly along the arc of said curve being concave to the southeast, having a radius of 961.74 feet, a central angle of 4°17'40", an arc distance of 72.08 feet; thence along said Right-of-Way line and tangent to said curve, North 71°45'19" East, 535.48 feet to a point of curvature; thence along said Right-of-Way line and northeasterly along the arc of said curve being concave to the northwest, having a radius of 712.00 feet, a central angle of 27°22'28", an arc distance of 340.18 feet to the most westerly northwest corner of aforesaid Parcel 'A', **COPANS CENTER**; thence along the West Plat boundary of said Parcel 'A', South 1°42'46" East, 367.94 feet to the Point of Beginning.

Said lands situate and lying in the City of Pompano Beach, Florida and containing 2.9974 acres, 130,568 square feet, more or less.

PLANNING AND ZONING BOARD/ LOCAL PLANNING AGENCY
MEMORANDUM #15-073

DATE: December 4, 2015

TO: City Commission

FROM: Planning and Zoning Board/ Local Planning Agency

SUBJECT: REZONING – General Business (B-3) from
Community Business (B-2) & Single-family Residence 4 (RS-4)
350 & 400 W Copans Road
P & Z #15-13000009 AN IMPORTS OF FORT LAUDERDALE, INC & NAPLETON INVESTMENT PARTNERSHIP, LP / MERCEDES POMPANO

At the meeting of the Planning and Zoning Board/ Local Planning Agency held on November 18th, 2015, the Board considered the request by **LINDA C. STRUTT** on behalf of **AN IMPORTS OF FORT LAUDERDALE, INC & NAPLETON INVESTMENT PARTNERSHIP, LP** requesting REZONING of the above referenced property.

As it is consistent with the goals, objectives, and policies of the Comprehensive Plan stated in Administrative Report 15-498, it is the recommendation of the Board by a 5-2 vote (Dwight Evans and Walter Syrek dissenting) that the REZONING request be approved subject to the following:

Prior to the placement on the City Commission agenda, the applicant must do the following:

1. Voluntarily restrict the property to B-2 uses as well as the use(s) in B-3 that apply to this project;
2. Include in the voluntary restriction that no building shall let light spill into the neighborhood; and
3. The applicant must also attempt to hold another meeting with the residents where most residents are able to attend the meeting.

Fred Stacer
Chairman
Planning and Zoning Board/ Local Planning Agency

kem
G:\Zoning 2009\Rezonings & LUPA's\2015\15-13000009 - Mercedes Rezoning\ABS\November P&Z\P&Z Approval Memo_15-073.doc

pompano beach
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MEMORANDUM

Development Services

ADMINISTRATIVE MEMORANDUM NO. 15-618

DATE: September 18, 2015

TO: Planning and Zoning Board

VIA: Robin M. Bird, Development Services Director

FROM: Maggie Barszewski, AICP, Planner

RE: Copans AMG/Mercedes Rezoning
November 18, 2015 meeting P&Z # 15-13000009

The property owner and applicant AN Imports of Ft. Lauderdale, Inc. and Napleton Investment Partnership, LP. has held two neighborhood meetings that meet the requirements of Section 155.2302 of the Zoning Code. I attended the first meeting held on October 12, 2015. The neighborhood residents voiced concern about the following issues:

- Landscape maintenance problems with the subject property;
- Drainage concerns with developing the subject property;
- Damage to houses and the residential streets that could be caused by the construction and construction vehicles;
- An increase in the use of the residential streets by test-driving vehicles due to an expansion of the car dealership business.

The applicant requested tabling consideration of the rezoning request from the October P&Z hearing to the November meeting so that they would be able to address some of the concerns of the neighborhood and hold another neighborhood meeting. I notified the applicant that I would not be able to attend the second neighborhood meeting (held on November 10); but they were to get the names addresses and phone numbers of all attendees, as well as provide a summary of the neighborhood concerns, and the ultimate consensus of those in attendance. The applicant provided the attachment to accommodate my request.

Notes – Mercedes community meeting

Start: 7:13pm

- Review of rezoning from B2 to B3. Going over uses of zoning districts. Showed them on charts. Explained that they need new use of new sales. Side by side chart – still a commercial use consistent with what is allowed.
    - Q: does the area start from the park (includes the park)? Starts at the corner of the dealership. Could not schedule the walk through.
- Andrea talks about draining issues. Ponding issues where water collects before. Surveyor went out and analyzed. Water collects in the cul-de-sac and another area. Reached out to the city about our concerns.
    - Q: what have you been doing since Walmart left? Going to city to take care of that. It is under the city's control because it is not on our property.
- The drainage is not actually going back into the residential area. The biggest issue is 1302, 1304 ?? The city could put in a catch basin or clean up the asphalt to slope. The city has the money set aside to take care of it.
    - Q: how often will they maintain the area where the concrete wall is? --- they will be taking care of it weekly.
    - There are hedges near the fence that cause a problem – manager answered; he is a stickler for clean premises. Explained to them how hard he works and this place will be a showplace.
    - There is a problem with snakes, they have killed many. The grass hasn't been cut regularly. They like the new company that started Monday, they have been doing a good job. – they don't know who will be continuously maintaining the property. --- the city is aware that the fence is on our property and could possibly be cited.
- AMG is top of the line for Mercedes.
    - Will the building obscure the view? – showed the picture; it will be elevated so it won't be a concrete façade in their faces. There wont be any neon signs or lighting going backwards. All lighting faces the roadway; city won't allow bright/neon lights.
    - Will it include movie theatre/golf course? – no, it will just be a showroom. Only a little over 10,000 sq ft.

    - How do I get the cars from the showroom? – there will be car elevators to move the cars from there to the parking lot. There's no parking around the building. There won't be a massive influx of vehicles.
    - There will be no new entrance/exit to the showroom.
- In the construction contracts, the hours will be m-f 7-5, sat 8-4. This will be on file for record. **THEY ASKED FOR A COPY**
- Set to be heard by the planning and zoning board on Nov. 18 at 7p.
- Asked about the map on the notice --- explained about situation with the city. We are not rezoning any part of the residential neighborhood.
- Asked clarifying question that zoning will only be from B2 to B3. Confirmed.
- When will the roads be fixed? She has an issue that Mercedes has the benefit of using the roads and the citizens have to pay the taxes – that is a city issue; it is ultimately a public right of way
- Where will the trucks come in when the construction begins? – they won't be coming down 3rd.
- Why are we here if you're going ahead with the project any? They are test driving and speeding through the neighborhood. It is an inconvenience to the residents. There is no benefit to the residents, they can't afford the vehicles.
- They want them to fix the roads. They believe they have pull.
- Wants them to note something about the state of the roads for approval
- Maybe do a survey about whether they want concrete or chain fence
- Shows list of names company sent notices too
- They want test driving to stop through the community. Go on federal highway or I-95.

SIGN-IN FOR 11/10/15 MEETING
ADDRESS SHEET
HODGEN/POMPANO (MERCEDES)

Mary Montgomery
665 N.W. 20th Street
Pompano Beach, FL 33060
754-234-5787

Leila Montgomery
673 N.W. 20th Street
Pompano Beach, FL 33060
954-729-7692

Minnie Campfield
616 NW 21 Court
Pompano Beach, FL 33060
954-943-8685

Lillie Grooms
609 NW 21 Court
Pompano Beach, FL 33060
954-941-6862
MGrooms@bellsouth.net

Walter McDougal
632 NW 21st Court
Pompano Beach, FL 33060
954-781-8542
wmcdougal@bellsouth.net

Omer Davis
640 NW 21 Court
Pompano Beach, FL 33060
954-941-7091

Juarilyn Pinkney
384 N.W. 19th Court
Pompano Beach, FL 33060
954-870-0217
Kendall38437@gmail.com

Robin Thompson
1880 NW 19 Court
Pompano Beach, FL 33060
954-907-6960

Ola Gay-Jones
697 NW 20 Court
Pompano Beach, FL 33060
954-943-7698

Mary Saddler
571 NW 21 Court
Pompano Beach, FL 33060
954-817-0636
marysaddler@gmail.com

Sharon Montgomery
673 NW 20 Street
Pompano Beach, FL 33060
954-234-0148
SharonMiller702@yahoo.com

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MEMORANDUM

Development Services

ADMINISTRATIVE MEMORANDUM NO. 15-498

DATE: September 10, 2015

TO: Planning and Zoning Board

VIA: Robin M. Bird, Development Services Director

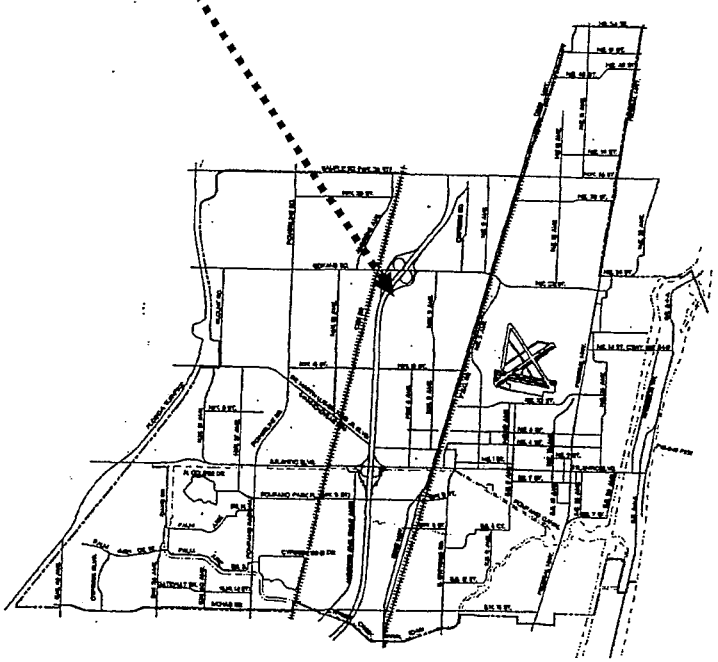
FROM: Maggie Barszewski, AICP, Planner

RE: Copans AMG/Mercedes Rezoning
September 23, 2015 meeting P&Z # 15-13000009

Request

This approximate 2.9974 acre property is located south of the Copans Road I-95/ramp and north of NW 21 Ct. The property is owned by AN Imports of Ft. Lauderdale, Inc. and Napleton Investment Partnership, LP. This is a request to rezone the subject property from Community Business (B-2) & Single Family Residential 4 (RS-4) to General Business (B-3). The portion currently zoned B-2 is approximately 2.67 acres and the portion zoned RS-4 is approximately .32 of an acre. The Land Use Designation for the entire parcel is Commercial (C) and therefore this request, if approved, would bring the RS-4 portion of the property into conformance with the Land Use designation. The applicant has a concurrent Plat request proposing to restrict the property to 15,000 square feet of commercial use.

South of Copans Rd. I-95 Ramp



LEGEND

FOR LAND USE PLAN

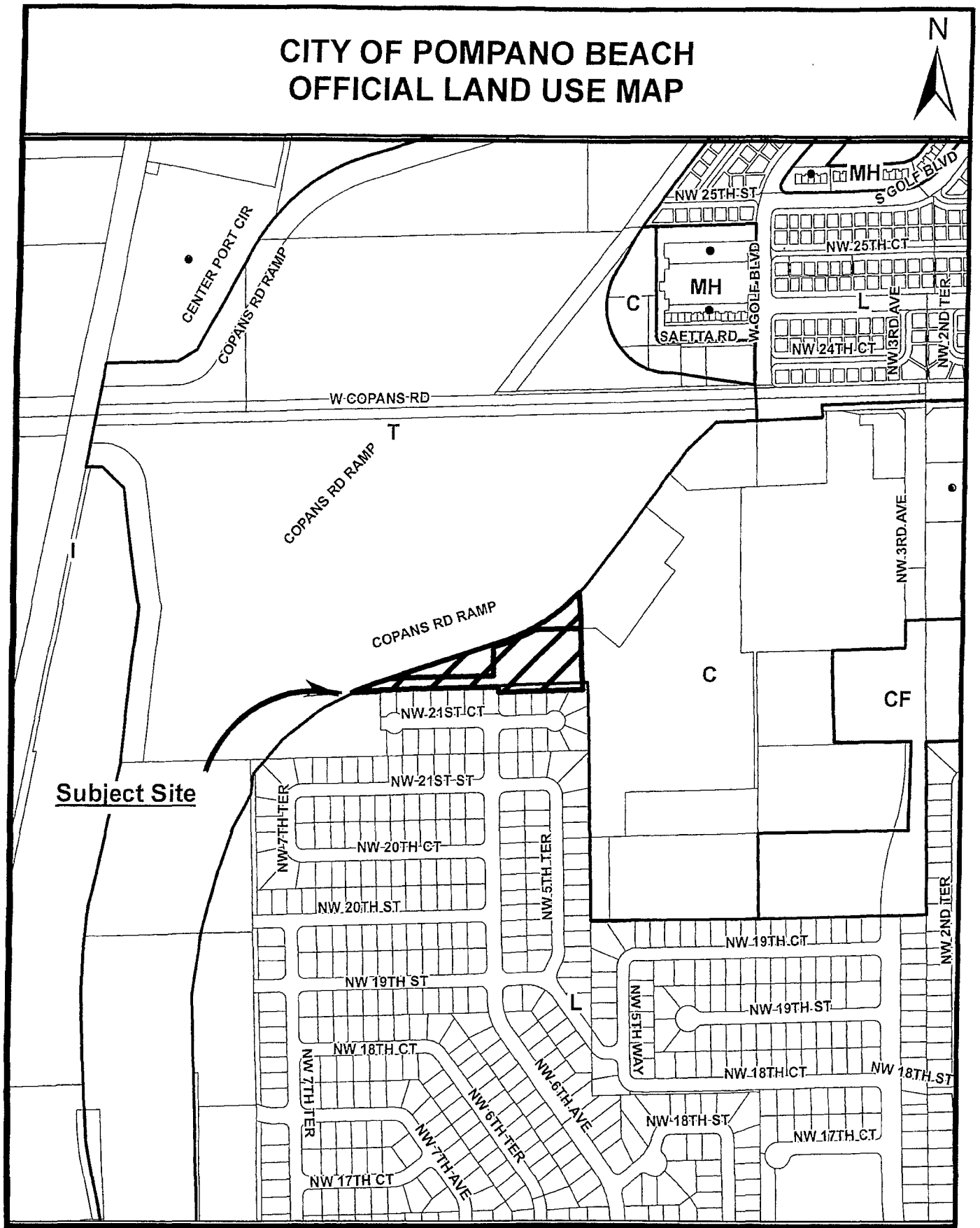
	Symbol	Classification Units/ Acre
		Gross Residential Density
		Residential
	E	Estate
	L	Low
	LM	Low- Medium
	M	Medium
	MH	Medium-High
	H	High
*	C	Commercial
	CR	Commercial Recreation
	I	Industrial
	T	Transportation
	U	Utilities
	CF	Community Facilities
	OR	Recreation & Open Space
	W	Water
	RAC	Regional Activity Center
		Boundaries City of Pompano Beach
	13	Number
		Reflects the maximum total number of units permitted within the dashed line of Palm Aire & Cypress Bend being 9,724 and 1,998

FOR ZONING MAP

	Symbol	District
	RS-1	One-Family Residence
	RS-2	One-Family Residence
	RS-3	One-Family Residence
*	RS-4	One-Family Residence
	RD-1	Two- Family Residence
	RM-12	Multi-Family Residence
	RM-20	Multi-Family Residence
	RM-30	Multi-Family Residence
	RM-45	Multi-Family Residence
	RM-45/HR	Overlay
	RPUD	Residential Planned Unit Dev.
	AOD	Atlantic Boulevard Overlay District
	MH-12	Mobile Home Park
	B-1	Limited Business
*	B-2	Neighborhood Business
>	B-3	General Business
	B-4	Heavy Business
	RO	Residence Office
	M-1	Marina Business
	M-2	Marina Industrial
	I-1	General Industrial
	I-1X	Special Industrial
	O-IP	Office Industrial Park
	BP	Business Parking
	BSC	Planned Shopping Center
	PCI	Planned Commercial / Industrial Overlay
	PR	Parks & Recreation
	CR	Commerical Recreation
	CF	Community Facilities
	T	Transportation
	PU	Public Utility

*	**Existing**
>	**Proposed**

CITY OF POMPANO BEACH
OFFICIAL LAND USE MAP



1 in = 500 ft

9/11/2015 KeeDan

3

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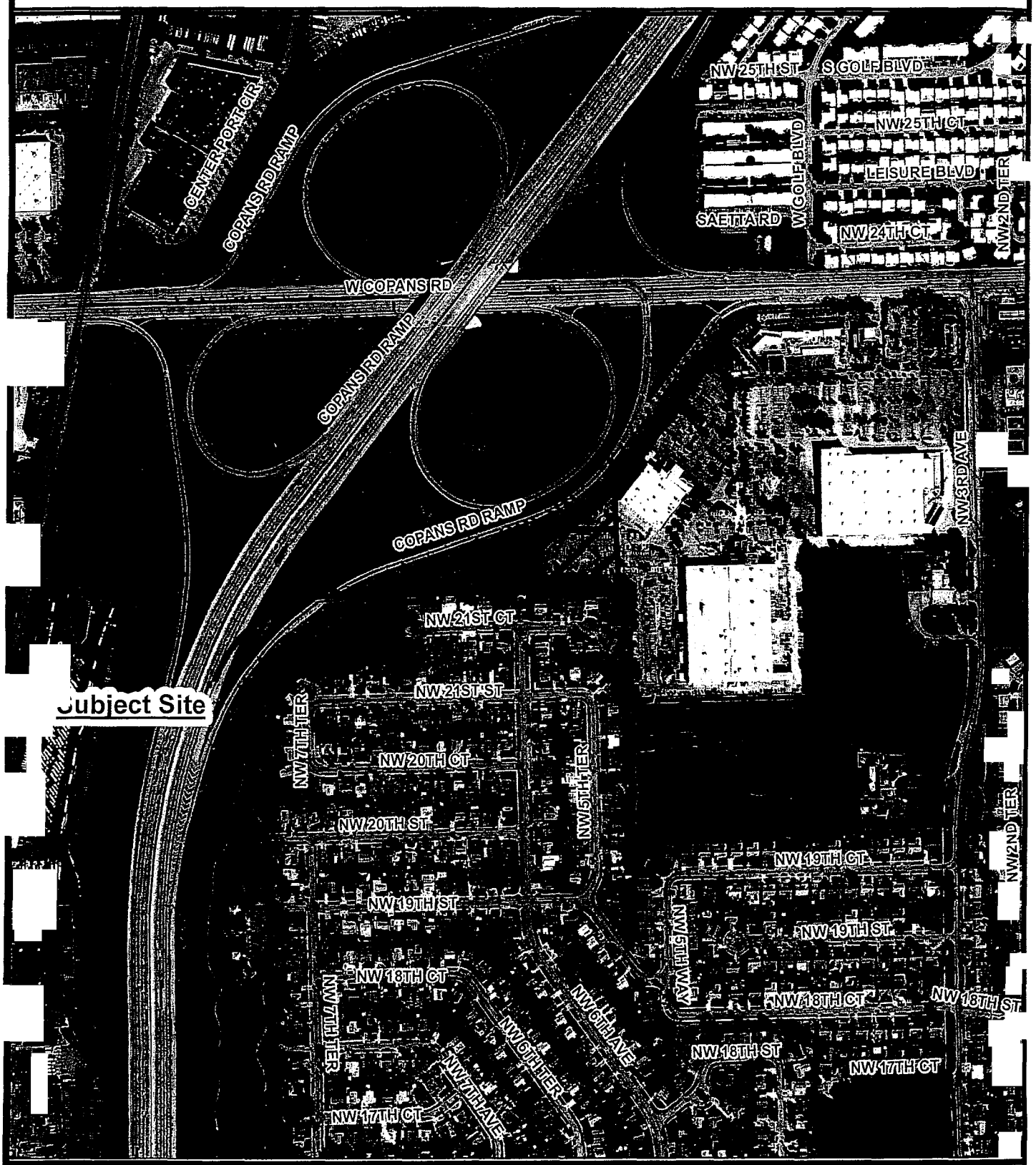
PREPARED BY:
DEPARTMENT OF
DEVELOPMENT SERVICES

CITY OF POMPANO BEACH
AERIAL MAP



1 in = 500 ft

9/11/2015 KeeDan

5

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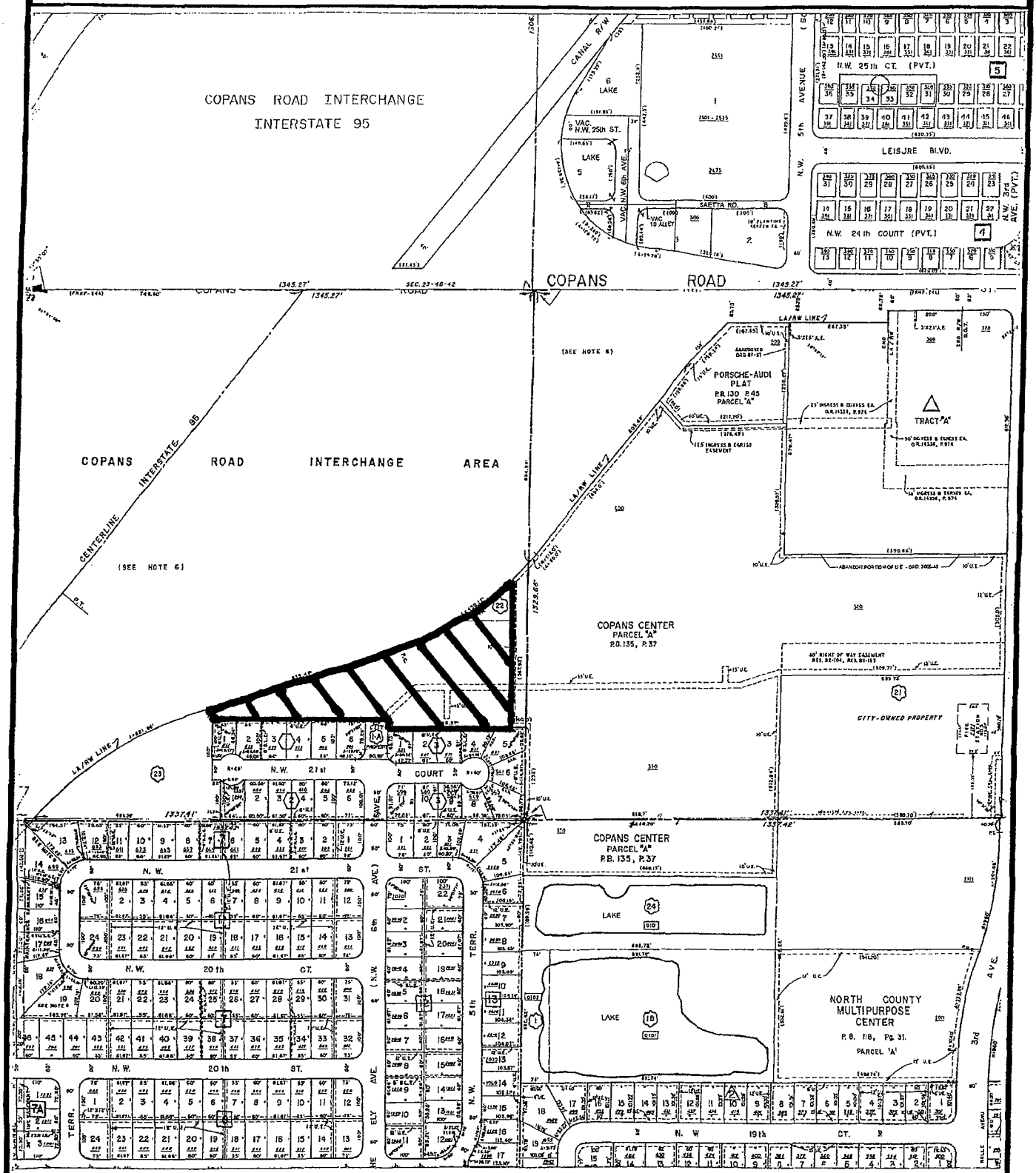
PREPARED BY:
DEPARTMENT OF
DEVELOPMENT SERVICES

EXCERPT FROM THE CITY OF POMPANO BEACH
PLAT MAP



SCALE: NTS

NORTH

REVIEW & SUMMARY

A. Pursuant to Section 157.31(A) [Major Review: Development Review Committee Report and Notice to Applicant], the Development Services Director has compiled the department comments from the September 2, 2015 Development Review (DRC) meeting which are summarized below:

BSO Scott Longo

Review Complete No Comments 08/25/2015

CRA Lorri Hall

Review Complete No Comments

ENGINEERING DEPARTMENT Bob Lawson

Review Complete No Comments 08-28-15: No Comments.

BUILDING DIVISIONSal Pravata

Review Complete No Comments 9/1/2015

UTILITIES Nathaniel Watson

Review Complete Pending Development Order 8-24-2015

Neither the narrative nor the survey indicates how the rezoning and desired development shall impact the existing 15' utility easement in the subject area that accommodates an active City owned utility infrastructure. Please provide details regarding development in proximity of the existing utility easement.

PLANNING Chris Clemens

Review Complete Pending Development Order Glad to see the community was engaged. Was there a sign-in sheet? What was the outcome? Was there an agreement? Were there objections? What is this proposed development going to do to the drainage system?

FIRE DEPARTMENT Jim Galloway

Review Complete Pending Development Order This P&Z application is able to meet all of the Fire Department requirements at this time for Site Plan Review. However, the petitioner shall maintain all proper fire department access and water supply requirements as per chapter 18 of NFPA 1 as amended from time to time.

*Additional comments may follow throughout the remainder of the permitting process. The buildings shall be in compliance with All NFPA Standards prior to receiving Fire Department approval.

In accordance with NFPA 1 chapter 11 section 11.10.1 Minimum radio signal strength for fire department communications shall be maintained at a level determined by the AHJ.

ZONING Maggie Barszewski

Review Complete Pending Development Order The survey refers to a Mediated Settlement Agreement that was recoded and restricts the subject property to serving as retention area for adjacent properties. Since in the Project Narrative you indicate that the purpose for the rezoning is to eventually build a two-story building on the site, please provide information as to how you will accommodate the restrictions that have been placed on the property.

To avoid confusion, the location map should be revised since the indicated subject site includes property to the southwest that is apparently not supposed to be a part of the subject property to be rezoned.

A neighborhood meeting in accordance with Section 155.2302 is strongly encouraged to ensure that the concerns of the neighborhood to the south can be sought and addressed. In the Project Narrative, it was stated that an "informational meeting" was held with the homeowners association for that community, however, the Development Services staff was not notified. If the requirements of this section were met, please provide verification.

The following Comp Plan Policies will be used in the review of this application:

01.03.11 Consider the compatibility of adjacent land uses in all Land Use Plan amendments and rezonings.

01.03.12 The following criteria may be used in evaluating rezoning requests:

1. Density;

2. Design;

3. Distance to similar development;

4. Existing adjoining uses;

5. Proposed adjoining uses;

6. Readiness for redevelopment of surrounding uses; and.

7. Proximity to mass transit.

B. Zoning Department staff submits the following factual information which is relevant to this rezoning request:

1. The rezoning was reviewed by DRC on September 2, 2015.

2. The property is located south of the Copans Road I-95 ramp and north of NW 21 Ct.

3. The area to be rezoned is approximately 2.9974 acres.

4. The Zoning and uses of adjacent properties are:
   North – (T) – Transportation, I-95
   South – (RS-4) – Single Family Residential, housing units
   East – (B-3) – General Business, Automotive Showroom buildings and parking-
   West – (T) – Transportation, I-95

5. Access to this property is currently through the adjacent parcel with the same owner and eventually connecting to NW 3rd Avenue.

6. The Land Use Designation is (C) Commercial.

C. The following goals, objectives and policies of the City's Comprehensive Plan have been identified as pertinent to this rezoning:

Objective

01.03.00 Annually review and periodically update adopted land development regulations and established procedures that encourage the elimination or reduction of uses inconsistent with the City's character and Future Land Use Plan.

Policies

01.03.01 Eliminate or reduce nonconforming uses which are inconsistent with the land development regulations and the designations of the Future Land Use Plan map.

01.03.03 Encourage property owners to rezone the subject properties when initiating the development and/or redevelopment proposals to be consistent with the designations of the Land Use Plan Map.

01.03.04 Consider the preservation of established single family neighborhoods in all rezonings, land use plan amendments and site plan approvals.

01.03.11 Consider the compatibility of adjacent land uses in all Land Use Plan amendments and rezonings.

01.03.12 The following criteria may be used in evaluating rezoning requests:

1. Density;
2. Design;
3. Distance to similar development;
4. Existing adjoining uses;
5. Proposed adjoining uses;
6. Readiness for redevelopment of surrounding uses; and.
7. Proximity to mass transit.

D. Recommendation:

Given the information provided to the Board, as the findings of fact, staff provides the following recommendation and alternative motions, which may be revised or modified at the Board's discretion.

Alternative Motion I

Table this rezoning request to give staff additional time to research the history of the property.

Alternative Motion II

Recommend approval of the rezoning of the subject property from Community Business (B-2) & Single Family Residential (RS-4) to General Business (B-3) since the Board finds it consistent with the Comprehensive Plan Map, Objectives and Policies as stated previously.

Alternative Motion III

Recommend denial as the Board finds that the request is not consistent with the objectives and policies of the Comprehensive Plan included in this report.

STAFF RECOMMENDS ALTERNATIVE MOTION I

City of Pompano Beach
Department of Development Services
Planning & Zoning Division

Florida's Warmest Welcome

100 W. Atlantic Blvd Pompano Beach, FL 33060
Phone: 954.786.4634 **Fax:** 954.786.4666

Rezoning Application

Rezoning Review

(•) **Site Specific** ( ) **Planned Development**

400 W. Copans Road	RS-4 & B-2	B-3
STREET ADDRESS	**Current**	**Proposed Zoning**
Copans AMG (in progress)		
Subdivision	**Block**	**Lot**

Representative or Agent's interest in property (Owner, Lessee, Etc)	Representative is consultant (attorney will act as agent)
Has any previous application(s) been filed?	Yes ( ) No (•)
If Yes, give date of hearing and finding	Plat application in progress. No previous zoning applications.

Agent or Representative	**Landowner (Owner of Record)**
Linda Strutt Consulting, Inc.	AN Imports of Ft. Lauderdale, Inc.
Business Name (if applicable)	**Business Name (if applicable)**
Linda C. Strutt, AICP	James R. Bender, President
Print Name and Title	**Print Name and Title**
Linda C. Strutt, President	James R. Bender
Signature	**Signature**
Linda C. Strutt	5/5/15
Date	**Date**
4/20/15	c/o Auto Nation, 200 S.W. 1st Ave., 14th Floor
Street Address	**Street Address**
227 Goolsby Blvd., Deerfield Beach, FL 33442	Ft. Lauderdale, FL 33301
Mailing Address City/ State/ Zip	**Mailing Address City/ State/ Zip**
954-426-4305	954-769-6680 (Chip Sabadash)
Phone Number	**Phone Number**
linda@struttconsulting.com	SabadashC@autonation.com
Email	**Email**
Indicate your preferred medium to receive agendas and notifications: ( ) Mail (•) E-Mail	Indicate your preferred medium to receive agendas and notifications: ( ) Mail (•) E-Mail

City of Pompano Beach RECEIVED APR 1 1 2015 Planning and Zoning

P&Z

PZ15-13000009
NOV 18 2015

City of Pompano Beach
Department of Development Services
Planning & Zoning Division

100 W. Atlantic Blvd Pompano Beach, FL 33060
Phone: 954.786.4634 **Fax:** 954.786.4666

Rezoning Application

Rezoning Review

(●) **Site Specific** ( ) **Planned Development**

400 W. Copans Road	RS-1 & B-2	B-3
STREET ADDRESS	**Current**	**Proposed Zoning**
Copans AMG (in progress)		
Subdivision	**Block**	**Lot**

Representative or Agent's interest in property (Owner, Lessee, Etc)	Representative is consultant (attorney will act as agent)
Has any previous application(s) been filed?	Yes ( ) No (●)
If Yes, give date of hearing and finding	Plat application in progress. No previous zoning applications.

Agent or Representative	**Landowner (Owner of Record)**
Linda Strutt Consulting, Inc.	Richard P. Brandstatter, Director of Real Estate
Business Name (if applicable)	**Business Name (if applicable)**
Linda C. Strutt, AICP	Napleton Investment Partnership, LP
Print Name and Title	**Print Name and Title**
Linda C. Strutt Linda C. Strutt President	Richard P Brandstatter Director of Real Estate
Signature	**Signature**
4/20/15	RPBrandstatter
Date	**Date** 4/30/15
	1 E. Oak Hill Drive, Suite 100
Street Address	**Street Address**
227 Goolsby Blvd., Deerfield Beach, FL 33442	Westmont, IL 60559
Mailing Address City/ State/ Zip	**Mailing Address City/ State/ Zip**
954-426-4305	630-455-2945
Phone Number	**Phone Number**
linda@struttconsulting.com	rick@napleton.com
Email	**Email**
Indicate your preferred medium to receive agendas and notifications: ( ) Mail (●) E-Mail	Indicate your preferred medium to receive agendas and notifications: (●) Mail ( ) E-Mail

City of Pompano Beach RECEIVED 2015 Planning and Zoning

P&Z

PZ15-13000009
NOV 18 2015

Meeting Date: March 8, 2016 Agenda Item 14

REQUESTED COMMISSION ACTION:

Consent	X Ordinance	Resolution	Consideration/ Discussion	Presentation
___	___	___	___	___

SHORT TITLE

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH AMENDING CHAPTER 155 "ZONING CODE", BY AMENDING SECTION 155.4222, "COMMERCIAL: RETAIL SALES AND SERVICE USES- RETAIL SALES," TO MODIFY THE DEFINITION OF A CONSIGNMENT SHOP AND A THRIFT SHOP; BY AMENDING SECTION 155.5102, "OFF-STREET PARKING AND LOADING"; BY AMENDING PART 5, "TERMS AND USES DEFINED"; BY AMENDING APPENDIX A: "CONSOLIDATED USE TABLE"; PROVIDING SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

Summary of Purpose and Why:

In order to allow sufficient time to study the provision of thrift shops in the City, on July 14, 2015 the City Commission adopted Ordinance 2015-67, which enacted a temporary moratorium on thrift shops. Staff has undertaken a study and has prepared text amendments based on the findings of the study (A copy of the study is attached). The text amendments propose renaming and redefining consignment shop as a consignment boutique, adopting standards that more clearly distinguish a thrift shop versus a consignment boutique, and adopting standards related to the donation areas for thrift shops. Staff will present a brief PowerPoint presentation highlighting the proposed recommendations; a copy of which is included at the end of the back-up for this item. The text amendments were unanimously recommended at the November 30, 2015 Planning and Zoning Board meeting (A copy of the draft minutes from the Planning and Zoning Board meeting are attached.).

(1) Origin of request for this action: Development Services Dept.
(2) Primary staff contact: Robin M. Bird/ Karen Friedman KBF Ext. 7792
(3) Expiration of contract, if applicable: N/A
(4) Fiscal impact and source of funding: N/A

DEPARTMENTAL COORDINATION	DATE	DEPARTMENTAL RECOMMENDATION	DEPARTMENTAL HEAD SIGNATURE
Dev. Services	11/19/2015	Approval	Memo #15-621
City Attorney	01/26/2016	Approval 1/28/16	Memo #2016-432
X Planning and Zoning Board		Approval	Memo #15-078 (01/11/2016)
X City Manager			

Ordinance		Resolution		Consideration	
Workshop					
1st Reading	2/9/16	1st Reading		Results:	Results:
Approved -	2/23/16-Approved				
2nd Reading	3/8/16				

City Attorney's Communication #2016-432

January 26, 2016

TO: Karen Friedman, AICP, Principal Planner

FROM: Carrie L. Sarver, Assistant City Attorney

RE: Ordinance Amending Section 155, Zoning Code

As requested, the following form of Ordinance, relative to the above-referenced matter, has been prepared and is attached:

> **AN ORDINANCE AMENDING CHAPTER 155, "ZONING CODE," OF THE CODE OF ORDINANCES OF THE CITY OF POMPANO BEACH, FLORIDA, BY AMENDING SECTION 155.4222, "COMMERCIAL: RETAIL SALES AND SERVICE USES – RETAIL SALES," TO MODIFY THE DEFINITION OF A CONSIGNMENT SHOP AND A THRIFT SHOP, AND TO PROVIDE ADDITIONAL STANDARDS FOR THRIFT SHOPS; BY AMENDING SECTION 155.5102, "OFF-STREET PARKING AND LOADING," TO AMEND THE CHART TO REFLECT SAID CHANGES; BY AMENDING PART 5, "TERMS AND USES DEFINED," BY REVISING TERMS USED OR REFERENCED IN THIS ORDINANCE; BY AMENDING APPENDIX A: "CONSOLIDATED USE TABLE," TO REVISE TABLE TO CONFORM TO AMENDMENTS MADE BY THIS ORDINANCE; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.**

Please carefully review the ordinance to ensure that it meets with your requirements.

CARRIE L. SARVER

/jrm

l:cor/dev-srv/2016-432
Attachment

ORDINANCE NO. 2016-_____

CITY OF POMPANO BEACH
Broward County, Florida

AN ORDINANCE AMENDING CHAPTER 155, "ZONING CODE," OF THE CODE OF ORDINANCES OF THE CITY OF POMPANO BEACH, FLORIDA, BY AMENDING SECTION 155.4222, "COMMERCIAL: RETAIL SALES AND SERVICE USES – RETAIL SALES," TO MODIFY THE DEFINITION OF A CONSIGNMENT SHOP AND A THRIFT SHOP, AND TO PROVIDE ADDITIONAL STANDARDS FOR THRIFT SHOPS; BY AMENDING SECTION 155.5102, "OFF-STREET PARKING AND LOADING," TO AMEND THE CHART TO REFLECT SAID CHANGES; BY AMENDING PART 5, "TERMS AND USES DEFINED," BY REVISING TERMS USED OR REFERENCED IN THIS ORDINANCE; BY AMENDING APPENDIX A: "CONSOLIDATED USE TABLE," TO REVISE TABLE TO CONFORM TO AMENDMENTS MADE BY THIS ORDINANCE; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

WHEREAS, in accordance with Florida Statutes, Section 166.041(3)(c)2, advertisements in accordance with said statute have been published in a newspaper of general paid circulation in the City of Pompano Beach and of general interest and readership in the community, notifying the public of two public hearings on this proposed Ordinance; and

WHEREAS, two public hearings have been held pursuant to said published hearings and all persons so desiring had the opportunity to be, and were, in fact, heard; now, therefore,

BE IT ENACTED BY THE CITY OF POMPANO BEACH, FLORIDA:

SECTION 1. That Section 155.4222., "Commercial: Retail Sales and Service Uses – Retail Sales," of Chapter 155, "Zoning Code," of the Code of Ordinances of the City of Pompano Beach is hereby amended to read as follows:

§ 155.4222. COMMERCIAL: RETAIL SALES AND SERVICE USES – RETAIL SALES

. . .

E. CONSIGNMENT ~~SHOP~~ BOUTIQUE

. . .

2. Definition

A consignment ~~shop~~ boutique is a retail establishment ~~primarily~~ engaged in selling used ~~household goods and merchandise (e.g., clothing, furniture, books, shoes, small appliances), where all such goods and merchandise are sold on consignment. This use does not include thrift shops or antique shops~~ non-donated, second-hand merchandise, and the merchandise is placed for sale with the establishment by the owner of the merchandise and upon sale of the merchandise the purchase price is divided between the establishment owner and the owner of the merchandise. The establishment shall be limited to one type of merchandise, including but not limited to, clothing and related accessories, children's apparel and furniture, sporting equipment, or furniture and related home furnishings. This use does not include the sale of guns, appliances, mattresses, or motor vehicles.

. . .

M. THRIFT SHOP

. . .

2. Definition

A thrift shop is a retail establishment primarily engaged in selling used ~~household goods and merchandise (e.g., clothing, furniture, books, shoes, small appliances), where such goods and merchandise are not sold on consignment~~ merchandise which has been obtained through bulk-purchases, or through donations or gifts and where the donor receives no value upon the sale of such merchandise, and where the use is designed to sell donated merchandise at a price below reasonable market value. This use ~~does not~~ also includes establishments which sell used merchandise on consignment ~~shops or antique shops~~ but which do not meet the

definition of consignment boutique. This use does not include the sale of used guns or motor vehicles.

3. Standards

A thrift shop shall comply with the following standards:

a. ~~In the B-3 Zoning District, a thrift store shall be a minimum of 12,000 square feet of total gross floor area and operated by a single tenant.~~ The thrift shop shall have a designated donation area, which shall be located at the rear of the store.

b. Donations shall only be accepted at the designated donation area.

c. Adequate directional signage shall be provided from the main entrance of the thrift shop to direct individuals to the designated donation area. The donation area shall be noticed to prohibit depositing goods when the shop is closed.

d. Donations left outside for more than 24 hours is considered outdoor storage and is strictly prohibited.

e. In the B-3 Zoning District, a thrift shop shall be operated by a single tenant.

. . .

SECTION 2. That Section 155.5102., "Off-Street Parking and Loading," of Chapter 155, "Zoning Code," of the Code of Ordinances of the City of Pompano Beach is hereby amended to read as follows:

§ 155.5102. OFF-STREET PARKING AND LOADING

. . .

D. OFF-STREET PARKING SPACE REQUIREMENTS

1. Minimum Number of Off-Street Parking Spaces

. . .

TABLE 155.5102.D.1: MINIMUM NUMBER OF OFF-STREET PARKING SPACES		
Use Category	Use Type	Minimum Number of Parking Spaces
COMMERCIAL USES		
...		
Retail Sales and Service Uses – Retail Sales	...	...
	Consignment ~~Shop~~ Boutique	

. . .

SECTION 3. That Article 9, "Definitions and Interpretations, Part 5, "Terms and Uses Defined," of Chapter 155, "Zoning Code," of the Code of Ordinances of the City of Pompano Beach is hereby amended to read as follows:

ARTICLE 9: DEFINITIONS AND INTERPRETATION

. . .

PART 5 TERMS AND USES DEFINED

The following words, terms, and phrases, when used in this Code, shall have the meaning ascribed to them in this section.

. . .

CONSIGNMENT ~~SHOP~~ BOUTIQUE
A retail establishment ~~primarily~~ engaged in selling used ~~household goods and merchandise (e.g., clothing, furniture, books, shoes, small appliances), where all such goods and merchandise are sold on consignment. This use does not include thrift shops or antique shops~~ non-donated, second-hand merchandise, and the merchandise is placed for sale with the establishment by the owner of the merchandise and upon sale of the merchandise the purchase price is divided between the establishment owner and the owner of the merchandise. The establishment shall be limited to one type of merchandise, including but not limited to, clothing and related accessories, children's apparel and furniture, sporting equipment, or furniture and related home furnishings. This use does not include the sale of used guns, used mattresses, or used motor vehicles.

. . .

THRIFT SHOP

A retail establishment primarily engaged in selling used ~~household goods and merchandise (e.g., clothing, furniture, books, shoes, small appliances), where such goods and merchandise are not sold on consignment~~ merchandise which has been obtained through bulk-purchases, or through donations or gifts and where the donor receives no value upon the sale of such merchandise, and where the use is designed to sell donated merchandise at a price below reasonable market value, and where the revenue received from selling the merchandise may be retained by a charitable or not-for-profit organization or institution. ~~This use does not include consignment shops or antique shops.~~

. . .

SECTION 4. That Appendix A, "Consolidated Use Table," of Chapter 155, "Zoning Code," of the Code of Ordinances of the City of Pompano Beach is hereby amended to read as follows:

APPENDIX A: CONSOLIDATED USE TABLE

. . .

APPENDIX A: CONSOLIDATED USE TABLE

P = PERMITTED PRINCIPAL USE S = USE ALLOWED AS A SPECIAL EXCEPTION A = PERMITTED ACCESSORY USE
T = TEMPORARY USE ALLOWED WITH A MAJOR TEMPORARY USE PERMIT t = TEMPORARY USE ALLOWED WITH A MINOR TEMPORARY USE PERMIT
√ = TEMPORARY USE ALLOWED WITHOUT TEMPORARY USE PERMIT
I = INTERIM USE ALLOWED WITH AN INTERIM USE PERMIT BLANK CELL = PROHIBITED USE

USE CATEGORY (PRINCIPAL USES) AND/OR USE TYPE		RESIDENTIAL DISTRICTS												COMMERCIAL DISTRICTS						INDUSTRIAL DISTRICTS				SPECIAL DISTRICTS						PLANNED DEVELOPMENT DISTRICTS					USE-SPECIFIC STANDARDS
		RS-1	RS-2	RS-3	RS-4	RS-L	RD-1	RM-7	RM-12	RM-20	RM-30	RM-45	MH-12	B-1	B-2	B-3	B-4	M-1	CR	I-1	I-1X	OIP	M-2	TO	PR	CF	PU	T	BP	RPUD	PCD	PD-TO	LAC	PD-I	
PRINCIPAL USES																																			
COMMERCIAL USES																																			
	. . .	. . .																																	
Retail Sales and Service Uses – Retail Sales	Consignment ~~shop~~ boutique	. . .																																	
	. . .	. . .																																	

. . .

SECTION 5. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance that 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 6. This Ordinance shall become effective upon passage.

PASSED FIRST READING this _____ day of _____, 2016.

PASSED SECOND READING this _____ day of _____, 2016.

_____

LAMAR FISHER, MAYOR

ATTEST:

_____

ASCELETA HAMMOND, CITY CLERK

:jrm
1/25/16 -12/14/15
L:ord/ch155/2016-73

PLANNING AND ZONING BOARD/ LOCAL PLANNING AGENCY
MEMORANDUM #15-078

DATE: January 11, 2016

TO: City Commission

FROM: Planning and Zoning Board/ Local Planning Agency

SUBJECT: Proposed Text Amendments to Zoning Code,
Thrift and Consignment Shops

At the special set meeting of the Planning and Zoning Board/ Local Planning Agency held on November 30, 2015 to review the Moratorium Studies and Recommendations, the Board considered proposed text amendments to the Article 4 (Use Standards), Article 5 (Development Standards), Article 9 (Definitions and Interpretation), and Appendix A (Consolidated Use Table) of the Zoning Code, as set forth in the Department of Development Services Administrative Report 15-621 as well as the Staff Report entitled "The Right Use in the Right Location: Thrift and Consignment Shops".

Within Article 3 (Zoning Districts) Staff recommends revising the Atlantic Boulevard Overlay District to add standards for "Consignment Boutique".

Within Article 4 (Use Standards) Staff recommends revising "Consignment Shop" and revising the definition and standards of "Thrift Shop."

Within other Articles Staff recommends revising Table 155.5102.D.1 "Minimum number of off-street parking spaces"; revising Article 9 Part 5; and revising Appendix A: Consolidated Use Table.

With a unanimous vote for the approval of the amendment, it is the recommendation of the Board that the text amendments be approved with the following revision:

§155.4222.E.2 & Article 9, Part 5: Consignment Boutique
The Board recommends striking the word luxury from the definition of Consignment Boutique in the above mentioned code sections.

Fred Stacer
Chairman
Planning and Zoning Board/ Local Planning Agency

kem
G:\Zoning 2009\Code Rewrite\Code Amendments\Moratorium - June 2015\P&Z_Special Set Hearing - Staff Reports\P&Z Approval Memos\PZ Approval Memo_Thrift and Consignment.doc

CITY OF POMPANO BEACH
FLORIDA

CITY HALL OFFICES:
100 W. Atlantic Boulevard
Pompano Beach, Florida
PHONE: (954) 786-4662

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http://www.pompanobeachfl.gov

MAILING ADDRESS:
City of Pompano Beach
P.O. Box 1300
Pompano Beach, FL 33061

****

PLANNING AND ZONING BOARD/LOCAL PLANNING AGENCY — November 30th, 2015, Monday

City Commission Chambers — 7:00 P.M.

SPECIAL MEETING AGENDA

A. Call to order by the Chairman of the Board, Mr. Fred Stacer at 7:03pm.

B. **ROLL CALL:**

Elizabeth Anderson
M. Dwight Evans
Richard Klosiewicz
Joan Kovac
Jerold Mills
Fred Stacer
Tobi Aycock *for Jeff Torrey*

Also Present

Karen Friedman
Robin Bird
Carrie Sarver
Kerrie MacNeil
Cecelia Ward
Patrick Jovanov
Tara Patton
Vincente Thrower

DRAFT

Mr. Evans asked for a vocal or silent moment for prayer. Mr. Stacer called for a moment of silence.

C. INDIVIDUALS TESTIFYING PLACED UNDER OATH

Mr. Robin Bird reminded the Chairman that this is not a quasi-judicial hearing and it is not necessary to place individuals under oath. Carrie Sarver agreed that placing the audience who wishes to speak under oath is above the requirements.

City Staff and members of the public testifying before the Board at the meeting were placed under oath by Kerrie MacNeil, Zoning Technician and Notary Public in the State of Florida.

D. OTHER BUSINESS

1. Temporary Moratorium - Staff Reports

Staff has prepared reports and recommendations regarding several uses subject to the Temporary Moratorium. The reports are as follows: Health Care Uses, Thrift and Consignment Shops, and Liquor Stores (and other retail sales of alcoholic beverages), and Alternative Financing Uses.

Mr. Robin Bird introduced himself to the Board as the Director of Development Services and reviewed the temporary moratorium and the reasons why it was enacted. Mr. Bird stated that four reports are being presented tonight and a significant size team worked on the reports. Mr. Bird added that staff reserves the ability to bring items back to the next Planning and Zoning Board meeting.

Mrs. Kovac asked why restaurants were not included in the reports. Mr. Bird replied that the City Commission did not select restaurants to be placed under moratorium.

Mrs. Friedman, Principal Planner, introduced herself to the Board and stated that she would be presenting condensed versions of the reports that were included in staff's back up material and she will be focusing mostly on the recommendations. Mrs. Friedman stated that the various recommendations have the same theme: the City's need to balance access to these uses, economic development, protect single family neighborhoods and regulate secondary effects of the uses. Distance requirements.

Mrs. Friedman introduced the first topic: Thrift and consignment shops. Mrs. Friedman stated that often times the difference between thrift and consignment shops is not understood. Mrs. Friedman delivered a PowerPoint presentation to the Board which included staff's recommendations.

Mrs. Friedman introduced the next topic and began the PowerPoint presentation on Alternative Financing Uses. Mrs. Friedman presented the definition, location, history, problems, and staff's recommendations for these uses.

DRAFT

Mrs. Friedman gave the next presentation on Liquor Stores and other retail sales of alcoholic beverages.

Mrs. Friedman presented the next report on Health Care Uses.

Mr. Bird informed the Board that there will be four separate ordinances and suggested that the Board discuss and vote on one topic at a time. The Board agreed to discuss the reports in the order that they were presented in by staff. Mr. Stacer asked the Board if they had any questions for staff regarding Thrift and Consignment shops.

Mrs. Anderson if the consignment stores that were in B-3 that will now be considered thrift stores are considered nonconforming. Mrs. Friedman replied that they would likely be treated under the lawfully existing special exception use. Mrs. Anderson asked if this would be true even if they do not apply and Mrs. Friedman responded that it is just the designation.

Dr. Mills stated that he is unclear on the difference between consignment and thrift shop. Mrs. Friedman explained the difference between the two. Dr. Mills asked if no new business can be established under the moratorium and what is the length of the Moratorium. Mrs. Friedman responded that the Moratorium was enacted by the City Commission on July 14, 2015 and it is set to expire on January 14, 2016 unless further action is taken by the Commission. Dr. Mills asked if no new business can be established during this time and Mrs. Friedman replied that no new permits and no new business tax receipts were issued to any of the uses that have been subject to the Temporary Moratorium.

Mrs. Aycock asked why consignment boutiques are prohibited from fronting Atlantic Boulevard in the AOD but not thrift. Mrs. Friedman responded that they Thrift Shops are a prohibited use in the AOD; therefore, we would not have to regulate where they would be located.

Mr. Klosiewicz asked who will determine what is considered "luxury merchandise." Mrs. Friedman responded that staff will be looking to see if the business is focusing on selling one type of merchandise or if they focusing on multiple items (this is a way to determine the difference between thrift and consignment). Mrs. Friedman added that this is a standard used by several other cities in South Florida and staff will make their best determination. Mr. Klosiewicz expressed that he does not believe the word luxury should be included because the word luxury may be interpreted differently by different people. Mr. Klosiewicz stated that he suggests the word be stricken from the text amendment.

Dr. Mills asked what happens to the places that are not in compliance once this goes into effect. Mrs. Friedman responded that the use will become a legal non-conforming use or lawfully existing special exception use. Mrs. Friedman added that we do not force them to comply.

Mr. Evans asked for the distinction between a shop and a boutique and if a boutique is a more specialized. Mrs. Friedman answered that it is a more specialized type of retail establishment (ex. vintage clothing or furniture).

DRAFT

Mrs. Anderson asked if the lawfully existing special exception is held to the same improvement as the legal nonconforming use. Mr. Bird responded that a lawful special exception use is held to a different standard.

Mr. Stacer asked if staff is looking for a recommendation to extend the Moratorium and Mrs. Friedman responded that they are only looking for a recommendation on the text amendments.

Mr. Stacer opened up the discussion to the public.

Patrick Jovanov (411 NE 18th Avenue Pompano Beach, FL) introduced himself to the Board and complimented Mrs. Friedman and the rest of the team on their research. Patrick stated that he has visited the Salvation Army over the years and he wishes that staff would come up with more equitable regulations. Patrick stated that this was a part of history. Patrick stated that "this is very good."

Tara Patton introduced herself to the Board as the representative of Festival Flea Market (2900 West Sample Road Pompano Beach, FL) and asked how outlet stores like Nordstrom Rack are categorized since they are selling goods below market value. Mrs. Friedman responded that there is a use in the code called "other retail establishment" that does not take into account the prices of the items sold. Mrs. Patton asked if there was an umbrella that grouped alike types of "luxury items." Mrs. Friedman answered that it would be related accessories (example: purses and jewelry). Mrs. Patton asked that her concern was who gets to make that determination.

Mrs. Kovac asked if clothing, jewelry and purses would be considered consignment and Mrs. Friedman confirmed.

Dr. Mills asked staff why the moratorium is necessary. Mr. Bird answered that staff and the City Commission have determined that the location of many of these uses were creating side effects that were concerning. The moratorium gives staff time to study the issues and decide how to go forward. Dr. Mills asked if we are currently under moratorium and Mr. Bird confirmed.

Mr. Klosiewicz asked the Chairman if the Board is going to have the opportunity, at this time, to amend the language in the text amendments. Mr. Stacer confirmed.

Mr. Stacer closed the public hearing.

MOTION made by Richard Klosiewicz and seconded by Dwight Evans to recommend approval of the proposed text amendments to Thrift and Consignment shops with the word "luxury" stricken from code sections 155.4222.E.2 and Article 9, Part 5. All vote in favor of the above motion; therefore, the motion passed.

Mr. Stacer asked the Board if anyone had questions on the Alternative Financing presentation and recommendations.

DRAFT

Dr. Mills asked if the proposed changes would mean that he cannot go into a bank and cash a check. Mrs. Friedman answered that one would be able to cash a check at a bank and they are separate uses. Dr. Mills asked why staff is recommending to modify the definition of bank to exclude these items. Mrs. Friedman answered that the definition of "Bank or Financial Institution" today includes a check cashing store. If we do not exclude them, we would be treating them under two different categories. We are not taking the ability to cash a check away from a bank, but we are removing the description of a check cashing facility from the "Bank or Financial Institution" use.

Mrs. Aycock asked staff why there is no separation distance between these uses and residential uses. Mrs. Friedman responded that she found separation of like uses in her research and the intent of this is to prevent clustering.

Mr. Evans asked if staff stated that these uses cause an area to become blighted. Mrs. Friedman confirmed that this is what the report indicated and the secondary effects blight the area, attract crime, cause deterioration of shopping centers, and they have certain appearance issues that may cause blighting (ex. bullet proof glass windows). Mr. Evans asked about the benefits staff identified on page 8 of the report and stated that he thinks there is a greater benefit to keeping the uses rather than removing them. Mr. Evans asked if we have this blight in Pompano. Mrs. Friedman responded that we have four distinct clusters of these uses and three of four are within or directly adjacent to the Northwest CRA which is a blighted area of the City. Mr. Evans asked if there was more than one facility located on Atlantic Blvd just west of Dixie Highway. Mrs. Friedman pulled up the map and responded that there are multiple locations in Cluster #4.

Mr. Klosiewicz stated that he believes that these stores would not have opened if they were not needed and that competition may benefit the people that are being served.

Mr. Stacer asked staff about an inconsistency between what is permitted in the PD-I in the appendix and the backup material. Mrs. Friedman stated that check cashing facility should not be permitted in the PD-I and confirmed it is an error and the Appendix is correct.

Mrs. Anderson asked if staff considered implanting design criteria for these uses. Mrs. Friedman responded design guidelines were not one of the considerations.

Mr. Klosiewicz asked if the State of Florida has some control over the rates that can be charged. Mrs. Friedman answered that the state has some rates but she does not know them off hand. Mr. Klosiewicz asked why people would use this type of service. Mrs. Kovac answered that it is possible that clients of these uses do not have checking accounts. Mr. Klosiewicz asked what people would do if this use is reduced or eliminated. Mrs. Friedman responded that staff's recommendation is not to eliminate the use.

Mrs. Kovac asked staff for confirmation that we are only talking about going forward and not talking about closing any existing Alternative Financing stores. Mrs. Friedman confirmed.

Mrs. Anderson asked if any of the existing uses will become nonconforming due to the separation requirements and Mrs. Friedman confirmed (legal non-conforming use).

Mr. Klosiewicz stated that he did not say anything that expressed that he believed that the uses were being eliminated.

Mrs. Aycock stated that, according to the research, the goal is to spread them out in order to lower the crime rates and help with appearance.

Mr. Klosiewicz asked how many stores on the map would be nonconforming. Mrs. Friedman responded that she could not provide that information at that very moment; however she could return with the requested information. Mr. Bird suggested a cover memo to the Board.

Mr. Stacer opened up the discussion to the public.

Vincente Thrower (1890 NW 6 AV Pompano Beach, FL) stated that the check cashing stores are needed in the minority community. Vincente stated that he believes this is a neighborhood discussion and not a board discussion on whether the neighbors want the stores in the area. Vincente expressed that the check cashing stores are important for people who have bad credit and are not able to open a bank account.

Patrick Jovanov (411 NE 18th Avenue Pompano Beach, FL) asked staff why the research includes military bases if there are no military bases in Pompano Beach. Mr. Jovanov expressed that he does not understand why there is a reference to military bases. Mr. Jovanov shared a quote from Mark Twain and stated that what is being proposed is a recurring prejudice that was discussed at City Commission meetings several times. The lack of financial institutions in the Northwest CRA was planned or discouraged.

The Chairman closed the public hearing and asked if the Board had any additional questions.

MOTION made by Joan Kovac and seconded by Tobi Aycock to recommend approval of the text amendments to Alternative Financing Uses. All voted in favor of the above motion with the exception of Jerry Mills and Dwight Evans.

The Board moved on to discussing Liquor Stores and other retail sales of alcoholic beverages.

Dr. Mills asked if these amendments will affect the American Legion, the Elks Lodge etc. Mrs. Friedman responded that these uses are not included. Dr. Mills if regular bars are included. Mrs. Friedman responded that bars with accessory package sales will be affected because the package sales will now be a new accessory use that would require approval.

Mr. Stacer asked staff for clarification on the difference between a brew pub and a distillery. Mrs. Friedman answered that the City has both brew pubs and food and beverage manufacturing and she briefly explained the differences between the two.

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Patrick Jovanov (411 NE 18th Avenue Pompano Beach, FL) asked how the Costco Liquor store would be grouped. Mrs. Friedman stated that we treat these membership stores as retail establishments.

The Chairman closed the public hearing and asked if any Board members had any additional questions.

MOTION made by Richard Klosiewicz and seconded by Dwight Evans to recommend approval of the text amendments to Liquor Stores and other retail sales of alcoholic beverages. All voted in favor of the above motion; therefore, the motion passed.

The Chair asked the Board if they had any questions concerning the proposed text amendments regarding Health Care uses.

Dr. Mills asked for the geographic definition of the AOD and Mr. Bird provided Dr. Mills with an explanation. Dr. Mills asked if he could open a one story office and have treatment on the first floor. Dr. Mills also asked why someone would not be able to have a doctor's office open after 7pm and expressed that he does not agree with the proposed changes.

Mrs. Friedman stated that the intent is to balance the various needs including access (ex. hours of operation) as well as taking into consideration the impact on neighboring properties (especially the residential community). Mrs. Friedman answered that the hours of operation in the AOD would be affected. Dr. Mills mentioned that there are many senior citizens living east and he expressed that he thinks the restrictions are wrong.

Cecelia Ward introduced herself to the Board as the Planning Consultant for the Pompano CRA and stated that she would like to address a few of the comments. Mrs. Ward stated that they have performed an extensive analysis of the medical facilities in the AOD and the DPOD. The research discovered that facilities exist that close before 7pm and open after 7am. Mrs. Ward informed the Board that the purpose of the restriction on the hours of operation is to utilize the evening activity to support the pedestrian oriented uses that will help revitalize the area. The research shows that the restriction on the hours is consistent with the current operating hours of the existing facilities.

Mr. Stacer asked why Health Care uses are not proposed to be permitted in the I-1X zoning district. Mrs. Friedman stated that this district is intended for heavier uses. Mr. Bird added that no I-1X locations would be on a major corridor.

The Chairman opened up the discussion to the public.

Vincente Thrower (1890 NW 6th Ave Pompano Beach, FL) asked if someone would be prohibited from building an urgent care facility on Martin Luther King Boulevard. Mrs. Friedman responded that on MLK, a Specialty Medical Facility would be prohibited in the Downtown Pompano Beach Overlay District. Mr. Thrower asked staff why we would prohibit an urgent care facility from being constructed when there are no existing facilities in the Northwest CRA community. Mr. Bird stated that this would not prohibit an urgent

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care center in the Northwest CRA, only in the downtown overlay district (DPOD). Mr. Thrower stated that he objects this item. Mr. Thrower asked the Chair what the logic is behind this regulation.

Mr. Stacer asked staff if it is permitted today. Mr. Bird responded that it is allowed today. Mr. Thrower asked if the text amendment is adopted it will not be permitted. Mr. Bird responded that the use would be permitted west of I-95 on MLK but not east of I-95.

Mr. Thrower asked why there would not be urgent care center allowed near the new residential development across from the E. Pat Larkins Center. Mr. Thrower asked the Board to not support the text amendment. Mr. Thrower asked if the item will need to pass the City Commission and staff confirmed. Mr. Thrower stated that he believes that it does not make economic sense to restrict the urgent care centers from the MLK corridor in the DPOD.

Patrick Jovanov (411 NE 18th Avenue Pompano Beach, FL) stated that the slide 17 of the presentation lists the "Lamb of God Recovery Centers" as being licensed since 2007 when it has been here for decades. Mr. Jovanov shared a personal account regarding a sober home and an attempted kidnapping of a small child. Mr. Stacer asked what part of the code Mr. Jovanov is referring to. Mr. Jovanov stated that the issue is allowing sober homes to be located in a residential district adjacent to schools. Mr. Jovanov stated that he does not have proof, but it is the only explanation for something like this happening in his neighborhood. Mr. Jovanov asked if sober homes are still permitted in the City under the temporary moratorium. Mrs. Friedman answered that the recommended text amendments do not deal with any housing uses and added that the question is unrelated to the topic at hand. Mr. Jovanov stated that he agrees with Mr. Thrower that not allowing urgent care is discrimination, prejudice, etc.

Mr. Stacer asked if this will happen in the east and west CRA. Mrs. Friedman responded that the use "Specialty medical facility" would be a special exception in B-3, permitted in B-4, I-1 and OIP. However, it would be prohibited in the AOD and DPOD. Mrs. Friedman stated that it is consistent with the goals of these districts in terms of promoting pedestrian activity uses and active night life activity. Mr. Stacer asked which uses are allowed in the AOD and DPOD and Mrs. Friedman answered that retail clinics, personal care services, and medical offices are all permitted uses in these districts.

Mr. Klosiewicz asked if an urgent medical facility open from 7am to 7pm would be permitted and Mrs. Friedman responded that it would not because the hours of operation are not the only issue. Other issues are ambulances (noise) and medical waste etc.

Mrs. Friedman answered that it is also ambulances, medical waste, (specialty medical uses), more intense that a regular doctor's office. Go here in lieu of the ER. Mr. K asked if these uses are permitted in the area that Vincente was worried about.

Mr. Evans said he thought that being transported in an ambulance to an urgent care facility occurs very infrequently. Mrs. Friedman stated that these uses have some deleterious secondary effects and we need to treat them with more regulation. Mr. Evans asked why

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it is necessary to go outside of the core area if there are not significant adverse effects. Mr. Bird stated that these uses will negatively affect redevelopment efforts.

Mrs. Kovac asked how many blocks from Martin Luther King Boulevard could there be an urgent care center.

Cecilia Ward explained the purpose of the redevelopment efforts for the DPOD area.

Mrs. Friedman explained the boundaries of the DPOD.

Mr. Evans asked if the zoning regulations of the area should adjust in the area as time goes on and be updated to reflect changes. Mrs. Friedman stated that this is what staff is trying to do and the point of the moratorium. Mr. Evans asked staff if it is their belief if a specialty medical facility located in the DPOD on MLK Boulevard would adversely affect development of the area.

Mr. Bird stated that there are many uses within the specialty medical facility (not just the urgent care center). Dr. Mills stated that he is asking specifically about medical offices and how these text amendments would eliminate these uses from the area. Mrs. Friedman stated that these uses are not consistent with the redevelopment efforts in the AOD and DPOD.

Mrs. Kovac asked if Dr. Mills is aware the urgent care centers close at 7pm as well.

Dr. Evans asked if the Board will be making a recommendation regarding one of staff's recommendations and Mrs. Friedman responded that those (that Mr. Evans is referring to) are the overriding recommendations and the proposed text amendments came from these recommendations. Mrs. Friedman stated that the Board could think of them as "Considerations 1, 2, 3 and 4" and the text amendments were prepared from these considerations.

Mr. Stacer asked if staff mapped the locations of the medical facilities. Mrs. Friedman replied that staff did mapping and staff was able to conclude from the mapping is that the change in the location of uses has not changed significantly from 2005 to 2015. The maps would not be useful because they would be so cluttered with the multiple locations.

Mr. Stacer closed the discussion to the public.

MOTION made by Elizabeth Anderson and seconded by Richard Klosiewicz to recommend approval of the proposed text amendments. All voted in favor of the above motion, with the exception of Jerry Mills and Dwight Evans, therefore the motion passed.

Mr. Stacer stated that he has questions for staff that are specific to the AOD. Mrs. Friedman placed a document on the screens for the Board to see and Mr. Stacer directed her to page 2, item number 3. Mr. Stacer asked what uses fall under 3b. Mrs. Friedman stated that the changes that were made reflected the changes coming out of the moratorium. Mrs.

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Friedman stated that staff will meet with the CRA and discuss visitor accommodation uses being permitted in a residential mixed use project.

Dr. Mills asked for clarification on the outcome of the most recent vote on health care uses and Mr. Stacer and Carrie Sarver clarified that there were two "Nays" or a 5-2 vote.

Mr. Stacer stated that, referring to page 3 and the parking exemptions, he is concerned about big projects that would theoretically not have to provide parking. Mrs. Friedman responded that this is an incentive for smaller projects that are looking to do adaptive reuse. Mrs. Friedman stated that this is an effective mechanism to get sites to convert their use to a more desirable use without meeting the parking requirements.

Mr. Stacer said that he considers it to be potentially dangerous to not require parking for new projects such as a large retail redevelopment project (100,000 square feet of retail).

Mr. Bird stated that this regulation has been in effect for 5 years and we have seen neither benefits nor deleterious effects. Mr. Bird used Delray Beach as an example of a City not requiring restaurants to provide additional parking and there were still new parking garages constructed. Mr. Stacer stated that he is still concerned about this concept. Mr. Bird suggested having staff come back before the Board with a separate report on this item. Mr. Stacer said that he is ok with this proposal.

Mrs. Aycock suggested staff look at the parking scheme in downtown Gainesville for ideas.

Mr. Klosiewicz complimented Mr. Bird and staff for their hard work regarding the reports on the moratorium uses.

E. AUDIENCE TO BE HEARD

Mr. Stacer asked if there was anyone in the audience who wished to speak and no one responded.

F. BOARD MEMBERS DISCUSSION

Mr. Stacer asked if the Board members had anything to discuss and there was no response.

G. REPORTS BY STAFF

Mr. Stacer asked if staff had anything to report and Ms. MacNeil announced that the next regularly scheduled meeting is December 16th, 2015.

H. ADJOURNMENT

MOTION made by Richard Klosiewicz and seconded by Dwight Evans to adjourn the meeting at 9:29pm; all voted in favor of the above motion.

Any person who decides to appeal any decision of the PLANNING AND ZONING BOARD/LOCAL PLANNING AGENCY with respect to any matter considered at this meeting will need a record of the proceedings and for such purpose 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. // kem

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Approved at the meeting held on January 27, 2016.

_____
Fred Stacer
Chairman
Planning and Zoning Board/Local Planning Agency

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Any person who decides to appeal any decision of the PLANNING AND ZONING BOARD/LOCAL PLANNING AGENCY with respect to any matter considered at this meeting will need a record of the proceedings and for such purpose 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. // kem

pompano beach
Florida's Warmest Welcome

MEMORANDUM

Development Services

ADMINISTRATIVE MEMORANDUM NO. 15-621

DATE: November 19, 2015

TO: Planning and Zoning Board

VIA: Robin M. Bird, Director of Development Services

FROM: Karen Friedman, AICP, Principal Planner KBF

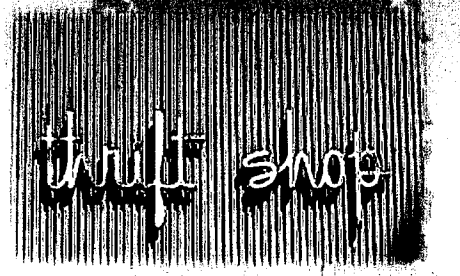
RE: Temporary Moratorium – Staff Reports

Staff has prepared reports and recommendations regarding several uses subject to the temporary Moratorium. A copy of each report and supporting text amendments is following.

Staff's Request
Staff is requesting the Board approve the recommended changes to the Zoning Code to the City Commission for adoption.

pompanobeachfl.gov 100 West Atlantic Boulevard | Pompano Beach, FL 33060 | Phone: 954-786-4600

Copy of Study



The Right Use in the Right Location:

Thrift and Consignment Shops

vember 2

Temporary Moratorium

Ordinance 2015-67: Temporary Moratorium on Thrift Stores

WHEREAS, the moratorium is intended to allow sufficient time to study the provision of these uses for the citizens of Fort Pierce Beach and to develop a long-term strategy to ensure adequate access to such services is provided; and

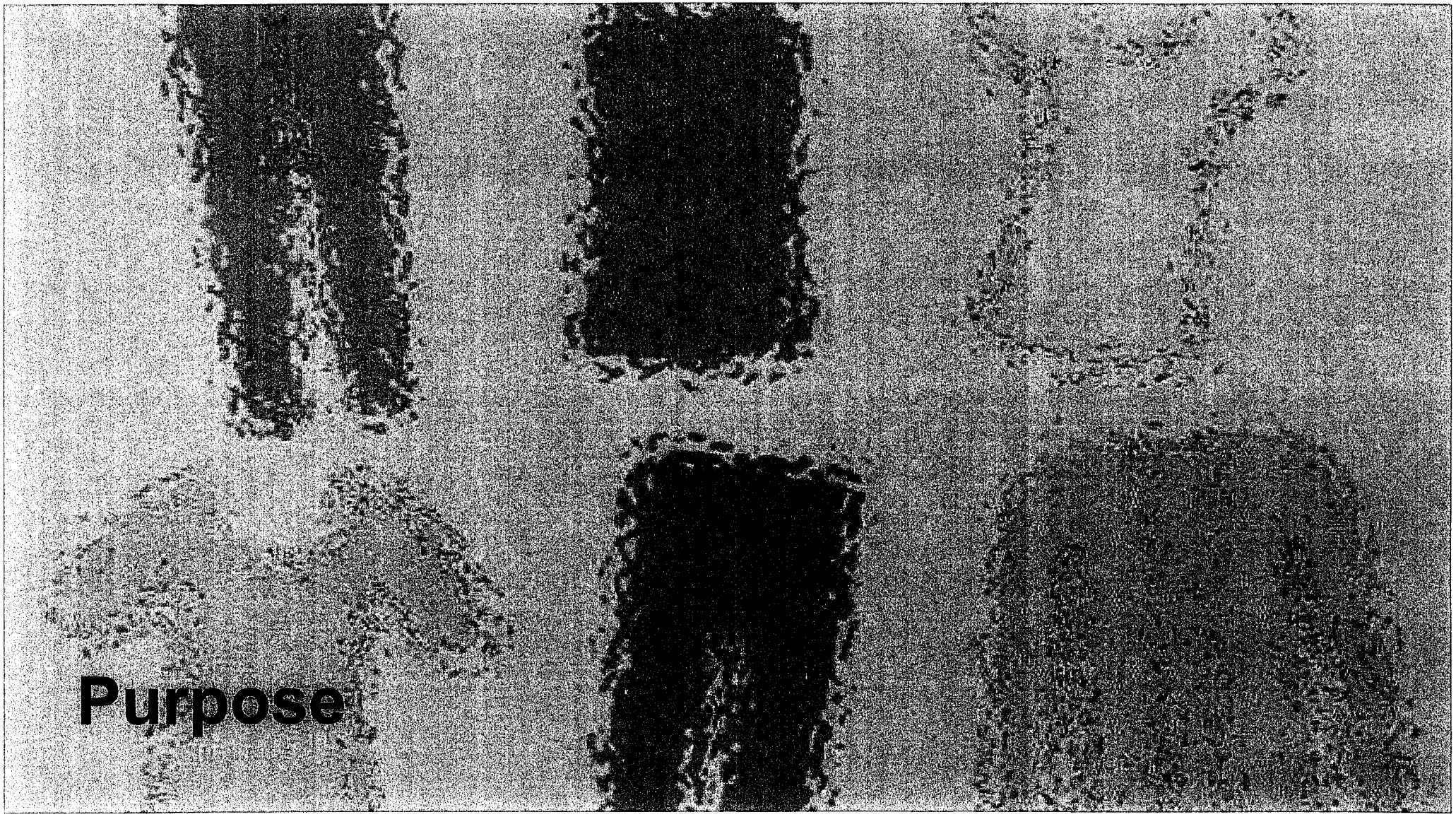
WHEREAS, the moratorium is intended to allow sufficient time to study the provision and location of these uses does not result in an overconcentration of these uses that will create a downward spiral of the surrounding neighborhoods; and

WHEREAS, the moratorium is intended to allow sufficient time to study the provision of these uses to ensure that there is a balance between the existing uses and the need for adequate locations for the uses.

Establishments which sell used merchandise not only prevent more goods from going to landfills and extend the life of products still in working condition, but can also offer hard to find, one-of-a-kind merchandise. However these uses can encourage illegal dumping and deteriorate the exterior appearance of shopping areas. This report analyzes the differences in consignment and thrift uses, the appearance and locations of the uses in the city, and proposes new definitions and use specific standards. The purpose of this report is to determine the right place in the city for the right consignment and thrift uses.

Contents

1 Purpose
2 Pictorial Review of Existing Thrift Shops and Consignment Shops
3 Analysis of Municipal Standards
4 Outcome, Considerations, and Recommendations

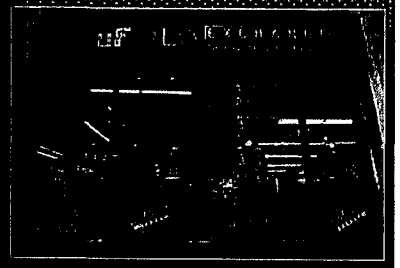


Purpose

Consignment vs. Thrift

Consignment Shop:

- Consign means to hand over goods to be cared for while being sold for a commission
- Sellers desiring to sell unwanted belongings can sell them throughout the shop, and have the advantage of avoiding advertising, display space, and storage costs. While the consignment store earns a percentage of the sales profits
- In general, they only accept items in good condition
- The goods must be current (one to two years old) and seasonal
  - Some consignment shops specialize in vintage goods
- If items are not sold within a given time period, they are returned to their owner
- Tends to focus on one or two specialty items:
  - Children's furniture/clothing
  - Vintage or high end clothing
  - High end furniture



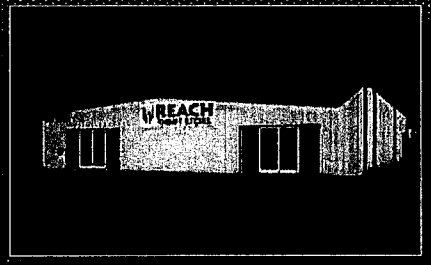
Consignment vs. Thrift

Illegal dumping turns donation sites into trash heaps

Problem not limited to Eagle River, non-profits say

By [illegible]

[illegible]



Thrift Shop:

- Sells a variety of donated merchandise, often quite below market value
- Thrift/charity shops are classified into three categories based on their operating system: nonprofit charity affiliated, for-profit, and for-profit thrift shops
- Nonprofit thrift shops may be operated by major national charities, and sometimes by local religious groups, charities, or cultural benefactors
- Donated merchandise is often left inside within or outside of a donation bin or an outdoor area
- Illegal dumping and donated merchandise left outside for extended periods create an unsightly appearance
- Donated merchandise left outside can attract critters and pests

Consignment vs. Thrift

City's Existing Regulations

CONSOLIDATED USE TABLE

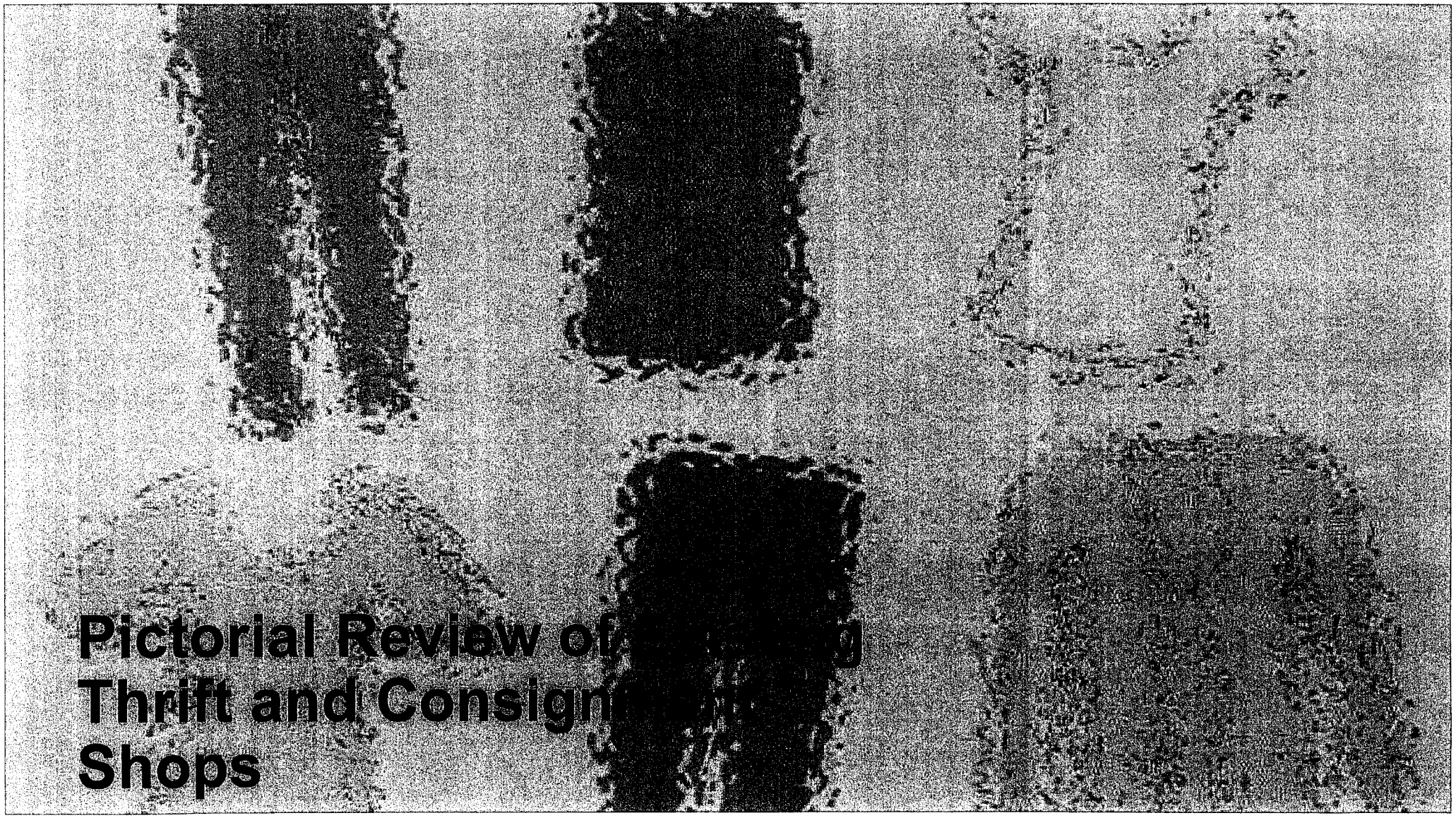
P = PERMITTED PRINCIPAL USE S = USE ALLOWED AS A SPECIAL EXCEPTION BLANK CELL = PROHIBITED USE

USE TYPE	B-1	B-2	B-3	B-4	CR	I-1	I-X	OIP	TO	CF	RPUD	PCD	PD-TO	LAC	PD-I	PARKING	USE-SPECIFIC STANDARD	DEFINITION
Consignment Shop			P	P					P			P	P	P	P	1 per 300 sq ft	None	A retail establishment primarily engaged in selling used household goods and merchandise (e.g., clothing, furniture, books, shoes, small appliances), where all such goods and merchandise are sold on consignment.
Thrift Shop			S	P					P			P	P	P	P	1 per 300 sq ft	In the B-3 Zoning District, a thrift store shall be a minimum of 12,000 square feet of total gross floor area and operated by a single tenant.	A retail establishment primarily engaged in selling used household goods and merchandise (e.g., clothing, furniture, books, shoes, small appliances), where such goods and merchandise are not sold on consignment.

- Consignment Shop is Permitted in B-3 Whereas Thrift Shop is Special Exception in B-3 and requires a minimum size
- There is very minimal difference in the definitions of the two uses

Purpose of Study -

1. Create more distinctive definitions for Consignment Shops and Thrift Shops
2. Determine if use specific standards are needed

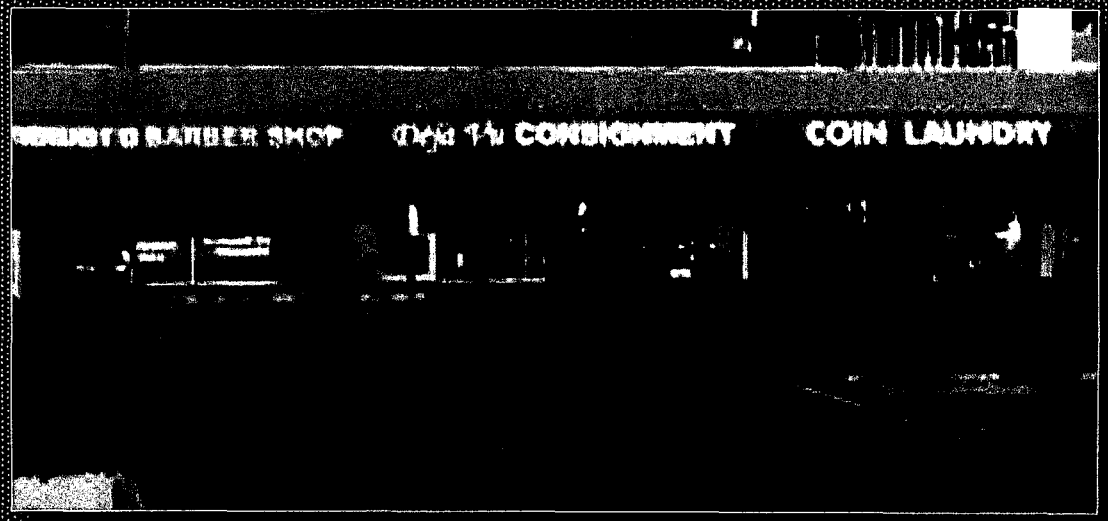


Pictorial Review of [illegible]g Thrift and Consign[illegible] Shops

St. Vincent DePaul
Thrift Store
2323 N. Dixie Hwy

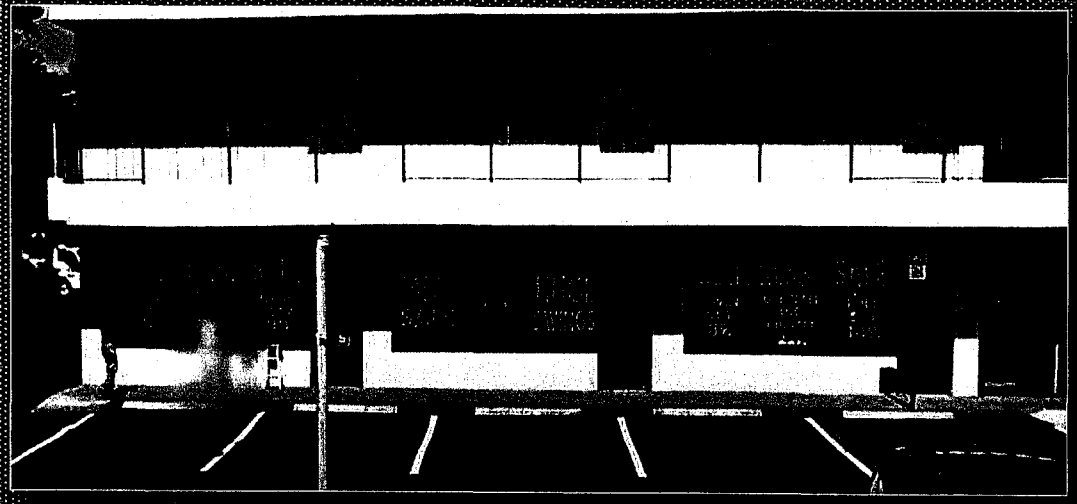
The Salvation Army Family
Store
451 E. Copans Rd.

Déja Vu Consignment
4524 S. Cypress Rd.

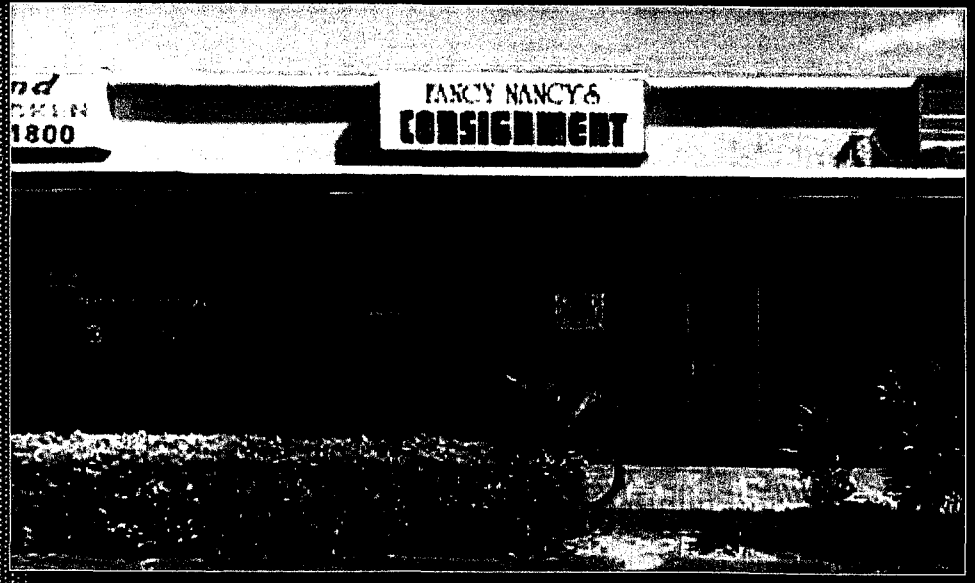


J&M Furniture Consignment
2169 N. Dixie Hwy

Alpha 2000 Thrift Store
1857 S. Dixie Hwy



Fancy Nancy's Consignment
1823 Sample Rd
(Closed Pic Apr 2015)

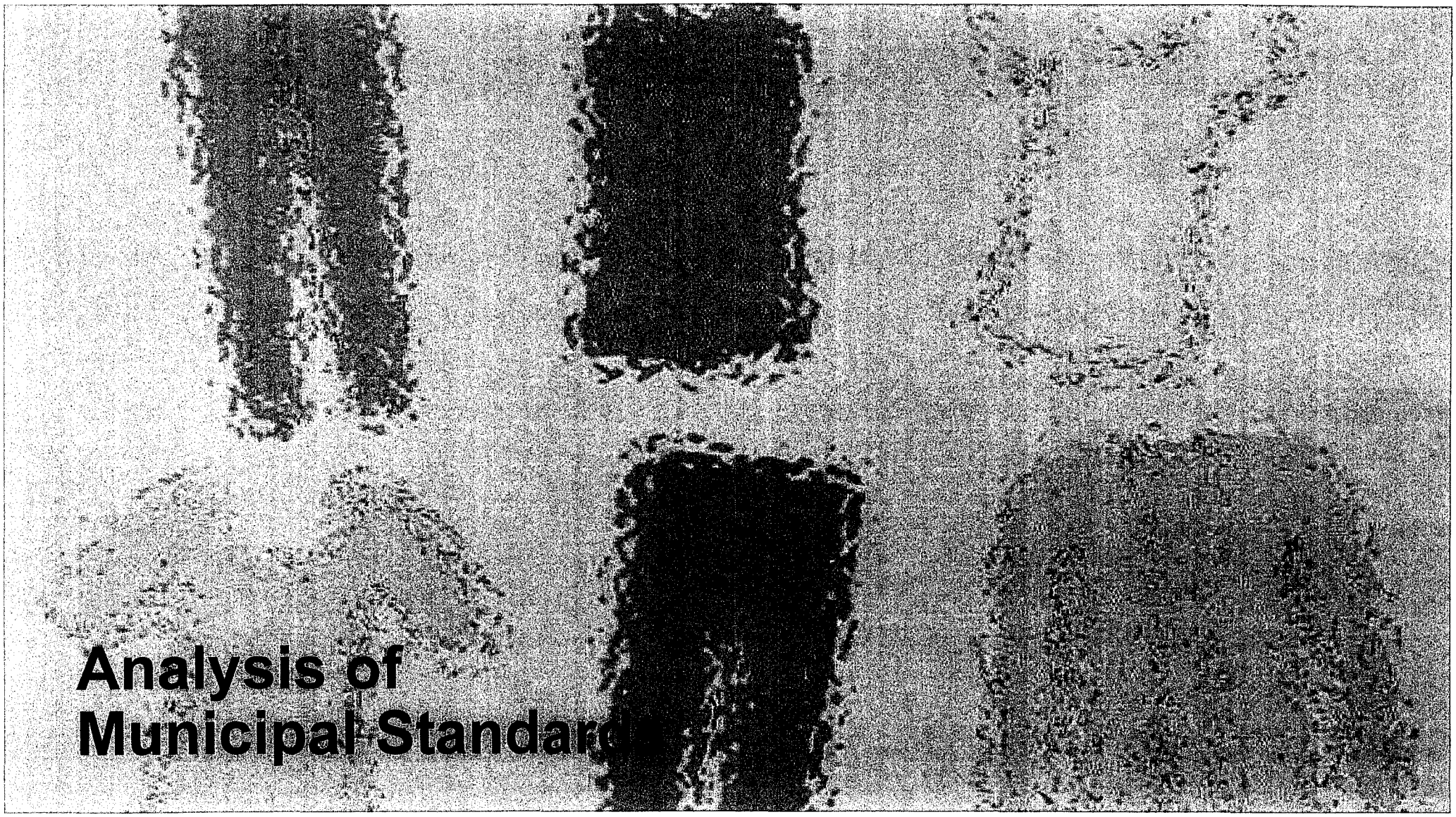


Hanky Panky
Consignment Store
568 E Avenue R
Palmdale

Hanky Panky
Consignment Store
2301 W Ave M
Lancaster

M&M Thrifty Consignments
2000 S. Dixie

I & M Thrift Store
7241 S. Dixie Hwy. East



Analysis of Municipal Standard

Definitions: Consignment Shop vs. Thrift Shops

City	Definition of Consignment Shop	Definition of Thrift Shop
Pompano Beach	Consignment Shop. A retail establishment primarily engaged in selling used household goods and merchandise (e.g., clothing, furniture, books, shoes, small appliances), where all such goods and merchandise are sold on consignment.	Thrift Store. A retail establishment primarily engaged in selling used household goods and merchandise (e.g., clothing, furniture, books, shoes, small appliances), where such goods and merchandise are not sold on consignment.
Dania Beach	Consignment store or shop. A business establishment in which secondhand merchandise is offered for sale; such merchandise is placed for sale with the business establishment by the owner of the item of merchandise and upon sale of the item the purchase price is divided between the business establishment owner and the owner of the item.	Charity or thrift shop. A shop in which the items sold (or given away to the needy) have been obtained through donations or gifts and where the donor receives no value upon the sale (or gift) of such merchandise to a thrift shop customer, and where the use is designed to sell donated merchandise at a price below reasonable market value, or where the revenue received from selling same is retained by a charitable or not-for-profit organization or institution.
Hallandale Beach	Consignment shop means an establishment wherein goods such as clothing, shoes and/or accessories for adults and/or children are sold by the operator of the shop, acting as the agent for the owner of such goods, in return for a percentage of the profits, or other consideration. Such goods may be comprised of used goods and/or new goods. As used within this definition, "used goods" shall be limited to wearing apparel and accessories to such apparel, which are clean and not stained, abraded or worn out in any area, and which (but for the sole fact that the item was previously owned) are generally merchantable as first quality merchandise.	None.
Hollywood	Consignment Store or Shop. A business establishment in which secondhand merchandise is offered for sale; such merchandise is placed for sale with the business establishment by the owner of the item of merchandise and upon sale of the item the purchase price is divided between the business establishment owner and the owner of the item.	Thrift Shop. A shop in which the items sold (or given away to the needy) have been obtained through donations or gifts and where the donor receives no value upon the sale (or gift) of such merchandise to a thrift shop customer, and where the use is designed to sell donated merchandise at a price below reasonable market value, or where the revenue received from selling same is retained by a charitable or not-for-profit organization or institution.

Continued on next page...

City	Definition of Consignment Shop	Definition of Thrift Shop
Pompano Beach	Consignment Shop. A retail establishment primarily engaged in selling used household goods and merchandise (e.g., clothing, furniture, books, shoes, small appliances), where all such goods and merchandise are sold on consignment.	Thrift Store. A retail establishment primarily engaged in selling used household goods and merchandise (e.g., clothing, furniture, books, shoes, small appliances), where such goods and merchandise are not sold on consignment.
North Miami	Consignment shop means an establishment wherein goods limited to clothing, shoes and/or accessories for adults and/or children are sold by the operator of the shop, acting as the agent for the owner of such goods, in return for a percentage of the profits, or other consideration. Such goods may be comprised of a combination of used goods and new goods, or of used goods only.	Thrift store or resale shop means an establishment wherein secondhand articles are sold, such as clothing, shoes, accessories, furniture and other assorted items, the value of which is only a fraction of the original cost, for which price guides are not available, and which normally have no collectible or antique value. This term shall not apply to businesses which sell primarily new goods, and which may occasionally sell secondhand articles as a result of trade-ins, or unclaimed merchandise.
Parkland	Consignment store means stores which sell non-donated items such as art work, used musical instruments, antiques, or a particular class of items that could be fairly characterized as vintage due to their association with a particular time in history or period of production or other luxury items whether new or used; provided that a pawn shop as defined in F.S. § 539.001 shall not be considered a consignment store.	None
Plantation	Resale boutique. A business engaged in the purchasing, selling, and consigning of qualified, previously owned or used merchandise which is not "second-hand goods" as defined in section 538.03, Florida Statutes (1991), as same may be amended, and which principally deals with buying and selling only one specific type or category of tangible personal property which is not identified as an item of extra value within the definition of "second-hand dealer" in section 14-91 of this Code, as amended, or which is subject to state certificate of title laws where the item is registered and a certificate of title is issued to identify ownership. A resale boutique shall not be defined to include the business of a "secondary dealer" as defined in section 4-91 of this Code of Ordinances, as same may be amended, or a "second-hand dealer" as defined in section 538.03, Florida Statutes (1991), as amended. As used within this definition, "qualified, previously owned or used merchandise" shall be limited to wearing apparel and accessories thereto, which are clean and not stained, abraded, torn, or worn out in any area, and which (but for the sole fact that the item was previously owned) are generally merchantable as "first quality" merchandise. Whenever in this chapter a use is defined sufficiently broad arguably to include the sale of previously owned items, such as "wearing apparel stores," but where the usual and customary connotation of such use would be for the sale of new and unused merchandise, then such use shall not be deemed to include the sale or consignment of previously owned or used merchandise.	Thrift shop. A shop wherein the items sold (or given away to the needy) have been obtained through donations or gifts and where the donor receives no value upon the sale (or gift) of such merchandise to a thrift shop customer, where the use is designed to sell donated merchandise at a price below reasonable market value, and where the revenue received from selling same is retained by a charitable, not-for-profit, or religious organization or institution. The term "resale boutique," as used in this chapter, shall not be deemed to include "thrift shops."
Boynton Beach	MERCHANDISE, USED (OTHER) - An establishment primarily engaged in the sale of used merchandise, such as a clothing or book store. "Merchandise used (other)" may also include any of the following types of establishments: (1) secondhand sales of personal items resold through a broker (consignment); (2) loaning money on the security of pledges of personal property (pawnshop); or (3) merchandise principally donated (thrift store). This classification does not include the sale of secondhand motor vehicles or parts.	

Additional Municipal Regulations for Thrift Shops

Hollywood, FL

- Shall have a minimum floor area of 10,000 square feet
- All goods donated for sale at the thrift shop must be accepted through the rear of the store
- No more than 30% of the floor area shall be utilized for receiving, sorting and storage of donated goods
- The sale of furniture is prohibited and
- Only the sale of small tabletop electronics is permitted
- Shall post signs advising patrons that the merchandise/goods within the store are primarily pre-owned

Dania Beach, FL

- 2,500 foot separation from another such use, property line to property line

Boynton Beach, FL

- 2,400 foot separation from another used merchandise store

Boca Raton, FL (consignment shops)

- Required to post a $10,000 surety bond

North Miami, FL (consignment shop)

- 600 foot separation from another such use

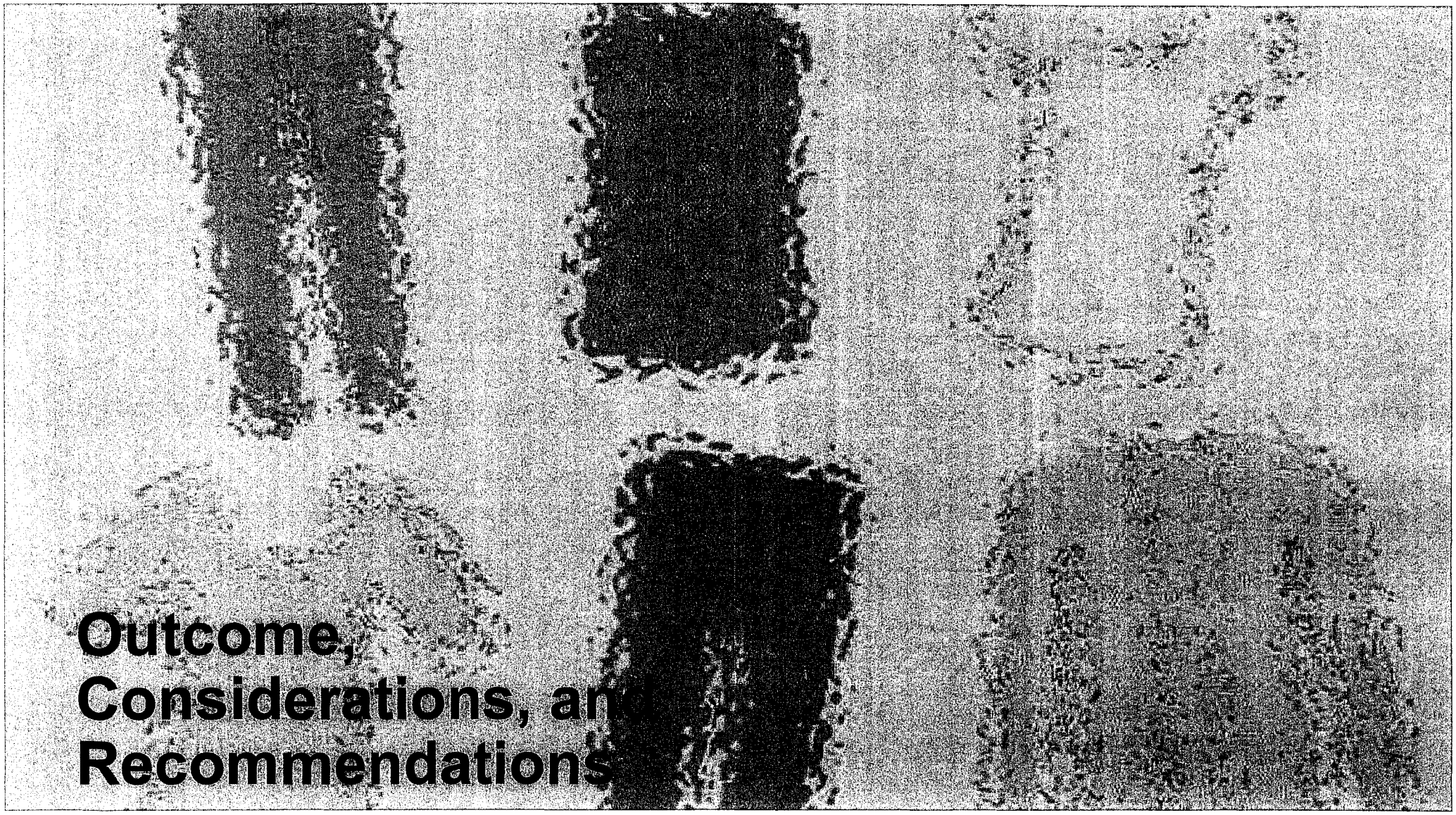
Additional Municipal Regulations for Thrift Shops

Rancho Cordova, CA

- Enclosed Activities: All activities shall be completely enclosed within the building for the use.
- Collection/Receiving Area: The collection area shall be located on the side or rear of the building. Adequate directional signage shall be provided from the main entrance to the rear to direct individuals to the collection area. The collection area shall be noticed to prohibit depositing goods when the store is closed.
- Property Maintenance: Management shall be responsible for the removal of litter from the subject property, adjacent property, and streets that results from the thrift store (with adjacent property owner consent).

Ventura, CA

- The storefront windows shall be permanently maintained as displays of merchandise in a professional and attractive manner (i.e., unsightly cloth in racks and displays shall not be placed adjacent to the windows).
- The subject property shall be maintained free of trash and debris at all times.
- A designated area inside the building shall be established for the receipt, sorting and processing of goods. Donated goods shall be accepted only during regular business hours. Donated goods shall not be left outside for any period of time. Loading and unloading must take place in a designated area.
- Outdoor storage or display of donated goods or merchandise shall not be permitted.
- Signage prohibiting dumping of merchandise during non-business hours shall be installed in conspicuous locations to the satisfaction of the director and penalties and fines for such activity. Signage should indicate daytime collection hours for donated goods. At the director's discretion, video cameras shall be installed to monitor all exterior areas abutting the store and recordings shall be made and retained for no less than 30 days to document illegal dumping. Exterior lighting shall be installed to illuminate collection bins.
- Temporary outdoor storage bins may be used for a period not to exceed 48 consecutive hours on up to two separate occasions monthly and shall not block access to required parking.
- Any donated goods or materials left outside of the store overnight shall be removed by 9:00 a.m. the next business day.



Outcome, Considerations, and Recommendations

Outcome

- Neither Parkland nor Hallandale Beach define "Thrift Store"
- Boynton Beach groups thrift stores and consignment stores together into one term "Other Used Merchandise"
- Dania Beach and Hollywood use the same definition for Consignment Shop
  - The definition includes the following components: the items sold are secondhand and that the purchase price is divided between the business establishment owner and the owner of the item.
- Hallandale Beach and North Miami use the same definition for Consignment Shop
  - The definition includes the following components: the goods sold include clothing, shoes and/or accessories; and the operator of the shop receives a percentage of the profit.
- Plantation has a class called "Resale Boutique"
  - Though it is convoluted, the intent of this use is for the resale of wearing apparel and accessories thereto. Therefore it is similar to the definition used by Hallandale Beach itself.
- Dania Beach, Hollywood and Plantation use a similar definition for Thrift Store
  - The definition includes the following components: the items sold have been obtained through donations; the donor receives no value from the sale; the goods are sold below the market value; and the revenue is retained by a non-profit.
- North Miami's definition of Thrift Store includes the sale of used items including clothing, shoes, accessories, furniture and other assorted items. This definition does not require the goods to have been donated or the store to be operated by a non-profit.
- There is local precedent to require separation between thrift shops.
- There is local and national precedent to require use specific standards related to outdoor donations, indoor donations space designated for sorting, illegal dumping, and overall appearance of thrift shops.

Considerations

- The City's existing Consignment Shops and Thrift Shops have similar exterior appearances; they are indistinguishable except in name only
- The City's regulations, which permit Consignment Shops in B-3, while requiring Thrift Shop to obtain Special Exception approval, are inadvertently encouraging business owners to apply as Consignment Shop even when they are operating a Thrift Shop.
- City Staff is unable to effectively determine when an applicant's request is a Consignment Shop versus a Thrift Shop

➢ City's definitions should enable applicants, staff, and code enforcement officers to easily distinguish between the two uses.

Recommendation: Consignment

- Rename Consignment Shop to Consignment Boutique
  - Similar to Hallandale Beach, Parkland and Plantation
- Revise definition to limit boutique to one type of merchandise. Examples include
  - Clothing and related accessories
  - Maternity clothes
  - Children's apparel and furniture
  - Sporting equipment
  - Furniture and related accessories
- Specifically excludes sales of guns, appliances, mattresses, and motor vehicles
- In AOD, prohibit Consignment Boutiques from fronting on Atlantic Blvd

E. CONSIGNMENT ~~SHOP~~ BOUTIQUE

2. Definition

A consignment ~~shop~~ boutique is a retail establishment ~~primarily~~ engaged in selling used ~~household goods and merchandise (e.g., clothing, furniture, books, shoes, small appliances), where all such goods and merchandise are sold on consignment. This use does not include thrift shops or antique shops~~ non-donated, second-hand luxury merchandise, and the merchandise is placed for sale with the establishment by the owner of the merchandise and upon sale of the merchandise the purchase price is divided between the establishment owner and the owner of the merchandise. The establishment shall be limited to one type of merchandise, including but not limited to, clothing and related accessories, children's apparel and furniture, sporting equipment, or furniture and related home furnishings. This use does not include the sale of guns, appliances, mattresses, or motor vehicles.

Recommendation: Thrift

- Revise definition to clarify that use is for items bought on bulk or donated items, which are sold below reasonable market value
- Definition also includes establishments that sell on consignment but are not a considered a Consignment Boutique, including:
  - Consignment Appliances or Mattresses
  - Consignment of more than one type of merchandise (furniture, books, clothing, ...)
- Require a designated donation area and require that the area be located in the rear of the building
- Require signage for the designated donation area, including no dumping signage
- Clarify that donation left outside for 24 hours are considered illegal outdoor storage and is prohibited
- Remove limitation on minimum size in B-3
  - The removal of the limitation reflects that this use now includes some consignment shops, which currently are permitted in B-3, but they do not meet the standard for Consignment Boutique.

➢ Continue to prohibit Thrift Shops in both AOD and DROD

Continued on next page

Recommendation: Thrift

M. THRIFT SHOP

2. Definition

A thrift shop is a retail establishment primarily engaged in selling used ~~household goods and merchandise (e.g., clothing, furniture, books, shoes, small appliances), where such goods and merchandise are not sold on consignment~~ merchandise which has been obtained through bulk-purchases, or through donations or gifts and where the donor receives no value upon the sale of such merchandise, and where the use is designed to sell donated merchandise at a price below reasonable market value. This use ~~does not~~ also includes establishments which sell used merchandise on consignment ~~shops or antique shops~~ but which do not meet the definition of consignment boutique. This use does not include the sale of used guns or motor vehicles.

3. Standards

A thrift shop shall comply with the following standards:

~~a. In the B-3 Zoning District, a thrift store shall be a minimum of 12,000 square feet of total gross floor area and operated by a single tenant.~~

a. The thrift shop shall have a designated donation area which shall be located at the rear of the store.

b. Donations shall only be accepted at the designated donation area.

c. Adequate directional signage shall be provided from the main entrance of the thrift shop to direct individuals to the designated donation area. The donation area shall be noticed to prohibit depositing goods when the shop is closed.

d. Donations left outside for more than 24 hours is considered outdoor storage and is strictly prohibited.

e. In the B-3 Zoning District, a thrift store shall be operated by a single tenant.

The Right Use in the Right Location:

Thrift and Consignment Shops

vember 2

§ 155.4222. COMMERCIAL: RETAIL SALES AND SERVICE USES - RETAIL SALES

. . .

E. CONSIGNMENT ~~SHOP~~ BOUTIQUE

. . .

2. Definition

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d. Donations left outside for more than 24 hours is considered outdoor storage and is strictly prohibited.

e. In the B-3 Zoning District, a thrift store shall be operated by a single tenant.

§ 155.5102 OFF-STREET PARKING AND LOADING

D. OFF-STREET PARKING SPACE REQUIREMENTS

1. Minimum Number of Off-Street Parking Spaces

. . .

TABLE 155.5102.D.1: MINIMUM NUMBER OF OFF-STREET PARKING SPACES		
Use Category	**Use Type**	**Minimum Number of Parking**
. . .		
Retail Sales and Service Uses - Retail Sales	. . .	. . .
	Consignment ~~Shop~~ Boutique	

ARTICLE 9: DEFINITIONS AND INTERPRETATION

. . .

PART 5 TERMS AND USES DEFINED

The following words, terms, and phrases, when used in this Code, shall have the meaning ascribed to them in this section.

. . .

CONSIGNMENT SHOP BOUTIQUE
A retail establishment ~~primarily~~ engaged in selling used ~~household goods and merchandise (e.g., clothing, furniture, books, shoes, small appliances), where all such goods and merchandise are sold on consignment. This use does not include thrift shops or antique shops~~ non-donated, second-hand luxury merchandise, and the merchandise is placed for sale with the establishment by the owner of the merchandise and upon sale of the merchandise the purchase price is divided between the establishment owner and the owner of the merchandise. The establishment shall be limited to one type of merchandise, including but not limited to, clothing and related accessories, children's apparel and furniture, sporting equipment, or furniture and related home furnishings. This use does not include the sale of used guns, used mattresses, or used motor vehicles.

. . .

THRIFT SHOP
A retail establishment primarily engaged in selling used ~~household goods and merchandise (e.g., clothing, furniture, books, shoes, small appliances), where such goods and merchandise are not sold on consignment~~ merchandise which has been obtained through donations or gifts and where the donor receives no value upon the sale of such merchandise, and where the use is designed to sell donated merchandise at a price below reasonable market value, and where the revenue received from selling the merchandise may be retained by a charitable or not-for-profit organization or institution. ~~This use does not include consignment shops or antique shops.~~

. . .

APPENDIX A: CONSOLIDATED USE TABLE

P = PERMITTED PRINCIPAL USE S = USE ALLOWED AS A SPECIAL EXCEPTION A = PERMITTED ACCESSORY USE
T = TEMPORARY USE ALLOWED WITH A MAJOR TEMPORARY USE PERMIT t = TEMPORARY USE ALLOWED WITH A MINOR TEMPORARY USE PERMIT
√ = TEMPORARY USE ALLOWED WITHOUT TEMPORARY USE PERMIT
I = INTERIM USE ALLOWED WITH AN INTERIM USE PERMIT BLANK CELL = PROHIBITED USE

USE CATEGORY (PRINCIPAL USES) AND/OR USE TYPE		RESIDENTIAL DISTRICTS												COMMERCIAL DISTRICTS						INDUSTRIAL DISTRICTS				SPECIAL DISTRICTS						PLANNED DEVELOPMENT DISTRICTS					USE-SPECIFIC STANDARDS
		RS-1	RS-2	RS-3	RS-4	RS-L	RD-1	RM-7	RM-12	RM-20	RM-30	RM-45	MH-12	B-1	B-2	B-3	B-4	M-1	CR	I-1	I-IX	OIP	M-2	TO	PR	CF	PU	T	BP	RPUD	PCD	PD-TO	LAC	PD-I	
COMMERCIAL USES																																			
***																																			
Retail Sales and Service Uses – Retail Sales	Consignment ~~Shop~~ Boutique	…																																	

Copy of Ord. 2015-67

ORDINANCE NO. 2015-67

CITY OF POMPANO BEACH
Broward County, Florida

AN ORDINANCE OF THE CITY OF POMPANO BEACH, FLORIDA, PROVIDING FOR IMPOSITION OF A MORATORIUM ON ISSUANCE OF DEVELOPMENT ORDERS AND PERMITS AND ON THE PROCESSING OF APPLICATIONS RELATING TO HEALTH CARE USES, CHECK CASHING STORES, CONVENIENCE STORES, LIQUOR OR PACKAGE STORES, PAWN SHOPS , THRIFT SHOPS AND DORMITORIES WITHIN THE CITY; PROVIDING FOR VESTED RIGHTS; APPEALS; AND EXHAUSTION OF ADMINISTRATIVE REMEDIES; PROVIDING FOR A SIX (6) MONTH TERM TO BE EXTENDED IF NECESSARY BY THE CITY COMMISSION; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Commission and the City's Planning and Zoning Board, the Local Planning Agency, have previously undertaken the necessary studies and adopted a Comprehensive Plan to guide and control growth in the City; and,

WHEREAS, the goals, objectives and policies contained within the City's adopted Comprehensive Plan require that the City:

i. Annually review and periodically update adopted land development regulations and established procedures that encourage the elimination or reduction of uses inconsistent with the City's character and Future Land Use Plan. (Future Land Use Element - Objective Inconsistent Land Uses - 01.03.00)

ii. Support and promote hotels, motels and other tourist accommodations in designated residential, commercial and commercial recreation land use designations. (Future Land Use Element – Policy - 01.03.10)

iii. Encourage the adoption of innovative land development regulations. Adopt new land use designations for Residential, Mixed Use, Transportation Oriented Districts, Transportation

Oriented Corridors and amend the land development regulations, including the creation of new zoning districts for these land use designations. (Future Land Use Element - Objective New Land Use Regulations - 01.07.00)

iv. Continually review and amend new land use designations for Residential, Mixed Use and Transportation Oriented Districts. (Future Land Use Element - Policy - 01.07.02)

v. Through ongoing updates to the land development regulations revise prohibited and permitted uses in the commercial, industrial and non-residential zoning districts. (Future Land Use Element - Policy - 01.07.07)

vi. Follow the recommendation of the Community Redevelopment Plans in all Land Use Plan amendments and rezonings. (Future Land Use Element – Community Redevelopment - 01.08.01)

vii. Redevelopment activities in the Community Redevelopment Areas shall be guided by their respective Community Redevelopment Plans, adopted pursuant to Chapter 163, Part III, Florida Statutes. (Future Land Use Element - Policy - 01.11.03)

viii. Establish criteria which encourage development of urban infill and community redevelopment areas to promote economic development, increase housing opportunities and maximize the use of existing public facilities and services. (Future Land Use Element - Objective Urban Infill Criteria - 01.12.00);

and,

WHEREAS, the City of Pompano Beach contains two (2) Community Redevelopment Areas: the West Pompano Beach District CRA, also known as the NW CRA, a 3,000 acre area established in 1989, and the East Pompano Beach District CRA, a 158 acre area, that was established in 2001; and

WHEREAS, the NW CRA and the EAST CRA areas were established for the purpose of removing existing slum and blight conditions and provide economic benefits to the City's residents; and

WHEREAS, the East CRA area encompasses the majority of lands contained within the Atlantic Boulevard Overlay District (AOD) and the NW CRA area encompasses the Transit Oriented Corridor District (TOC); and

WHEREAS, the City adopted land development regulations for the AOD and the TOC; and

WHEREAS, the projects and programs of the City's Community Redevelopment Agency in the East CRA and in the NW CRA are designed to solve underlying problems that have a blighting influence on the redevelopment areas as further expressed in East CRA Redevelopment Plan and in the NW CRA Redevelopment Plan; and

WHEREAS, the AOD encompasses the Atlantic Boulevard Corridor which was included in a 2008 Urban Land Institute Technical Advisory Panel wherein the ULI recommended medium density, mixed-use development on Atlantic Boulevard; lower-scale development between the medium density and single family; creating great public spaces that exemplify and promote pedestrian activity; maintaining a small town feel and encouraging smaller scale (not big box) uses; and

WHEREAS, the AOD was also the subject of the City's Beach Master Plan which was approved in September 2008, which included measures for the restoration of the dune system along the public beach; streetscape improvements and realignment for Pompano Beach Boulevard; streetscape improvements for the east end of Atlantic Boulevard; a mixed use project and parking garage with 500 parking spaces; a new Fire Station, Library and upgrades to North Riverside Drive Park; and

WHEREAS, the City's Community Redevelopment Agency adopted an East Financing and Implementation Plan, which sets forth financial resources required and necessary for the

CRA to attain its redevelopment goals in the East CRA, which includes the majority of the AOD area; and

WHEREAS, the City's Community Redevelopment Agency adopted a Northwest Financing and Implementation Plan, which sets forth financial resources required and necessary for the CRA to attain its redevelopment goals in the NW CRA; and

WHEREAS, in its adopted Comprehensive Plan, the City identified "Major Issue No. 5: City Sense of Place" wherein the City expressed that there is a unique opportunity for the City to capitalize on its key transportation corridors, its major attractions and the Northwest and East Redevelopment CRA's to improve on its sense of place; and

WHEREAS, the City also adopted a Strategic Plan for the City of Pompano, wherein the City adopted the following strategies in support of the CRA redevelopment plans:

i. 2.0 Tourism: Make the City more attractive to residents, visitors and tourists and expand visitor and tourism markets.

ii. 5.0 Corridor Redevelopment: Enhance Corridor Redevelopment

5.1 Begin implementation of corridor studies and plans for Federal Highway, Atlantic Boulevard and Dixie Highway

5.2 Promote Class A office space development on Atlantic Boulevard near I-95 and along the Dixie corridor

5.3 Support and facilitate development of an education corridor along MLK

5.4 Improve overall aesthetic appearances

iii. 6.0 CRA Redevelopment: Enhance CRA area redevelopment

6.1 Expand CRA incentive programs

WHEREAS, the City has contracted with The Renaissance Planning Group to prepare corridor studies for Atlantic Boulevard, Dixie Highway and Federal Highway to identify

elements crucial to economic development and redevelopment along these major city transportation corridors; and

WHEREAS, the Zoning Code of the City of Pompano Beach, is designed to promote health, and general welfare, and to promote adequate light and air, and to prevent the overcrowding of land, and to avoid the undue concentration of population, and to facilitate adequate transportation, water, sewage treatment, schools, parks and other public requirements; and

WHEREAS, the process of growth and change within the City requires the continuing analysis of living and working conditions; and

WHEREAS, the health, safety and welfare of the citizens of Pompano Beach are proper and necessary for the consideration of the City Commission; and

WHEREAS, the continual flux of patterns in the urban community requires intensive restudy of areas of the community; and

WHEREAS, the changing patterns often cause existing zoning districts to become outdated, inequitable, unbalanced and inappropriate as applied; and

WHEREAS, it is in the public interest to make a determination as to whether existing zoning uses are appropriate where it appears that changing patterns have cast doubt on their propriety; and

WHEREAS, it is in the public interest to review the Zoning Code so as to ensure that the City's economic redevelopment efforts are not frustrated due to a proliferation of incompatible uses; and

WHEREAS, it is in the public interest to protect the substantial financial investment the City has made in recent years to promote economic redevelopment; and

WHEREAS, the moratorium is intended to allow sufficient time to study the provision of these uses for the citizens of Pompano Beach and to create a long term strategy to ensure adequate access to such services is provided; and

WHEREAS, the moratorium is intended to allow sufficient time to study the provision and location of these uses in a manner that does not result in an over-concentration of these uses that will further result in the blighting or downgrading of the surrounding neighborhood; and

WHEREAS, the moratorium is intended to allow sufficient time to study the provision of these uses to ensure that there is a balance between the existing residential uses and the projected demand for and location of these uses; and

WHEREAS, the moratorium is also intended to allow sufficient time to study the provision of these uses within the AOD and the DPOD, TOC, East CRA, NW CRA, corridors connecting the CRA areas and the corridors being studied by The Renaissance Planning Group and to determine the impact of these uses on the economic redevelopment efforts included in the City's Comprehensive Plan, the City's Community Redevelopment Plans, the CRA East Financing and Implementation Plan, the CRA NW Financing and Implementation Plan, the City's Beach Master Plan, and the City's Strategic Plan; and

WHEREAS, while the study conducted by The Renaissance Planning Group will address the City's major transportation corridors, additional studies are needed to address the impact of permitted and prohibited uses in the City; and

WHEREAS, the City desires to ensure, while necessary studies are presently underway for the formulation and implementation of remedial measures referenced herein, that additional Applications, Orders and Permits, as specified in the City's Code of Ordinances ("CODE") listed

below not be processed or issued in the City within the scope of the moratorium which is described herein:

> Health Care Uses (Code Sec. 155.4209), Check Cashing Store (Code Sec. 155.4221.C), Convenience Store (Code Sec. 155.4222.F), Liquor or Package Store (Code Sec. 155.4222.K), Pawn Shop (Code Sec. 155.4222.L), Thrift Shop (Code Sec. 155.4222.M) and Dormitory (Code Sec. 155.4303.II);

and

WHEREAS, in accordance with Florida Statutes, Section 166.041 (3)(c)2, advertisement in accordance with said statute have been published in a newspaper of general paid circulation in the City of Pompano beach and of general interest and readership in the community, notifying the public of two public hearings on this proposed Ordinance; and

WHEREAS, two public hearings have been held pursuant to said published hearings and all persons so desiring had the opportunity to be and were, in fact, heard; now therefore,

BE IT ENACTED BY THE CITY OF POMPANO BEACH, FLORIDA:

SECTION 1. Moratorium Imposed; Applicability.

A. During the time that this Ordinance is in effect as specified herein, there shall be a moratorium upon the acceptance of applications and the issuance of Development Orders and Permits, as defined in Section 163.3164, Florida Statues, (collectively "Development Orders") approving Health Care Uses (Code Sec. 155.4209), Check Cashing Store (Code Sec. 155.4221.C), Convenience Store (Code Sec. 155.4222.F), Liquor or Package Store (Code Sec. 155.4222.K), Pawn Shop (Code Sec. 155.4222.L), Thrift Shop (Code Sec. 155.4222.M) and Dormitory (Code Sec. 155.4303.II).

SECTION 2. Vested Rights.

A. Nothing in this Ordinance shall be construed or applied to abrogate the vested right of a property owner to complete development where the property owner demonstrates each of the following:

1. A governmental act of development approval obtained prior to the effective date of this Ordinance; and

2. Upon which the owner has detrimentally relied, in good faith, by making such a substantial change in position or incurring such extensive obligations and expenses; and

3. That it would be highly inequitable to deny the property owner the right to complete development.

B. Except as provided by paragraph (C) below, any property owner claiming to have vested rights under this Section must file an application with the City Manager for a vested rights determination within thirty (30) days after the effective date of this Ordinance. The application shall be accompanied by a fee of $600.00 and contain a sworn statement as to the basis upon which the vested rights are asserted, together with documentation required by the City Manager and other documentary evidence supporting the claim. The City Manager shall review the application and, based upon the evidence submitted, shall make a determination as to whether the property owner has established vested rights. The City Manager's decision shall be subject to appeal by the applicant for vested rights determination or by a third party claiming to be adversely affected by the City Manager's decision, provided that the third party can demonstrate a legally recognizable interest which is or will be affected by the decision and that such interest, which while it may be shared in common generally with other members of the community, is definite and exceeds in degree the general interest in the community good shared by all persons. Such appeals may be made to the City Commission by notice of appeal filed with the City

Manager within ten (10) days after the City Manager's written decision. In the event of a timely appeal, the City Commission shall hold a public hearing on appeal and, based upon the evidence submitted, shall make a determination as to whether or not the property owner has established vested rights. To the extent that a property owner demonstrates vested rights, the moratorium shall not be applied to that owner.

C. Any property owner establishing vested rights under this Section shall not be subject to this moratorium and shall be authorized to apply for Orders, and Permits in accordance with a Vested Rights Determination Agreement to be executed by the City and the property owner. A copy of the Vested Rights Determination Agreement shall be filed with the City Clerk, accompanied by a letter which references this paragraph (C) within Forty-five (45) days after the effective date of the City Commission's determination under this Section.

SECTION 3. Appeals. Appeals from final decision by the City Commission under Section 2 of this Ordinance shall be by the filing of a Petition for Certiorari in the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County in accordance with the Florida Rules of Appellate Procedure for the review of the quasi-judicial rulings of municipalities.

SECTION 4. Exhaustion of Administrative Remedies. No property owner claiming that this Ordinance as applied constitutes or would constitute a temporary or permanent taking of private property or an abrogation of vested rights may pursue such claim unless he or she has first exhausted all administrative remedies provided for in Section 2.

SECTION 5. Term. The moratorium imposed by this Ordinance is temporary and, unless dissolved earlier by the City, shall automatically dissolve in six (6) months from the effective date of this Ordinance unless otherwise extended in accordance with applicable law.

The moratorium may be reasonably extended, if, necessary, by Ordinance of the City Commission.

SECTION 6. Conflicts. All Sections or parts of Sections of the Code of Ordinances, all Ordinances or parts of Ordinances, and all Resolutions, or parts of Resolutions, in conflict with this Ordinance are repealed to the extent of such conflict.

SECTION 7. Severability. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decisions shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

SECTION 8. Effective Date. This Ordinance shall become effective upon passage.

PASSED FIRST READING this 23rd day of June, 2015.

PASSED SECOND READING this 14th day of July, 2015.

LAMAR FISHER, MAYOR

ATTEST:

ASCELETA HAMMOND, CITY CLERK

GBL/tal/ds:jrm
7/15/2015
l:ord/2015-367a

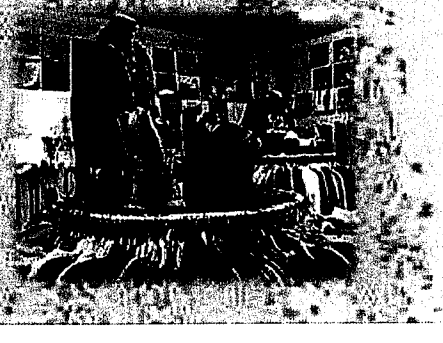
PowerPoint Presentation for the City Commission Hearing

The Right Use in the Right Location:

Thrift and Consignment Shops

City Commission Hearing

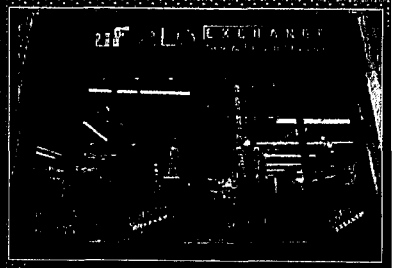
February 9, 2016

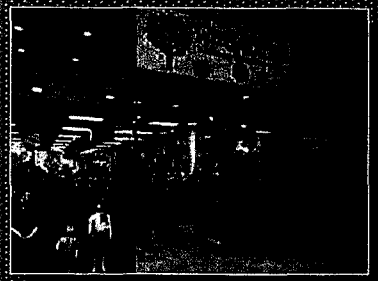


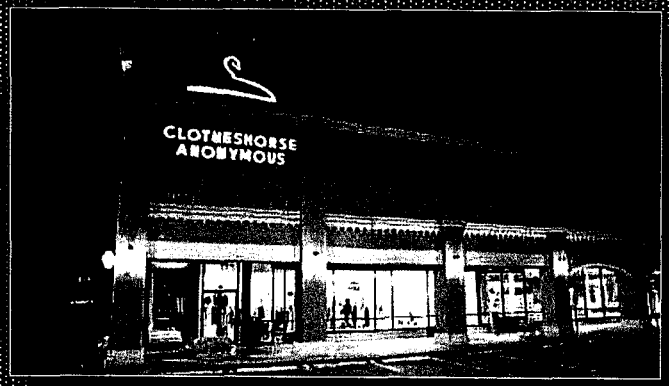
Consignment vs. Thrift

Consignment Shop:

- Consign: means to hand over goods to be cared for while being sold for a commission
- Sellers desiring to sell unwanted belongings can sell them throughout the shop, and have the advantage of avoiding advertising, display space, and storage costs. While the consignment store earns a percentage of the sales profits
- In general, they only accept items in good condition
- The goods must be current (one to two years old) and seasonal
  - Some consignment shops do specialize in vintage goods
- If items are not sold within a given time period, they are returned to their owner
- Tends to focus on one or two specialty items
  - Children's Furniture/clothing
  - Vintage or high end clothing
  - High end furniture







Consignment vs. Thrift

Illegal dumping turns donation sites into trash heaps

Problem not limited to Eagle River, non-profits say

Thrift Shop:

- Sells a variety of donated merchandise, often quite below market value.
- Thrift/charity shops are classified into three catedories based on their operating system: nonprofit charity affiliated for-profit and for-profit thrift shops.
- Nonprofit thrift shops may be operated by major national charities and sometimes by local religious groups, charities, or cultural benefactors.
- Donated merchandise is often left onsite within or outside of a donation bin or an outdoor area.
- Illegal dumping and donated merchandise left outside for extended periods create an unsightly appearance.
- Donated merchandise left outside can attract crime and theft.

Recommendations

Consignment

- ✓ Rename as Consignment *Boutique*
- ✓ Revise definition to limit boutique to one type of merchandise.
- ✓ Specifically excludes sales of guns, appliances, mattresses, and motor vehicles
- ✓ In AOD, prohibit Consignment Boutiques from fronting on Atlantic Blvd

Thrift

- ✓ Revise definition to clarify that use is for items bought on bulk or donated items, which are sold below reasonable market value
- ✓ Require a designated donation area
- ✓ Require donation area be located in the rear of the building
- ✓ Require "No dumping" signage
- ✓ Prohibit donations from being left outdoors for 24-hours
- ✓ Remove limitation on minimum size in B-3
- ✓ Continue to prohibit Thrift Shops in both AOD and DPOD

Meeting Date: March 8, 2016 Agenda Item 15

REQUESTED COMMISSION ACTION:

Consent	X Ordinance	Resolution	Consideration/ Discussion	Presentation
____	____	____	____	____

SHORT TITLE

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH AMENDING CHAPTER 155 "ZONING CODE", BY AMENDING SECTION 155.4221, "COMMERCIAL: RETAIL SALES AND SERVICE USES - PERSONAL SERVICES," TO AMEND THE DEFINITION OF BANK OR FINANCIAL INSTITUTION AND CREATE A NEW DEFINITION AND STANDARDS FOR CHECK CASHING OR PAYDAY LOAN STORES; BY AMENDING SECTION 155.5102, "OFF-STREET PARKING AND LOADING"; BY AMENDING PART 5, "TERMS AND USES DEFINED"; BY AMENDING APPENDIX A: "CONSOLIDATED USE TABLE"; PROVIDING SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

Summary of Purpose and Why:

In order to allow sufficient time to study the provision of pawn shops and check cashing stores in the City, on July 14, 2015 the City Commission adopted Ordinance 2015-67, which enacted a temporary moratorium on pawn shops and check cashing stores. Staff has undertaken a study of pawn shops and check cashing stores and has prepared text amendments based on the findings of the study (A copy of the study is attached). The text amendments propose creating a new use for check cashing or pay day loan stores, requiring special exception approval for this use in the B-1 and B-2 Zoning District, and requiring check cashing or pay day loan stores and pawn shops to be separated by 1,000 feet. Staff will present a brief PowerPoint presentation highlighting the proposed recommendations; a copy of which is included at the end of the back-up for this item. The text amendments were unanimously recommended at the November 30, 2015 Planning and Zoning Board meeting (A copy of the draft minutes from the Planning and Zoning Board meeting are attached.).

(1) Origin of request for this action: Development Services Dept.
(2) Primary staff contact: Robin M. Bird/ Karen Friedman Ext. 7792
(3) Expiration of contract, if applicable: N/A
(4) Fiscal impact and source of funding: N/A

DEPARTMENTAL COORDINATION	DATE	DEPARTMENTAL RECOMMENDATION	DEPARTMENTAL HEAD SIGNATURE
Dev. Services	11/19/2015	Approval	Memo #15-621
City Attorney	01/26/2016	Approval 1/28/16	Memo #2016-433
X Planning and Zoning Board		Approval	Memo #15-077 (01/11/2016)
X City Manager			

Ordinance		Resolution		Consideration	
Workshop					
1st Reading	2/9/16	1st Reading		Results:	Results:
Approved	2/23/16-Approved				
2nd Reading	3/8/16				

City Attorney's Communication #2016-433

January 26, 2016

TO: Karen Friedman, AICP, Principal Planner

FROM: Carrie L. Sarver, Assistant City Attorney

RE: Ordinance Amending Section 155, Zoning Code

As requested, the following form of Ordinance, relative to the above-referenced matter, has been prepared and is attached:

> **AN ORDINANCE AMENDING CHAPTER 155, "ZONING CODE," OF THE CODE OF ORDINANCES OF THE CITY OF POMPANO BEACH, FLORIDA, BY AMENDING SECTION 155.4221, "COMMERCIAL: RETAIL SALES AND SERVICE USES – PERSONAL SERVICES," TO AMEND THE DEFINITION OF BANK OR FINANCIAL INSTITUTION AND CREATE A NEW DEFINITION AND APPLICABLE STANDARDS FOR A CHECK CASHING OR PAYDAY LOAN STORES; BY AMENDING SECTION 155.4222, "COMMERCIAL: RETAIL SALES AND SERVICE USES – RETAIL SALES" TO PROVIDE DISTANCE SEPARATION REQUIREMENTS BETWEEN CHECK CASHING OR PAYDAY LOAN STORES AND PAWN SHOPS; BY AMENDING SECTION 155.5102, "OFF-STREET PARKING AND LOADING," TO AMEND CHART TO MODIFY PARKING SPACE REQUIREMENTS FOR CHECK CASHING OR PAYDAY LOAN STORES; BY AMENDING PART 5, "TERMS AND USES DEFINED," BY MODIFYING TERMS USED OR REFERENCED IN THIS ORDINANCE; BY AMENDING APPENDIX A: "CONSOLIDATED USE TABLE," TO REVISE TABLE TO CONFORM TO AMENDMENTS MADE BY THIS ORDINANCE; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.**

Please carefully review the ordinance to ensure that it meets with your requirements.

CARRIE L. SARVER

/jrm

l:cor/dev-srv/2016-433
Attachment

ORDINANCE NO. 2016-_____

CITY OF POMPANO BEACH
Broward County, Florida

AN ORDINANCE AMENDING CHAPTER 155, "ZONING CODE," OF THE CODE OF ORDINANCES OF THE CITY OF POMPANO BEACH, FLORIDA, BY AMENDING SECTION 155.4221, "COMMERCIAL: RETAIL SALES AND SERVICE USES – PERSONAL SERVICES," TO AMEND THE DEFINITION OF BANK OR FINANCIAL INSTITUTION AND CREATE A NEW DEFINITION AND APPLICABLE STANDARDS FOR A CHECK CASHING OR PAYDAY LOAN STORES; BY AMENDING SECTION 155.4222, "COMMERCIAL: RETAIL SALES AND SERVICE USES – RETAIL SALES" TO PROVIDE DISTANCE SEPARATION REQUIREMENTS BETWEEN CHECK CASHING OR PAYDAY LOAN STORES AND PAWN SHOPS; BY AMENDING SECTION 155.5102, "OFF-STREET PARKING AND LOADING," TO AMEND CHART TO MODIFY PARKING SPACE REQUIREMENTS FOR CHECK CASHING OR PAYDAY LOAN STORES; BY AMENDING PART 5, "TERMS AND USES DEFINED," BY MODIFYING TERMS USED OR REFERENCED IN THIS ORDINANCE; BY AMENDING APPENDIX A: "CONSOLIDATED USE TABLE," TO REVISE TABLE TO CONFORM TO AMENDMENTS MADE BY THIS ORDINANCE; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

WHEREAS, in accordance with Florida Statutes, Section 166.041(3)(c)2, advertisements in accordance with said statute have been published in a newspaper of general paid circulation in the City of Pompano Beach and of general interest and readership in the community, notifying the public of two public hearings on this proposed Ordinance; and

WHEREAS, two public hearings have been held pursuant to said published hearings and all persons so desiring had the opportunity to be, and were, in fact, heard; now, therefore,

BE IT ENACTED BY THE CITY OF POMPANO BEACH, FLORIDA:

SECTION 1. That Section 155.4221., "Commercial: Retail Sales and Service Uses – Personal Services," of Chapter 155, "Zoning Code," of the Code of Ordinances of the City of Pompano Beach is hereby amended to read as follows:

§ 155.4221. COMMERCIAL: RETAIL SALES AND SERVICE USES – PERSONAL SERVICES

. . .

C. BANK OR FINANCIAL INSTITUTION

. . .

2. Definition

A bank or financial institution is an establishment that provides retail banking services, mortgage lending, credit union services, or similar financial services to individuals and businesses. ~~This use type also includes those establishments engaged in the on-site circulation of cash money and check-cashing facilities, but does not include bail bond brokers.~~ Accessory uses may include automated teller machines (ATMs) and facilities providing drive-through service. This use does not include a business commonly referred to as a check cashing store or payday loan store.

. . .

M. CHECK CASHING OR PAYDAY LOAN STORE

1. Districts Where Permitted

												S	S	P	P

M-1	CR	I-1	I-IX	OIP	M-2	TO	PR	CF	PU	T	BP	RP UD	PC D	PD-TO	LA C	PD-I
													P		P	

2. Definition

A check cashing or payday loan store is an establishment subject to regulation by FL SS Chapter 560, Money Services Businesses, and that provides check cashing and/or deferred presentment transactions.

3. Standards

A check cashing or payday loan store shall be located at least 1,000 feet from another check cashing or payday loan store or from a pawn shop.

SECTION 2. That Section 155.4222., "Commercial: Retail Sales and Service Uses – Retail Sales," of Chapter 155, "Zoning Code," of the Code of Ordinances of the City of Pompano Beach is hereby amended to read as follows:

§ 155.4222. COMMERCIAL: RETAIL SALES AND SERVICE USES – RETAIL SALES

. . .

L. PAWN SHOP

. . .

3. Standards

A pawn shop shall be located at least 1,000 feet from another pawn shop or from a check cashing or payday loan store.

. . .

SECTION 3. That Section 155.5102., "Off-Street Parking and Loading," of Chapter 155, "Zoning Code," of the Code of Ordinances of the City of Pompano Beach is hereby amended to read as follows:

§ 155.5102. OFF-STREET PARKING AND LOADING

. . .

D. OFF-STREET PARKING SPACE REQUIREMENTS

1. Minimum Number of Off-Street Parking Spaces

. . .

TABLE 155.5102.D.1: MINIMUM NUMBER OF OFF-STREET PARKING SPACES		
Use Category	**Use Type**	**Minimum Number of Parking Spaces**
COMMERCIAL USES		
Retail Sales and Service Uses - Personal Services	. . .	. . .
	Bank or financial institution	1 per 300 sq ft
	Check Cashing or Payday Loan Store	1 per 300 sq ft
	. . .	. . .

. . .

SECTION 4. That Article 9, "Definitions and Interpretations, Part 5, "Terms and Uses Defined," of Chapter 155, "Zoning Code," of the Code of Ordinances of the City of Pompano Beach is hereby amended to read as follows:

ARTICLE 9: DEFINITIONS AND INTERPRETATION

. . .

PART 5 TERMS AND USES DEFINED

The following words, terms, and phrases, when used in this Code, shall have the meaning ascribed to them in this section.

. . .

BANK OR FINANCIAL INSTITUTION
An establishment that provides retail banking services, mortgage lending, credit union services, or similar financial services to individuals and businesses. ~~This use type also includes those establishments engaged in the on-site circulation of cash money and check-cashing facilities, but does not include bail bond brokers.~~ Accessory uses may include automated teller machines (ATMs) and facilities providing drive-through service. This use does not include a business commonly referred to as a check cashing store or payday loan store.

. . .

CHANGE IN USE
The change in the use of a structure or land from one use to another use listed in the table of uses as a permitted use. A mere change in use requires a Zoning Use Certificate.

CHECK CASHING OR PAYDAY LOAN STORE
An establishment subject to regulation by FL SS Chapter 560, Money Services Businesses, and that provides check cashing and/or deferred presentment transactions.

SECTION 5. That Appendix A, "Consolidated Use Table," of Chapter 155, "Zoning Code," of the Code of Ordinances of the City of Pompano Beach is hereby amended to read as follows:

APPENDIX A: CONSOLIDATED USE TABLE

P = PERMITTED PRINCIPAL USE S = USE ALLOWED AS A SPECIAL EXCEPTION A = PERMITTED ACCESSORY USE
T = TEMPORARY USE ALLOWED WITH A MAJOR TEMPORARY USE PERMIT t = TEMPORARY USE ALLOWED WITH A MINOR TEMPORARY USE PERMIT
√ = TEMPORARY USE ALLOWED WITHOUT TEMPORARY USE PERMIT
I = INTERIM USE ALLOWED WITH AN INTERIM USE PERMIT BLANK CELL = PROHIBITED USE

USE CATEGORY (PRINCIPAL USES) AND/OR USE TYPE		RESIDENTIAL DISTRICTS												COMMERCIAL DISTRICTS						INDUSTRIAL DISTRICTS				SPECIAL DISTRICTS						PLANNED DEVELOPMENT DISTRICTS					USE-SPECIFIC STANDARDS
		RS-1	RS-2	RS-3	RS-4	RS-L	RD-1	RM-7	RM-12	RM-20	RM-30	RM-45	MH-12	B-1	B-2	B-3	B-4	M-1	CR	I-1	I-IX	OIP	M-2	TO	PR	CF	PU	T	BP	RPUD	PCD	PD-TO	LAC	PD-I	
PRINCIPAL USES																																			
COMMERCIAL USES																																			
. . .																																			
Retail Sales and Service Uses - Personal Services	Bank or financial institution									S	S	S		P	P	P	P							P				P		P	P	P	P	P	155.4221.C
	Check Cashing or Payday Loan Store													S	S	P	P														P		P		155.4221.M
. . .																																			

SECTION 6. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance that 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 7. This Ordinance shall become effective upon passage.

PASSED FIRST READING this _____ day of _____, 2016.

PASSED SECOND READING this _____ day of _____, 2016.

_____

LAMAR FISHER, MAYOR

ATTEST:

_____

ASCELETA HAMMOND, CITY CLERK

:jrm
1/26/16 - 12/29/15
L:ord/ch155/2016-78

PLANNING AND ZONING BOARD/ LOCAL PLANNING AGENCY
MEMORANDUM #15-077

DATE: January 11, 2016

TO: City Commission

FROM: Planning and Zoning Board/ Local Planning Agency

SUBJECT: Proposed Text Amendments to Zoning Code, Alternative Financing Uses

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At the special set meeting of the Planning and Zoning Board/ Local Planning Agency held on November 30, 2015 to review the Moratorium Studies and Recommendations, the Board considered proposed text amendments to Article 4 (Use Standards), Article 5 (Development Standards), Article 9 (Definitions and Interpretation), and Appendix A (Consolidated Use Table) of the Zoning Code as set forth in the Department of Development Services Administrative Report 15-621 as well as the Staff Report entitled "Alternative Financing Uses".

Within Article 3 (Zoning Districts) Staff recommends revising the Atlantic Boulevard Overlay District and Downtown Pompano Beach Overlay District to prohibit "Check Cashing or Payday Loan Stores".

Within Article 4 (Use Standards) Staff recommends revising the definition of "Bank or Financial Institution"; adding "Check cashing or payday loan store"; and adding standards to "Pawn Shop."

Within other Articles Staff recommends revising Table 155.5102.D.1 "Minimum number of off-street parking spaces"; revising Article 9 Part 5; and revising Appendix A: Consolidated Use Table.

With a unanimous vote for the approval of the amendment, it is the recommendation of the Board that the text amendments be approved.

Fred Stacer
Chairman
Planning and Zoning Board/ Local Planning Agency

kem
G:\Zoning 2009\Code Rewrite\Code Amendments\Moratorium - June 2015\P&Z_Special Set Hearing - Staff Reports\P&Z Approval Memos\PZ Approval Memo_Alternative Financing Uses.doc

CITY OF POMPANO BEACH
FLORIDA

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****

PLANNING AND ZONING BOARD/LOCAL PLANNING AGENCY — November 30th, 2015, Monday

City Commission Chambers — 7:00 P.M.

SPECIAL MEETING AGENDA

A. Call to order by the Chairman of the Board, Mr. Fred Stacer at 7:03pm.

B. **ROLL CALL:**

Elizabeth Anderson
M. Dwight Evans
Richard Klosiewicz
Joan Kovac
Jerold Mills
Fred Stacer
Tobi Aycock *for Jeff Torrey*

Also Present

Karen Friedman
Robin Bird
Carrie Sarver
Kerrie MacNeil
Cecelia Ward
Patrick Jovanov
Tara Patton
Vincente Thrower

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Mr. Evans asked for a vocal or silent moment for prayer. Mr. Stacer called for a moment of silence.

C. INDIVIDUALS TESTIFYING PLACED UNDER OATH

Mr. Robin Bird reminded the Chairman that this is not a quasi-judicial hearing and it is not necessary to place individuals under oath. Carrie Sarver agreed that placing the audience who wishes to speak under oath is above the requirements.

City Staff and members of the public testifying before the Board at the meeting were placed under oath by Kerrie MacNeil, Zoning Technician and Notary Public in the State of Florida.

D. OTHER BUSINESS

1. Temporary Moratorium - Staff Reports

Staff has prepared reports and recommendations regarding several uses subject to the Temporary Moratorium. The reports are as follows: Health Care Uses, Thrift and Consignment Shops, and Liquor Stores (and other retail sales of alcoholic beverages), and Alternative Financing Uses.

Mr. Robin Bird introduced himself to the Board as the Director of Development Services and reviewed the temporary moratorium and the reasons why it was enacted. Mr. Bird stated that four reports are being presented tonight and a significant size team worked on the reports. Mr. Bird added that staff reserves the ability to bring items back to the next Planning and Zoning Board meeting.

Mrs. Kovac asked why restaurants were not included in the reports. Mr. Bird replied that the City Commission did not select restaurants to be placed under moratorium.

Mrs. Friedman, Principal Planner, introduced herself to the Board and stated that she would be presenting condensed versions of the reports that were included in staff's back up material and she will be focusing mostly on the recommendations. Mrs. Friedman stated that the various recommendations have the same theme: the City's need to balance access to these uses, economic development, protect single family neighborhoods and regulate secondary effects of the uses. Distance requirements.

Mrs. Friedman introduced the first topic: Thrift and consignment shops. Mrs. Friedman stated that often times the difference between thrift and consignment shops is not understood. Mrs. Friedman delivered a PowerPoint presentation to the Board which included staff's recommendations.

Mrs. Friedman introduced the next topic and began the PowerPoint presentation on Alternative Financing Uses. Mrs. Friedman presented the definition, location, history, problems, and staff's recommendations for these uses.

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Mrs. Friedman gave the next presentation on Liquor Stores and other retail sales of alcoholic beverages.

Mrs. Friedman presented the next report on Health Care Uses.

Mr. Bird informed the Board that there will be four separate ordinances and suggested that the Board discuss and vote on one topic at a time. The Board agreed to discuss the reports in the order that they were presented in by staff. Mr. Stacer asked the Board if they had any questions for staff regarding Thrift and Consignment shops.

Mrs. Anderson if the consignment stores that were in B-3 that will now be considered thrift stores are considered nonconforming. Mrs. Friedman replied that they would likely be treated under the lawfully existing special exception use. Mrs. Anderson asked if this would be true even if they do not apply and Mrs. Friedman responded that it is just the designation.

Dr. Mills stated that he is unclear on the difference between consignment and thrift shop. Mrs. Friedman explained the difference between the two. Dr. Mills asked if no new business can be established under the moratorium and what is the length of the Moratorium. Mrs. Friedman responded that the Moratorium was enacted by the City Commission on July 14, 2015 and it is set to expire on January 14, 2016 unless further action is taken by the Commission. Dr. Mills asked if no new business can be established during this time and Mrs. Friedman replied that no new permits and no new business tax receipts were issued to any of the uses that have been subject to the Temporary Moratorium.

Mrs. Aycock asked why consignment boutiques are prohibited from fronting Atlantic Boulevard in the AOD but not thrift. Mrs. Friedman responded that they Thrift Shops are a prohibited use in the AOD; therefore, we would not have to regulate where they would be located.

Mr. Klosiewicz asked who will determine what is considered "luxury merchandise." Mrs. Friedman responded that staff will be looking to see if the business is focusing on selling one type of merchandise or if they focusing on multiple items (this is a way to determine the difference between thrift and consignment). Mrs. Friedman added that this is a standard used by several other cities in South Florida and staff will make their best determination. Mr. Klosiewicz expressed that he does not believe the word luxury should be included because the word luxury may be interpreted differently by different people. Mr. Klosiewicz stated that he suggests the word be stricken from the text amendment.

Dr. Mills asked what happens to the places that are not in compliance once this goes into effect. Mrs. Friedman responded that the use will become a legal non-conforming use or lawfully existing special exception use. Mrs. Friedman added that we do not force them to comply.

Mr. Evans asked for the distinction between a shop and a boutique and if a boutique is a more specialized. Mrs. Friedman answered that it is a more specialized type of retail establishment (ex. vintage clothing or furniture).

Mrs. Anderson asked if the lawfully existing special exception is held to the same improvement as the legal nonconforming use. Mr. Bird responded that a lawful special exception use is held to a different standard.

Mr. Stacer asked if staff is looking for a recommendation to extend the Moratorium and Mrs. Friedman responded that they are only looking for a recommendation on the text amendments.

Mr. Stacer opened up the discussion to the public.

Patrick Jovanov (411 NE 18th Avenue Pompano Beach, FL) introduced himself to the Board and complimented Mrs. Friedman and the rest of the team on their research. Patrick stated that he has visited the Salvation Army over the years and he wishes that staff would come up with more equitable regulations. Patrick stated that this was a part of history. Patrick stated that "this is very good."

Tara Patton introduced herself to the Board as the representative of Festival Flea Market (2900 West Sample Road Pompano Beach, FL) and asked how outlet stores like Nordstrom Rack are categorized since they are selling goods below market value. Mrs. Friedman responded that there is a use in the code called "other retail establishment" that does not take into account the prices of the items sold. Mrs. Patton asked if there was an umbrella that grouped alike types of "luxury items." Mrs. Friedman answered that it would be related accessories (example: purses and jewelry). Mrs. Patton asked that her concern was who gets to make that determination.

Mrs. Kovac asked if clothing, jewelry and purses would be considered consignment and Mrs. Friedman confirmed.

Dr. Mills asked staff why the moratorium is necessary. Mr. Bird answered that staff and the City Commission have determined that the location of many of these uses were creating side effects that were concerning. The moratorium gives staff time to study the issues and decide how to go forward. Dr. Mills asked if we are currently under moratorium and Mr. Bird confirmed.

Mr. Klosiewicz asked the Chairman if the Board is going to have the opportunity, at this time, to amend the language in the text amendments. Mr. Stacer confirmed.

Mr. Stacer closed the public hearing.

MOTION made by Richard Klosiewicz and seconded by Dwight Evans to recommend approval of the proposed text amendments to Thrift and Consignment shops with the word "luxury" stricken from code sections 155.4222.E.2 and Article 9, Part 5. All vote in favor of the above motion; therefore, the motion passed.

Mr. Stacer asked the Board if anyone had questions on the Alternative Financing presentation and recommendations.

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Dr. Mills asked if the proposed changes would mean that he cannot go into a bank and cash a check. Mrs. Friedman answered that one would be able to cash a check at a bank and they are separate uses. Dr. Mills asked why staff is recommending to modify the definition of bank to exclude these items. Mrs. Friedman answered that the definition of "Bank or Financial Institution" today includes a check cashing store. If we do not exclude them, we would be treating them under two different categories. We are not taking the ability to cash a check away from a bank, but we are removing the description of a check cashing facility from the "Bank or Financial Institution" use.

Mrs. Aycock asked staff why there is no separation distance between these uses and residential uses. Mrs. Friedman responded that she found separation of like uses in her research and the intent of this is to prevent clustering.

Mr. Evans asked if staff stated that these uses cause an area to become blighted. Mrs. Friedman confirmed that this is what the report indicated and the secondary effects blight the area, attract crime, cause deterioration of shopping centers, and they have certain appearance issues that may cause blighting (ex. bullet proof glass windows). Mr. Evans asked about the benefits staff identified on page 8 of the report and stated that he thinks there is a greater benefit to keeping the uses rather than removing them. Mr. Evans asked if we have this blight in Pompano. Mrs. Friedman responded that we have four distinct clusters of these uses and three of four are within or directly adjacent to the Northwest CRA which is a blighted area of the City. Mr. Evans asked if there was more than one facility located on Atlantic Blvd just west of Dixie Highway. Mrs. Friedman pulled up the map and responded that there are multiple locations in Cluster #4.

Mr. Klosiewicz stated that he believes that these stores would not have opened if they were not needed and that competition may benefit the people that are being served.

Mr. Stacer asked staff about an inconsistency between what is permitted in the PD-I in the appendix and the backup material. Mrs. Friedman stated that check cashing facility should not be permitted in the PD-I and confirmed it is an error and the Appendix is correct.

Mrs. Anderson asked if staff considered implanting design criteria for these uses. Mrs. Friedman responded design guidelines were not one of the considerations.

Mr. Klosiewicz asked if the State of Florida has some control over the rates that can be charged. Mrs. Friedman answered that the state has some rates but she does not know them off hand. Mr. Klosiewicz asked why people would use this type of service. Mrs. Kovac answered that it is possible that clients of these uses do not have checking accounts. Mr. Klosiewicz asked what people would do if this use is reduced or eliminated. Mrs. Friedman responded that staff's recommendation is not to eliminate the use.

Mrs. Kovac asked staff for confirmation that we are only talking about going forward and not talking about closing any existing Alternative Financing stores. Mrs. Friedman confirmed.

Mrs. Anderson asked if any of the existing uses will become nonconforming due to the separation requirements and Mrs. Friedman confirmed (legal non-conforming use).

Mr. Klosiewicz stated that he did not say anything that expressed that he believed that the uses were being eliminated.

Mrs. Aycock stated that, according to the research, the goal is to spread them out in order to lower the crime rates and help with appearance.

Mr. Klosiewicz asked how many stores on the map would be nonconforming. Mrs. Friedman responded that she could not provide that information at that very moment; however she could return with the requested information. Mr. Bird suggested a cover memo to the Board.

Mr. Stacer opened up the discussion to the public.

Vincente Thrower (1890 NW 6 AV Pompano Beach, FL) stated that the check cashing stores are needed in the minority community. Vincente stated that he believes this is a neighborhood discussion and not a board discussion on whether the neighbors want the stores in the area. Vincente expressed that the check cashing stores are important for people who have bad credit and are not able to open a bank account.

Patrick Jovanov (411 NE 18th Avenue Pompano Beach, FL) asked staff why the research includes military bases if there are no military bases in Pompano Beach. Mr. Jovanov expressed that he does not understand why there is a reference to military bases. Mr. Jovanov shared a quote from Mark Twain and stated that what is being proposed is a recurring prejudice that was discussed at City Commission meetings several times. The lack of financial institutions in the Northwest CRA was planned or discouraged.

The Chairman closed the public hearing and asked if the Board had any additional questions.

MOTION made by Joan Kovac and seconded by Tobi Aycock to recommend approval of the text amendments to Alternative Financing Uses. All voted in favor of the above motion with the exception of Jerry Mills and Dwight Evans.

The Board moved on to discussing Liquor Stores and other retail sales of alcoholic beverages.

Dr. Mills asked if these amendments will affect the American Legion, the Elks Lodge etc. Mrs. Friedman responded that these uses are not included. Dr. Mills if regular bars are included. Mrs. Friedman responded that bars with accessory package sales will be affected because the package sales will now be a new accessory use that would require approval.

Mr. Stacer asked staff for clarification on the difference between a brew pub and a distillery. Mrs. Friedman answered that the City has both brew pubs and food and beverage manufacturing and she briefly explained the differences between the two.

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Patrick Jovanov (411 NE 18th Avenue Pompano Beach, FL) asked how the Costco Liquor store would be grouped. Mrs. Friedman stated that we treat these membership stores as retail establishments.

The Chairman closed the public hearing and asked if any Board members had any additional questions.

MOTION made by Richard Klosiewicz and seconded by Dwight Evans to recommend approval of the text amendments to Liquor Stores and other retail sales of alcoholic beverages. All voted in favor of the above motion; therefore, the motion passed.

The Chair asked the Board if they had any questions concerning the proposed text amendments regarding Health Care uses.

Dr. Mills asked for the geographic definition of the AOD and Mr. Bird provided Dr. Mills with an explanation. Dr. Mills asked if he could open a one story office and have treatment on the first floor. Dr. Mills also asked why someone would not be able to have a doctor's office open after 7pm and expressed that he does not agree with the proposed changes.

Mrs. Friedman stated that the intent is to balance the various needs including access (ex. hours of operation) as well as taking into consideration the impact on neighboring properties (especially the residential community). Mrs. Friedman answered that the hours of operation in the AOD would be affected. Dr. Mills mentioned that there are many senior citizens living east and he expressed that he thinks the restrictions are wrong.

Cecelia Ward introduced herself to the Board as the Planning Consultant for the Pompano CRA and stated that she would like to address a few of the comments. Mrs. Ward stated that they have performed an extensive analysis of the medical facilities in the AOD and the DPOD. The research discovered that facilities exist that close before 7pm and open after 7am. Mrs. Ward informed the Board that the purpose of the restriction on the hours of operation is to utilize the evening activity to support the pedestrian oriented uses that will help revitalize the area. The research shows that the restriction on the hours is consistent with the current operating hours of the existing facilities.

Mr. Stacer asked why Health Care uses are not proposed to be permitted in the I-1X zoning district. Mrs. Friedman stated that this district is intended for heavier uses. Mr. Bird added that no I-1X locations would be on a major corridor.

The Chairman opened up the discussion to the public.

Vincente Thrower (1890 NW 6th Ave Pompano Beach, FL) asked if someone would be prohibited from building an urgent care facility on Martin Luther King Boulevard. Mrs. Friedman responded that on MLK, a Specialty Medical Facility would be prohibited in the Downtown Pompano Beach Overlay District. Mr. Thrower asked staff why we would prohibit an urgent care facility from being constructed when there are no existing facilities in the Northwest CRA community. Mr. Bird stated that this would not prohibit an urgent

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care center in the Northwest CRA, only in the downtown overlay district (DPOD). Mr. Thrower stated that he objects this item. Mr. Thrower asked the Chair what the logic is behind this regulation.

Mr. Stacer asked staff if it is permitted today. Mr. Bird responded that it is allowed today. Mr. Thrower asked if the text amendment is adopted it will not be permitted. Mr. Bird responded that the use would be permitted west of I-95 on MLK but not east of I-95.

Mr. Thrower asked why there would not be urgent care center allowed near the new residential development across from the E. Pat Larkins Center. Mr. Thrower asked the Board to not support the text amendment. Mr. Thrower asked if the item will need to pass the City Commission and staff confirmed. Mr. Thrower stated that he believes that it does not make economic sense to restrict the urgent care centers from the MLK corridor in the DPOD.

Patrick Jovanov (411 NE 18th Avenue Pompano Beach, FL) stated that the slide 17 of the presentation lists the "Lamb of God Recovery Centers" as being licensed since 2007 when it has been here for decades. Mr. Jovanov shared a personal account regarding a sober home and an attempted kidnapping of a small child. Mr. Stacer asked what part of the code Mr. Jovanov is referring to. Mr. Jovanov stated that the issue is allowing sober homes to be located in a residential district adjacent to schools. Mr. Jovanov stated that he does not have proof, but it is the only explanation for something like this happening in his neighborhood. Mr. Jovanov asked if sober homes are still permitted in the City under the temporary moratorium. Mrs. Friedman answered that the recommended text amendments do not deal with any housing uses and added that the question is unrelated to the topic at hand. Mr. Jovanov stated that he agrees with Mr. Thrower that not allowing urgent care is discrimination, prejudice, etc.

Mr. Stacer asked if this will happen in the east and west CRA. Mrs. Friedman responded that the use "Specialty medical facility" would be a special exception in B-3, permitted in B-4, I-1 and OIP. However, it would be prohibited in the AOD and DPOD. Mrs. Friedman stated that it is consistent with the goals of these districts in terms of promoting pedestrian activity uses and active night life activity. Mr. Stacer asked which uses are allowed in the AOD and DPOD and Mrs. Friedman answered that retail clinics, personal care services, and medical offices are all permitted uses in these districts.

Mr. Klosiewicz asked if an urgent medical facility open from 7am to 7pm would be permitted and Mrs. Friedman responded that it would not because the hours of operation are not the only issue. Other issues are ambulances (noise) and medical waste etc.

Mrs. Friedman answered that it is also ambulances, medical waste, (specialty medical uses), more intense that a regular doctor's office. Go here in lieu of the ER. Mr. K asked if these uses are permitted in the area that Vincente was worried about.

Mr. Evans said he thought that being transported in an ambulance to an urgent care facility occurs very infrequently. Mrs. Friedman stated that these uses have some deleterious secondary effects and we need to treat them with more regulation. Mr. Evans asked why

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it is necessary to go outside of the core area if there are not significant adverse effects. Mr. Bird stated that these uses will negatively affect redevelopment efforts.

Mrs. Kovac asked how many blocks from Martin Luther King Boulevard could there be an urgent care center.

Cecilia Ward explained the purpose of the redevelopment efforts for the DPOD area.

Mrs. Friedman explained the boundaries of the DPOD.

Mr. Evans asked if the zoning regulations of the area should adjust in the area as time goes on and be updated to reflect changes. Mrs. Friedman stated that this is what staff is trying to do and the point of the moratorium. Mr. Evans asked staff if it is their belief if a specialty medical facility located in the DPOD on MLK Boulevard would adversely affect development of the area.

Mr. Bird stated that there are many uses within the specialty medical facility (not just the urgent care center). Dr. Mills stated that he is asking specifically about medical offices and how these text amendments would eliminate these uses from the area. Mrs. Friedman stated that these uses are not consistent with the redevelopment efforts in the AOD and DPOD.

Mrs. Kovac asked if Dr. Mills is aware the urgent care centers close at 7pm as well.

Dr. Evans asked if the Board will be making a recommendation regarding one of staff's recommendations and Mrs. Friedman responded that those (that Mr. Evans is referring to) are the overriding recommendations and the proposed text amendments came from these recommendations. Mrs. Friedman stated that the Board could think of them as "Considerations 1, 2, 3 and 4" and the text amendments were prepared from these considerations.

Mr. Stacer asked if staff mapped the locations of the medical facilities. Mrs. Friedman replied that staff did mapping and staff was able to conclude from the mapping is that the change in the location of uses has not changed significantly from 2005 to 2015. The maps would not be useful because they would be so cluttered with the multiple locations.

Mr. Stacer closed the discussion to the public.

MOTION made by Elizabeth Anderson and seconded by Richard Klosiewicz to recommend approval of the proposed text amendments. All voted in favor of the above motion, with the exception of Jerry Mills and Dwight Evans, therefore the motion passed.

Mr. Stacer stated that he has questions for staff that are specific to the AOD. Mrs. Friedman placed a document on the screens for the Board to see and Mr. Stacer directed her to page 2, item number 3. Mr. Stacer asked what uses fall under 3b. Mrs. Friedman stated that the changes that were made reflected the changes coming out of the moratorium. Mrs.

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Friedman stated that staff will meet with the CRA and discuss visitor accommodation uses being permitted in a residential mixed use project.

Dr. Mills asked for clarification on the outcome of the most recent vote on health care uses and Mr. Stacer and Carrie Sarver clarified that there were two "Nays" or a 5-2 vote.

Mr. Stacer stated that, referring to page 3 and the parking exemptions, he is concerned about big projects that would theoretically not have to provide parking. Mrs. Friedman responded that this is an incentive for smaller projects that are looking to do adaptive reuse. Mrs. Friedman stated that this is an effective mechanism to get sites to convert their use to a more desirable use without meeting the parking requirements.

Mr. Stacer said that he considers it to be potentially dangerous to not require parking for new projects such as a large retail redevelopment project (100,000 square feet of retail).

Mr. Bird stated that this regulation has been in effect for 5 years and we have seen neither benefits nor deleterious effects. Mr. Bird used Delray Beach as an example of a City not requiring restaurants to provide additional parking and there were still new parking garages constructed. Mr. Stacer stated that he is still concerned about this concept. Mr. Bird suggested having staff come back before the Board with a separate report on this item. Mr. Stacer said that he is ok with this proposal.

Mrs. Aycock suggested staff look at the parking scheme in downtown Gainesville for ideas.

Mr. Klosiewicz complimented Mr. Bird and staff for their hard work regarding the reports on the moratorium uses.

E. AUDIENCE TO BE HEARD

Mr. Stacer asked if there was anyone in the audience who wished to speak and no one responded.

F. BOARD MEMBERS DISCUSSION

Mr. Stacer asked if the Board members had anything to discuss and there was no response.

G. REPORTS BY STAFF

Mr. Stacer asked if staff had anything to report and Ms. MacNeil announced that the next regularly scheduled meeting is December 16th, 2015.

H. ADJOURNMENT

MOTION made by Richard Klosiewicz and seconded by Dwight Evans to adjourn the meeting at 9:29pm; all voted in favor of the above motion.

Any person who decides to appeal any decision of the PLANNING AND ZONING BOARD/LOCAL PLANNING AGENCY with respect to any matter considered at this meeting will need a record of the proceedings and for such purpose 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. // kem

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Approved at the meeting held on January 27, 2016.

_____
Fred Stacer
Chairman
Planning and Zoning Board/Local Planning Agency

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pompano beach
Florida's Warmest Welcome

MEMORANDUM

Development Services

ADMINISTRATIVE MEMORANDUM NO. 15-621

DATE: November 19, 2015

TO: Planning and Zoning Board

VIA: Robin M. Bird, Director of Development Services

FROM: Karen Friedman, AICP, Principal Planner KBF

RE: Temporary Moratorium – Staff Reports

Staff has prepared reports and recommendations regarding several uses subject to the temporary Moratorium. A copy of each report and supporting text amendments is following.

Staff's Request
Staff is requesting the Board approve the recommended changes to the Zoning Code to the City Commission for adoption.

pompanobeachfl.gov 100 West Atlantic Boulevard | Pompano Beach, FL 33060 | Phone: 954-786-4600

Copy of Study

ALTERNATIVE FINANCING USES

Karen Friedman, AICP, Principal Planner

November 2015

Contents

- Introduction and Purpose
- What are "Alternative Financing" Uses?
- Current city regulations
- General Research
- Pictorial Review of existing establishments

Introduction and Purpose

Introduction and Purpose

Ordinance 2015-67, Temporary Moratorium on Check Cashing Stores and Pawn Shops

WHEREAS, the moratorium is intended to allow sufficient time to study the provision of these uses for the citizens of Pompano Beach and to create a long term strategy to ensure adequate access to such services is provided; and,

WHEREAS, the moratorium is intended to allow sufficient time to study the provision and location of these uses does not result in an over-concentration of these uses that will result in the blighting or downgrading of the surrounding neighborhood; and

WHEREAS, the moratorium is intended to allow sufficient time to study the provision of these uses to ensure that there is a balance between the existing residential uses and the projected demand for and location of these uses;

- Understand the issues related to these uses (and other alternative financing uses)
  - Understand the secondary effects of these uses
  - Provide an overview of national, state, and local regulations of these uses
- Where are these uses in the City?
  - Are the uses clustered?
- How should city regulate these uses?

What are *Alternative Financing* Uses

- Payday Loan providers
  - Payday loan is a small, short-term, unsecured, single-payment, consumer loan. The borrower writes a personal check to the lender, with the amount of the check equal to the loan amount plus the finance charge. The lender agrees to hold the check for a specified period of time (usually until the customer's next payday) before depositing it. The term of the loan is typically between seven and thirty days. The payday lending industry began in the mid-1990s, with roughly 200 stores throughout the United States between 2007-2010, storefront loan volume declined to approximately $30 billion. In 2010, through traditional and online channels, the payday lending industry had an approximate loan volume of $44.3 billion.7 Today, the industry shows tremendous growth through online lending.
  - 15 States and the District of Columbia prohibit Payday Lending
- Check cashing facilities
  - Check-cashing outlets cash checks in exchange for a fee that is typically a percentage of the face value of the check. Most of the checks that they cash are paychecks or government-issued checks. Fees charged for cashing these types of checks are a percent of the face value of the check. The number of check-cashing outlets grew rapidly from the early 1980s through the mid-1990s, and more slowly in recent years. The slowdown in growth over the past decade is at least partially attributable to a decline in demand for check-cashing services, as the share of wage payments and government transfer payments made by direct deposit has increased.
- Pawn Shops
  - Pawnshops make small, non-recourse loans collateralized by tangible personal property, such as jewelry, consumer electronics, tools, musical instruments or firearms. Pawnbrokers do not attempt to assess the creditworthiness of their customers; rather, they rely upon the estimated value of the collateral in making their loan decisions.
  - As of 2007, the number of pawnshops in the U.S. was estimated to be between 10,000 and 15,000.

City's Current Regulations

Payday Loan and Check Cashing:

- No separate use.
- Both are considered Bank or Financial Institution.
- Allowed in many Zoning Districts including RM-20, RM-30, and RM-45.

Pawnshop

- Separate Use
- Primarily limited to B-4 Zoning

155.4221. COMMERCIAL: RETAIL SALES AND SERVICE USES - PERSONAL SERVICES

C. Bank or Financial Institution

1. Districts Where Permitted

RS-1	RS-2	RS-3	RS-4	RS-L	RD-1	RM-7	RM-12	RM-20	RM-30	RM-45	MH-12	B-1	B-2	B-3	B-4
								S	S	S		P	P	P	P

M-1	CR	I-1	I-IX	OIP	M-2	TO	PR	CF	PU	T	BP	RPUD	PCD	PD-TO	LAC	PD-I
						P				P		P	P	P	P	P

2. Definition

A bank or financial institution is an establishment that provides retail banking services, mortgage lending, or similar financial services to individuals and businesses. This use type also includes those establishments engaged in the on-site circulation of cash money and check-cashing facilities, but does not include bail bond brokers.

155.4222. COMMERCIAL: RETAIL SALES AND SERVICE USES - RETAIL SALES

L. Pawn Shop

1. Districts Where Permitted

RS-1	RS-2	RS-3	RS-4	RS-L	RD-1	RM-7	RM-12	RM-20	RM-30	RM-45	MH-12	B-1	B-2	B-3	B-4
															P

M-1	CR	I-1	I-IX	OIP	M-2	TO	PR	CF	PU	T	BP	RPUD	PCD	PD-TO	LAC	PD-I
						P							P	P	P	P

2. Definition

A pawn shop is a business that advances funds to a person on the security of pledged tangible personal property on condition that the pledged property is left in the possession of the pawnbroker until redeemed by the pledger within an established default time period, after which title in unredeemed property vests in the pawnbroker, who may then sell the property.

General Research and Overview of National and Local Regulations

Including Municipal Zoning Regulations

Federal Reserve Board's "Determinants of the Locations of Payday Lenders, Pawnshops and Check-Cashing Outlets" (2009)

- This study examines the determinants of the locations payday lenders, pawnshops, and check-cashing outlets.
- Supporters of these uses argue that the firms locate in areas that are inadequately served by banks and other mainstream financial service providers, thereby fulfilling otherwise unmet needs of the residents of these neighborhoods.
- Critics argue that these firms prey upon disadvantaged segments of the population by strategically locating their stores in low-income, high-minority-population neighborhoods.
- Consistent with the prior research, this report found these uses are more prevalent in areas where a large percentage of the population is black or lacks a high school diploma.
- This report found that credit scores are found to be a strong predictor of concentration: counties where a larger percentage of the population has no credit score have a greater density of all three types of uses, while counties where a larger percentage of the population has a credit score that would place them in the subprime category have increased concentrations of both payday lenders and pawnshops.
- This finding suggests that these uses may simply locate where the demand for their services is likely to be greatest because a significant portion of the population does not qualify for more mainstream (and less expensive) forms of credit.

Federal Reserve Board's "Determinants of the Locations of Payday Lenders, Pawnshops and Check-Cashing Outlets" (2009)

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Graves, Steven M. "Landscapes of Predation, Landscapes of Neglect: A Location Analysis of Payday Lenders and Banks," *The Professional Geographer*, 55(3) 2003, pp. 303-317.

Shackman, Joshua D. and Glen Tenney. "The Effects of Government Regulations on the Supply of Pawn Loans: Evidence from 51 Jurisdictions in the U.S." *Journal of Financial Services Research*, 30(1), 2006, pp. 69-91.

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2006 / 2015 - Military Lending Act

Congress passed the Military Lending Act (MLA) in 2006 with bipartisan support to provide specific protections for active duty service members and their dependents in consumer credit transactions. In particular the Act was intended to help protect all active duty service members and their families from committing to loans with excessive fees and charges. This rule applies to all forms of payday loans, vehicle title loans, refund anticipation loans, deposit advance loans, installment loans, unsecured open-end lines of credit, and credit cards.

- Originally adopted in 2006 / Updated in 2015
- Applies to active-duty military personnel.
- Caps annual interest rates for consumer credit to military borrowers at 36 percent including all fees and charges, credit insurance premiums and other ancillary charges.
- Prohibits lender from securing a consumer credit loan to a military borrower with a personal check, debit authorization, wage allotment, or title to a vehicle.
- Requires written and oral disclosure of interest rates and payment obligations before loan is issued.
- Lenders cannot require that borrowers waive their right to legal recourse under any law, including the Service members Civil Relief Act.
- 2015 Update extends MLA protections, including the 36 percent Military Annual Percentage Rate (MAPR) cap, to a wider range of credit products, including credit cards.
- 2015 Update modifies the MAPR to include fees for credit-related ancillary products sold in connection with the credit transaction, finance charges associated with consumer credit, and certain application and participation fees.
- Also, for credit cards, the MAPR excludes certain fees if bona fide and reasonable.
- Prohibits all rollovers, renewals or refinances of payday loan transactions or other deferred presentment transactions by creditors other than banks, thrifts or credit unions.

2013 - Florida's Check Cashing Database

- FL SS Ch. 560, Money Services Businesses, regulates Check Cashing (cashing payment instruments) and Deferred Presentment Providers (payday loan lenders).
- In 2008 Ch. 560 was significantly updated to incorporate recommendations from the Senate Interim Project 2008-101, "Regulation of Money Services Businesses," the Office of Financial Regulation.
  - From Senate Staff report: *"Currently, Florida ranks first in the nation with respect to the total number of MSB firms, branches, and vendors (approximately 35,000) registered with the state regulator, the Office of Financial Regulation (office). In recent years, an increasing number of state and federal law enforcement actions have been taken against MSBs. Many of these actions have targeted those entities attempting to avoid the payments of state and federal taxes and workers' compensation premiums. Check cashers, in particular, can be used, knowingly or unknowingly, as facilitators of fraudulent insurance activity or money laundering activities."*
- In 2013 the Florida Legislature passed House Bill 217 which requires check cashers to log check cashing data into a statewide database for any check cashed in excess of $1,000.
- House Bill 217 was a result of a 2011 program by Florida's Chief Financial Officer, who convened the Money Service Business Facilitated Workers' Comp Fraud Work Group. This group consisted of regulators, Office of Financial Regulation, law enforcement, and industry stakeholders to study the issue of workers' compensation premium fraud, with particular regard to the role that check cashers play in facilitating the fraudulent schemes.
- The work group made a number of findings and recommendations, including the establishment of a statewide, real-time database for regulators and law enforcement to quickly and effectively detect and deter workers' compensation premium fraud. The work group recommended that the database interface with the Secretary of State's database for verifying corporate registration records and with the Department of Financial Services' database for verifying workers' compensation coverage.

2015 - U.S. Department of the Treasury's Financial Crimes Enforcement Network's Geographic Targeting Order

- Beginning on August 3, 2015 and ending on January 30, 2016
- Requiring check cashers located in Broward and Miami-Dade counties to obtain and record identifying information about persons cashing Federal tax refund checks in excess of $1,000
- South Florida has become a hotbed for stolen identity tax refund fraud. In a typical scheme, the criminal files a fraudulent tax return after stealing a victim's identity and then cashes the refund check at a local check casher. The criminal typically cashes the check using fake identification in an attempt to evade law enforcement.
- *"For the past several years, the State of Florida and IRS Criminal Investigation have seen a significant increase in Stolen Identity Refund Fraud cases," said Richard Weber, Chief, IRS Criminal Investigation. "One common thread in many investigations was the ability of criminals to cash tax refund checks with little fear of repercussion. Using this information from countless investigations, we felt that more needed to be done on the front end to prevent this type of crime from happening and to make it more difficult for criminals to successfully steal a person's identity. By issuing this Geographic Targeting Order, the Treasury Department has put a roadblock in the path of those who would steal another person's identity. This GTO will make it difficult for these criminals to reap the rewards of their actions and the end result will be fewer losses to the U.S. Treasury and taxpayers.*

National Regulations (page 1 of 2)

City	Definitions/ terminology	Dispersal, setback, and density requirements
Blue Springs, Missouri[127]	Short Term Loan Service	1,500 feet between uses; 200 feet from residential areas; 1,500 feet from schools, parks, and city limits; 1 per 4,500 population
Clark County, Nevada[129]	Check cashing	1,000 feet between uses; 250 feet from residential areas
Clayton, Ohio[130]	Payday loan business, title loan business	1,000 feet between uses; 1,000 feet from residential areas; 1,000 feet from schools, places of worship, and places selling alcohol
Irving, Texas[142]	Non-depository financial institutions, check cashing business, payday advance/loan business, car title loan business	1,000 feet between uses; 200 feet from residential areas; 500 feet from major highways
Kansas City, Missouri[143]	Short-term loan establishment	One mile between uses; 1,000 feet from landmark and historic districts
Layton City, Utah[144]	Title loan, payday loan, deferred deposit lending	1,500 feet between uses; 1 per 10,000 population

City	Definitions/ terminology	Dispersal, setback, and density requirements
Cuyahoga Falls, Ohio[135]	Advance or payday loan	1,000 feet between uses; 1 per 10,000 population
Des Moines, Iowa[136]	pawnbroker, delayed deposit services business	1/2 mile between uses; 250 feet from residential areas
Fairview Heights, Illinois[137]	Consumer Installment Loan Business	Maximum of 2
Gladstone, Missouri[138]	Payday loan business, title loan business	5,280 feet between uses; 200 feet from residential areas
Greenbay, Wisconsin[139]	Payday loan business, title loan business	5,000 feet between uses; 150 feet from residential areas
Greenville, South Carolina[140]	Check cashing establishment	
Hellertown, Pennsylvania[141]	Check cashing business	1,000 feet between uses; 1,000 feet from traditional banks
North Kansas City, Missouri[156]	Car title lenders, check cashing lenders, pay day lenders	
North Las Vegas, Nevada[157]	Deferred deposit loan, short-term loan, auto title loan, pawn shop	2,500 feet between payday loan uses; three miles between auto title lenders; 500 feet from residential areas
Norwalk, California[158]	Payday loan establishments	1,320 feet between uses; maximum of 8

National Regulations (page 2 of 2)

City	Definitions/ terminology	Dispersal, setback, and density requirements
Cleveland, Ohio[131]	Check cashing business	1,000 feet between uses; 1 per 20,000 population
Clinton, Mississippi[132]	Alternative financial services provider, pawn shops, check cashing businesses, cash for title stores, tax refund anticipation loan offices	500 feet between uses; 500 feet from residential areas; 500 feet from places of worship, schools, hospitals, parks, and playgrounds
Clive, Iowa[133]	Pawnbrokers, delayed deposit services	1,000 feet between uses; 1,000 feet from residential areas; 1,000 feet from day cares, schools, places of worship, and parks; 1,000 feet from adult businesses
Columbia, South Carolina[134]	Non-depository personal credit institutions	3,000 feet between uses
Overland Park, Kansas[162]	Payday loan business, title loan business	5,280 feet between uses; 200 feet from residential areas
Pima County, Arizona[163]	Non-chartered financial institution	1,320 feet between uses; 500 feet from residential areas

City	Definitions/ terminology	Dispersal, setback, and density requirements
Madison, Wisconsin[147]	Auto title loan, payday loan	5,000 feet between uses
Manassas, Virginia[148]	Short-term loan establishment, high impact business	750 feet from residential areas; 750 feet from adult businesses; 750 feet from places of worship, schools, parks, libraries, and ball fields
Mesa, Arizona[149]	Pawn shops, non-chartered financial institutions	1,200 feet between uses; 1,200 feet from schools
Mesquite, TX[150]	Non-depository institutions, alternative financial establishments, car title loan business, check cashing business, money transfer business, payday advance or loan business	1,000 feet between uses; 200 feet from residential areas; 500 feet from major highways
American Fork, Utah[124]	Check cashing business, payday loan business, title loan business, deferred deposit lender	5,280 feet between uses; 1 per 10,000 population
Avondale, Arizona[125]	Non-chartered financial services, pawnshops	1,320 feet between uses; 1,320 feet from adult business, bars, and night clubs

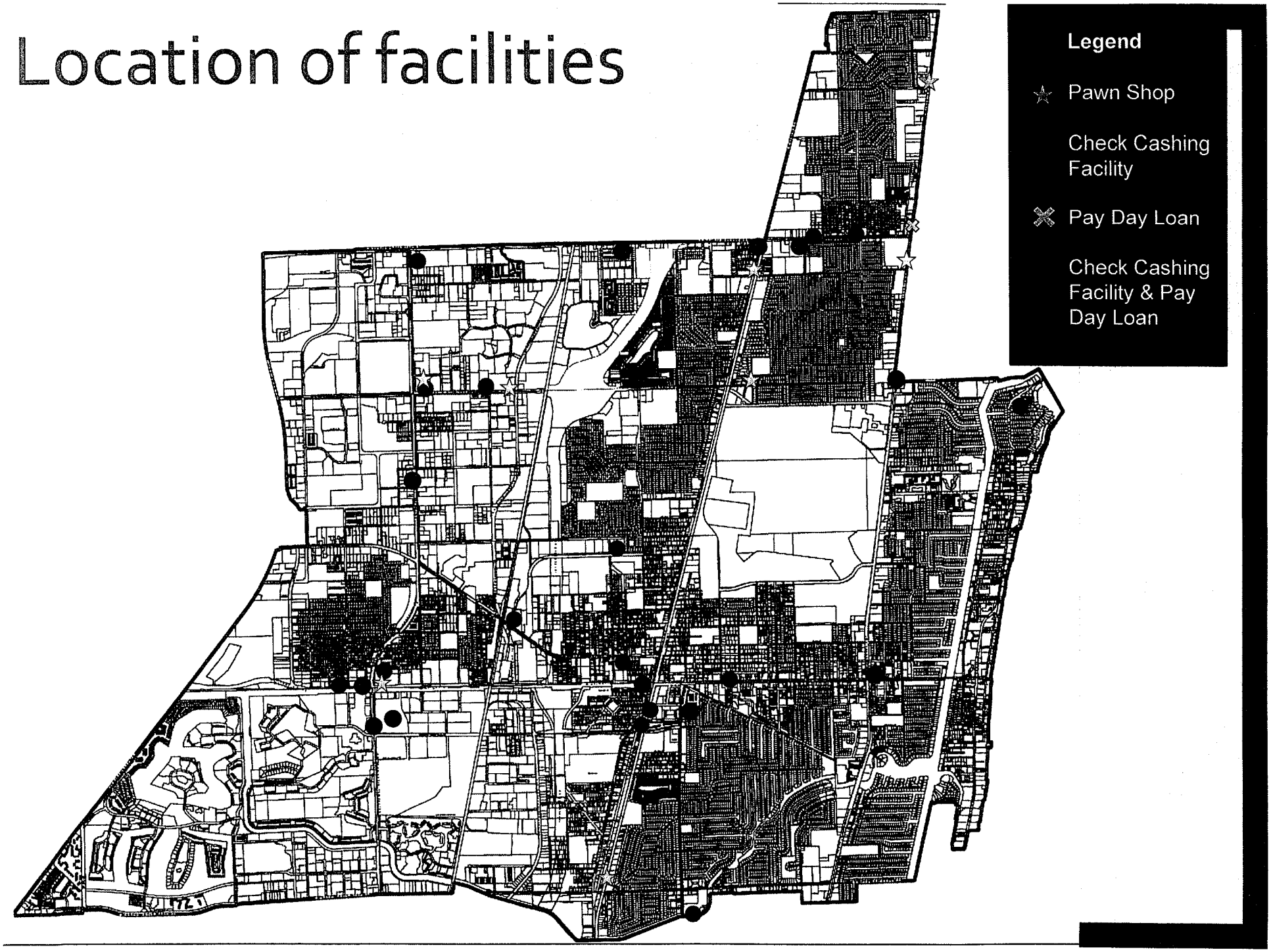
Florida Municipal Regulations

City	Use	Regulation
Boca Raton	Check Cashing, Pawn Shops	"Problematic uses" means commercial retail and service uses such as pawn shops, check cashing centers and blood plasma centers which are typically characterized by poorly maintained facilities, loitering and other indices of neighborhood deterioration or urban blight.
Dania Beach	Check Cashing, Pawn Shops	2,500 ft separation from similar use
Daytona Beach	Check Cashing, Pawn Shops	Prohibited in North Ridgewood Overlay District
Deerfield Beach	Check Cashing	Conditional Use in B-3 Zoning
Fort Walton Beach	Non-Chartered Financial Institutions	Within Downtown Design Overlay District, 1,000 ft separation from similar use
Holly Hill	Check Cashing	Prohibited on property on or within 250 ft of LPGA Blvd
Hollywood	Check Cashing, Pawn Shops	1,000 ft separation from similar use
Hollywood	Check cashing store, payday loans, Pawn Shops	Prohibited Use in North Federal Highway Commercial Zoning District
Lauderhill	Check cashing / Payday loan store	Prohibited Use
North Miami	Check Cashing	200 ft separation from residential use
North Miami	Check Cashing, Pawn Shops	Problematic uses mean commercial retail and service uses including, but not limited to, day labor, tattoo parlors, body piercing, pawn shops, check cashing centers and blood plasma centers which are typically characterized by poorly maintained facilities, loitering and other indicates of neighborhood deterioration or urban blight.
Orange County	Check Cashing, Pay Day Loans, Pawn Shops	Prohibited in South Orange Avenue Corridor Overlay District, Conway Road Corridor Overlay District, State Road 436/State Road 50 Corridor Overlay District
Orlando	Check Cashing, Pay Day Loans, Pawn Shops	Prohibited in Semoran Gateway Special Plan, Conway Road Special Plan, and Semoran Blvd. Special Plan
West Palm Beach	Check Cashing	Prohibited in Coleman Park districts
West Palm Beach	Pawn Shop	Requires approval by Planning and Zoning Board

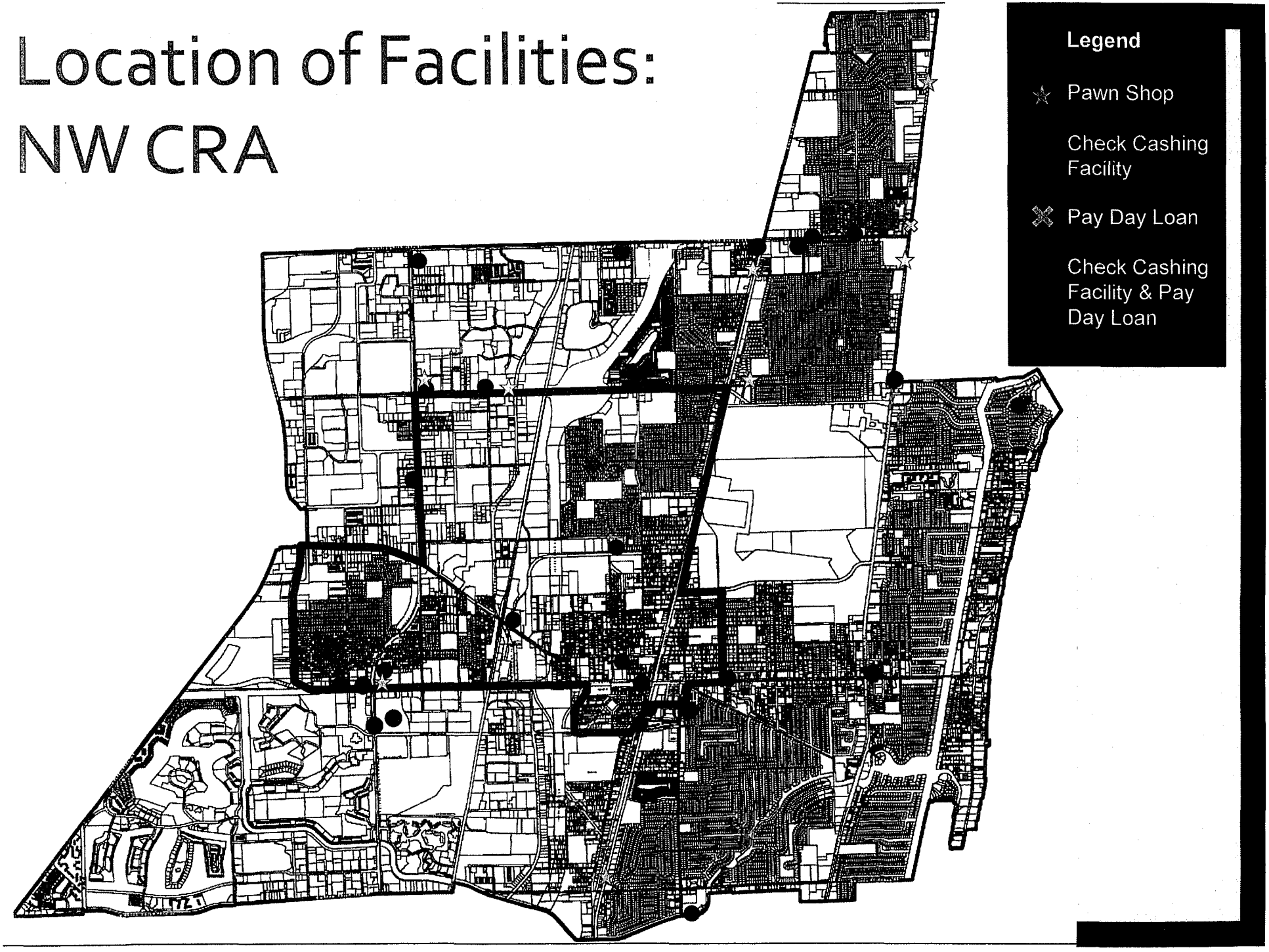
Location of Uses in Pompano Beach

A focus on Corridors

Location of facilities



Location of Facilities: NW CRA

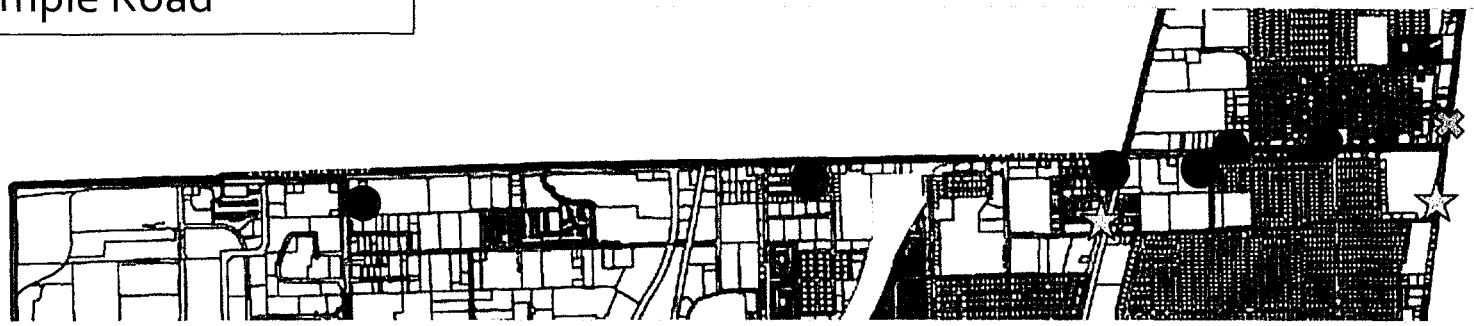


Corridors: East/West

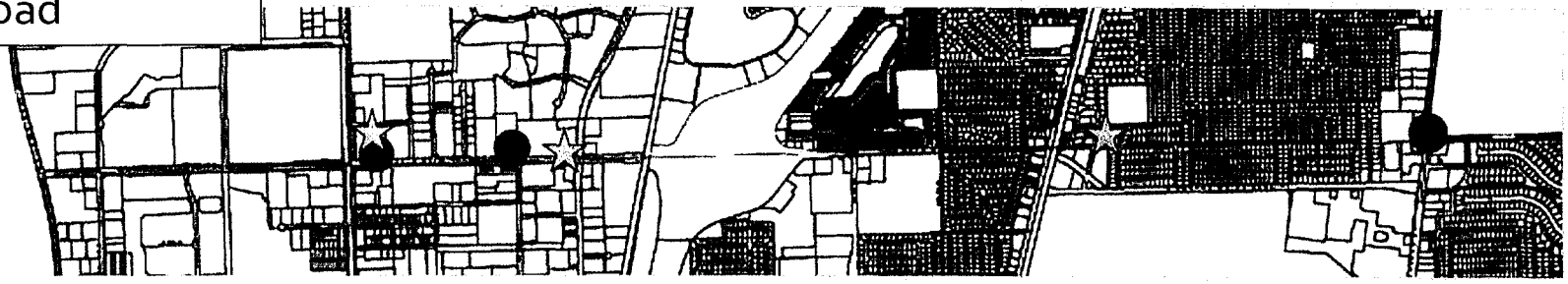
Legend

- Pawn Shop
- Check Cashing Facility
- Pay Day Loan
- Check Cashing Facility & Pay Day Loan

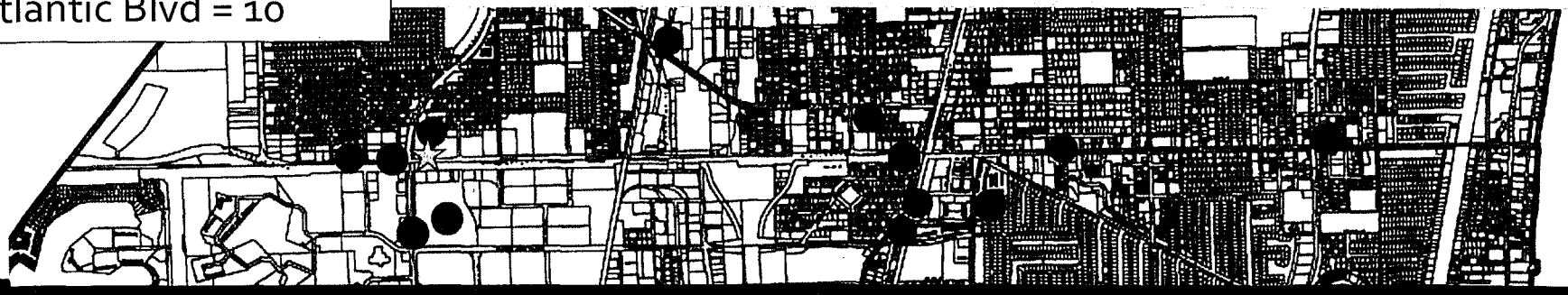
Sample Road



Copans Road

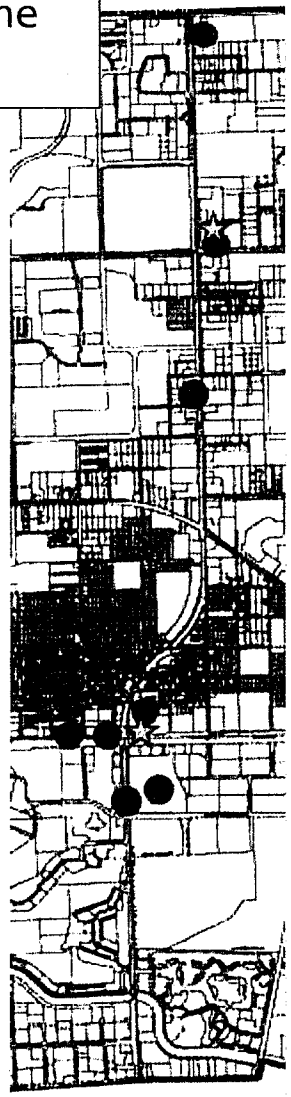


Atlantic Blvd = 10



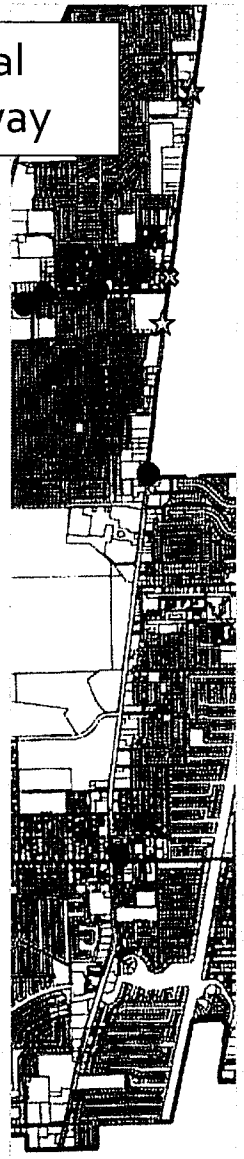
Corridors: North / South

Powerline Road



Dixie Highway

Federal Highway



Legend

- Pawn Shop
- Check Cashing Facility
- Pay Day Loan
- Check Cashing Facility & Pay Day Loan

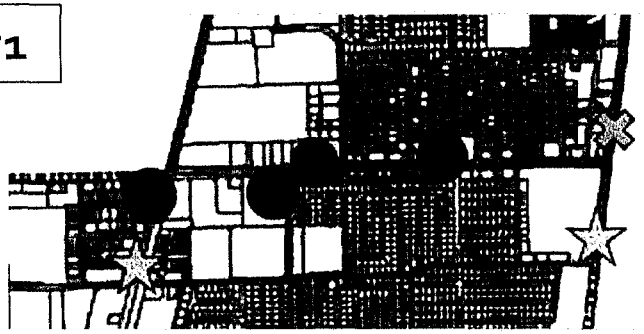
Corridors: Clusters

1. Sample Rd; Dixie Highway to Federal Highway
2. Copans Rd; Powerline Road to Andrews Avenue
3. Intersection of Atlantic Boulevard & Powerline Road
4. Intersection of Atlantic Boulevard & Dixie Highway

Legend

- ☆ Pawn Shop
- Check Cashing Facility
- ✖ Pay Day Loan
- Check Cashing Facility & Pay Day Loan

#1



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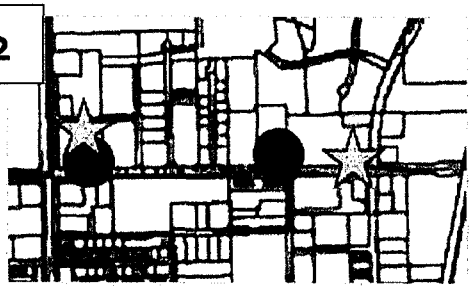

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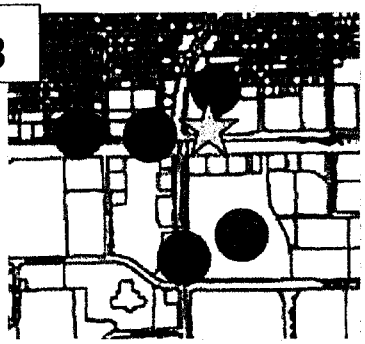

#4

Outcomes and Recommendations

Outcomes

- There is a wealth of research detailing the problematic impacts of alternative financing uses
- There is a wealth of research detailing the tendency of these uses to locate in blighted areas and in adjacency to vulnerable populations (low-income, minority, or military)
- Mapping of the location of these uses indicate they are clustered in four primary locations in the city, three of which are in or directly adjacent to the NW CRA

Recommendations

- Create a new use called "Check Cashing or Payday Loan Store"
  - Modify definition of Bank to exclude these uses
- Prohibit Check Cashing or Payday Loan Stores from AOD and DPOD
  - Pawn Shops are already prohibited
- Require separation of 1,000 ft between all uses i.e.
  - A Check Cashing Store would need to be 1,000 ft from another Check Cashing Store, a Payday Loan Store, and a Pawn Shop

155.3703. ATLANTIC BOULEVARD OVERLAY DISTRICT (AOD)

C. Modified Use Standards

2. Prohibited Uses

a. Prohibited Principal Uses.

m. Check Cashing or Payday Loan Store

§ 155.4221. COMMERCIAL: RETAIL SALES AND SERVICE USES – PERSONAL SERVICES

C. BANK OR FINANCIAL INSTITUTION

2. Definition

A bank or financial institution is an establishment that provides retail banking services, mortgage lending, credit union services, or similar financial services to individuals and businesses. ~~This use type also includes those establishments engaged in the on-site circulation of cash money and check cashing facilities, but does not include bail bond brokers.~~ Accessory uses may include automated teller machines (ATMs) and facilities providing drive-through service. This use does not include a business commonly referred to as a check cashing store or payday loan store.

M. CHECK CASHING OR PAYDAY LOAN STORE

1. Districts Where Permitted

RS-1	RS-2	RS-3	RS-4	RS-L	RD-1	RM-7	RM-12	RM-20	RM-30	RM-45	MH-12	B-1	B-2	B-3	B-4
												S	S	P	P

M-1	CR	I-1	I-IX	OIP	M-2	TO	PR	CF	PU	T	BP	RP UD	PCD	PD-TO	LAC	PD-I
													P		P	P

2. Definition

A check cashing or payday loan store is an establishment subject to regulation by FL SS Chapter 560, Money Services Businesses, and that provides check cashing and/or deferred presentment transactions.

3. Standards

A check cashing or payday loan store shall be located at least 1,000 feet from another check cashing or payday loan store or from a pawn shop.

§ 155.4222. COMMERCIAL: RETAIL SALES AND SERVICE USES – RETAIL SALES

L. PAWN SHOP

3. Standards

A pawn shop shall be located at least 1,000 feet from another pawn shop or from a check cashing or payday loan store.

ALTERNATIVE FINANCING USES

Karen Friedman, AICP, Principal Planner

November 2015

§ 155.4221. COMMERCIAL: RETAIL SALES AND SERVICE USES – PERSONAL SERVICES

. . .

C. BANK OR FINANCIAL INSTITUTION

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												S	S	P	P

M-1	CR	I-1	I-IX	OIP	M-2	TO	PR	CF	PU	T	BP	RPUD	PCD	PD-TO	LAC	PD-I
													P		P	

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§ 155.4222. COMMERCIAL: RETAIL SALES AND SERVICE USES – RETAIL SALES

. . .

L. PAWN SHOP

. . .

3. Standards

A pawn shop shall be located at least 1,000 feet from another pawn shop or from a check cashing or payday loan store.

§ 155.5102 OFF-STREET PARKING AND LOADING

D. OFF-STREET PARKING SPACE REQUIREMENTS

1. Minimum Number of Off-Street Parking Spaces

. . .

TABLE 155.5102.D.1: MINIMUM NUMBER OF OFF-STREET PARKING SPACES		
Use Category	**Use Type**	**Minimum Number of Parking Spaces**
. . .		
Retail Sales and Service Uses - Personal Services	. . .	
	Check Cashing or Payday Loan Store	1 per 300 sq ft
	. . .	

ARTICLE 9: DEFINITIONS AND INTERPRETATION

. . .

PART 5 TERMS AND USES DEFINED

The following words, terms, and phrases, when used in this Code, shall have the meaning ascribed to them in this section.

. . .

BANK OR FINANCIAL INSTITUTION

An establishment that provides retail banking services, mortgage lending, credit union services, or similar financial services to individuals and businesses. ~~This use type also includes those establishments engaged in the on-site circulation of cash money and check-cashing facilities, but does not include bail bond brokers.~~ Accessory uses may include automated teller machines (ATMs) and facilities providing drive-through service. This use does not include a business commonly referred to as a check cashing store or payday loan store.

. . .

CHECK CASHING OR PAYDAY LOAN STORE

An establishment subject to regulation by FL SS Chapter 560, Money Services Businesses, and that provides check cashing and/or deferred presentment transactions.

APPENDIX A: CONSOLIDATED USE TABLE

P = PERMITTED PRINCIPAL USE S = USE ALLOWED AS A SPECIAL EXCEPTION A = PERMITTED ACCESSORY USE
T = TEMPORARY USE ALLOWED WITH A MAJOR TEMPORARY USE PERMIT t = TEMPORARY USE ALLOWED WITH A MINOR TEMPORARY USE PERMIT
√ = TEMPORARY USE ALLOWED WITHOUT TEMPORARY USE PERMIT
I = INTERIM USE ALLOWED WITH AN INTERIM USE PERMIT BLANK CELL = PROHIBITED USE

USE CATEGORY (PRINCIPAL USES) AND/OR USE TYPE		RESIDENTIAL DISTRICTS												COMMERCIAL DISTRICTS						INDUSTRIAL DISTRICTS				SPECIAL DISTRICTS						PLANNED DEVELOPMENT DISTRICTS					USE-SPECIFIC STANDARDS
		RS-1	RS-2	RS-3	RS-4	RS-L	RD-1	RM-7	RM-12	RM-20	RM-30	RM-45	MH-12	B-1	B-2	B-3	B-4	M-1	CR	I-1	I-IX	OIP	M-2	TO	PR	CF	PU	T	BP	RPUD	PCD	PD-TO	LAC	PD-I	
COMMERCIAL USES																																			
***																																			
Retail Sales and Service Uses - Personal Services	Check Cashing or Payday Loan Store													S	S	P	P														P		P		155.4221.M

Copy of Ord. 2015-67

ORDINANCE NO. 2015-67

CITY OF POMPANO BEACH
Broward County, Florida

AN ORDINANCE OF THE CITY OF POMPANO BEACH, FLORIDA, PROVIDING FOR IMPOSITION OF A MORATORIUM ON ISSUANCE OF DEVELOPMENT ORDERS AND PERMITS AND ON THE PROCESSING OF APPLICATIONS RELATING TO HEALTH CARE USES, CHECK CASHING STORES, CONVENIENCE STORES, LIQUOR OR PACKAGE STORES, PAWN SHOPS , THRIFT SHOPS AND DORMITORIES WITHIN THE CITY; PROVIDING FOR VESTED RIGHTS; APPEALS; AND EXHAUSTION OF ADMINISTRATIVE REMEDIES; PROVIDING FOR A SIX (6) MONTH TERM TO BE EXTENDED IF NECESSARY BY THE CITY COMMISSION; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Commission and the City's Planning and Zoning Board, the Local Planning Agency, have previously undertaken the necessary studies and adopted a Comprehensive Plan to guide and control growth in the City; and,

WHEREAS, the goals, objectives and policies contained within the City's adopted Comprehensive Plan require that the City:

i. Annually review and periodically update adopted land development regulations and established procedures that encourage the elimination or reduction of uses inconsistent with the City's character and Future Land Use Plan. (Future Land Use Element - Objective Inconsistent Land Uses - 01.03.00)

ii. Support and promote hotels, motels and other tourist accommodations in designated residential, commercial and commercial recreation land use designations. (Future Land Use Element – Policy - 01.03.10)

iii. Encourage the adoption of innovative land development regulations. Adopt new land use designations for Residential, Mixed Use, Transportation Oriented Districts, Transportation

Oriented Corridors and amend the land development regulations, including the creation of new zoning districts for these land use designations. (Future Land Use Element - Objective New Land Use Regulations - 01.07.00)

iv. Continually review and amend new land use designations for Residential, Mixed Use and Transportation Oriented Districts. (Future Land Use Element - Policy - 01.07.02)

v. Through ongoing updates to the land development regulations revise prohibited and permitted uses in the commercial, industrial and non-residential zoning districts. (Future Land Use Element - Policy - 01.07.07)

vi. Follow the recommendation of the Community Redevelopment Plans in all Land Use Plan amendments and rezonings. (Future Land Use Element – Community Redevelopment - 01.08.01)

vii. Redevelopment activities in the Community Redevelopment Areas shall be guided by their respective Community Redevelopment Plans, adopted pursuant to Chapter 163, Part III, Florida Statutes. (Future Land Use Element - Policy - 01.11.03)

viii. Establish criteria which encourage development of urban infill and community redevelopment areas to promote economic development, increase housing opportunities and maximize the use of existing public facilities and services. (Future Land Use Element - Objective Urban Infill Criteria - 01.12.00);

and,

WHEREAS, the City of Pompano Beach contains two (2) Community Redevelopment Areas: the West Pompano Beach District CRA, also known as the NW CRA, a 3,000 acre area established in 1989, and the East Pompano Beach District CRA, a 158 acre area, that was established in 2001; and

WHEREAS, the NW CRA and the EAST CRA areas were established for the purpose of removing existing slum and blight conditions and provide economic benefits to the City's residents; and

WHEREAS, the East CRA area encompasses the majority of lands contained within the Atlantic Boulevard Overlay District (AOD) and the NW CRA area encompasses the Transit Oriented Corridor District (TOC); and

WHEREAS, the City adopted land development regulations for the AOD and the TOC; and

WHEREAS, the projects and programs of the City's Community Redevelopment Agency in the East CRA and in the NW CRA are designed to solve underlying problems that have a blighting influence on the redevelopment areas as further expressed in East CRA Redevelopment Plan and in the NW CRA Redevelopment Plan; and

WHEREAS, the AOD encompasses the Atlantic Boulevard Corridor which was included in a 2008 Urban Land Institute Technical Advisory Panel wherein the ULI recommended medium density, mixed-use development on Atlantic Boulevard; lower-scale development between the medium density and single family; creating great public spaces that exemplify and promote pedestrian activity; maintaining a small town feel and encouraging smaller scale (not big box) uses; and

WHEREAS, the AOD was also the subject of the City's Beach Master Plan which was approved in September 2008, which included measures for the restoration of the dune system along the public beach; streetscape improvements and realignment for Pompano Beach Boulevard; streetscape improvements for the east end of Atlantic Boulevard; a mixed use project and parking garage with 500 parking spaces; a new Fire Station, Library and upgrades to North Riverside Drive Park; and

WHEREAS, the City's Community Redevelopment Agency adopted an East Financing and Implementation Plan, which sets forth financial resources required and necessary for the

CRA to attain its redevelopment goals in the East CRA, which includes the majority of the AOD area; and

WHEREAS, the City's Community Redevelopment Agency adopted a Northwest Financing and Implementation Plan, which sets forth financial resources required and necessary for the CRA to attain its redevelopment goals in the NW CRA; and

WHEREAS, in its adopted Comprehensive Plan, the City identified "Major Issue No. 5: City Sense of Place" wherein the City expressed that there is a unique opportunity for the City to capitalize on its key transportation corridors, its major attractions and the Northwest and East Redevelopment CRA's to improve on its sense of place; and

WHEREAS, the City also adopted a Strategic Plan for the City of Pompano, wherein the City adopted the following strategies in support of the CRA redevelopment plans:

i. 2.0 Tourism: Make the City more attractive to residents, visitors and tourists and expand visitor and tourism markets.

ii. 5.0 Corridor Redevelopment: Enhance Corridor Redevelopment

5.1 Begin implementation of corridor studies and plans for Federal Highway, Atlantic Boulevard and Dixie Highway

5.2 Promote Class A office space development on Atlantic Boulevard near I-95 and along the Dixie corridor

5.3 Support and facilitate development of an education corridor along MLK

5.4 Improve overall aesthetic appearances

iii. 6.0 CRA Redevelopment: Enhance CRA area redevelopment

6.1 Expand CRA incentive programs

WHEREAS, the City has contracted with The Renaissance Planning Group to prepare corridor studies for Atlantic Boulevard, Dixie Highway and Federal Highway to identify

elements crucial to economic development and redevelopment along these major city transportation corridors; and

WHEREAS, the Zoning Code of the City of Pompano Beach, is designed to promote health, and general welfare, and to promote adequate light and air, and to prevent the overcrowding of land, and to avoid the undue concentration of population, and to facilitate adequate transportation, water, sewage treatment, schools, parks and other public requirements; and

WHEREAS, the process of growth and change within the City requires the continuing analysis of living and working conditions; and

WHEREAS, the health, safety and welfare of the citizens of Pompano Beach are proper and necessary for the consideration of the City Commission; and

WHEREAS, the continual flux of patterns in the urban community requires intensive restudy of areas of the community; and

WHEREAS, the changing patterns often cause existing zoning districts to become outdated, inequitable, unbalanced and inappropriate as applied; and

WHEREAS, it is in the public interest to make a determination as to whether existing zoning uses are appropriate where it appears that changing patterns have cast doubt on their propriety; and

WHEREAS, it is in the public interest to review the Zoning Code so as to ensure that the City's economic redevelopment efforts are not frustrated due to a proliferation of incompatible uses; and

WHEREAS, it is in the public interest to protect the substantial financial investment the City has made in recent years to promote economic redevelopment; and

WHEREAS, the moratorium is intended to allow sufficient time to study the provision of these uses for the citizens of Pompano Beach and to create a long term strategy to ensure adequate access to such services is provided; and

WHEREAS, the moratorium is intended to allow sufficient time to study the provision and location of these uses in a manner that does not result in an over-concentration of these uses that will further result in the blighting or downgrading of the surrounding neighborhood; and

WHEREAS, the moratorium is intended to allow sufficient time to study the provision of these uses to ensure that there is a balance between the existing residential uses and the projected demand for and location of these uses; and

WHEREAS, the moratorium is also intended to allow sufficient time to study the provision of these uses within the AOD and the DPOD, TOC, East CRA, NW CRA, corridors connecting the CRA areas and the corridors being studied by The Renaissance Planning Group and to determine the impact of these uses on the economic redevelopment efforts included in the City's Comprehensive Plan, the City's Community Redevelopment Plans, the CRA East Financing and Implementation Plan, the CRA NW Financing and Implementation Plan, the City's Beach Master Plan, and the City's Strategic Plan; and

WHEREAS, while the study conducted by The Renaissance Planning Group will address the City's major transportation corridors, additional studies are needed to address the impact of permitted and prohibited uses in the City; and

WHEREAS, the City desires to ensure, while necessary studies are presently underway for the formulation and implementation of remedial measures referenced herein, that additional Applications, Orders and Permits, as specified in the City's Code of Ordinances ("CODE") listed

below not be processed or issued in the City within the scope of the moratorium which is described herein:

> Health Care Uses (Code Sec. 155.4209), Check Cashing Store (Code Sec. 155.4221.C), Convenience Store (Code Sec. 155.4222.F), Liquor or Package Store (Code Sec. 155.4222.K), Pawn Shop (Code Sec. 155.4222.L), Thrift Shop (Code Sec. 155.4222.M) and Dormitory (Code Sec. 155.4303.II);

and

WHEREAS, in accordance with Florida Statutes, Section 166.041 (3)(c)2, advertisement in accordance with said statute have been published in a newspaper of general paid circulation in the City of Pompano beach and of general interest and readership in the community, notifying the public of two public hearings on this proposed Ordinance; and

WHEREAS, two public hearings have been held pursuant to said published hearings and all persons so desiring had the opportunity to be and were, in fact, heard; now therefore,

BE IT ENACTED BY THE CITY OF POMPANO BEACH, FLORIDA:

SECTION 1. Moratorium Imposed; Applicability.

A. During the time that this Ordinance is in effect as specified herein, there shall be a moratorium upon the acceptance of applications and the issuance of Development Orders and Permits, as defined in Section 163.3164, Florida Statues, (collectively "Development Orders") approving Health Care Uses (Code Sec. 155.4209), Check Cashing Store (Code Sec. 155.4221.C), Convenience Store (Code Sec. 155.4222.F), Liquor or Package Store (Code Sec. 155.4222.K), Pawn Shop (Code Sec. 155.4222.L), Thrift Shop (Code Sec. 155.4222.M) and Dormitory (Code Sec. 155.4303.II).

SECTION 2. Vested Rights.

A. Nothing in this Ordinance shall be construed or applied to abrogate the vested right of a property owner to complete development where the property owner demonstrates each of the following:

1. A governmental act of development approval obtained prior to the effective date of this Ordinance; and

2. Upon which the owner has detrimentally relied, in good faith, by making such a substantial change in position or incurring such extensive obligations and expenses; and

3. That it would be highly inequitable to deny the property owner the right to complete development.

B. Except as provided by paragraph (C) below, any property owner claiming to have vested rights under this Section must file an application with the City Manager for a vested rights determination within thirty (30) days after the effective date of this Ordinance. The application shall be accompanied by a fee of $600.00 and contain a sworn statement as to the basis upon which the vested rights are asserted, together with documentation required by the City Manager and other documentary evidence supporting the claim. The City Manager shall review the application and, based upon the evidence submitted, shall make a determination as to whether the property owner has established vested rights. The City Manager's decision shall be subject to appeal by the applicant for vested rights determination or by a third party claiming to be adversely affected by the City Manager's decision, provided that the third party can demonstrate a legally recognizable interest which is or will be affected by the decision and that such interest, which while it may be shared in common generally with other members of the community, is definite and exceeds in degree the general interest in the community good shared by all persons. Such appeals may be made to the City Commission by notice of appeal filed with the City

Manager within ten (10) days after the City Manager's written decision. In the event of a timely appeal, the City Commission shall hold a public hearing on appeal and, based upon the evidence submitted, shall make a determination as to whether or not the property owner has established vested rights. To the extent that a property owner demonstrates vested rights, the moratorium shall not be applied to that owner.

C. Any property owner establishing vested rights under this Section shall not be subject to this moratorium and shall be authorized to apply for Orders, and Permits in accordance with a Vested Rights Determination Agreement to be executed by the City and the property owner. A copy of the Vested Rights Determination Agreement shall be filed with the City Clerk, accompanied by a letter which references this paragraph (C) within Forty-five (45) days after the effective date of the City Commission's determination under this Section.

SECTION 3. Appeals. Appeals from final decision by the City Commission under Section 2 of this Ordinance shall be by the filing of a Petition for Certiorari in the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County in accordance with the Florida Rules of Appellate Procedure for the review of the quasi-judicial rulings of municipalities.

SECTION 4. Exhaustion of Administrative Remedies. No property owner claiming that this Ordinance as applied constitutes or would constitute a temporary or permanent taking of private property or an abrogation of vested rights may pursue such claim unless he or she has first exhausted all administrative remedies provided for in Section 2.

SECTION 5. Term. The moratorium imposed by this Ordinance is temporary and, unless dissolved earlier by the City, shall automatically dissolve in six (6) months from the effective date of this Ordinance unless otherwise extended in accordance with applicable law.

The moratorium may be reasonably extended, if, necessary, by Ordinance of the City Commission.

SECTION 6. Conflicts. All Sections or parts of Sections of the Code of Ordinances, all Ordinances or parts of Ordinances, and all Resolutions, or parts of Resolutions, in conflict with this Ordinance are repealed to the extent of such conflict.

SECTION 7. Severability. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decisions shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

SECTION 8. Effective Date. This Ordinance shall become effective upon passage.

PASSED FIRST READING this 23rd day of June, 2015.

PASSED SECOND READING this 14th day of July, 2015.

LAMAR FISHER, MAYOR

ATTEST:

ASCELETA HAMMOND, CITY CLERK

GBL/tal/ds:jrm
7/15/2015
l:ord/2015-367a

PowerPoint Presentation for the City Commission Hearing

ALTERNATIVE FINANCING USES

City Commission Hearing

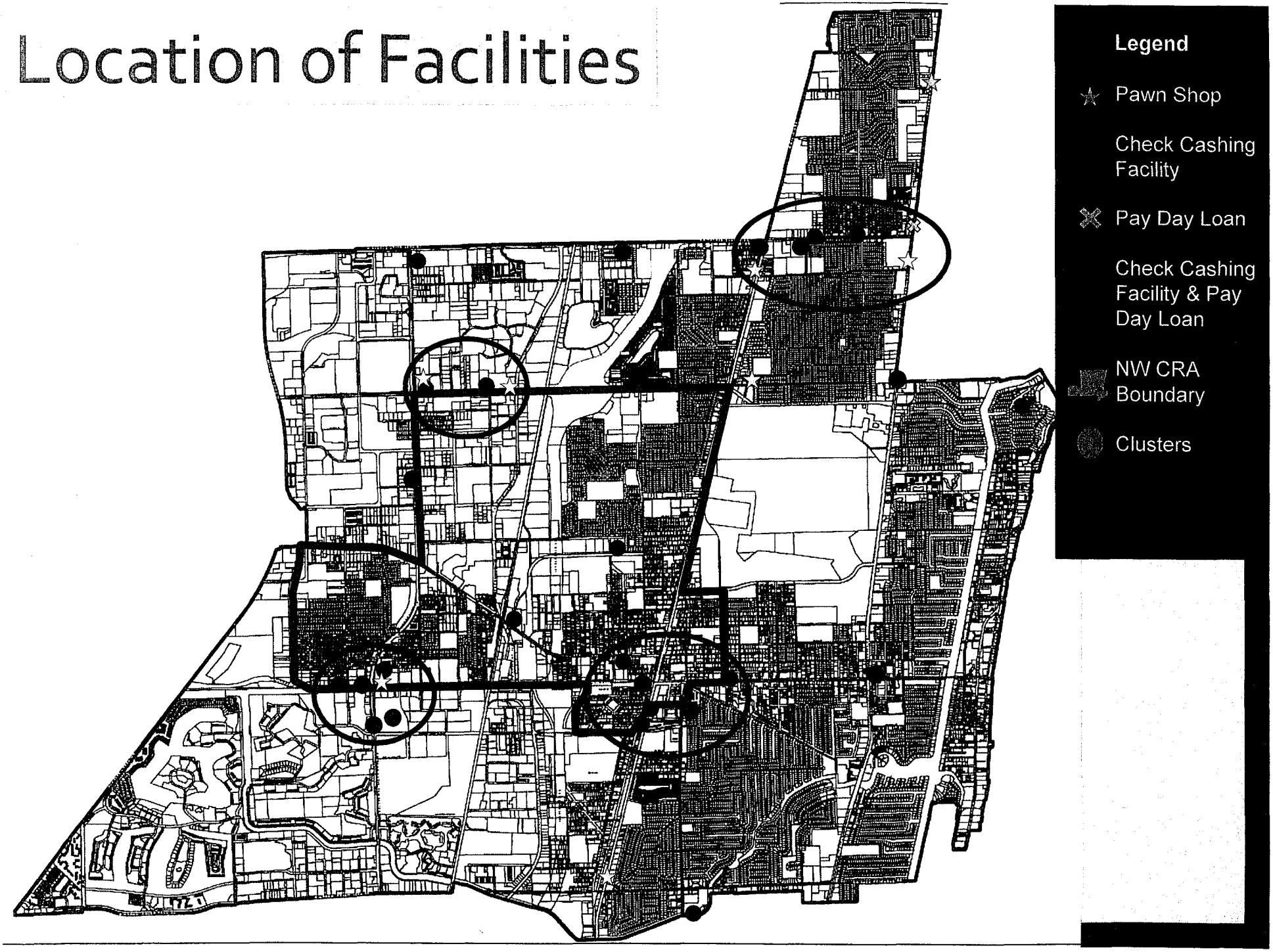
February 9 ,2016

Alternative Financing Uses

- Payday Loan providers
- Check cashing facilities
- Pawn Shops

- Wealth of research detailing the problematic impacts of alternative financing uses
  - Federal Reserve Board's "Determinants of the Locations of Payday Lenders, Pawnshops and Check-Cashing Outlets" (2009)
  - 2006 / 2015 – U.S. Military Lending Act
  - 2013 - Florida Legislature passed House Bill 217 which requires check cashers to log check cashing data into a statewide database for any check cashed in excess of $1,000.
  - 2015 - U.S. Department of the Treasury's Financial Crimes Enforcement Network's Geographic Targeting Order
- Wealth of research detailing the tendency of these uses to cluster in blighted areas and/or in adjacency to vulnerable populations
- Mapping of the location of these uses indicate they are clustered in four primary locations in the city, three of which are in or directly adjacent to the NW CRA

Location of Facilities



Recommendations

Check Cashing / Payday Loan

- Create a new use called "Check Cashing or Payday Loan Store"
- Require Special Exception approval in B-1 and B-2 Districts
- Prohibit use in AOD and DPOD
- Require 1,000 ft separation from other check cashing or pay day loan stores
- Require 1,000 ft separation from pawn shops

Pawn Shop

- Continue to prohibit in AOD and DPOD
- Require 1,000 ft separation from other check cashing or pay day loan stores
- Require 1,000 ft separation from pawn shops

Meeting Date: March 8, 2016 Agenda Item 16

REQUESTED COMMISSION ACTION:

Consent	X Ordinance	Resolution	Consideration/ Discussion	Presentation
____	____	____	____	____

SHORT TITLE

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH AMENDING CHAPTER 155 "ZONING CODE", BY AMENDING SECTION 155.4222, "COMMERCIAL: RETAIL SALES AND SERVICE USES – RETAIL SALES"; BY AMENDING SECTION 155.4227 "INDUSTRIAL: MANUFACTURING AND PRODUCTION USES"; BY AMENDING SECTION 155.4303, "STANDARDS FOR SPECIFIC ACCESSORY USES AND STRUCTURES"; BY AMENDING SECTION 155.4501, "SEPARATION REQUIREMENTS FOR ALCOHOLIC BEVERAGE ESTABLISHMENTS"; BY AMENDING SECTION 155.5102, "OFF-STREET PARKING AND LOADING"; BY AMENDING PART 5, "TERMS AND USES DEFINED"; BY AMENDING APPENDIX A: "CONSOLIDATED USE TABLE"; PROVIDING SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

Summary of Purpose and Why:

In order to allow sufficient time to study the provision of liquor or package stores and convenience stores in the City, on July 14, 2015 the City Commission adopted Ordinance 2015-67, which enacted a temporary moratorium on these uses. Staff has undertaken the study and has prepared text amendments based on the findings of the study (A copy of the study is attached). The proposed text amendments create a separate use for the sales of beer or wine, establish standards to better distinguish between a convenience store and a beer or wine store, create two categories of liquor stores, address the retail sales of liquor at bars, require special exception approval for beer or wine stores and liquor stores in the B-1, B-2, and B-3 Zoning Districts, and amend the list of alcoholic beverage uses that are exempt from separation standards. Staff will present a brief PowerPoint presentation highlighting the proposed recommendations; a copy of which is included at the end of the back-up for this item. The text amendments were unanimously recommended at the November 30, 2015 Planning and Zoning Board meeting (A copy of the draft minutes from the meeting are included.).

(1) Origin of request for this action: Development Services Dept.
(2) Primary staff contact: Robin M. Bird/ Karen Friedman KBF Ext. 7792
(3) Expiration of contract, if applicable: N/A
(4) Fiscal impact and source of funding: N/A

DEPARTMENTAL COORDINATION	DATE	DEPARTMENTAL RECOMMENDATION	DEPARTMENTAL HEAD SIGNATURE
Dev. Services	11/19/2015	Approval JD	Memo #15-621
City Attorney	01/26/2016	Approval 1/28/16	Memo #2016-436
X Planning and Zoning Board		Approval	Memo #15-076 (01/11/2016)
X City Manager			

Ordinance		Resolution		Consideration	
Workshop					
1st Reading	2/9/16	1st Reading		Results:	Results:
Approved-	2/23/16-Approved				
2nd Reading	3/8/16				

G:\Zoning 2009\Code Rewrite\Code Amendments\Moratorium - June 2015\CC - Feb 9 2016 - Text Amendments\CC Agenda sheet_Liquor.doc

City Attorney's Communication #2016-436

January 26, 2016

TO: Karen Friedman, AICP, Principal Planner

FROM: Carrie L. Sarver, Assistant City Attorney

RE: Ordinance Amending Section 155, Zoning Code

As requested, the following form of Ordinance, relative to the above-referenced matter, has been prepared and is attached:

AN ORDINANCE AMENDING CHAPTER 155, "ZONING CODE," OF THE CODE OF ORDINANCES OF THE CITY OF POMPANO BEACH, FLORIDA, BY AMENDING SECTION 155.4222, "COMMERCIAL: RETAIL SALES AND SERVICE USES – RETAIL SALES," TO PROVIDE STANDARDS FOR GROCERY AND CONVENIENCE STORES; TO MODIFY THE PERMITTED LOCATIONS FOR, THE DEFINITION OF, AND STANDARDS FOR LOCAL LIQUOR OR PACKAGE STORES, REGIONAL LIQUOR OR PACKAGE STORES AND BEER OR WINE STORES; BY AMENDING SECTION 155.4227, "INDUSTRIAL: MANUFACTURING AND PRODUCTION USES" TO AMEND THE DEFINITION OF FOOD AND OR BEVERAGE PRODUCTS MANUFACTURING; BY AMENDING SECTION 155.4303, "STANDARDS FOR SPECIFIC ACCESSORY USES AND STRUCTURES," TO AMEND THE DEFINITION OF ALCOHOLIC BEVERAGE SALES AS AN ACCESSORY USE TO A BREWERY, WINERY OR DISTILLERY AND PROVIDE FOR DISTRICTS WHERE PERMITTED; AMENDING THE DEFINITION OF PACKAGE SALES AS AN ACCESSORY USE TO A BAR OR LOUNGE AND PROVIDING FOR DISTRICTS WHERE PERMITTED; BY AMENDING SECTION 155.4501, "SEPARATION REQUIREMENTS FOR ALCOHOLIC BEVERAGE ESTABLISHMENTS," TO AMEND THE USES THAT ARE EXEMPT FROM SEPARATION REQUIREMENTS; BY AMENDING SECTION 155.5102, "OFF-STREET PARKING AND LOADING" TO AMEND THE MINIMUM NUMBER OF OFF-STREET PARKING SPACES FOR VARIOUS ALCOHOL BEVERAGE ESTABLISHMENTS; BY AMENDING PART 5, "TERMS AND USES DEFINED," BY REVISING TERMS USED OR REFERENCED IN THIS ORDINANCE; BY AMENDING APPENDIX A: "CONSOLIDATED USE TABLE," TO REVISE TABLE TO CONFORM TO AMENDMENTS MADE BY THIS ORDINANCE; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

Please carefully review the ordinance to ensure that it meets with your requirements.

CARRIE L. SARVER

/jrm
l:cor/dev-srv/2016-436
Attachment

ORDINANCE NO. 2016-_____

CITY OF POMPANO BEACH
Broward County, Florida

AN ORDINANCE AMENDING CHAPTER 155, "ZONING CODE," OF THE CODE OF ORDINANCES OF THE CITY OF POMPANO BEACH, FLORIDA, BY AMENDING SECTION 155.4222, "COMMERCIAL: RETAIL SALES AND SERVICE USES – RETAIL SALES," TO PROVIDE STANDARDS FOR GROCERY AND CONVENIENCE STORES; TO MODIFY THE PERMITTED LOCATIONS FOR, THE DEFINITION OF, AND STANDARDS FOR LOCAL LIQUOR OR PACKAGE STORES, REGIONAL LIQUOR OR PACKAGE STORES AND BEER OR WINE STORES; BY AMENDING SECTION 155.4227, "INDUSTRIAL: MANUFACTURING AND PRODUCTION USES" TO AMEND THE DEFINITION OF FOOD AND OR BEVERAGE PRODUCTS MANUFACTURING; BY AMENDING SECTION 155.4303, "STANDARDS FOR SPECIFIC ACCESSORY USES AND STRUCTURES," TO AMEND THE DEFINITION OF ALCOHOLIC BEVERAGE SALES AS AN ACCESSORY USE TO A BREWERY, WINERY OR DISTILLERY AND PROVIDE FOR DISTRICTS WHERE PERMITTED; AMENDING THE DEFINITION OF PACKAGE SALES AS AN ACCESSORY USE TO A BAR OR LOUNGE AND PROVIDING FOR DISTRICTS WHERE PERMITTED; BY AMENDING SECTION 155.4501, "SEPARATION REQUIREMENTS FOR ALCOHOLIC BEVERAGE ESTABLISHMENTS," TO AMEND THE USES THAT ARE EXEMPT FROM SEPARATION REQUIREMENTS; BY AMENDING SECTION 155.5102, "OFF-STREET PARKING AND LOADING" TO AMEND THE MINIMUM NUMBER OF OFF-STREET PARKING SPACES FOR VARIOUS ALCOHOL BEVERAGE ESTABLISHMENTS; BY AMENDING PART 5, "TERMS AND USES DEFINED," BY REVISING TERMS USED OR REFERENCED IN THIS ORDINANCE; BY AMENDING APPENDIX A: "CONSOLIDATED USE TABLE," TO REVISE TABLE TO CONFORM TO AMENDMENTS MADE BY THIS ORDINANCE; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

WHEREAS, in accordance with Florida Statutes, Section 166.041(3)(c)2, advertisements in accordance with said statute have been published in a newspaper of general paid circulation in the City of Pompano Beach and of general interest and readership in the community, notifying the public of two public hearings on this proposed Ordinance; and

WHEREAS, two public hearings have been held pursuant to said published hearings and all persons so desiring had the opportunity to be, and were, in fact, heard; now, therefore,

BE IT ENACTED BY THE CITY OF POMPANO BEACH, FLORIDA:

SECTION 1. That Section 155.4222., "Commercial: Retail Sales and Service Uses – Retail Sales," of Chapter 155, "Zoning Code," of the Code of Ordinances of the City of Pompano Beach is hereby amended to read as follows:

§ 155.4222. COMMERCIAL: RETAIL SALES AND SERVICE USES – RETAIL SALES

. . .

F. GROCERY OR CONVENIENCE STORE

. . .

3. Standards

a. Sales of beer or wine may only be considered an accessory use to a Grocery or Convenience Store provided the display area for the sales of beer or wine does not exceed 20% of the total display area used for all other merchandise and no exterior signage for the sale of beer or wine is provided.

b. Grocery or Convenience Stores with sales of beer or wine which exceed the standards listed in subsection a. above and/or provide exterior signage for the sale of beer or wine also be considered a Beer or Wine Store and subject to all of the standards for such use.

. . .

K. LOCAL LIQUOR OR PACKAGE STORE

1. Districts Where Permitted

RS-1	RS-2	RS-3	RS-4	RS-L	RD-1	RM-7	RM-12	RM-20	RM-30	RM-45	MH-12	B-1	B-2	B-3	B-4
												~~P~~ S	~~P~~ S	~~P~~ S	~~P~~ S

M-1	CR	I-1	I-IX	OIP	M-2	TO	PR	CF	PU	T	BP	RPUD	PCD	PD-TO	LAC	PD-I
						P							P	P	P	P

2. **Definition**

A local liquor or package store is an alcoholic beverage establishment with a gross floor area of less than 7,500 square feet and licensed by the state exclusively for the retail sale of liquor or spirits in sealed containers for consumption off the premises where sold.

3. **Standards**

Drive-through service is strictly prohibited.

L. REGIONAL LIQUOR OR PACKAGE STORE

1. **Districts Where Permitted**

RS-1	RS-2	RS-3	RS-4	RS-L	RD-1	RM-7	RM-12	RM-20	RM-30	RM-45	MH-12	B-1	B-2	B-3	B-4
												S	S	P	P

M-1	CR	I-1	I-IX	OIP	M-2	TO	PR	CF	PU	T	BP	RP UD	PC D	PD-TO	LA C	PD-I
						P							P	P	P	P

2. **Definition**

A regional liquor or package store is an alcoholic beverage establishment with a gross floor area of at least 7,500 square feet and licensed by the state exclusively for the retail sale of liquor or spirits in sealed containers for consumption off the premises where sold.

3. **Standards**

Drive-through service is strictly prohibited.

M. BEER OR WINE STORE

1. **Districts Where Permitted**

RS-1	RS-2	RS-3	RS-4	RS-L	RD-1	RM-7	RM-12	RM-20	RM-30	RM-45	MH-12	B-1	B-2	B-3	B-4
												S	S	S	P

M-1	CR	I-1	I-IX	OIP	M-2	TO	PR	CF	PU	T	BP	RP UD	PC D	PD-TO	LA C	PD-I
						P							P	P	P	P

2. Definition

A beer or wine store is an alcoholic beverage establishment licensed by the state exclusively for the retail sale of beer and/or wine in sealed containers for consumption off the premises where sold. A beer or wine store maybe considered a specialty store if the establishment emphasizes a single unique type of specialty beer or wine not readily available at a grocery or convenience store, such as beer or wine made from craft or microbreweries or wineries, or beer or wine from a specific geographic region.

3. Standards

Drive-through service is strictly prohibited.

~~L~~N. Pawn Shop

. . .

~~M~~O. THRIFT SHOP

. . .

~~N~~P. RETAIL SALES ESTABLISHMENT, LARGE

. . .

~~O~~Q. INDOOR MALL OR MARKETPLACE

. . .

~~P~~R. OTHER RETAIL SALES ESTABLISHMENT

SECTION 2. That Section 155.4227., "Industrial: Manufacturing and Production Uses," of Chapter 155, "Zoning Code," of the Code of Ordinances of the City of Pompano Beach is hereby amended to read as follows:

§155.4227. INDUSTRIAL: MANUFACTURING AND PRODUCTION USES

. . .

E. FOOD AND/OR BEVERAGE PRODUCTS MANUFACTURING (WITHOUT SLAUGHTERING)

. . .

2. Definition

A food and/or beverage products manufacturing use is an establishment primarily engaged in manufacturing of food and/or

beverage products including, but not limited to, products made from livestock or agricultural products; fresh and frozen bread and other bakery products (e.g., cookies, crackers); frozen food products such as ice or ice cream; ~~alcoholic beverages such as ale, beer, malt liquors, wine~~ brewery, winery, or distillery; and nonalcoholic beverages. This use also includes vegetable or fruit packing, fish hatcheries and hydroponic garden facilities.

. . .

SECTION 3. That Section 155.4303., "Standards for Specific Accessory Uses and Structures," of Chapter 155, "Zoning Code," of the Code of Ordinances of the City of Pompano Beach is hereby amended to read as follows:

§155.4303. STANDARDS FOR SPECIFIC ACCESSORY USES AND STRUCTURES

. . .

SS. ALCOHOLIC BEVERAGE SALES AS AN ACCESSORY USE TO A BREWERY, WINERY, OR DISTILLERY

1. Districts Where Permitted

RS-1	RS-2	RS-3	RS-4	RS-L	RD-1	RM-7	RM-12	RM-20	RM-30	RM-45	MH-12	B-1	B-2	B-3	B-4
															A

M-1	CR	I-1	I-IX	OIP	M-2	TO	PR	CF	PU	T	BP	RPUD	PCD	PD-TO	LAC	PD-I
		A	A	A									A			

2. Definition

Alcoholic beverage sales as an accessory use to a brewery, winery, or distillery is the accessory retail sales of beer, wine, or liquor at the same location where the beverage is manufactured, including for consumption on the premises and for consumption off the premises.

TT. PACKAGE SALES AS AN ACCESSORY USE TO A BAR OR LOUNGE

1. Districts Where Permitted

RS-1	RS-2	RS-3	RS-4	RS-L	RD-1	RM-7	RM-12	RM-20	RM-30	RM-45	MH-12	B-1	B-2	B-3	B-4
												S	S	S	A

M-1	CR	I-1	I-IX	OIP	M-2	TO	PR	CF	PU	T	BP	RP UD	PC D	PD-TO	LA C	PD-I
		A	A	A		A						A	A	A	A	A

2. Definition

Package sales as an accessory use to a bar or lounge is the accessory retail sales of beer, wine, or liquor for consumption off the premises at a bar or lounge.

SECTION 4. That Section 155.4501., "Separation Requirements for Alcoholic Beverage Establishments," of Chapter 155, "Zoning Code," of the Code of Ordinances of the City of Pompano Beach is hereby amended to read as follows:

§155.4501. SEPARATION REQUIREMENTS FOR ALCOHOLIC BEVERAGE ESTABLISHMENTS

. . .

B. EXCEPTIONS

Table 155.4501.B lists uses that are exempt from the separation requirements in Table 155.4501.A.

TABLE 155.4501.B: EXCEPTIONS TO THE MINIMUM SEPARATION OF USES INVOLVING THE SALE OF ALCOHOLIC BEVERAGES FROM CERTAIN EXISTING USES		
	Required Separation	
Use and Criteria	Any other use involving the sales of alcoholic beverages; and Sexually oriented business	Child Care facility; School; and Place of Worship
An establishment limited by its state beverage license ~~to the sale of beer or wine for consumption off the premises~~ for the distribution of alcoholic beverages to vendors and other distributors.	Exempt	Exempt
Grocery or Convenience Store with accessory sales of beer or wine. Sales of beer or wine may only be considered an accessory use to a Grocery or Convenience Store provided the display area for the sales of beer or wine does not exceed 20% of the total display area used for all other merchandise and no exterior signage for the sale of beer or wine is provided.	Exempt	Exempt
Beer or Wine Store which meets the definition of a specialty store.	Exempt	Exempt
An enclosed restaurant which sells only beer and/or wine for consumption on the premises.	Exempt	Exempt if no externally visible display window or sign indicating the sale of alcoholic beverages

A food and/or beverage manufacturer limited by its state beverage license for manufacturing of wines and cordials, brewing malt beverages, or distiller of spirituous liquor.	Exempt	Exempt
Alcoholic beverage sales as an accessory use to a brewery, winery, or distillery.	Exempt	Exempt
A bowling alley that contains more than nine bowling lanes.	Exempt	Exempt
A motion picture theater that contains more than 100 seats.	Exempt	Exempt
~~A retail sales establishment that is an anchor store containing more than 10,000 square feet of gross floor area.~~ Regional Liquor or Package Store	Exempt	Exempt
A bar or lounge which is operated as an accessory use to a restaurant and therefore meets the following standards: it is operated by the same management, and the restaurant has dining accommodations for service of 150 or more patrons at tables occupying more than 2,500 square feet, and deriving at least 51% of the gross revenue from the sale of food and non-alcoholic beverages.	Exempt	Exempt if there is no display window, sign, or other externally visible indication of the bar's or lounge's existence
A bar or lounge which is operated as an accessory use to a hotel or apartment hotel that has more than 25 sleeping rooms and/or dwelling units and that is operated by the same management as the hotel or apartment hotel.	Exempt	Exempt if there is no display window, sign, or other externally visible indication of the bar's or lounge's existence
~~An enclosed restaurant which sells only beer and/or wine.~~	~~Exempt~~	~~Exempt if no externally visible display window or sign indicating the sale of alcoholic beverages~~
A lodge or club which limits on-premise consumption of alcoholic beverages to only lodge or club members.	Exempt	Exempt if no externally visible display window or sign indicating the sale of alcoholic beverages
A use located on property owned by the city.	Not Exempt	Exempt
Within the Atlantic Boulevard Overlay District (AOD) only, a bar or lounge, brewpub, restaurant, or specialty eating establishment (whether a principal use or an accessory use to a hotel, and including any accessory outdoor seating).	Exempt if no package sales are offered at bar or lounge	Exempt if no package sales are offered at bar or lounge

SECTION 5. That Section 155.5102., "Off-Street Parking and Loading," of Chapter 155, "Zoning Code," of the Code of Ordinances of the City of Pompano Beach is hereby amended to read as follows:

§ 155.5102. OFF-STREET PARKING AND LOADING

. . .

D. OFF-STREET PARKING SPACE REQUIREMENTS

1. Minimum Number of Off-Street Parking Spaces

. . .

TABLE 155.5102.D.1: MINIMUM NUMBER OF OFF-STREET PARKING SPACES		
Use Category	Use Type	Minimum Number of Parking
COMMERCIAL USES		
Retail Sales and Service Uses - Retail Sales	Local Liquor or Package Store	1 per 300 sq ft
	Regional Liquor or Package Store	
	Beer or Wine Store	
	Pawn Shop	1 per 300 sq ft
	. . .	
. . .	. . .	. . .
INDUSTRIAL USES		
. . .	. . .	. . .
Accessory Uses	. . .	. . .
	Dormitory (as accessory to educational use)	See Section 155.5102.D.2
	Alcoholic Beverage Sales as an Accessory Use to a Brewery, Winery, or Distillery	1 per 300 sq ft. Except no parking is required if gross floor area used for accessory sales is less than 20% of total gross floor area of the principal use
. . .		

. . .

SECTION 6. That Article 9, "Definitions and Interpretations, Part 5, "Terms and Uses Defined," of Chapter 155, "Zoning Code," of the Code of Ordinances of the City of Pompano Beach is hereby amended to read as follows:

ARTICLE 9: DEFINITIONS AND INTERPRETATION

. . .

PART 5 TERMS AND USES DEFINED

The following words, terms, and phrases, when used in this Code, shall have the meaning ascribed to them in this section.

. . .

ALCOHOLIC BEVERAGE ESTABLISHMENT

Any facility that sells or provides alcoholic beverages to be consumed on or off the premises.

ALCOHOLIC BEVERAGE SALES AS AN ACCESSORY USE TO A BREWERY, WINERY, OR DISTILLERY

The accessory retail sales of beer, wine or liquor at the same location where the beverage is manufactured, including for consumption on the premises and for consumption off the premises.

. . .

BED AND BREAKFAST INN

A state-licensed private single-family dwelling engaged in renting one or more sleeping rooms on a daily basis and providing breakfast.

BEER OR WINE STORE

An alcoholic beverage establishment licensed by the state exclusively for the retail sale of beer and/or wine in sealed containers for consumption off the premises where sold. A beer or wine store maybe considered a specialty store if the establishment emphasizes a single unique type of specialty beer or wine not readily available at a grocery or convenience store, such as beer or wine made from craft or microbreweries or wineries, or beer or wine from a specific geographic region.

. . .

FOOD ~~PROCESSING~~ AND/OR BEVERAGE PRODUCTS MANUFACTURING (WITHOUT SLAUGHTERING)

An establishment primarily engaged in ~~processing livestock or agricultural products into food products for immediate or final consumption. Such products are typically sold to wholesalers or retailers for distribution to consumers. Food processing does not include slaughtering animals.~~ manufacturing of food and/or beverage products including, but not limited to, products made from livestock or agricultural products; fresh and frozen bread and other bakery products (e.g., cookies, crackers); frozen food products such as ice or ice cream; brewery, winery, or distillery; and nonalcoholic beverages. This use also includes vegetable or fruit packing, fish hatcheries and hydroponic garden facilities.

. . .

~~**LIQUOR OR PACKAGE STORE**~~

~~An alcoholic beverage establishment licensed by the state exclusively for the retail sale of liquor or spirits in sealed containers for consumption off the premises where sold.~~

LIVE ENTERTAINMENT

Visual entertainment for the public usually accessory to a commercial use, in the form of an act, production, or performance, and that may include-but is not limited to-performances by a musical band, disc jockey, cancer, or other type of entertainer.

LOCAL LIQUOR OR PACKAGE STORE

An alcoholic beverage establishment with a gross floor area of less than 7,500 square feet and licensed by the state exclusively for the retail sale of liquor or spirits in sealed containers for consumption off the premises where sold.

. . .

OWNER OF RECORD

The owner of a lot of record reflected on the current Broward County tax roll.

PACKAGE SALES AS AN ACCESSORY USE TO A BAR OR LOUNGE

The accessory retail sales of beer, wine, or liquor for consumption off the premises at a bar or lounge.

. . .

REDEVELOPMENT

Any proposed expansion, addition, reduction, or other alteration to an existing building, structure, or other constructed feature on a lot or site. Redevelopment also includes changes in use to existing buildings, as well as modifications to site features such as parking, signage, landscaping, grading, stormwater management devices, or changes to outdoor storage.

REGIONAL LIQUOR OR PACKAGE STORE

An alcoholic beverage establishment with a gross floor area of at least 7,500 square feet and licensed by the state exclusively for the retail sale of liquor or spirits in sealed containers for consumption off the premises where sold.

. . .

SECTION 7. That Appendix A, "Consolidated Use Table," of Chapter 155, "Zoning Code," of the Code of Ordinances of the City of Pompano Beach is hereby amended to read as follows:

APPENDIX A: CONSOLIDATED USE TABLE

P = PERMITTED PRINCIPAL USE S = USE ALLOWED AS A SPECIAL EXCEPTION A = PERMITTED ACCESSORY USE
T = TEMPORARY USE ALLOWED WITH A MAJOR TEMPORARY USE PERMIT t = TEMPORARY USE ALLOWED WITH A MINOR TEMPORARY USE PERMIT
√ = TEMPORARY USE ALLOWED WITHOUT TEMPORARY USE PERMIT
I = INTERIM USE ALLOWED WITH AN INTERIM USE PERMIT BLANK CELL = PROHIBITED USE

USE CATEGORY (PRINCIPAL USES) AND/OR USE TYPE		RESIDENTIAL DISTRICTS												COMMERCIAL DISTRICTS						INDUSTRIAL DISTRICTS				SPECIAL DISTRICTS						PLANNED DEVELOPMENT DISTRICTS					USE-SPECIFIC STANDARDS
		RS-1	RS-2	RS-3	RS-4	RS-L	RD-1	RM-7	RM-12	RM-20	RM-30	RM-45	MH-12	B-1	B-2	B-3	B-4	M-1	CR	I-1	I-IX	OIP	M-2	TO	PR	CF	PU	T	BP	RPUD	PCD	PD-TO	LAC	PD-I	
PRINCIPAL USES																																			
COMMERCIAL USES																																			
Retail Sales and Service Uses – Retail Sales																																			
	Home and building supply center	...																																	155.4222.~~K~~ J
	Local liquor or package store													~~P~~ S	~~P~~ S	~~P~~ S	~~P~~ S							P							P	P	P	P	155.4222.~~L~~ K
	Regional liquor or package store													S	S	P	P							P							P	P	P	P	155.4222.L
	Beer or wine store													S	S	P	P							P							P	P	P	P	155.4222.M
	Pawn shop	...																																	155.4222.~~L~~ N
	Thrift shop	...																																	155.4222.~~M~~ O
	Retail sales establishment, large	...																																	155.4222.~~N~~ P
	Indoor mall or, marketplace	...																																	155.4222.~~O~~ Q
	Other retail sales establishment	...																																	155.4222.~~P~~ R

APPENDIX A: CONSOLIDATED USE TABLE

P = PERMITTED PRINCIPAL USE S = USE ALLOWED AS A SPECIAL EXCEPTION A = PERMITTED ACCESSORY USE
T = TEMPORARY USE ALLOWED WITH A MAJOR TEMPORARY USE PERMIT t = TEMPORARY USE ALLOWED WITH A MINOR TEMPORARY USE PERMIT
√ = TEMPORARY USE ALLOWED WITHOUT TEMPORARY USE PERMIT
I = INTERIM USE ALLOWED WITH AN INTERIM USE PERMIT BLANK CELL = PROHIBITED USE

USE CATEGORY (PRINCIPAL USES) AND/OR USE TYPE		RESIDENTIAL DISTRICTS												COMMERCIAL DISTRICTS						INDUSTRIAL DISTRICTS				SPECIAL DISTRICTS						PLANNED DEVELOPMENT DISTRICTS					USE-SPECIFIC STANDARDS
		RS-1	RS-2	RS-3	RS-4	RS-L	RD-1	RM-7	RM-12	RM-20	RM-30	RM-45	MH-12	B-1	B-2	B-3	B-4	M-1	CR	I-1	I-IX	OIP	M-2	TO	PR	CF	PU	T	BP	RPUD	PCD	PD-TO	LAC	PD-1	
ACCESSORY USES AND STRUCTURES																																			
...		...																																	...
Limited Mental Health Treatment Facility		...																																	...
Alcoholic beverage sales as an accessory use to a brewery, winery or distillery																	A			A	A	A									A				155.4303.SS
package sales as an accessory use to a bar or lounge														S	S	S	A			A	A	A		A						A	A	A	A	A	155.4303.TT

SECTION 6. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance that 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 7. This Ordinance shall become effective upon passage.

PASSED FIRST READING this _____ day of _____, 2016.

PASSED SECOND READING this _____ day of _____, 2016.

_____

LAMAR FISHER, MAYOR

ATTEST:

_____

ASCELETA HAMMOND, CITY CLERK

:jrm
1/26/16 - 1/4/16
L:ord/ch155/2016-79

PLANNING AND ZONING BOARD/ LOCAL PLANNING AGENCY
MEMORANDUM #15-076

DATE: January 11, 2016

TO: City Commission

FROM: Planning and Zoning Board/ Local Planning Agency

SUBJECT: Proposed Text Amendments to Zoning Code,
Liquor Stores and other retail sales of alcoholic beverages

At the special set meeting of the Planning and Zoning Board/ Local Planning Agency held on November 30, 2015 to review the Moratorium Studies and Recommendations, the Board considered proposed text amendments to the Article 4 (Use Standards), Article 5 (Development Standards), Article 9 (Definitions and Interpretation), and Appendix A (Consolidated Use Table) of the Zoning Code, as set forth in the Department of Development Services Administrative Report 15-621 as well as the Staff Report entitled "The Right Use in the Right Location: Liquor Stores (& other retail sales of alcoholic beverages)".

Within Article 3 (Zoning Districts) Staff recommends revising the Downtown Pompano Beach Overlay District to prohibit Local Liquor or Package Store, require Special Exception approval for Regional Liquor or Package Store and require Special Exception approval for Beer or Wine Store.

Within Article 4 (Use Standards) Staff recommends revising the standards of "Grocery or Convenience Store"; revising "Liquor or Package Store"; adding "Regional liquor or package store"; adding "Beer or wine store"; revising the definition of "Food and /or Beverage Products Manufacturing (without slaughtering)"; adding "Alcoholic beverage sales as an accessory use to a brewery, winery or distillery" and "Package sales as an accessory use to a bar or lounge"; and revising Table 155.4101.B: Exceptions to the minimum separation of uses involving the sale of alcoholic beverages from certain existing uses.

Within other Articles Staff recommends revising Table 155.5102.D.1 "Minimum number of off-street parking spaces"; revising Article 9 Part 5; and revising Appendix A: Consolidated Use Table.

With a unanimous vote for the approval of the amendment, it is the recommendation of the Board that the text amendments be approved.

Fred Stacer
Chairman
Planning and Zoning Board/ Local Planning Agency

kem
G:\Zoning 2009\Code Rewrite\Code Amendments\Moratorium - June 2015\P&Z_Special Set Hearing - Staff Reports\P&Z Approval Memos\PZ Approval Memo_Liquor Stores and other retail sales of alcoholic beverages.doc

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****

PLANNING AND ZONING BOARD/LOCAL PLANNING AGENCY — November 30th, 2015, Monday

City Commission Chambers — 7:00 P.M.

SPECIAL MEETING AGENDA

A. Call to order by the Chairman of the Board, Mr. Fred Stacer at 7:03pm.

B. **ROLL CALL:**

Elizabeth Anderson
M. Dwight Evans
Richard Klosiewicz
Joan Kovac
Jerold Mills
Fred Stacer
Tobi Aycock *for Jeff Torrey*

Also Present

Karen Friedman
Robin Bird
Carrie Sarver
Kerrie MacNeil
Cecelia Ward
Patrick Jovanov
Tara Patton
Vincente Thrower

DRAFT

Mr. Evans asked for a vocal or silent moment for prayer. Mr. Stacer called for a moment of silence.

C. INDIVIDUALS TESTIFYING PLACED UNDER OATH

Mr. Robin Bird reminded the Chairman that this is not a quasi-judicial hearing and it is not necessary to place individuals under oath. Carrie Sarver agreed that placing the audience who wishes to speak under oath is above the requirements.

City Staff and members of the public testifying before the Board at the meeting were placed under oath by Kerrie MacNeil, Zoning Technician and Notary Public in the State of Florida.

D. OTHER BUSINESS

1. Temporary Moratorium - Staff Reports

Staff has prepared reports and recommendations regarding several uses subject to the Temporary Moratorium. The reports are as follows: Health Care Uses, Thrift and Consignment Shops, and Liquor Stores (and other retail sales of alcoholic beverages), and Alternative Financing Uses.

Mr. Robin Bird introduced himself to the Board as the Director of Development Services and reviewed the temporary moratorium and the reasons why it was enacted. Mr. Bird stated that four reports are being presented tonight and a significant size team worked on the reports. Mr. Bird added that staff reserves the ability to bring items back to the next Planning and Zoning Board meeting.

Mrs. Kovac asked why restaurants were not included in the reports. Mr. Bird replied that the City Commission did not select restaurants to be placed under moratorium.

Mrs. Friedman, Principal Planner, introduced herself to the Board and stated that she would be presenting condensed versions of the reports that were included in staff's back up material and she will be focusing mostly on the recommendations. Mrs. Friedman stated that the various recommendations have the same theme: the City's need to balance access to these uses, economic development, protect single family neighborhoods and regulate secondary effects of the uses. Distance requirements.

Mrs. Friedman introduced the first topic: Thrift and consignment shops. Mrs. Friedman stated that often times the difference between thrift and consignment shops is not understood. Mrs. Friedman delivered a PowerPoint presentation to the Board which included staff's recommendations.

Mrs. Friedman introduced the next topic and began the PowerPoint presentation on Alternative Financing Uses. Mrs. Friedman presented the definition, location, history, problems, and staff's recommendations for these uses.

Any person who decides to appeal any decision of the PLANNING AND ZONING BOARD/LOCAL PLANNING AGENCY with respect to any matter considered at this meeting will need a record of the proceedings and for such purpose 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. // kem

Mrs. Friedman gave the next presentation on Liquor Stores and other retail sales of alcoholic beverages.

Mrs. Friedman presented the next report on Health Care Uses.

Mr. Bird informed the Board that there will be four separate ordinances and suggested that the Board discuss and vote on one topic at a time. The Board agreed to discuss the reports in the order that they were presented in by staff. Mr. Stacer asked the Board if they had any questions for staff regarding Thrift and Consignment shops.

Mrs. Anderson if the consignment stores that were in B-3 that will now be considered thrift stores are considered nonconforming. Mrs. Friedman replied that they would likely be treated under the lawfully existing special exception use. Mrs. Anderson asked if this would be true even if they do not apply and Mrs. Friedman responded that it is just the designation.

Dr. Mills stated that he is unclear on the difference between consignment and thrift shop. Mrs. Friedman explained the difference between the two. Dr. Mills asked if no new business can be established under the moratorium and what is the length of the Moratorium. Mrs. Friedman responded that the Moratorium was enacted by the City Commission on July 14, 2015 and it is set to expire on January 14, 2016 unless further action is taken by the Commission. Dr. Mills asked if no new business can be established during this time and Mrs. Friedman replied that no new permits and no new business tax receipts were issued to any of the uses that have been subject to the Temporary Moratorium.

Mrs. Aycock asked why consignment boutiques are prohibited from fronting Atlantic Boulevard in the AOD but not thrift. Mrs. Friedman responded that they Thrift Shops are a prohibited use in the AOD; therefore, we would not have to regulate where they would be located.

Mr. Klosiewicz asked who will determine what is considered "luxury merchandise." Mrs. Friedman responded that staff will be looking to see if the business is focusing on selling one type of merchandise or if they focusing on multiple items (this is a way to determine the difference between thrift and consignment). Mrs. Friedman added that this is a standard used by several other cities in South Florida and staff will make their best determination. Mr. Klosiewicz expressed that he does not believe the word luxury should be included because the word luxury may be interpreted differently by different people. Mr. Klosiewicz stated that he suggests the word be stricken from the text amendment.

Dr. Mills asked what happens to the places that are not in compliance once this goes into effect. Mrs. Friedman responded that the use will become a legal non-conforming use or lawfully existing special exception use. Mrs. Friedman added that we do not force them to comply.

Mr. Evans asked for the distinction between a shop and a boutique and if a boutique is a more specialized. Mrs. Friedman answered that it is a more specialized type of retail establishment (ex. vintage clothing or furniture).

Mrs. Anderson asked if the lawfully existing special exception is held to the same improvement as the legal nonconforming use. Mr. Bird responded that a lawful special exception use is held to a different standard.

Mr. Stacer asked if staff is looking for a recommendation to extend the Moratorium and Mrs. Friedman responded that they are only looking for a recommendation on the text amendments.

Mr. Stacer opened up the discussion to the public.

Patrick Jovanov (411 NE 18th Avenue Pompano Beach, FL) introduced himself to the Board and complimented Mrs. Friedman and the rest of the team on their research. Patrick stated that he has visited the Salvation Army over the years and he wishes that staff would come up with more equitable regulations. Patrick stated that this was a part of history. Patrick stated that "this is very good."

Tara Patton introduced herself to the Board as the representative of Festival Flea Market (2900 West Sample Road Pompano Beach, FL) and asked how outlet stores like Nordstrom Rack are categorized since they are selling goods below market value. Mrs. Friedman responded that there is a use in the code called "other retail establishment" that does not take into account the prices of the items sold. Mrs. Patton asked if there was an umbrella that grouped alike types of "luxury items." Mrs. Friedman answered that it would be related accessories (example: purses and jewelry). Mrs. Patton asked that her concern was who gets to make that determination.

Mrs. Kovac asked if clothing, jewelry and purses would be considered consignment and Mrs. Friedman confirmed.

Dr. Mills asked staff why the moratorium is necessary. Mr. Bird answered that staff and the City Commission have determined that the location of many of these uses were creating side effects that were concerning. The moratorium gives staff time to study the issues and decide how to go forward. Dr. Mills asked if we are currently under moratorium and Mr. Bird confirmed.

Mr. Klosiewicz asked the Chairman if the Board is going to have the opportunity, at this time, to amend the language in the text amendments. Mr. Stacer confirmed.

Mr. Stacer closed the public hearing.

MOTION made by Richard Klosiewicz and seconded by Dwight Evans to recommend approval of the proposed text amendments to Thrift and Consignment shops with the word "luxury" stricken from code sections 155.4222.E.2 and Article 9, Part 5. All vote in favor of the above motion; therefore, the motion passed.

Mr. Stacer asked the Board if anyone had questions on the Alternative Financing presentation and recommendations.

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Dr. Mills asked if the proposed changes would mean that he cannot go into a bank and cash a check. Mrs. Friedman answered that one would be able to cash a check at a bank and they are separate uses. Dr. Mills asked why staff is recommending to modify the definition of bank to exclude these items. Mrs. Friedman answered that the definition of "Bank or Financial Institution" today includes a check cashing store. If we do not exclude them, we would be treating them under two different categories. We are not taking the ability to cash a check away from a bank, but we are removing the description of a check cashing facility from the "Bank or Financial Institution" use.

Mrs. Aycock asked staff why there is no separation distance between these uses and residential uses. Mrs. Friedman responded that she found separation of like uses in her research and the intent of this is to prevent clustering.

Mr. Evans asked if staff stated that these uses cause an area to become blighted. Mrs. Friedman confirmed that this is what the report indicated and the secondary effects blight the area, attract crime, cause deterioration of shopping centers, and they have certain appearance issues that may cause blighting (ex. bullet proof glass windows). Mr. Evans asked about the benefits staff identified on page 8 of the report and stated that he thinks there is a greater benefit to keeping the uses rather than removing them. Mr. Evans asked if we have this blight in Pompano. Mrs. Friedman responded that we have four distinct clusters of these uses and three of four are within or directly adjacent to the Northwest CRA which is a blighted area of the City. Mr. Evans asked if there was more than one facility located on Atlantic Blvd just west of Dixie Highway. Mrs. Friedman pulled up the map and responded that there are multiple locations in Cluster #4.

Mr. Klosiewicz stated that he believes that these stores would not have opened if they were not needed and that competition may benefit the people that are being served.

Mr. Stacer asked staff about an inconsistency between what is permitted in the PD-I in the appendix and the backup material. Mrs. Friedman stated that check cashing facility should not be permitted in the PD-I and confirmed it is an error and the Appendix is correct.

Mrs. Anderson asked if staff considered implanting design criteria for these uses. Mrs. Friedman responded design guidelines were not one of the considerations.

Mr. Klosiewicz asked if the State of Florida has some control over the rates that can be charged. Mrs. Friedman answered that the state has some rates but she does not know them off hand. Mr. Klosiewicz asked why people would use this type of service. Mrs. Kovac answered that it is possible that clients of these uses do not have checking accounts. Mr. Klosiewicz asked what people would do if this use is reduced or eliminated. Mrs. Friedman responded that staff's recommendation is not to eliminate the use.

Mrs. Kovac asked staff for confirmation that we are only talking about going forward and not talking about closing any existing Alternative Financing stores. Mrs. Friedman confirmed.

Mrs. Anderson asked if any of the existing uses will become nonconforming due to the separation requirements and Mrs. Friedman confirmed (legal non-conforming use).

Mr. Klosiewicz stated that he did not say anything that expressed that he believed that the uses were being eliminated.

Mrs. Aycock stated that, according to the research, the goal is to spread them out in order to lower the crime rates and help with appearance.

Mr. Klosiewicz asked how many stores on the map would be nonconforming. Mrs. Friedman responded that she could not provide that information at that very moment; however she could return with the requested information. Mr. Bird suggested a cover memo to the Board.

Mr. Stacer opened up the discussion to the public.

Vincente Thrower (1890 NW 6 AV Pompano Beach, FL) stated that the check cashing stores are needed in the minority community. Vincente stated that he believes this is a neighborhood discussion and not a board discussion on whether the neighbors want the stores in the area. Vincente expressed that the check cashing stores are important for people who have bad credit and are not able to open a bank account.

Patrick Jovanov (411 NE 18th Avenue Pompano Beach, FL) asked staff why the research includes military bases if there are no military bases in Pompano Beach. Mr. Jovanov expressed that he does not understand why there is a reference to military bases. Mr. Jovanov shared a quote from Mark Twain and stated that what is being proposed is a recurring prejudice that was discussed at City Commission meetings several times. The lack of financial institutions in the Northwest CRA was planned or discouraged.

The Chairman closed the public hearing and asked if the Board had any additional questions.

MOTION made by Joan Kovac and seconded by Tobi Aycock to recommend approval of the text amendments to Alternative Financing Uses. All voted in favor of the above motion with the exception of Jerry Mills and Dwight Evans.

The Board moved on to discussing Liquor Stores and other retail sales of alcoholic beverages.

Dr. Mills asked if these amendments will affect the American Legion, the Elks Lodge etc. Mrs. Friedman responded that these uses are not included. Dr. Mills if regular bars are included. Mrs. Friedman responded that bars with accessory package sales will be affected because the package sales will now be a new accessory use that would require approval.

Mr. Stacer asked staff for clarification on the difference between a brew pub and a distillery. Mrs. Friedman answered that the City has both brew pubs and food and beverage manufacturing and she briefly explained the differences between the two.

Patrick Jovanov (411 NE 18th Avenue Pompano Beach, FL) asked how the Costco Liquor store would be grouped. Mrs. Friedman stated that we treat these membership stores as retail establishments.

The Chairman closed the public hearing and asked if any Board members had any additional questions.

MOTION made by Richard Klosiewicz and seconded by Dwight Evans to recommend approval of the text amendments to Liquor Stores and other retail sales of alcoholic beverages. All voted in favor of the above motion; therefore, the motion passed.

The Chair asked the Board if they had any questions concerning the proposed text amendments regarding Health Care uses.

Dr. Mills asked for the geographic definition of the AOD and Mr. Bird provided Dr. Mills with an explanation. Dr. Mills asked if he could open a one story office and have treatment on the first floor. Dr. Mills also asked why someone would not be able to have a doctor's office open after 7pm and expressed that he does not agree with the proposed changes.

Mrs. Friedman stated that the intent is to balance the various needs including access (ex. hours of operation) as well as taking into consideration the impact on neighboring properties (especially the residential community). Mrs. Friedman answered that the hours of operation in the AOD would be affected. Dr. Mills mentioned that there are many senior citizens living east and he expressed that he thinks the restrictions are wrong.

Cecelia Ward introduced herself to the Board as the Planning Consultant for the Pompano CRA and stated that she would like to address a few of the comments. Mrs. Ward stated that they have performed an extensive analysis of the medical facilities in the AOD and the DPOD. The research discovered that facilities exist that close before 7pm and open after 7am. Mrs. Ward informed the Board that the purpose of the restriction on the hours of operation is to utilize the evening activity to support the pedestrian oriented uses that will help revitalize the area. The research shows that the restriction on the hours is consistent with the current operating hours of the existing facilities.

Mr. Stacer asked why Health Care uses are not proposed to be permitted in the I-1X zoning district. Mrs. Friedman stated that this district is intended for heavier uses. Mr. Bird added that no I-1X locations would be on a major corridor.

The Chairman opened up the discussion to the public.

Vincente Thrower (1890 NW 6th Ave Pompano Beach, FL) asked if someone would be prohibited from building an urgent care facility on Martin Luther King Boulevard. Mrs. Friedman responded that on MLK, a Specialty Medical Facility would be prohibited in the Downtown Pompano Beach Overlay District. Mr. Thrower asked staff why we would prohibit an urgent care facility from being constructed when there are no existing facilities in the Northwest CRA community. Mr. Bird stated that this would not prohibit an urgent

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care center in the Northwest CRA, only in the downtown overlay district (DPOD). Mr. Thrower stated that he objects this item. Mr. Thrower asked the Chair what the logic is behind this regulation.

Mr. Stacer asked staff if it is permitted today. Mr. Bird responded that it is allowed today. Mr. Thrower asked if the text amendment is adopted it will not be permitted. Mr. Bird responded that the use would be permitted west of I-95 on MLK but not east of I-95.

Mr. Thrower asked why there would not be urgent care center allowed near the new residential development across from the E. Pat Larkins Center. Mr. Thrower asked the Board to not support the text amendment. Mr. Thrower asked if the item will need to pass the City Commission and staff confirmed. Mr. Thrower stated that he believes that it does not make economic sense to restrict the urgent care centers from the MLK corridor in the DPOD.

Patrick Jovanov (411 NE 18th Avenue Pompano Beach, FL) stated that the slide 17 of the presentation lists the "Lamb of God Recovery Centers" as being licensed since 2007 when it has been here for decades. Mr. Jovanov shared a personal account regarding a sober home and an attempted kidnapping of a small child. Mr. Stacer asked what part of the code Mr. Jovanov is referring to. Mr. Jovanov stated that the issue is allowing sober homes to be located in a residential district adjacent to schools. Mr. Jovanov stated that he does not have proof, but it is the only explanation for something like this happening in his neighborhood. Mr. Jovanov asked if sober homes are still permitted in the City under the temporary moratorium. Mrs. Friedman answered that the recommended text amendments do not deal with any housing uses and added that the question is unrelated to the topic at hand. Mr. Jovanov stated that he agrees with Mr. Thrower that not allowing urgent care is discrimination, prejudice, etc.

Mr. Stacer asked if this will happen in the east and west CRA. Mrs. Friedman responded that the use "Specialty medical facility" would be a special exception in B-3, permitted in B-4, I-1 and OIP. However, it would be prohibited in the AOD and DPOD. Mrs. Friedman stated that it is consistent with the goals of these districts in terms of promoting pedestrian activity uses and active night life activity. Mr. Stacer asked which uses are allowed in the AOD and DPOD and Mrs. Friedman answered that retail clinics, personal care services, and medical offices are all permitted uses in these districts.

Mr. Klosiewicz asked if an urgent medical facility open from 7am to 7pm would be permitted and Mrs. Friedman responded that it would not because the hours of operation are not the only issue. Other issues are ambulances (noise) and medical waste etc.

Mrs. Friedman answered that it is also ambulances, medical waste, (specialty medical uses), more intense that a regular doctor's office. Go here in lieu of the ER. Mr. K asked if these uses are permitted in the area that Vincente was worried about.

Mr. Evans said he thought that being transported in an ambulance to an urgent care facility occurs very infrequently. Mrs. Friedman stated that these uses have some deleterious secondary effects and we need to treat them with more regulation. Mr. Evans asked why

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it is necessary to go outside of the core area if there are not significant adverse effects. Mr. Bird stated that these uses will negatively affect redevelopment efforts.

Mrs. Kovac asked how many blocks from Martin Luther King Boulevard could there be an urgent care center.

Cecilia Ward explained the purpose of the redevelopment efforts for the DPOD area.

Mrs. Friedman explained the boundaries of the DPOD.

Mr. Evans asked if the zoning regulations of the area should adjust in the area as time goes on and be updated to reflect changes. Mrs. Friedman stated that this is what staff is trying to do and the point of the moratorium. Mr. Evans asked staff if it is their belief if a specialty medical facility located in the DPOD on MLK Boulevard would adversely affect development of the area.

Mr. Bird stated that there are many uses within the specialty medical facility (not just the urgent care center). Dr. Mills stated that he is asking specifically about medical offices and how these text amendments would eliminate these uses from the area. Mrs. Friedman stated that these uses are not consistent with the redevelopment efforts in the AOD and DPOD.

Mrs. Kovac asked if Dr. Mills is aware the urgent care centers close at 7pm as well.

Dr. Evans asked if the Board will be making a recommendation regarding one of staff's recommendations and Mrs. Friedman responded that those (that Mr. Evans is referring to) are the overriding recommendations and the proposed text amendments came from these recommendations. Mrs. Friedman stated that the Board could think of them as "Considerations 1, 2, 3 and 4" and the text amendments were prepared from these considerations.

Mr. Stacer asked if staff mapped the locations of the medical facilities. Mrs. Friedman replied that staff did mapping and staff was able to conclude from the mapping is that the change in the location of uses has not changed significantly from 2005 to 2015. The maps would not be useful because they would be so cluttered with the multiple locations.

Mr. Stacer closed the discussion to the public.

MOTION made by Elizabeth Anderson and seconded by Richard Klosiewicz to recommend approval of the proposed text amendments. All voted in favor of the above motion, with the exception of Jerry Mills and Dwight Evans, therefore the motion passed.

Mr. Stacer stated that he has questions for staff that are specific to the AOD. Mrs. Friedman placed a document on the screens for the Board to see and Mr. Stacer directed her to page 2, item number 3. Mr. Stacer asked what uses fall under 3b. Mrs. Friedman stated that the changes that were made reflected the changes coming out of the moratorium. Mrs.

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Friedman stated that staff will meet with the CRA and discuss visitor accommodation uses being permitted in a residential mixed use project.

Dr. Mills asked for clarification on the outcome of the most recent vote on health care uses and Mr. Stacer and Carrie Sarver clarified that there were two "Nays" or a 5-2 vote.

Mr. Stacer stated that, referring to page 3 and the parking exemptions, he is concerned about big projects that would theoretically not have to provide parking. Mrs. Friedman responded that this is an incentive for smaller projects that are looking to do adaptive reuse. Mrs. Friedman stated that this is an effective mechanism to get sites to convert their use to a more desirable use without meeting the parking requirements.

Mr. Stacer said that he considers it to be potentially dangerous to not require parking for new projects such as a large retail redevelopment project (100,000 square feet of retail).

Mr. Bird stated that this regulation has been in effect for 5 years and we have seen neither benefits nor deleterious effects. Mr. Bird used Delray Beach as an example of a City not requiring restaurants to provide additional parking and there were still new parking garages constructed. Mr. Stacer stated that he is still concerned about this concept. Mr. Bird suggested having staff come back before the Board with a separate report on this item. Mr. Stacer said that he is ok with this proposal.

Mrs. Aycock suggested staff look at the parking scheme in downtown Gainesville for ideas.

Mr. Klosiewicz complimented Mr. Bird and staff for their hard work regarding the reports on the moratorium uses.

E. AUDIENCE TO BE HEARD

Mr. Stacer asked if there was anyone in the audience who wished to speak and no one responded.

F. BOARD MEMBERS DISCUSSION

Mr. Stacer asked if the Board members had anything to discuss and there was no response.

G. REPORTS BY STAFF

Mr. Stacer asked if staff had anything to report and Ms. MacNeil announced that the next regularly scheduled meeting is December 16th, 2015.

H. ADJOURNMENT

MOTION made by Richard Klosiewicz and seconded by Dwight Evans to adjourn the meeting at 9:29pm; all voted in favor of the above motion.

Any person who decides to appeal any decision of the PLANNING AND ZONING BOARD/LOCAL PLANNING AGENCY with respect to any matter considered at this meeting will need a record of the proceedings and for such purpose 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. // kem

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Approved at the meeting held on January 27, 2016.

_____

Fred Stacer
Chairman
Planning and Zoning Board/Local Planning Agency

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Any person who decides to appeal any decision of the PLANNING AND ZONING BOARD/LOCAL PLANNING AGENCY with respect to any matter considered at this meeting will need a record of the proceedings and for such purpose 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. // kem

pompano beach
Florida's Warmest Welcome

MEMORANDUM

Development Services

ADMINISTRATIVE MEMORANDUM NO. 15-621

DATE: November 19, 2015

TO: Planning and Zoning Board

VIA: Robin M. Bird, Director of Development Services

FROM: Karen Friedman, AICP, Principal Planner KBF

RE: Temporary Moratorium – Staff Reports

Staff has prepared reports and recommendations regarding several uses subject to the temporary Moratorium. A copy of each report and supporting text amendments is following.

Staff's Request
Staff is requesting the Board approve the recommended changes to the Zoning Code to the City Commission for adoption.

pompanobeachfl.gov 100 West Atlantic Boulevard | Pompano Beach, FL 33060 | Phone: 954-786-4600

Copy of Study

The Right Use in the Right Location:
Liquor Stores
(& other retail sales of alcoholic beverages)

November 2015

Contents

1. Need for Study
2. Pompano Beach Liquor Store Regulations
3. Research - Municipal Regulations
4. Primer: Florida Liquor Licenses
5. Overview: City's Existing Liquor Stores
6. Remaining Permitted Locations for Liquor Stores
7. Analysis – Number of Liquor Stores in Pompano Beach vs. other Broward Municipalities
8. Outcome, Considerations, and Recommendation

Need for Study

Introduction and Purpose

Ordinance 2015-67, Temporary Moratorium on Liquor Stores

WHEREAS, the moratorium is intended to allow sufficient time to study the provision of these uses for the citizens of Pompano Beach and to create a long term strategy to ensure adequate access to such services is provided, and

WHEREAS, the moratorium is intended to allow sufficient time to study the provision and location of these uses does not result in an over-concentration of these uses that will result in the blighting or downgrading of the surrounding neighborhood, and

WHEREAS, the moratorium is intended to allow sufficient time to study the provision of these uses to ensure that there is a balance between the existing residential uses and the projected demand for and location of these uses;

Liquor Stores are a valuable component of "Live, Work, Play". However secondary impacts of establishments which sell alcoholic beverages can be detrimental to both neighboring properties and the community as a whole. This report analyzes the number, appearance and location of liquor stores, reviews the changing types of alcoholic beverage establishments, and proposes new definitions and use specific standards. The purpose of this report is to determine the right place in the city for the right alcoholic beverage retail uses.

Focus: Liquor Stores

"*Liquor Stores and Community Health*" by the Pacific Institute:

- Neighborhoods with a higher density of liquor stores had higher numbers of childhood accidents, assaults, and child abuse injuries.
- Liquor stores become places where social controls are weaker, increasing the likelihood of criminal and nuisance activities.
- A high density of liquor stores is linked to higher levels of crime and violence.

"*Evidence-Based Strategies to Prevent Excessive Alcohol Consumption and Related Harms*" by the Centers for Disease Control and Prevention

- The Community Preventive Services Task Force recommends several strategies to prevent excessive alcohol consumption and related harms. These strategies are based on systematic reviews of the scientific evidence on intervention effectiveness.
- Regulating the number of places in a given area where alcohol may be legally sold (outlet density) is an effective way to prevent excessive alcohol use.
- The review was led by Community Guide scientists at the Centers for Disease Control and Prevention, in collaboration with federal and nonfederal experts in research, practice, and policy.
- Based on this review, the Task Force recommends the use of regulatory authority (e.g., through licensing and zoning) to limit alcohol outlet density, on the basis of sufficient evidence of a positive association between outlet density and excessive alcohol consumption and related harms.
- Excessive alcohol consumption, which includes both binge drinking and heavy average daily alcohol consumption, is the third-leading cause of preventable death in the United States. According to the review, sufficient evidence exists of a positive link between outlet density and excessive alcohol use and related harms.

Report Considerations

- How does city regulate retail sales for:
  - Liquor
  - Beer
  - Wine
- How does the number of liquor stores in Pompano Beach compare to surrounding municipalities?
- Should the city create separate uses for sales or beer and wine?
- What type of liquor / beverage stores, if any, does the city want to encourage?

Pompano Beach Liquor Store Regulations

Pompano Beach Regulations

Standards related to the sales of alcoholic beverages are listed in two Code Chapters:

- Chapter 155 (Zoning)
  - Permitted Zoning Districts
  - Required Separations
- Chapter 110 (Alcoholic Beverages)
  - Hours of Operations
    - Retail sales for consumption off the premises is prohibited between 2:00 a.m. and 7:00 a.m.
  - Unlawful Sales
  - Conduct on Premises

The Zoning Code treat uses with "liquor" more stringently than uses for only beer and/or wine.

BUT

Chapter 110 treats sales of liquor the same as sales of beer and wine.

Zoning Code *Uses*

- Pompano Beach has two uses that specifically include the sales of alcoholic beverages:

  155.4220.K.2 - Liquor or Package Store
  An alcoholic beverage establishment licensed by the state exclusively for the retail sale of liquor or spirits in sealed containers for consumption off the premises where sold.
  Permitted Locations: B-1, B-2, B-3, B-4, TO, PCD, PD-TO, LAC, and PD-I

  155.4220.F.2 - Grocery or convenience store
  A retail establishment engaged in the sale of food and foodstuffs, sundries, tobacco products, beer, wine, papers and magazines.
  Permitted Locations: B-1, B-2, B-3, B-4, M-1, TO, RPUD, PCD, PD-TO, LAC, and PD-I

- **Zoning Code does not:**
  - Include a specific use solely for the sales of wine and/or beer
  - Address package sales at bars
  - Address sales of "growlers" from microbreweries or brewpubs

Required "Separations"

TABLE 155.4501.A: MINIMUM SEPARATION OF USES INVOLVING THE SALE OF ALCOHOLIC BEVERAGES FROM CERTAIN EXISTING USES [1]	
EXISTING USE	**MINIMUM SEPARATION [2]**
Any other use involving the sale of alcoholic beverages other than those uses listed in Section 155.4501.B	1,000 feet (Measurement Type 1)
Sexually oriented business	
Child care facility	500 feet (Measurement Type 2) and 300 feet (Measurement Type 3)
School	
Place of worship	

NOTES:

1. Measurement Type 1: Seperation shall be measured from main entrance to main entrance of the establishments by airline route
2. Measurement Type 2: Separation shall be measured from main normal public enterance of Alcoholic Beverage Esablishment to the nearest point of the Child Care facility, School, or Place of Worship's property used as a part of the facility measured along public thoroughfares by the shortest route of ordinary pedestrian traffic.
3. Measurement Type 3: Separation shall be measured from main normal public enterance of Alcoholic Beverage Establishment to the nearest point of the Child Care facility, School, or Place of Worship's property used as a part of the facility measure by airline route.
4. All separations shall be measured from establishments located withon or outside of the City limits.
5. Compliance with these separation standards shall not be affected by the subsequent rezoning of the site of the alcoholic beverage establishment to AOD, conveyance of city-owned property, or the establishment of one of the uses from which separation is required on a property closer than the required separation distance. In such case, the alcoholic beverage establishment shall be construed as continuing to comply with the separation standards.

Exemptions

TABLE 155.4501.B: EXCEPTIONS TO THE MINIMUM SEPARATION OF USES INVOLVING THE SALE OF ALCOHOLIC BEVERAGES FROM CERTAIN EXISTING USES		
Use and Criteria	Required Separation	
	Any other use involving the sales of alcoholic beverages; and Sexually oriented business	Child Care Facility; School; and Place of Worship
An establishment limited by its state beverage license to the sale of beer or wine for consumption off the premises.	Exempt	Exempt
A bowling alley that contains more than nine bowling lanes.	Exempt	Exempt
A motion picture theater that contains more than 100 seats.	Exempt	Exempt
A retail sales establishment that is an anchor store containing more than 10,000 square feet of gross floor area.	Exempt	Exempt
A bar or lounge which is operated as an accessory use to a restaurant and therefore meets the following standards: it is operated by the same management, and the restaurant has indoor dining accommodations for service of 150 or more patrons at tables occupying more than 2,500 square feet of customer service area, and deriving at least 51% of the gross revenue from the sale of food and non-alcoholic beverages.	Exempt	Exempt if there is no display window, sign, or other externally visible indication of the bar's or lounge's existence

TABLE 155.4501.B: EXCEPTIONS TO THE MINIMUM SEPARATION OF USES INVOLVING THE SALE OF ALCOHOLIC BEVERAGES FROM CERTAIN EXISTING USES		
Use and Criteria	Required Separation	
	Any other use involving the sales of alcoholic beverages; and Sexually oriented business	Child Care Facility; School; and Place of Worship
A bar or lounge which is operated as an accessory use to a hotel or apartment hotel that has more than 25 sleeping rooms and/or dwelling units and that is operated by the same management as the hotel or apartment hotel.	Exempt	Exempt if there is no display window, sign, or other externally visible indication of the bar's or lounge's existence
An enclosed restaurant which sells only beer and/or wine.	Exempt	Exempt if no externally visible display window or sign indicating the sale of alcoholic beverages
A lodge or club which limits on-premise consumption of alcoholic beverages to only lodge or club members.	Exempt	Exempt if no externally visible display window or sign indicating the sale of alcoholic beverages
A use located on property owned by the city.	Not Exempt	Exempt
Within the Atlantic Boulevard Overlay District (AOD) only, a bar or lounge, brewpub, restaurant, or specialty eating establishment (whether a principal use or an accessory use to a hotel, and including any accessory outdoor seating).	Exempt	Exempt

Research – Municipal Regulations

Separation Standards of Neighboring Municipalities

Distance / Separation Requirements for Alcoholic Beverage Establishments with Consumption Off Premises Only				
City	**Distance**	**From**	**Measurement**	**Additional Information**
Coconut Creek	500 feet	Place of Worship or School	Pedestrian travel on public-right-of way, main entrance to main entrance. Except for school, to the nearest point of the school grounds used as part of the school facilities.	Does not apply to – • Establishments that are licensed for beer, wine, or beer and wine, only. • Beverages containing alcohol of 14% or less by weight.
Coral Springs	Only has separation for consumption on the premises			
Deerfield Beach	Only has separation for consumption on the premises			
Fort Lauderdale	300 feet	Another place of business for sale of alcoholic beverages for consumption on or off site	Main normal public entrances along public thoroughfares by the shortest route of ordinary pedestrian traffic	Schools do not include pre-kindergarten school, nursery school or day care center, or adult education center
	500 feet	Church or public or private school	Main normal public entrance of ABE to the nearest point of the church or school property used as part of such facility along public thoroughfares by the shortest route of ordinary pedestrian traffic	
Hollywood	500 feet	Place of Worship or School	Nearest pedestrian travel on the public right-of-way from main entrance to main entrance, except that in case of a school, to the nearest point of the school grounds used as part of the school facilities	Does not apply to – • Sale of malt beverages and wine for off-premise consumption.
Lauderdale by the Sea	500 feet	Another such establishment	Airline measurement from main entrance to main entrance	Does not apply to – • Food Store (which does not include package store)
Lauderhill	1000 feet	Any other alcoholic beverage establishment OR Public or private elementary or secondary school OR Place of Worship	Shortest route of ordinary pedestrian travel along the public thoroughfare or any walkway made available for public use from the main entrance of the establishment in question to the main entrance of the other establishment	Does not apply to – • grocery store, supermarket, a pharmacy • Within the Commercial Entertainment (CE) and Town Center (TC) zoning districts
Margate	No distance separation required but city limits the number of licenses to be issued both city-wide and within five alcoholic beverage districts			
Miami Beach	300 feet	Public or private school operated for the instruction of minors in the common branches of learning OR Place of Worship OR Retail stores primarily selling alcohol beverages for consumption off the premises as a main permitted use	Straight line from the main entrance or exit in which the use associated with alcohol beverages occurs to the nearest point of the property used for a public or private school. In cases where a minimum distance is required between two uses associated with the alcohol beverages for consumption on or off the premises, the minimum requirement shall be determined by measuring a straight line between the principal means of entrance of each use.	Liquor can not be sold at filling stations
Oakland Park	500 feet	Church or school	Closest feasible route on public right-of-way from main entrance to main entrance, except, in case of a school, to the nearest point of the school grounds used as part of the school facilities	School shall mean any state-accredited elementary, middle or high school.

Comment: There is no consistent separation standard among neighboring municipalities.

Additional Florida Municipal Regulations

Orange County

- 2002 – Florida Supreme Court Decision (*Orange County vs. Costco Wholesale Corporation*)
- County requires 5,000 ft separation for "package store" – an establishment which sells beer, wine, and liquor for off-site consumption.
- *"The 5000-foot distance separation requirement represents approximately a one-mile radius, which is "typically the distance for a primary market for a store or facility of this nature. . . . that this distance provides residents enough opportunity to use such facilities without allowing such businesses to become so dense that they, along with activities they generate, become a problem."*
- *"The challenged ordinance is a valid exercise of police power, bearing a substantial relationship to the health, safety, morals, or general welfare of the community. . . . Florida's counties are diverse, and—absent clear proof that a challenged enactment in the area of liquor license regulation does not bear such a substantial relationship to the health, safety, morals, or general welfare of the community—the legitimate exercise of a governing body's authority in addressing the particular needs of each community cannot be judicially constrained by requiring conformity to a single, inflexible rule."*

Fort Lauderdale

- 2013 – Prohibition on Liquor Stores and Convenience Stores in NW RAC
- *"Whereas, City staff has conducted the necessary studies and have found that research generally supports the finding that neighborhoods where liquor and convenience stores are concentrated, have more incidences of violence and other alcohol-related problems and that there is a strong correlation between the density and location of establishments that sell packaged alcohol and incidences of violence".*

West Palm Beach

- 2012 – Prohibition on all retail sales of beer, wine, or liquor for consumption off the premises within the Northwest Neighborhood District or the Clematis Waterfront District.

Liquor Stores as *Special Exception Uses*:

- Charlotte County, FL
- Deland, FL
- North Miami, FL
- Palm Springs, FL
- Seminole County, FL
- Sunrise, FL

Primer: Florida Liquor Licenses

Florida Department of Business and Professional Regulations

License Types: Non-Quota

- 1APS = Beer Package Sales
- 2APS = Beer and Wine Package Sales
- 1COP = Beer Consumption on Premises
- 2COP = Beer and Wine Consumption on Premises
- 4COP SRX = Beer, Wine, and Liquor Consumption on Premises, Special Restaurant
  - SRX licenses are available for issuance to restaurants meeting the specific requirements for the special restaurant license.

*License Types: Quota**

**Quota license is based on County Population and limited to 1 license per 7,500 residents (FL SS 561.20)*

- 3APS = Beer, Wine and Liquor Package Sales
- 4COP = Beer, Wine, and Liquor Consumption on Premises *and Package Sales*
  - 4COP license allows "bars" to also sell package for off site consumption.
  - i.e. "Big Daddy's" on E. Atlantic Blvd has a 4COP license / BEV1600460

Comment: The City currently does not regulate package stores in conjunction with a 4COP license as a "Liquor Store". There is a separate quote for 3APS (liquor store) and 4COP (bar with accessory package sales).

Number of 3APS Licenses:
Broward County and Pompano Beach

Broward County

- 2015 = 180 3PS licenses issued
- 2014 Population = 1,869,235 = 249 3APS licenses max
- 69 additional 3APS licenses are available for Broward County

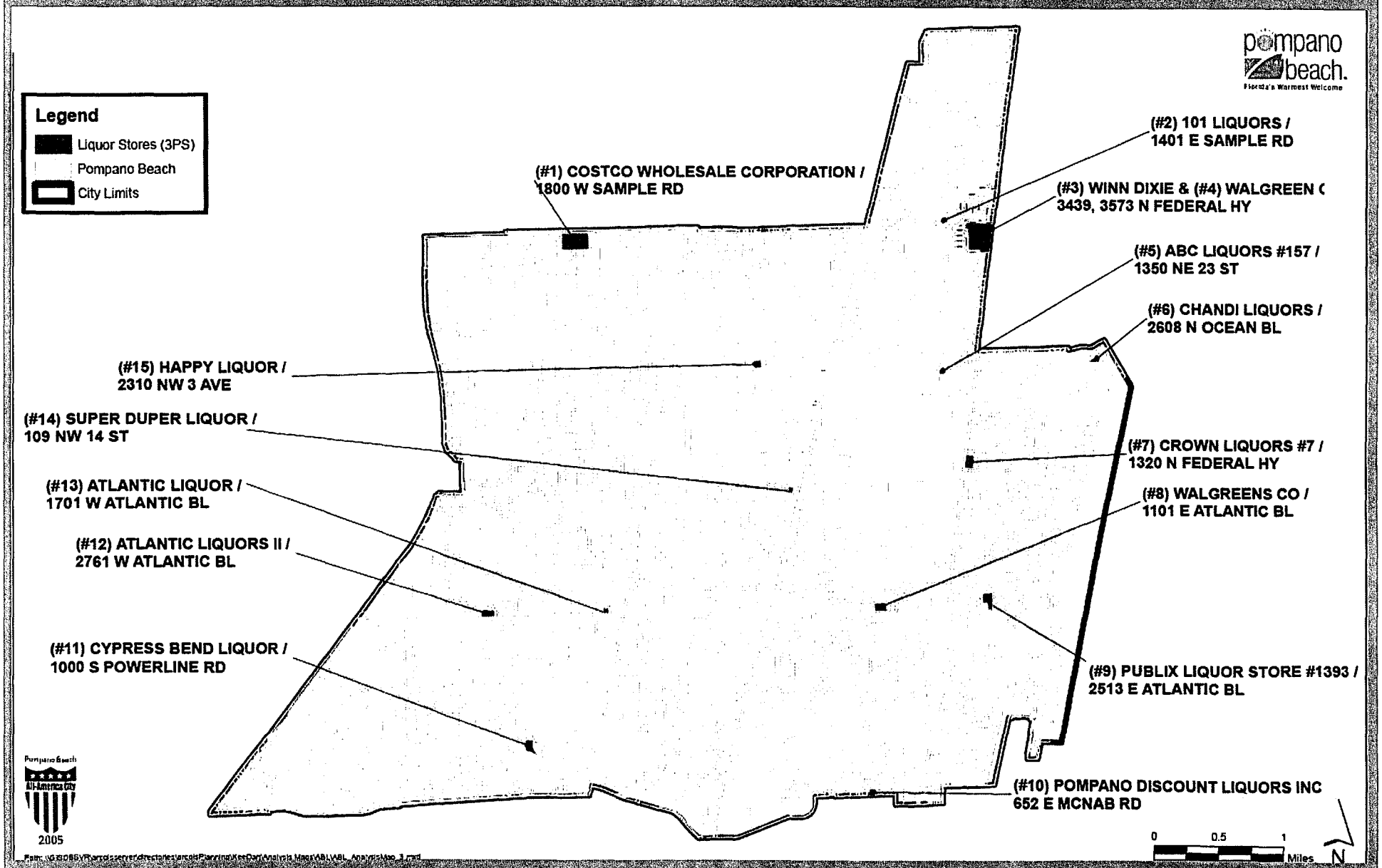
Pompano Beach

- 2014 Population is 104,410 = 13.9 3PS licenses
- Currently there are 15 3APS licenses = 1 per 6,942 residents

Comment: Based on the County's existing population, there are 69 additional 3APS licenses available for the County. Currently, the city's amount of 3APS licenses is in-line with the state's quota ratio.

Overview: Existing Liquor Stores in Pompano Beach

Locations of 15 Existing 3APS Establishments



Pictorial Review - Existing 3APS Establishments

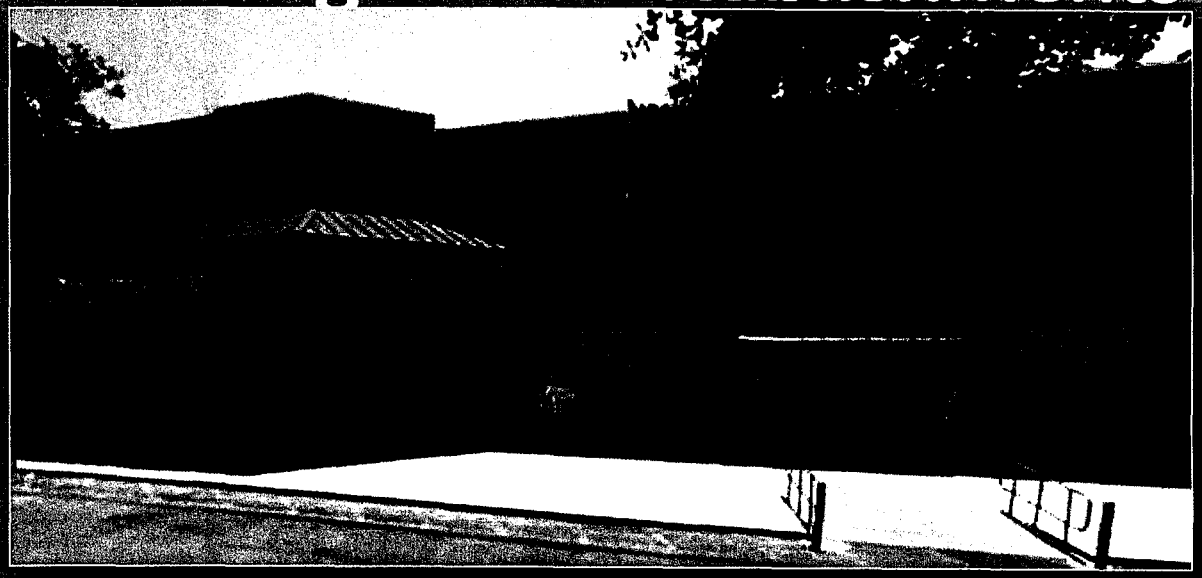
#1 - Costco Liquor Store
1800 W. Sample Rd.

#2 - 101 Liquors
1401 E. Sample Rd.
(2,694 sq ft)

Pictorial Review - Existing 3APS Establishments

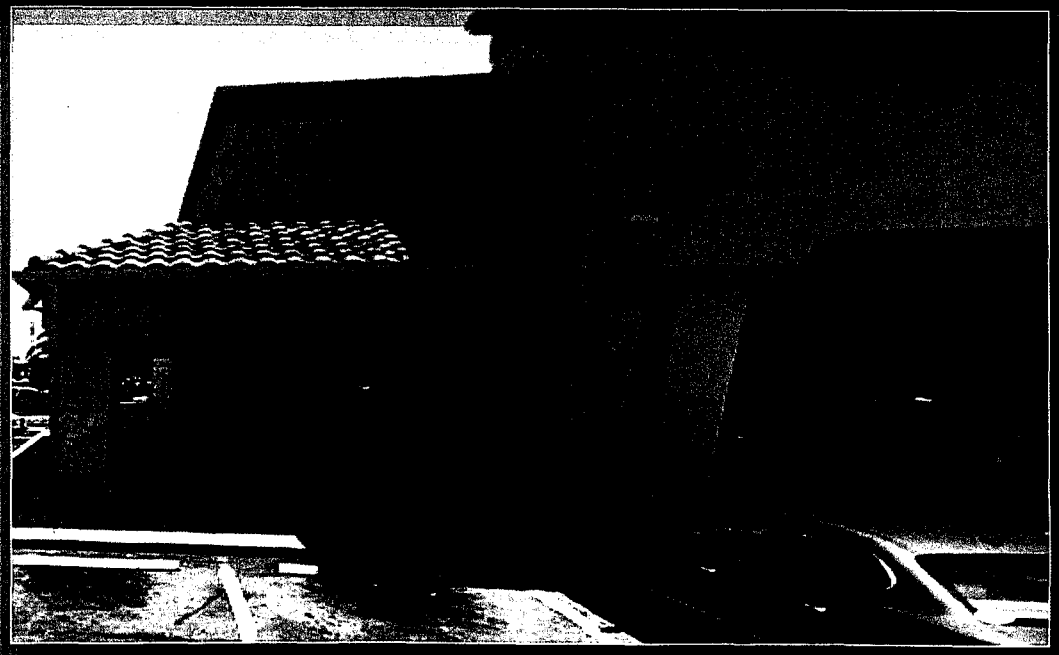
#3 - Winn Dixie

3439 N. Federal Hwy.



#4 - Walgreens

3573 N. Federal Hwy.



Pictorial Review - Existing 3APS Establishments

#5 - ABC Fine Wines & Spirits

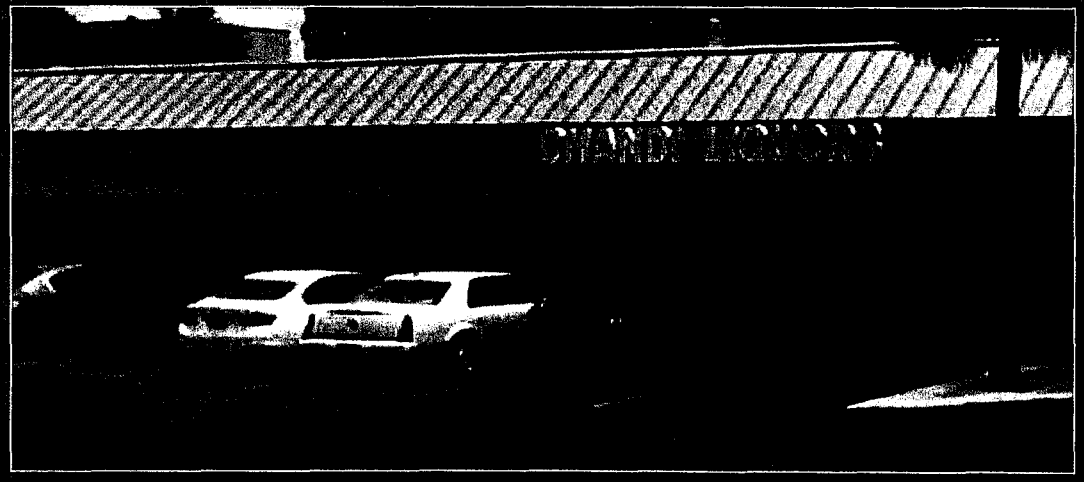
1350 NE 23rd St.

(7,575 sq ft)

#6 - Chandi Liquors

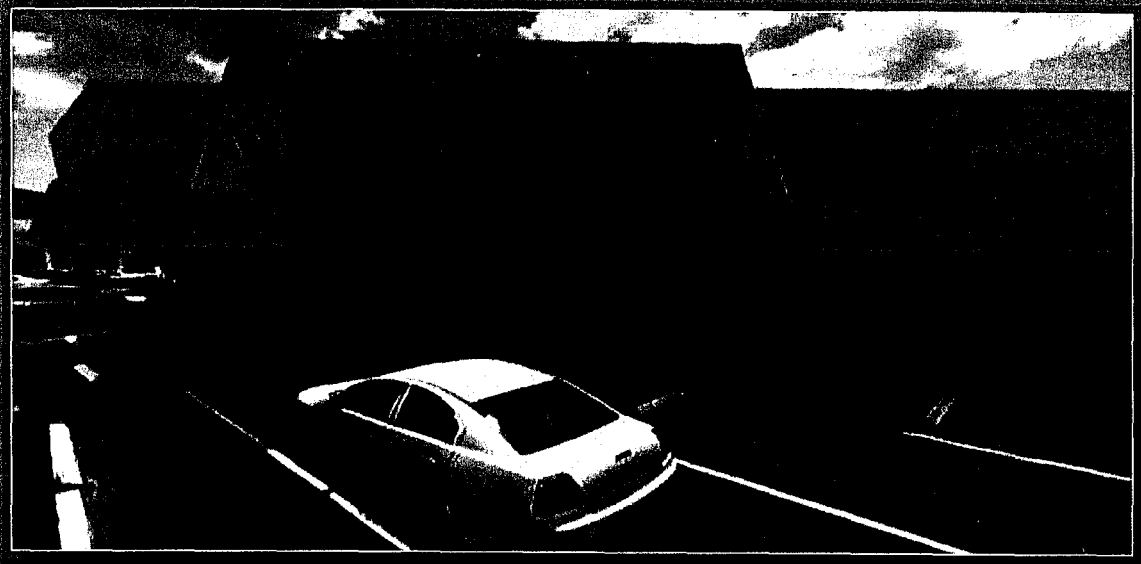
2608 N. Ocean Blvd.

(~850 sq ft)



Pictorial Review - Existing 3APS Establishments

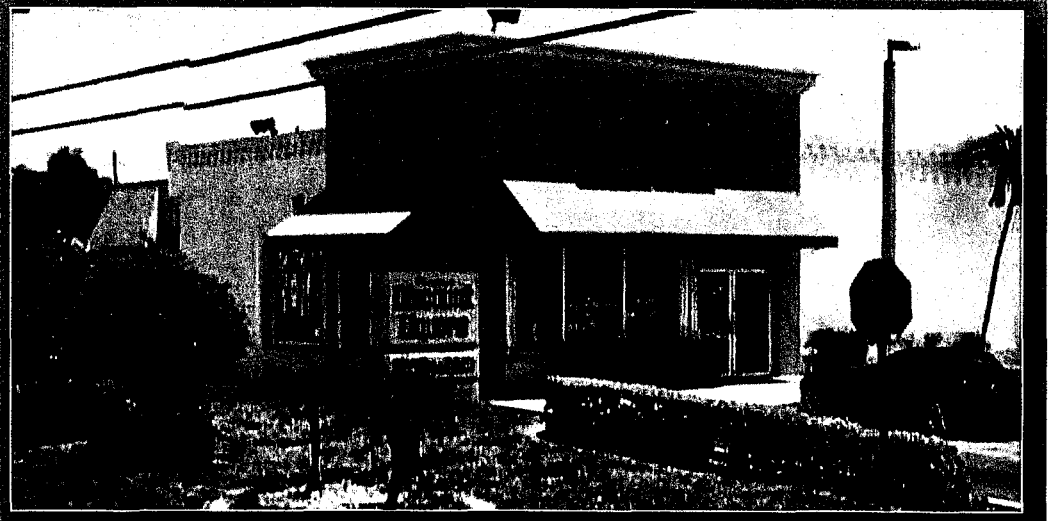
7 - Crown Wine & Spirits
1320 N. Federal Hwy.
(5,023 sq ft)



#8 - Walgreens
1101 E. Atlantic Blvd.

Pictorial Review - Existing 3APS Establishments

9 -Publix Liquor Store
2513 E. Atlantic Blvd

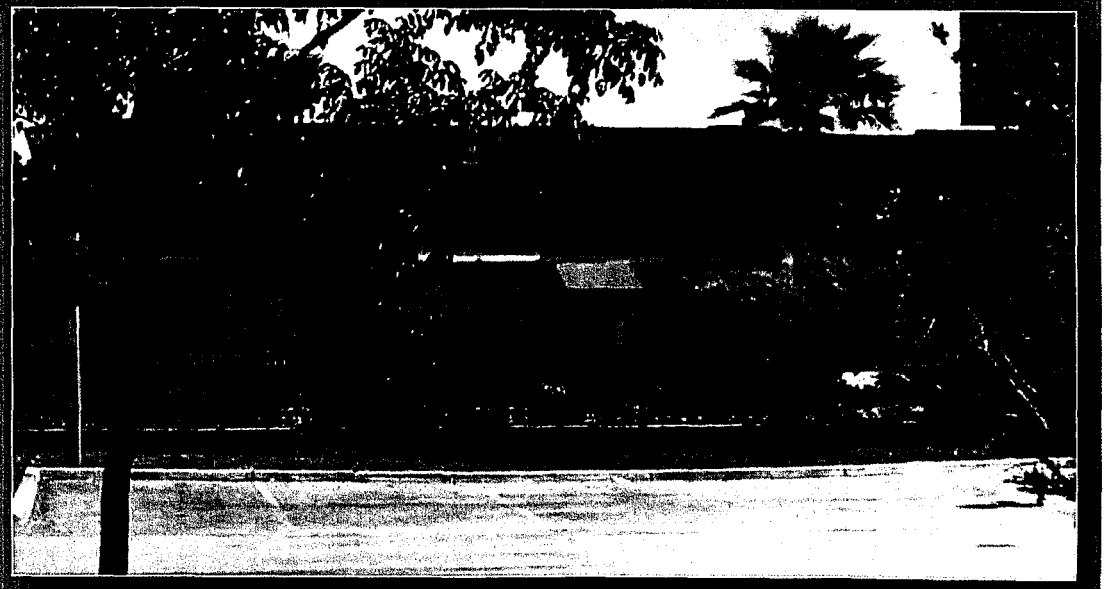


#10 - Pompano Discount Liquors
652 E. McNab Rd.
(3,600 sq ft)

Pictorial Review - Existing 3APS Establishments

#11 - Cypress Bend Liquor
1000 S. Powerline Rd.
(1,770 sq ft)

#12 - Atlantic Liquor II
2761 W. Atlantic Blvd
(~1,250 sq ft /drive-thru)



Pictorial Review - Existing 3APS Establishments

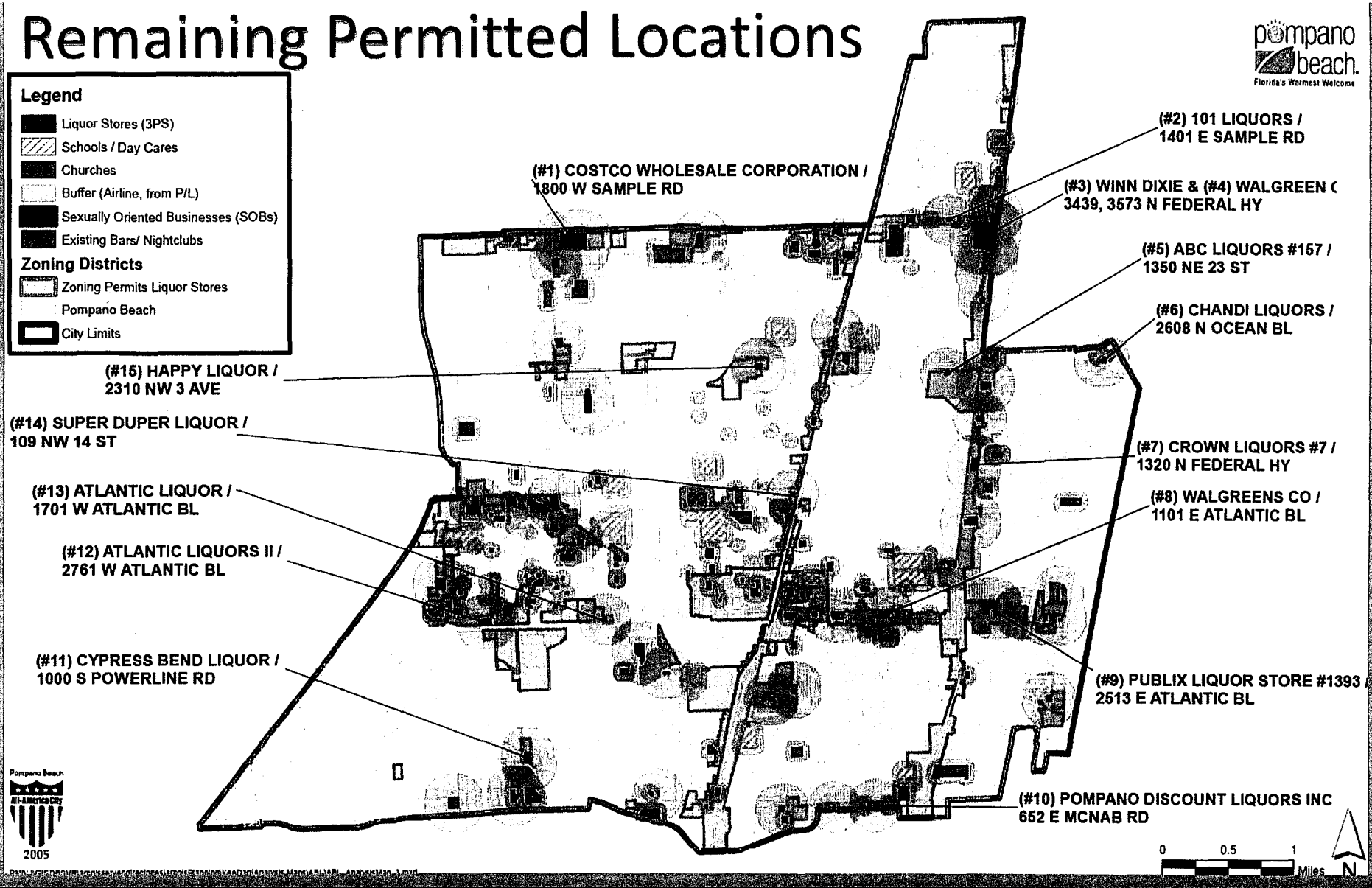
#13 - Atlantic Liquor
1701 W. Atlantic Blvd
(2,192 sq ft / drive-thru)

#14 – Super Duper Liquor
109 NW 14 St
(not shown / 5,665 sq ft)

#15 - Happy Liquors
2310 NW 3 Ave.
(2,400 sq ft)

Permitted Locations for 3APS establishments in Pompano Beach

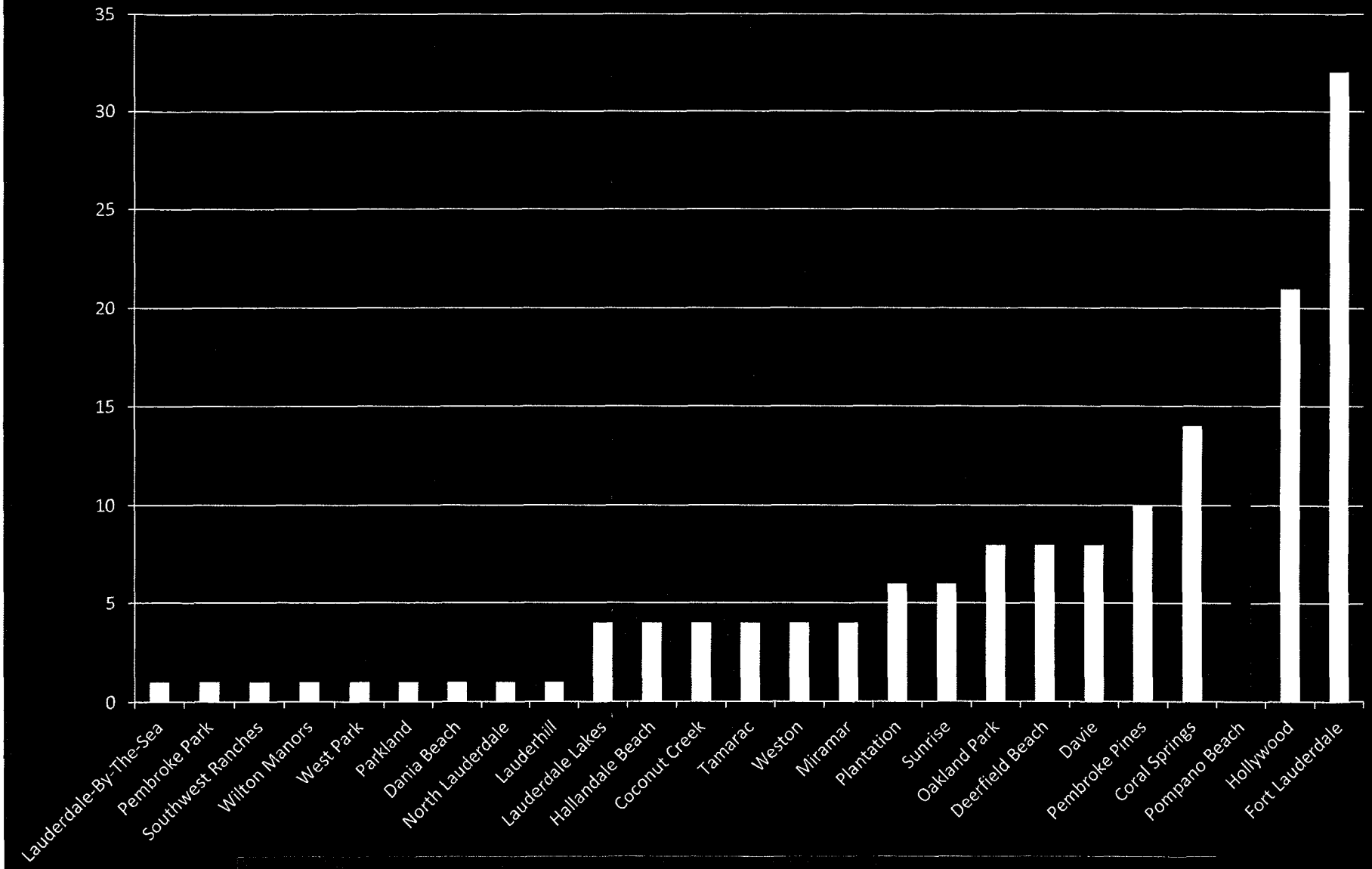
Remaining Permitted Locations



Comments: The "permitted" locations are those green areas not covered by a grey buffer. The buffers shown are an approximation based on existing locations of separated uses and measurements from property line. Also, the Zoning Code exempts liquor stores which are greater than 25,000 sq ft from separation requirements. Therefore the actual "permitted" locations may be slightly different than those shown in green. Finally, while the AOD and DPOD do not require separation for bars, brewpubs, etc..., these districts do not exempt Liquor Stores from separation requirements.

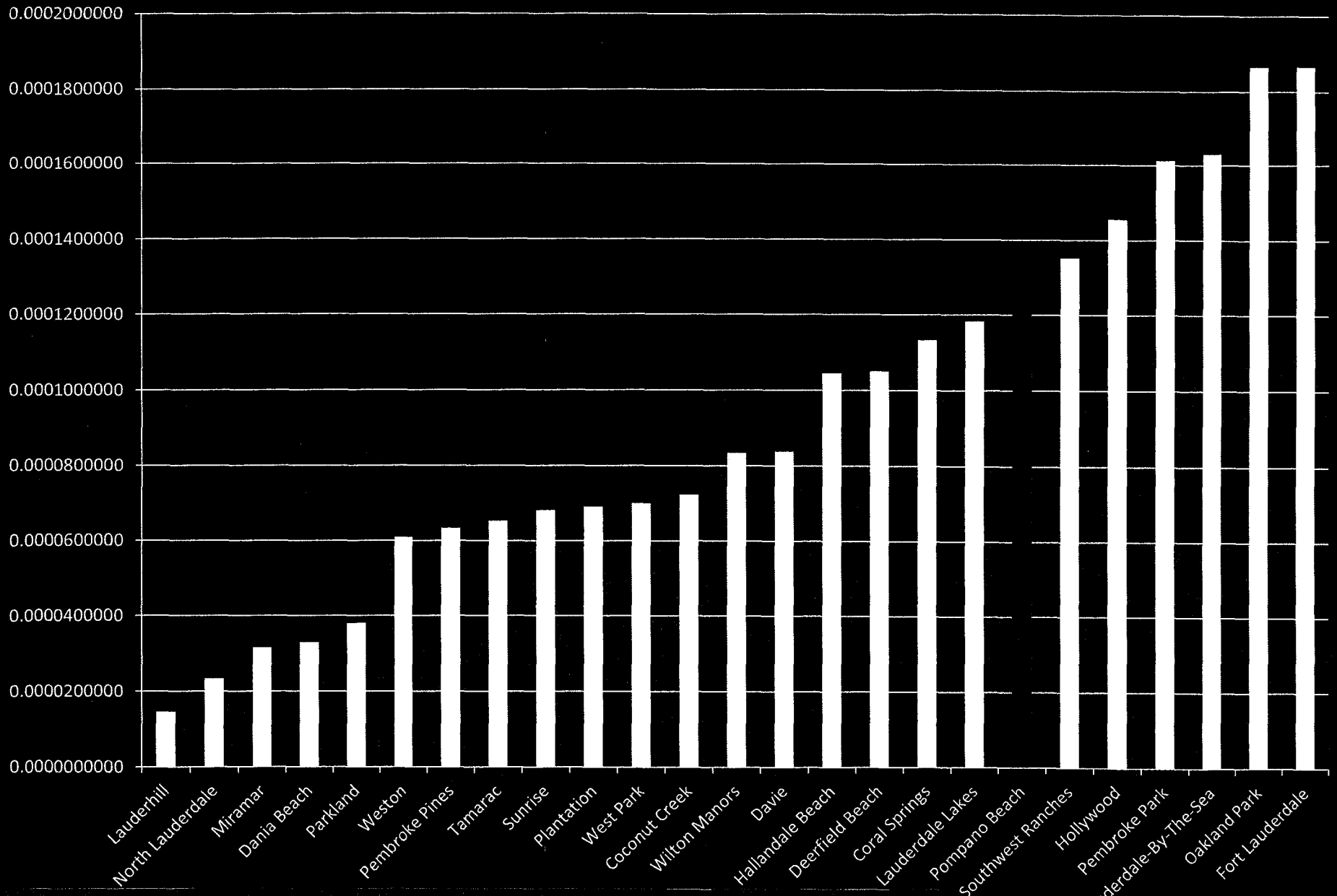
Analysis: Number of Liquor Stores in Pompano Beach vs. other Broward County Municipalities

Number of 3APS Establishments for Broward County Municipalities – March 2015



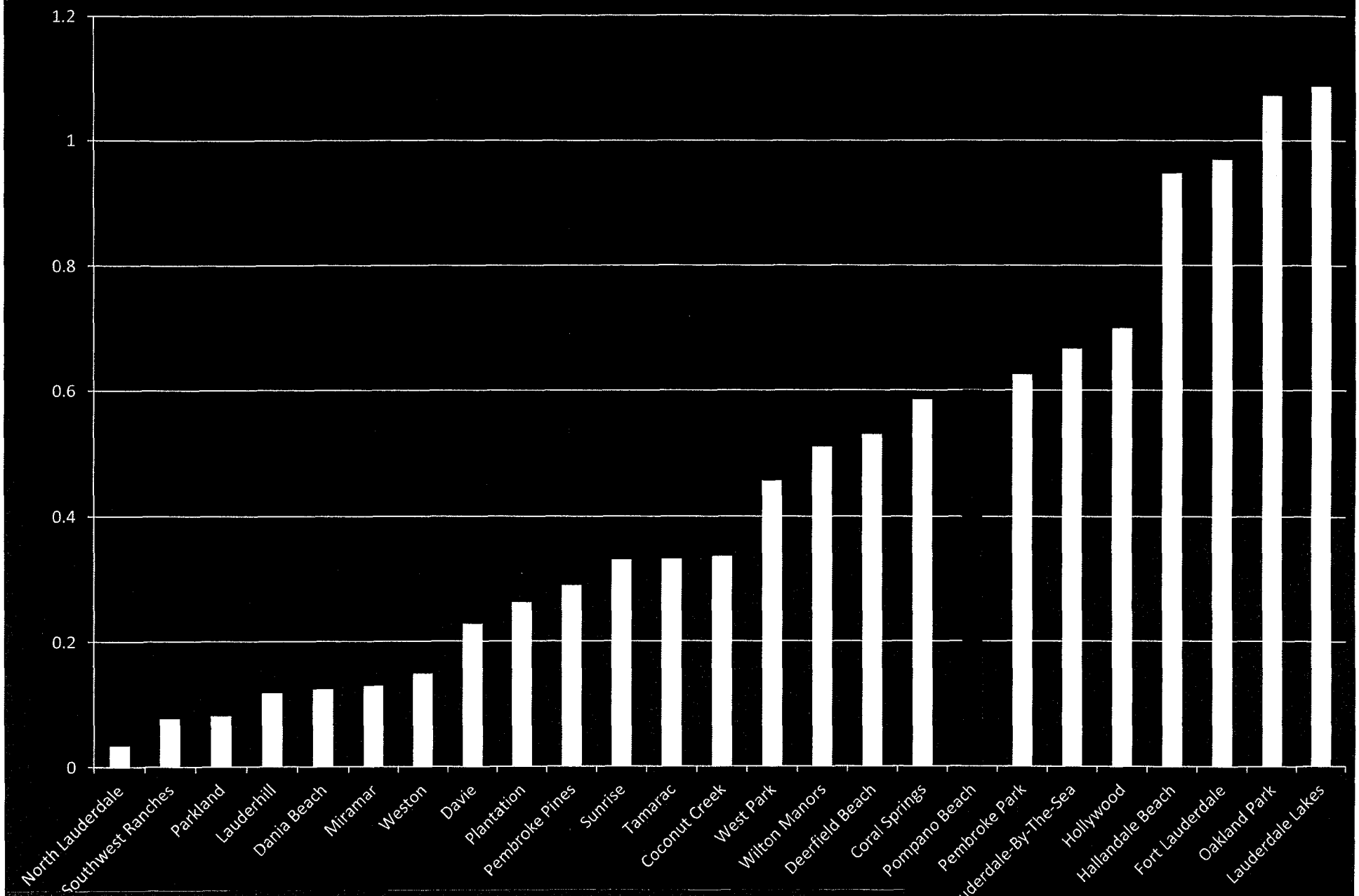
Comment: Pompano Beach has the 3rd highest number of liquor stores in Broward County.

Number of 3APS Establishments per Capita



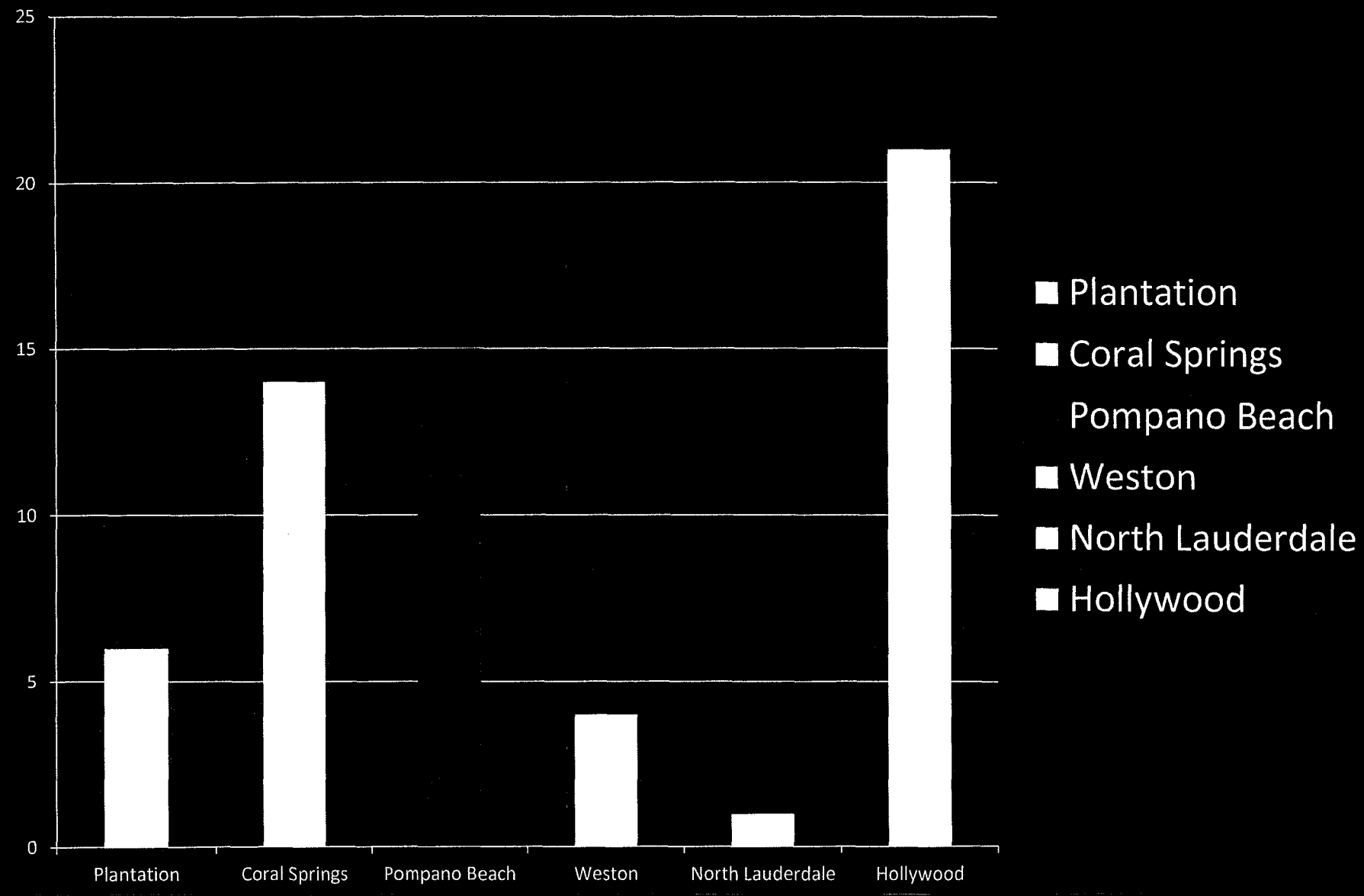
Comment: Pompano Beach has the 7th highest number of liquor stores per capita in Broward County.

Number of 3APS Establishments per Square Mile



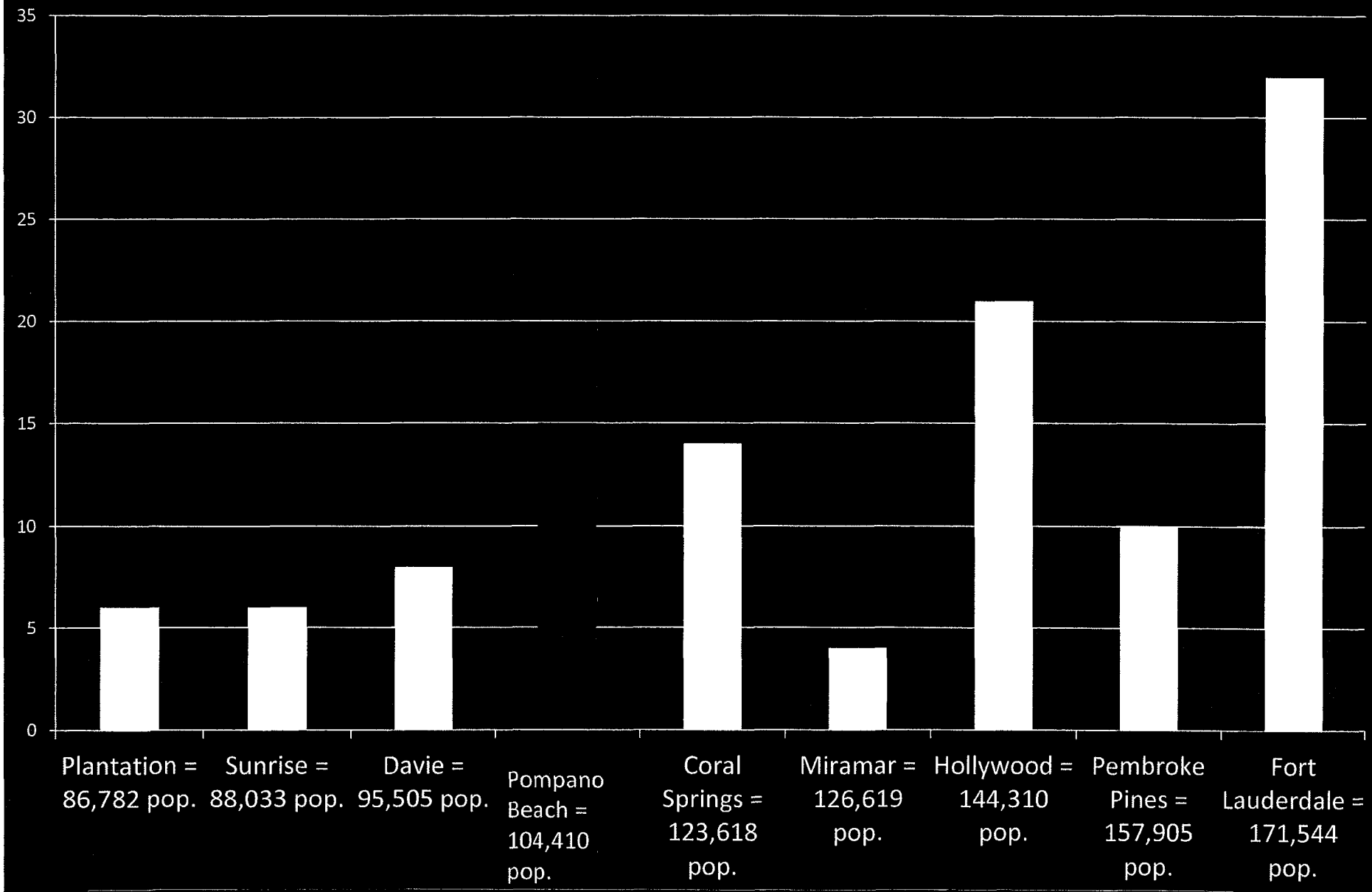
Comment: Pompano Beach has the 8th highest number of liquor stores per square mile in Broward County.

Pompano Beach compared to Cities of Similar Size: Square Miles



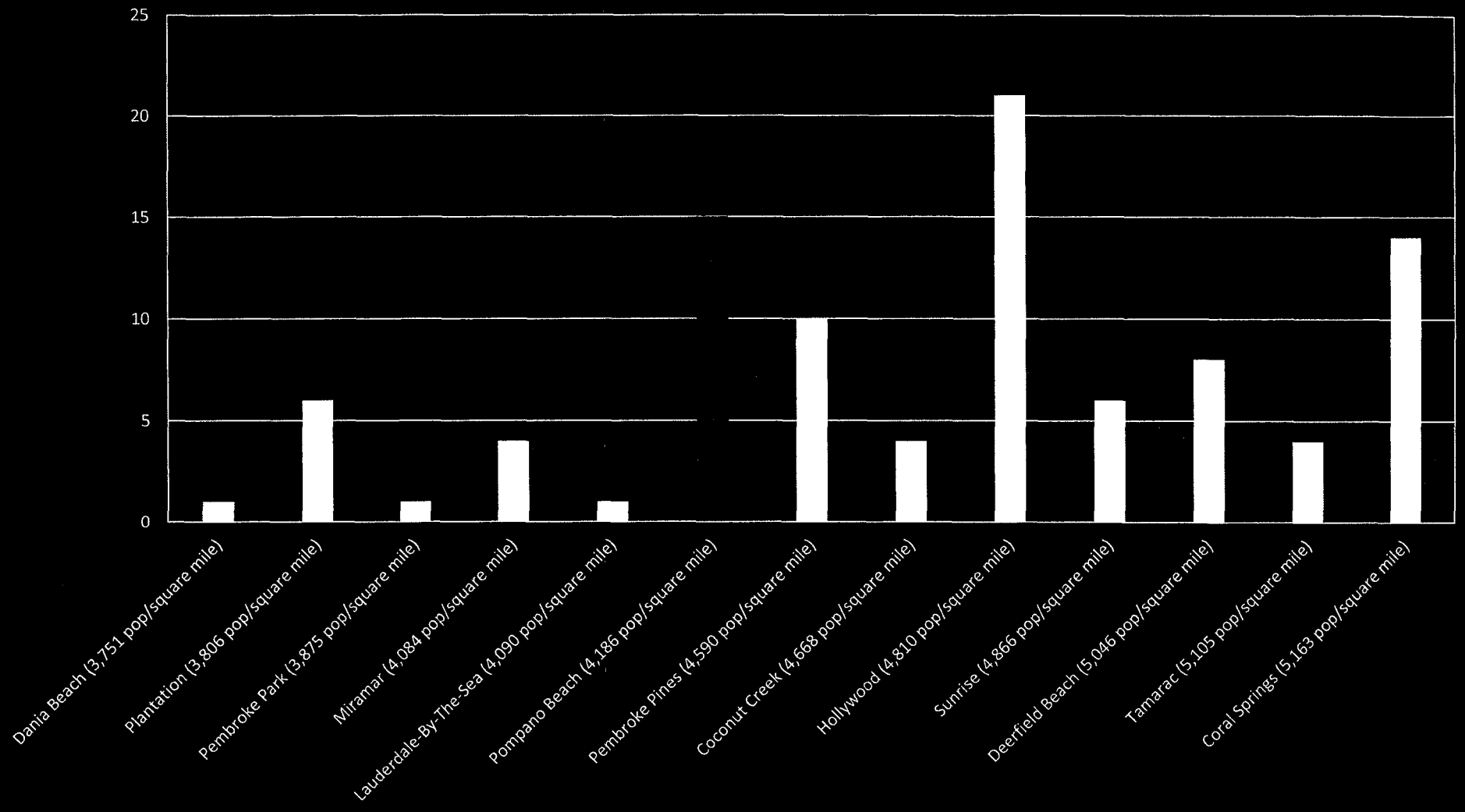
Comment: When compared to cities of similar size (square miles) Pompano Beach has the 2nd highest number of liquor stores.

Pompano Beach Compared to Similar Size Cities: Population



Comment: When compared to cities of similar population size, Pompano Beach has the 3rd highest number of liquor stores.

Pompano Beach Compared to Cities of Similar Size: Density



Comment: When compared to cities of similar population density, Pompano Beach has the 2nd highest number of liquor stores.

Outcome, Considerations, & Recommendations

Outcome

- ✓ City's *current* number of 3APS licenses is in-line with state quota for county
  - State = 1 per 7,500 residents (per county)
  - City = 1 per 6,942 residents
- ✓ City's *current* number of 3APS licenses is "average" as compared to all 31 Broward Municipalities:
  - Total # of Licenses 3rd highest amount of 3APS licenses
  - # of Licenses per capita 7th highest
  - # of Licenses per square mile 8th highest
  - # of Licenses as compared to city's of similar size 2nd highest
  - # of Licenses as compared to city's of similar population size 3rd highest
  - # of Licenses as compared to city's of similar density 2nd highest
- ✓ City's definitions / uses are not consistent with state terminology which can be confusing (i.e. 4COP allows a bar with package sales = Should this use be treated as a liquor store?)

Considerations

#1
Maintain Pompano Beach's "average" status (as compared to other Broward municipalities)

#2
Limit concentration of liquor stores in blighted areas

#3
Create Use for sales of Beer or Wine

#4
Encourage new establishments, particularly those whose focus is products from small, specialized or local breweries, wineries, or distilleries

#5
Revise definitions / uses to be in-line with state terminology

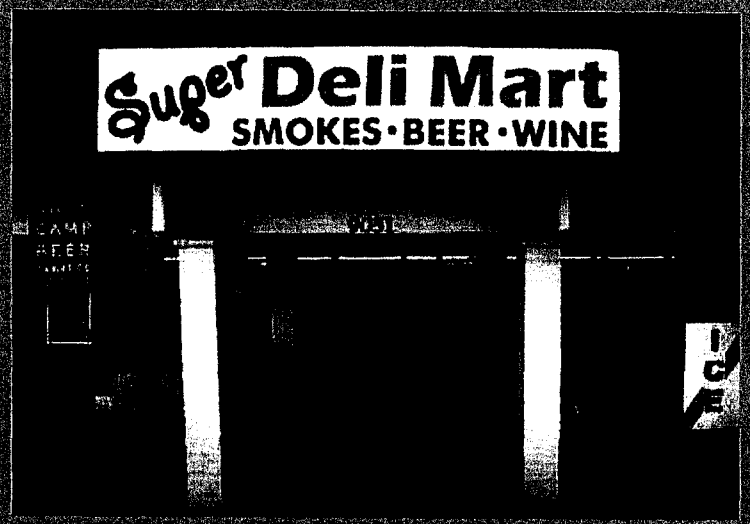
#6
Transfer all regulations regarding sales of alcoholic beverages to CH. 110, Alcoholic Beverages

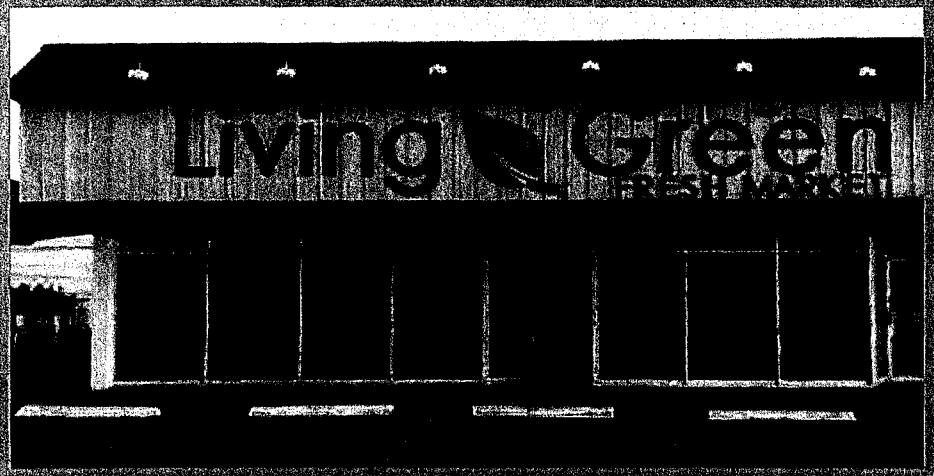
Comment: The six consideration items should not be viewed as final recommendations, but as the components to be considered in determining recommendations. Therefore the final recommendations may not reflect some of the considerations.

Additional Information: Consideration #3
Beer Sales in Convenience Stores

How does city ensure that "Grocery or Convenience Store" is primarily for sales of foodstuffs and nonalcoholic beverages

VS.





Additional Information: Consideration #3
Beer Sales in Convenience Stores

"The Association for Convenience & Fuel Retailing: Fact Sheets / Instore Merchandise / Beer Sales (2015)"

- Convenience Store sales of beer in 2013:
  - $14.7 / 59% of beer sold in retail channels, including food, mass and drugstores
  - Most beer subcategories posted increases in sales dollar growth in 2013, including flavored malts (24%), imports (8.9%) and micro or craft brews (31%).
- Unlike grocery and drugstores, convenience stores have an advantage with beer sales: *open longer hours*, stock top sellers and product is often kept cold in beer caves.
  - Beer caves, which are temperature-controlled walk-in coolers, have been gaining traction within convenience stores, allowing retailers to sell more product in larger packaging sizes that is already cold, such as 12 packs and cases. Walk-in beer caves also allow c-stores to store more product and eliminate out-of-stock situations. Many retailers also use their beer caves to enhance the shopper experience with attractive merchandising, lighting and design elements that convey to customers that their store has the coldest beer in town.

Additional Considerations:

- Convenience stores in New Jersey, Pennsylvania and Rhode Island cannot sell beer
- Convenience stores in Indiana cannot sell beer cold
- In San Francisco, Grocery Stores and Convenience Stores are treated as alcoholic beverage establishments if they devote more than 15% of the gross square footage of the establishment to the display and sale of alcoholic beverages, and they sell single servings of beer in container sizes 24 oz. or smaller.

Additional Information: Consideration #4
Specialty Beer, Wine, and Liquor Stores

- In conjunction with the growth of craft breweries, craft wineries, and craft distilleries is the growth of retail stores whose inventory consists solely of craft beverages.
- There are stores whose inventory whose inventory consists solely of locally produced beverages, such as Florida Wines.
- There are stores whose inventory consists solely of a particular region, such as French wines and other French products.
- "While it may have once been a destination to purchase beer or wine from one or two lower end options many grocery stores today now offer a cornucopia of beer and wine varieties. As consumers have ramped up their desires for distinctive and varied options, grocery retailers have ratcheted up their efforts with three primary goals in mind: offer convenience of a one-stop shop, participate in a big and growing category, and ring up bigger basket sales" (nielsen.com - Grapes of Worth: How Supermarkets are Becoming Local Wine Shops, Consumer | 02-19-2016)

Tampa Bay Times
WINNER OF 10 PULITZER PRIZES

Pinellas County relaxes zoning rules to welcome craft beer sales

Additional Information: Consideration #4
Defining Specialty Beer, Wine, and Liquor Stores

Atlanta, GA / Wine specialty shop means a retail establishment:

(1) Which shall deal in the sale of table wine, fortified wines, port, sherry for consumption off the premises and/or wine accessories, and at which on premises consumption of alcoholic beverages is specifically prohibited, except that if a wine specialty shop is the holder of a license under section 10-60(a)(1)c. of this Code, that licensed retail establishment shall be authorized to hold wine tastings in conjunction with educational programs on the subjects of enology or viticulture;

(2) Which shall not maintain on the premises or offer for sale malt beverages or distilled spirits;

(3) Which shall maintain on the premises and offer for sale at all times a variety of wines from not less than 100 nor more than 200 manufacturers or importers of wine or any combination thereof the total of which shall not fall below 100 nor exceed 200;

(4) Which shall maintain and replenish an inventory of at least 36 bottles of wine from each manufacturer or importer of wine referred to in subsection (3) above, provided however, that any inventory which is depleted to less than 36 bottles of wine must be replenished to at least 36 bottles of wine within 15 days of the date that the inventory falls below 36 bottles;

(5) Which shall submit an inventory list of all wines maintained on the premises and offered for sale to the licenses and permits unit of the police department. Such inventory list shall be submitted to the licenses and permits unit on a quarterly basis by the first day of each of the following months: January, April, July and October; and

(6) Whose total interior floor area, inclusive of storage area, shall not exceed 2,000 square feet.

Fairfield, CA / Market, Specialty Beverage

An establishment emphasizing a single unique type of specialty beverage product in a distinct category of merchandise such as a specialty wine merchant. This use is distinct from other beverage stores in that the market focuses on a single type or range of products not readily available at a convenience market or grocery.

Oneonta, AL / Specialty beverage store:

An establishment principally operated for the sale of a diversified selection of both domestic and imported beer and/or wine, but not liquor, in unopened containers for off site consumption. Such establishments may also apply for a retail table wine for off-premises consumption and retail beer license for off-premises consumption.

Recommended Uses: Liquor Stores

Local Liquor or Package Store.

- Less than 7,500 sq ft
- SE in all B Districts *(Consideration #1 and #2)*
- Required to comply with Separation Standards (see separation slide) *(Consideration #1 and #2)*
- *Specifically prohibited in DPOD (AOD per underlying Zoning)*

Regional Liquor or Package Store.

- 7,500 sq ft or greater *(Consideration #4)*
  - Of the stand-alone liquor stores currently existing, ABC liquors is the largest at 7,575 sq ft
- SE in B-1 and B-2 Districts *(Consideration #1 and #2)*
- Exempt from Separation Standards (see separation slide) *(Consideration #4)*
  - This use will replace the exemption for "Anchor Store larger than 10,000 sq ft".
  - The change is both a reduction in sq ft but also now can be a stand-alone bldg.
- *SE in DPOD (AOD per underlying Zoning)*

K. LOCAL LIQUOR OR PACKAGE STORE

1. Districts Where Permitted

RS-1	RS-2	RS-3	RS-4	RS-L	RD-1	RM-7	RM-12	RM-20	RM-30	RM-45	MH-12	B-1	B-2	B-3	B-4
												~~P~~ S	~~P~~ S	~~P~~ S	~~P~~ S

M-1	CR	I-1	I-IX	OIP	M-2	TO	PR	CF	PU	T	BP	RP UD	PC D	PD-TO	LA C	PD-I
						P							P	P	P	P

2. Definition

A local liquor or package store is an alcoholic beverage establishment with a gross floor area of less than 7,500 square feet and licensed by the state exclusively for the retail sale of liquor or spirits in sealed containers for consumption off the premises where sold.

3. Standards

Drive-through service is strictly prohibited.

L. REGIONAL LIQUOR OR PACKAGE STORE

1. Districts Where Permitted

RS-1	RS-2	RS-3	RS-4	RS-L	RD-1	RM-7	RM-12	RM-20	RM-30	RM-45	MH-12	B-1	B-2	B-3	B-4
												S	S	P	P

M-1	CR	I-1	I-IX	OIP	M-2	TO	PR	CF	PU	T	BP	RP UD	PC D	PD-TO	LA C	PD-I
						P							P	P	P	P

2. Definition

A regional liquor or package store is an alcoholic beverage establishment with a gross floor area of at least 7,500 square feet and licensed by the state exclusively for the retail sale of liquor or spirits in sealed containers for consumption off the premises where sold.

3. Standards

Drive-through service is strictly prohibited.

Recommended Uses: Beer/Wine Stores

Grocery or Convenience Store.

- New use specific standard clarifies when sales of beer and/or wine are considered accessory to this use. *(Consideration #3)*
- No ABE separation required only if sales of beer or wine are 20% or less of total display area AND no exterior signage *(Consideration #3 and #4)*
  - 20% is the percentage used for adult book/novelty stores. Restaurants and Bars at Hotels, retail sales in industrial districts, and sale of used merchandise and/or goods is limited to 20% of the floor space in the General Business (B-3)
- Grocery or Convenience Stores that exceed 20% limit are also considered Beer or Wine Store.

Beer or Wine Store.

- SE in B-1, B-2, and B-3 *(Consideration #2 and #3)*
- Drive-through is prohibits
- Required to comply with separation standards. *(Consideration #2)*
- In order to encourage "specialty stores", specialty stores are exempt from separation (see separation slide). *(Consideration #4)*
- *SE in DPOD / (AOD per underlying Zoning)*

F. GROCERY OR CONVENIENCE STORE

. . .

3. Standards

a. Sales of beer or wine may only be considered an accessory use to a Grocery or Convenience Store provided the display area for the sales of beer or wine does not exceed 20% of the total display area used for all other merchandise and no exterior signage for the sale of beer or wine is provided.

b. Grocery or Convenience Stores with sales of beer or wine which exceed the standards listed in subsection a above and/or provide exterior signage for the sale of beer or wine shall also be considered a Beer or Wine Store and subject to all of the standards for such use.

M. BEER OR WINE STORE

1. Districts Where Permitted

RS-1	RS-2	RS-3	RS-4	RS-L	RD-1	RM-7	RM-12	RM-20	RM-30	RM-45	MH-12	B-1	B-2	B-3	B-4
												S	S	S	P

M-1	CR	I-1	I-IX	OIP	M-2	TO	PR	CF	PU	T	BP	RP UD	PC D	PD-TO	LA C	PD-I
						P							P	P	P	P

2. Definition

A beer or wine store is an alcoholic beverage establishment licensed by the state exclusively for the retail sale of beer and/or wine in sealed containers for consumption off the premises where sold. A beer or wine store maybe considered a specialty store if the establishment emphasizes a single unique type of specialty beer or wine not readily available at a grocery or convenience store, such as beer or wine made from craft or microbreweries or wineries, or beer or wine from a specific geographic region.

3. Standards

Drive-through service is strictly prohibited.

Recommended Uses: Accessory Uses

Accessory Beer or Wine Sales at a Brewery or Winery.

- Exempts the sales of beer, wine, or liquor at a brewery, winery, or distillery from separation standards (see separation slide). *(Consideration #4)*
- No additional parking required if the sales area (aka tap room) is less than 20% of the GFA of the brewery or winery, otherwise the standard parking for beer or wine bar would apply. *(Consideration #4)*

Accessory Package Sales at Bar or Lounge.

- SE approval in B-1, B-2, and B-3 *(Consideration #2 and #3)*
- Required to comply with Separation Standards (see separation slide). *(Consideration #1 and #2)*

SS. ALCOHOLIC BEVERAGE SALES AS AN ACCESSORY USE TO A BREWERY, WINERY OR DISTILLERY

1. Districts Where Permitted

RS-1	RS-2	RS-3	RS-4	RS-L	RD-1	RM-7	RM-12	RM-20	RM-30	RM-45	MH-12	B-1	B-2	B-3	B-4
															A

M-1	CR	I-1	I-IX	OIP	M-2	TO	PR	CF	PU	T	BP	RP UD	PC D	PD-TO	LA C	PD-I
		A	A	A									A			

2. Definition

Alcoholic beverage sales as an accessory use to a brewery, winery, or distillery is the accessory retail sales of beer, wine, or liquor at the same location where the beverage is manufactured, including for consumption on the premises and for consumption off the premises.

TT. PACKAGE SALES AS AN ACCESSORY USE TO A BAR OR LOUNGE

1. Districts Where Permitted

RS-1	RS-2	RS-3	RS-4	RS-L	RD-1	RM-7	RM-12	RM-20	RM-30	RM-45	MH-12	B-1	B-2	B-3	B-4
												S	S	S	A

M-1	CR	I-1	I-IX	OIP	M-2	TO	PR	CF	PU	T	BP	RP UD	PC D	PD-TO	LA C	PD-I
		A	A	A		A						A	A	A	A	A

2. Definition

Package sales as an accessory use to a bar or lounge is the accessory retail sales of beer, wine, or liquor for consumption off the premises at a bar or lounge.

Recommended Revisions to Separation Exemptions

No longer exempt from separation:

- Sales of beer or wine for consumption off the premises, *unless* accessory sales at a Grocery or Convenience Store (20% sales and no signage) or if a Specialty Store
- Bars with Package Sales in AOD

New exemptions from separation:

- Sales or beer, wine, or liquor as accessory to brewery, winery, or distillery
- Liquor Stores which are 7,500 sq ft or larger (aka Regional Liquor Stores)

➢ Clarifies that distributors and manufacturers are also exempt

TABLE 155.4501.B: EXCEPTIONS TO THE MINIMUM SEPARATION OF USES INVOLVING THE SALE OF ALCOHOLIC BEVERAGES FROM CERTAIN EXISTING USES

Use and Criteria	Required Separation: Any other use involving the sales of alcoholic beverages; and Sexually oriented business	Required Separation: Child Care facility; School; and Place of Worship
An establishment limited by its state beverage license ~~to the sale of beer or wine for consumption off the premises~~ for the distribution of alcoholic beverages to vendors and other distributors.	Exempt	Exempt
Grocery or Convenience Store with accessory sales of beer or wine. Sales of beer or wine may only be considered an accessory use to a Grocery or Convenience Store provided the display area for the sales of beer or wine does not exceed 20% of the total display area used for all other merchandise and no exterior signage for the sale of beer or wine is provided.	Exempt	Exempt
Beer or Wine Store.	Exempt if a Specialty Store.	Exempt if a Specialty Store.
A food and/or beverage manufacturer limited by its state beverage license for manufacturing of wines and cordials, brewing malt beverages, or distiller of spirituous liquor.	Exempt	Exempt
Alcoholic beverage sales as an accessory use to a brewery, winery or distillery.	Exempt	Exempt
~~A retail sales establishment that is an anchor store containing more than 10,000 square feet of gross floor area.~~ Regional Liquor or Package Store	Exempt	Exempt
Within the Atlantic Boulevard Overlay District (AOD) only, a bar or lounge, brewpub, restaurant, or specialty eating establishment (whether a principal use or an accessory use to a hotel, and including any accessory outdoor seating).	Exempt if no package sales are offered at bar or lounge.	Exempt if no package sales are offered at bar or lounge.

The Right Use in the Right Location:
Liquor Stores
(& other retail sales of alcoholic beverages)

November 2015

§ 155.4222. COMMERCIAL: RETAIL SALES AND SERVICE USES - RETAIL SALES

. . .

F. GROCERY OR CONVENIENCE STORE

. . .

3. Standards

a. Sales of beer or wine may only be considered an accessory use to a Grocery or Convenience Store provided the display area for the sales of beer or wine does not exceed 20% of the total display area used for all other merchandise and no exterior signage for the sale of beer or wine is provided.

b. Grocery or Convenience Stores with sales of beer or wine which exceed the standards listed in subsection a above and/or provide exterior signage for the sale of beer or wine also be considered a Beer or Wine Store and subject to all of the standards for such use.

. . .

K. LOCAL LIQUOR OR PACKAGE STORE

1. Districts Where Permitted

RS-1	RS-2	RS-3	RS-4	RS-L	RD-1	RM-7	RM-12	RM-20	RM-30	RM-45	MH-12	B-1	B-2	B-3	B-4
												~~P~~ S	~~P~~ S	~~P~~ S	~~P~~ S

M-1	CR	I-1	I-IX	OIP	M-2	TO	PR	CF	PU	T	BP	RP UD	PC D	PD-TO	LA C	PD-I
						P							P	P	P	P

2. Definition

A local liquor or package store is an alcoholic beverage establishment with a gross floor area of less than 7,500 square feet and licensed by the state exclusively for the retail sale of liquor or spirits in sealed containers for consumption off the premises where sold.

3. Standards

Drive-through service is strictly prohibited.

L. REGIONAL LIQUOR OR PACKAGE STORE

1. Districts Where Permitted

RS-1	RS-2	RS-3	RS-4	RS-L	RD-1	RM-7	RM-12	RM-20	RM-30	RM-45	MH-12	B-1	B-2	B-3	B-4
												S	S	P	P

M-1	CR	I-1	I-IX	OIP	M-2	TO	PR	CF	PU	T	BP	RP UD	PC D	PD-TO	LA C	PD-I
						P							P	P	P	P

2. Definition

A regional liquor or package store is an alcoholic beverage establishment with a gross floor area of at least 7,500 square feet and licensed by the state exclusively for the retail sale of liquor or spirits in sealed containers for consumption off the premises where sold.

3. Standards

Drive-through service is strictly prohibited.

M. BEER OR WINE STORE

1. Districts Where Permitted

RS-1	RS-2	RS-3	RS-4	RS-L	RD-1	RM-7	RM-12	RM-20	RM-30	RM-45	MH-12	B-1	B-2	B-3	B-4
												S	S	S	P

M-1	CR	I-1	I-IX	OIP	M-2	TO	PR	CF	PU	T	BP	RP UD	PC D	PD-TO	LA C	PD-I
						P							P	P	P	P

2. Definition

A beer or wine store is an alcoholic beverage establishment licensed by the state exclusively for the retail sale of beer and/or wine in sealed containers for consumption off the premises where sold. A beer or wine store maybe considered a specialty store if the establishment emphasizes a single unique type of specialty beer or wine not readily available at a grocery or convenience store, such as beer or wine made from craft or microbreweries or wineries, or beer or wine from a specific geographic region.

3. Standards

Drive-through service is strictly prohibited.

~~L~~N. **Pawn Shop**

. . .

~~M~~O. **Thrift Shop**

. . .

~~N~~P. **Retail Sales Establishment, Large**

. . .

~~O~~Q. **Indoor Mall or Marketplace**

. . .

~~P~~R. **Other Retail Sales Establishment**

. . .

§155.4227. INDUSTRIAL: MANUFACTURING AND PRODUCTION USES

. . .

E. Food and/or Beverage Products Manufacturing (without slaughtering)

. . .

2. Definition

A food and/or beverage products manufacturing use is an establishment primarily engaged in manufacturing of food and/or beverage products including, but not limited to, products made from livestock or agricultural products; fresh and frozen bread and other bakery products (e.g., cookies, crackers); frozen food products such as ice or ice cream; ~~alcoholic beverages such as ale, beer, malt liquors, wine~~ brewery, winery, or distillery; and nonalcoholic beverages. This use also includes vegetable or fruit packing, fish hatcheries and hydroponic garden facilities.

§155.4303. STANDARDS FOR SPECIFIC ACCESSORY USES AND STRUCTURES

. . .

SS. ALCOHOLIC BEVERAGE SALES AS AN ACCESSORY USE TO A BREWERY, WINERY OR DISTILLERY

1. Districts Where Permitted

RS-1	RS-2	RS-3	RS-4	RS-L	RD-1	RM-7	RM-12	RM-20	RM-30	RM-45	MH-12	B-1	B-2	B-3	B-4
															A

M-1	CR	I-1	I-IX	OIP	M-2	TO	PR	CF	PU	T	BP	RP UD	PC D	PD-TO	LA C	PD-I
		A	A	A									A			

2. Definition

Alcoholic beverage sales as an accessory use to a brewery, winery, or distillery is the accessory retail sales of beer, wine, or liquor at the same location where the beverage is manufactured, including for consumption on the premises and for consumption off the premises.

TT. PACKAGE SALES AS AN ACCESSORY USE TO A BAR OR LOUNGE

1. Districts Where Permitted

RS-1	RS-2	RS-3	RS-4	RS-L	RD-1	RM-7	RM-12	RM-20	RM-30	RM-45	MH-12	B-1	B-2	B-3	B-4
												S	S	S	A

M-1	CR	I-1	I-IX	OIP	M-2	TO	PR	CF	PU	T	BP	RP UD	PC D	PD-TO	LA C	PD-I
		A	A	A		A						A	A	A	A	A

2. Definition

Package sales as an accessory use to a bar or lounge is the accessory retail sales of beer, wine, or liquor for consumption off the premises at a bar or lounge.

§155.4501. SEPARATION REQUIREMENTS FOR ALCOHOLIC BEVERAGE ESTABLISHMENTS

TABLE 155.4501.B: EXCEPTIONS TO THE MINIMUM SEPARATION OF USES INVOLVING THE SALE OF ALCOHOLIC BEVERAGES FROM CERTAIN EXISTING USES		
	Required Separation	
Use and Criteria	Any other use involving the sales of alcoholic beverages; and Sexually oriented business	Child Care facility; School; and Place of Worship
An establishment limited by its state beverage license ~~to the sale of beer or wine for consumption off the premises~~ for the distribution of alcoholic beverages to vendors and other distributors.	Exempt	Exempt
Grocery or Convenience Store with accessory sales of beer or wine. Sales of beer or wine may only be considered an accessory use to a Grocery or Convenience Store provided the display area for the sales of beer or wine does not exceed 20% of the total display area used for all other merchandise and no exterior signage for the sale of beer or wine is provided.	Exempt	Exempt
Beer or Wine Store.	Exempt if a Specialty Store.	Exempt if a Specialty Store.
An enclosed restaurant which sells only beer and/or wine for consumption on the premises.	Exempt	Exempt if no externally visible display window or sign indicating the sale of alcoholic beverages
A food and/or beverage manufacturer limited by its state beverage license for manufacturing of wines and cordials, brewing malt beverages, or distiller of spirituous liquor.	Exempt	Exempt
Alcoholic beverage sales as an accessory use to a brewery, winery or distillery.	Exempt	Exempt
A bowling alley that contains more than nine bowling lanes.	Exempt	Exempt
A motion picture theater that contains more than 100 seats.	Exempt	Exempt
~~A retail sales establishment that is an anchor store containing more than 10,000 square feet of gross floor area.~~ Regional Liquor or Package Store	Exempt	Exempt
A bar or lounge which is operated as an accessory use to a restaurant and therefore meets the following standards: it is operated by the same management, and the restaurant has dining accommodations for service of 150 or more patrons at tables occupying more than 2,500 square feet, and deriving at least 51% of the gross revenue from the sale of food and non-alcoholic beverages.	Exempt	Exempt if there is no display window, sign, or other externally visible indication of the bar's or lounge's existence

A bar or lounge which is operated as an accessory use to a hotel or apartment hotel that has more than 25 sleeping rooms and/or dwelling units and that is operated by the same management as the hotel or apartment hotel.	Exempt	Exempt if there is no display window, sign, or other externally visible indication of the bar's or lounge's existence
~~An enclosed restaurant which sells only beer and/or wine.~~	~~Exempt~~	~~Exempt if no externally visible display window or sign indicating the sale of alcoholic beverages~~
A lodge or club which limits on-premise consumption of alcoholic beverages to only lodge or club members.	Exempt	Exempt if no externally visible display window or sign indicating the sale of alcoholic beverages
A use located on property owned by the city.	Not Exempt	Exempt
Within the Atlantic Boulevard Overlay District (AOD) only, a bar or lounge, brewpub, restaurant, or specialty eating establishment (whether a principal use or an accessory use to a hotel, and including any accessory outdoor seating).	Exempt if no package sales are offered at bar or lounge.	Exempt if no package sales are offered at bar or lounge.

§ 155.5102 OFF-STREET PARKING AND LOADING

D. OFF-STREET PARKING SPACE REQUIREMENTS

1. Minimum Number of Off-Street Parking Spaces

. . .

TABLE 155.5102.D.1: MINIMUM NUMBER OF OFF-STREET PARKING SPACES		
Use Category	**Use Type**	**Minimum Number of Parking**
. . .		
Retail Sales and Service Uses - Retail Sales	. . .	1 per 300 sq ft
	Local Liquor or Package Store	
	Regional Liquor or Package Store	
	Beer or Wine Store	
	Pawn Shop	
	. . .	
***		
Accessory Uses	. . .	
	Dormitory (as accessory to educational use)	See Section 155.5102.D.2
	Alcoholic Beverage Sales as an Accessory Use to a Brewery, Winery or Distillery	1 per 300 sq ft. Except no parking is required if gross floor area used for accessory sales is less than 20% of total gross floor area of the principal use.
	. . .	

ARTICLE 9: DEFINITIONS AND INTERPRETATION

. . .

PART 5 TERMS AND USES DEFINED

The following words, terms, and phrases, when used in this Code, shall have the meaning ascribed to them in this section.

ACCESSORY DWELLING UNIT

. . .

ALCOHOLIC BEVERAGE ESTABLISHMENT

. . .

ALCOHOLIC BEVERAGE SALES AS AN ACCESSORY USE TO A BREWEY, WINERY, OR DISTILLERY
The accessory retail sales of beer, wine, or liquor at the same location where the beverage is manufactured, including for consumption on the premises and for consumption off the premises.

ALL WHOLESALE USES

. . .

BED AND BREAKFAST INN

. . .

BEER OR WINE STORE
An alcoholic beverage establishment licensed by the state exclusively for the retail sale of beer and/or wine in sealed containers for consumption off the premises where sold. A beer or wine store maybe considered a specialty store if the establishment emphasizes a single unique type of specialty beer or wine not readily available at a grocery or convenience store, such as beer or wine made from craft or microbreweries or wineries, or beer or wine from a specific geographic region.

BERM

. . .

Food ~~Processing~~ and/or Beverage Products Manufacturing (without slaughtering)
An establishment primarily engaged in ~~processing livestock or agricultural products into food products for immediate or final consumption. Such products are typically sold to wholesalers or retailers for distribution to consumers. Food processing does not include slaughtering animals.~~ manufacturing of food and/or beverage products including, but not limited to, products made from livestock or agricultural products; fresh and frozen bread and other bakery products (e.g., cookies, crackers); frozen food products such as ice or ice cream; brewery, winery, or distillery; and nonalcoholic beverages. This use also includes vegetable or fruit packing, fish hatcheries and hydroponic garden facilities.

LOCAL LIQUOR OR PACKAGE STORE
An alcoholic beverage establishment with a gross floor area of less than 7,500 square feet and licensed by the state exclusively for the retail sale of liquor or spirits in sealed containers for consumption off the premises where sold.

...

OWNER OF RECORD

...

PACKAGE SALES AS AN ACCESSORY USE TO A BAR OR LOUNGE
The accessory retail sales of beer, wine, or liquor for consumption off the premises at a bar or lounge.

PARAPET

...

REDEVELOPMENT

...

REGIONAL LIQUOR OR PACKAGE STORE
An alcoholic beverage establishment with a gross floor area of at least 7,500 square feet and licensed by the state exclusively for the retail sale of liquor or spirits in sealed containers for consumption off the premises where sold.

REGULATING PLAN

...

APPENDIX A: CONSOLIDATED USE TABLE

P = PERMITTED PRINCIPAL USE S = USE ALLOWED AS A SPECIAL EXCEPTION A = PERMITTED ACCESSORY USE
T = TEMPORARY USE ALLOWED WITH A MAJOR TEMPORARY USE PERMIT t = TEMPORARY USE ALLOWED WITH A MINOR TEMPORARY USE PERMIT
√ = TEMPORARY USE ALLOWED WITHOUT TEMPORARY USE PERMIT
I = INTERIM USE ALLOWED WITH AN INTERIM USE PERMIT BLANK CELL = PROHIBITED USE

USE CATEGORY (PRINCIPAL USES) AND/OR USE TYPE		RESIDENTIAL DISTRICTS												COMMERCIAL DISTRICTS						INDUSTRIAL DISTRICTS				SPECIAL DISTRICTS						PLANNED DEVELOPMENT DISTRICTS					USE-SPECIFIC STANDARDS
		RS-1	RS-2	RS-3	RS-4	RS-L	RD-1	RM-7	RM-12	RM-20	RM-30	RM-45	MH-12	B-1	B-2	B-3	B-4	M-1	CR	I-1	I-IX	OIP	M-2	TO	PR	CF	PU	T	BP	RPUD	PCD	PD-TO	LAC	PD-1	
COMMERCIAL USES																																			
***																																			
Retail Sales and Service Uses – Retail Sales	Home and Building Supply Center	…																																	155.4222.~~K~~ J
	Local Liquor or Package Store													~~P~~ S	~~P~~ S	~~P~~ S	~~P~~ S							P							P	P	P	P	155.4222.~~L~~ K
	Regional Liquor or Package Store													S	S	P	P							P							P	P	P	P	155.4222.L
	Beer or Wine Store													S	S	P	P							P							P	P	P	P	155.4222.M
	Pawn Shop	…																																	155.4222.~~L~~ N
	Thrift Shop	…																																	155.4222.~~M~~ O
	Retail Sales Establishment, Large	…																																	155.4222.~~N~~ P
	Indoor Mall or Marketplace	…																																	155.4222.~~O~~ Q
	Other Retail Sales Establishment	…																																	155.4222.~~P~~ R

APPENDIX A: CONSOLIDATED USE TABLE

P = PERMITTED PRINCIPAL USE S = USE ALLOWED AS A SPECIAL EXCEPTION A = PERMITTED ACCESSORY USE
T = TEMPORARY USE ALLOWED WITH A MAJOR TEMPORARY USE PERMIT t = TEMPORARY USE ALLOWED WITH A MINOR TEMPORARY USE PERMIT
√ = TEMPORARY USE ALLOWED WITHOUT TEMPORARY USE PERMIT
I = INTERIM USE ALLOWED WITH AN INTERIM USE PERMIT BLANK CELL = PROHIBITED USE

USE CATEGORY (PRINCIPAL USES) AND/OR USE TYPE	RESIDENTIAL DISTRICTS												COMMERCIAL DISTRICTS						INDUSTRIAL DISTRICTS				SPECIAL DISTRICTS						PLANNED DEVELOPMENT DISTRICTS					USE-SPECIFIC STANDARDS
	RS-1	RS-2	RS-3	RS-4	RS-L	RD-1	RM-7	RM-12	RM-20	RM-30	RM-45	MH-12	B-1	B-2	B-3	B-4	M-1	CR	I-1	I-IX	OIP	M-2	TO	PR	CF	PU	T	BP	RPUD	PCD	PD-TO	LAC	PD-1	
ACCESSORY USES AND STRUCTURES																																		
...																																		
Limited Mental Health Treatment Facility	...																																	
Alcoholic Beverage Sales as an Accessory Use to a Brewery, Winery or Distillery																A			A	A	A									A				155.4303.SS
Package Sales as an Accessory Use to a Bar or Lounge													S	S	S	A			A	A	A		A						A	A	A	A	A	155.4303.TT

Copy of Ord. 2015-67

ORDINANCE NO. 2015-67

CITY OF POMPANO BEACH
Broward County, Florida

AN ORDINANCE OF THE CITY OF POMPANO BEACH, FLORIDA, PROVIDING FOR IMPOSITION OF A MORATORIUM ON ISSUANCE OF DEVELOPMENT ORDERS AND PERMITS AND ON THE PROCESSING OF APPLICATIONS RELATING TO HEALTH CARE USES, CHECK CASHING STORES, CONVENIENCE STORES, LIQUOR OR PACKAGE STORES, PAWN SHOPS , THRIFT SHOPS AND DORMITORIES WITHIN THE CITY; PROVIDING FOR VESTED RIGHTS; APPEALS; AND EXHAUSTION OF ADMINISTRATIVE REMEDIES; PROVIDING FOR A SIX (6) MONTH TERM TO BE EXTENDED IF NECESSARY BY THE CITY COMMISSION; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Commission and the City's Planning and Zoning Board, the Local Planning Agency, have previously undertaken the necessary studies and adopted a Comprehensive Plan to guide and control growth in the City; and,

WHEREAS, the goals, objectives and policies contained within the City's adopted Comprehensive Plan require that the City:

i. Annually review and periodically update adopted land development regulations and established procedures that encourage the elimination or reduction of uses inconsistent with the City's character and Future Land Use Plan. (Future Land Use Element - Objective Inconsistent Land Uses - 01.03.00)

ii. Support and promote hotels, motels and other tourist accommodations in designated residential, commercial and commercial recreation land use designations. (Future Land Use Element – Policy - 01.03.10)

iii. Encourage the adoption of innovative land development regulations. Adopt new land use designations for Residential, Mixed Use, Transportation Oriented Districts, Transportation

Oriented Corridors and amend the land development regulations, including the creation of new zoning districts for these land use designations. (Future Land Use Element - Objective New Land Use Regulations - 01.07.00)

iv. Continually review and amend new land use designations for Residential, Mixed Use and Transportation Oriented Districts. (Future Land Use Element - Policy - 01.07.02)

v. Through ongoing updates to the land development regulations revise prohibited and permitted uses in the commercial, industrial and non-residential zoning districts. (Future Land Use Element - Policy - 01.07.07)

vi. Follow the recommendation of the Community Redevelopment Plans in all Land Use Plan amendments and rezonings. (Future Land Use Element – Community Redevelopment - 01.08.01)

vii. Redevelopment activities in the Community Redevelopment Areas shall be guided by their respective Community Redevelopment Plans, adopted pursuant to Chapter 163, Part III, Florida Statutes. (Future Land Use Element - Policy - 01.11.03)

viii. Establish criteria which encourage development of urban infill and community redevelopment areas to promote economic development, increase housing opportunities and maximize the use of existing public facilities and services. (Future Land Use Element - Objective Urban Infill Criteria - 01.12.00);

and,

WHEREAS, the City of Pompano Beach contains two (2) Community Redevelopment Areas: the West Pompano Beach District CRA, also known as the NW CRA, a 3,000 acre area established in 1989, and the East Pompano Beach District CRA, a 158 acre area, that was established in 2001; and

WHEREAS, the NW CRA and the EAST CRA areas were established for the purpose of removing existing slum and blight conditions and provide economic benefits to the City's residents; and

WHEREAS, the East CRA area encompasses the majority of lands contained within the Atlantic Boulevard Overlay District (AOD) and the NW CRA area encompasses the Transit Oriented Corridor District (TOC); and

WHEREAS, the City adopted land development regulations for the AOD and the TOC; and

WHEREAS, the projects and programs of the City's Community Redevelopment Agency in the East CRA and in the NW CRA are designed to solve underlying problems that have a blighting influence on the redevelopment areas as further expressed in East CRA Redevelopment Plan and in the NW CRA Redevelopment Plan; and

WHEREAS, the AOD encompasses the Atlantic Boulevard Corridor which was included in a 2008 Urban Land Institute Technical Advisory Panel wherein the ULI recommended medium density, mixed-use development on Atlantic Boulevard; lower-scale development between the medium density and single family; creating great public spaces that exemplify and promote pedestrian activity; maintaining a small town feel and encouraging smaller scale (not big box) uses; and

WHEREAS, the AOD was also the subject of the City's Beach Master Plan which was approved in September 2008, which included measures for the restoration of the dune system along the public beach; streetscape improvements and realignment for Pompano Beach Boulevard; streetscape improvements for the east end of Atlantic Boulevard; a mixed use project and parking garage with 500 parking spaces; a new Fire Station, Library and upgrades to North Riverside Drive Park; and

WHEREAS, the City's Community Redevelopment Agency adopted an East Financing and Implementation Plan, which sets forth financial resources required and necessary for the

CRA to attain its redevelopment goals in the East CRA, which includes the majority of the AOD area; and

WHEREAS, the City's Community Redevelopment Agency adopted a Northwest Financing and Implementation Plan, which sets forth financial resources required and necessary for the CRA to attain its redevelopment goals in the NW CRA; and

WHEREAS, in its adopted Comprehensive Plan, the City identified "Major Issue No. 5: City Sense of Place" wherein the City expressed that there is a unique opportunity for the City to capitalize on its key transportation corridors, its major attractions and the Northwest and East Redevelopment CRA's to improve on its sense of place; and

WHEREAS, the City also adopted a Strategic Plan for the City of Pompano, wherein the City adopted the following strategies in support of the CRA redevelopment plans:

i. 2.0 Tourism: Make the City more attractive to residents, visitors and tourists and expand visitor and tourism markets.

ii. 5.0 Corridor Redevelopment: Enhance Corridor Redevelopment

5.1 Begin implementation of corridor studies and plans for Federal Highway, Atlantic Boulevard and Dixie Highway

5.2 Promote Class A office space development on Atlantic Boulevard near I-95 and along the Dixie corridor

5.3 Support and facilitate development of an education corridor along MLK

5.4 Improve overall aesthetic appearances

iii. 6.0 CRA Redevelopment: Enhance CRA area redevelopment

6.1 Expand CRA incentive programs

WHEREAS, the City has contracted with The Renaissance Planning Group to prepare corridor studies for Atlantic Boulevard, Dixie Highway and Federal Highway to identify

elements crucial to economic development and redevelopment along these major city transportation corridors; and

WHEREAS, the Zoning Code of the City of Pompano Beach, is designed to promote health, and general welfare, and to promote adequate light and air, and to prevent the overcrowding of land, and to avoid the undue concentration of population, and to facilitate adequate transportation, water, sewage treatment, schools, parks and other public requirements; and

WHEREAS, the process of growth and change within the City requires the continuing analysis of living and working conditions; and

WHEREAS, the health, safety and welfare of the citizens of Pompano Beach are proper and necessary for the consideration of the City Commission; and

WHEREAS, the continual flux of patterns in the urban community requires intensive restudy of areas of the community; and

WHEREAS, the changing patterns often cause existing zoning districts to become outdated, inequitable, unbalanced and inappropriate as applied; and

WHEREAS, it is in the public interest to make a determination as to whether existing zoning uses are appropriate where it appears that changing patterns have cast doubt on their propriety; and

WHEREAS, it is in the public interest to review the Zoning Code so as to ensure that the City's economic redevelopment efforts are not frustrated due to a proliferation of incompatible uses; and

WHEREAS, it is in the public interest to protect the substantial financial investment the City has made in recent years to promote economic redevelopment; and

WHEREAS, the moratorium is intended to allow sufficient time to study the provision of these uses for the citizens of Pompano Beach and to create a long term strategy to ensure adequate access to such services is provided; and

WHEREAS, the moratorium is intended to allow sufficient time to study the provision and location of these uses in a manner that does not result in an over-concentration of these uses that will further result in the blighting or downgrading of the surrounding neighborhood; and

WHEREAS, the moratorium is intended to allow sufficient time to study the provision of these uses to ensure that there is a balance between the existing residential uses and the projected demand for and location of these uses; and

WHEREAS, the moratorium is also intended to allow sufficient time to study the provision of these uses within the AOD and the DPOD, TOC, East CRA, NW CRA, corridors connecting the CRA areas and the corridors being studied by The Renaissance Planning Group and to determine the impact of these uses on the economic redevelopment efforts included in the City's Comprehensive Plan, the City's Community Redevelopment Plans, the CRA East Financing and Implementation Plan, the CRA NW Financing and Implementation Plan, the City's Beach Master Plan, and the City's Strategic Plan; and

WHEREAS, while the study conducted by The Renaissance Planning Group will address the City's major transportation corridors, additional studies are needed to address the impact of permitted and prohibited uses in the City; and

WHEREAS, the City desires to ensure, while necessary studies are presently underway for the formulation and implementation of remedial measures referenced herein, that additional Applications, Orders and Permits, as specified in the City's Code of Ordinances ("CODE") listed

below not be processed or issued in the City within the scope of the moratorium which is described herein:

> Health Care Uses (Code Sec. 155.4209), Check Cashing Store (Code Sec. 155.4221.C), Convenience Store (Code Sec. 155.4222.F), Liquor or Package Store (Code Sec. 155.4222.K), Pawn Shop (Code Sec. 155.4222.L), Thrift Shop (Code Sec. 155.4222.M) and Dormitory (Code Sec. 155.4303.II);

and

WHEREAS, in accordance with Florida Statutes, Section 166.041 (3)(c)2, advertisement in accordance with said statute have been published in a newspaper of general paid circulation in the City of Pompano beach and of general interest and readership in the community, notifying the public of two public hearings on this proposed Ordinance; and

WHEREAS, two public hearings have been held pursuant to said published hearings and all persons so desiring had the opportunity to be and were, in fact, heard; now therefore,

BE IT ENACTED BY THE CITY OF POMPANO BEACH, FLORIDA:

SECTION 1. Moratorium Imposed; Applicability.

A. During the time that this Ordinance is in effect as specified herein, there shall be a moratorium upon the acceptance of applications and the issuance of Development Orders and Permits, as defined in Section 163.3164, Florida Statues, (collectively "Development Orders") approving Health Care Uses (Code Sec. 155.4209), Check Cashing Store (Code Sec. 155.4221.C), Convenience Store (Code Sec. 155.4222.F), Liquor or Package Store (Code Sec. 155.4222.K), Pawn Shop (Code Sec. 155.4222.L), Thrift Shop (Code Sec. 155.4222.M) and Dormitory (Code Sec. 155.4303.II).

SECTION 2. Vested Rights.

A. Nothing in this Ordinance shall be construed or applied to abrogate the vested right of a property owner to complete development where the property owner demonstrates each of the following:

1. A governmental act of development approval obtained prior to the effective date of this Ordinance; and

2. Upon which the owner has detrimentally relied, in good faith, by making such a substantial change in position or incurring such extensive obligations and expenses; and

3. That it would be highly inequitable to deny the property owner the right to complete development.

B. Except as provided by paragraph (C) below, any property owner claiming to have vested rights under this Section must file an application with the City Manager for a vested rights determination within thirty (30) days after the effective date of this Ordinance. The application shall be accompanied by a fee of $600.00 and contain a sworn statement as to the basis upon which the vested rights are asserted, together with documentation required by the City Manager and other documentary evidence supporting the claim. The City Manager shall review the application and, based upon the evidence submitted, shall make a determination as to whether the property owner has established vested rights. The City Manager's decision shall be subject to appeal by the applicant for vested rights determination or by a third party claiming to be adversely affected by the City Manager's decision, provided that the third party can demonstrate a legally recognizable interest which is or will be affected by the decision and that such interest, which while it may be shared in common generally with other members of the community, is definite and exceeds in degree the general interest in the community good shared by all persons. Such appeals may be made to the City Commission by notice of appeal filed with the City

Manager within ten (10) days after the City Manager's written decision. In the event of a timely appeal, the City Commission shall hold a public hearing on appeal and, based upon the evidence submitted, shall make a determination as to whether or not the property owner has established vested rights. To the extent that a property owner demonstrates vested rights, the moratorium shall not be applied to that owner.

C. Any property owner establishing vested rights under this Section shall not be subject to this moratorium and shall be authorized to apply for Orders, and Permits in accordance with a Vested Rights Determination Agreement to be executed by the City and the property owner. A copy of the Vested Rights Determination Agreement shall be filed with the City Clerk, accompanied by a letter which references this paragraph (C) within Forty-five (45) days after the effective date of the City Commission's determination under this Section.

SECTION 3. Appeals. Appeals from final decision by the City Commission under Section 2 of this Ordinance shall be by the filing of a Petition for Certiorari in the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County in accordance with the Florida Rules of Appellate Procedure for the review of the quasi-judicial rulings of municipalities.

SECTION 4. Exhaustion of Administrative Remedies. No property owner claiming that this Ordinance as applied constitutes or would constitute a temporary or permanent taking of private property or an abrogation of vested rights may pursue such claim unless he or she has first exhausted all administrative remedies provided for in Section 2.

SECTION 5. Term. The moratorium imposed by this Ordinance is temporary and, unless dissolved earlier by the City, shall automatically dissolve in six (6) months from the effective date of this Ordinance unless otherwise extended in accordance with applicable law.

The moratorium may be reasonably extended, if, necessary, by Ordinance of the City Commission.

SECTION 6. Conflicts. All Sections or parts of Sections of the Code of Ordinances, all Ordinances or parts of Ordinances, and all Resolutions, or parts of Resolutions, in conflict with this Ordinance are repealed to the extent of such conflict.

SECTION 7. Severability. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decisions shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

SECTION 8. Effective Date. This Ordinance shall become effective upon passage.

PASSED FIRST READING this 23rd day of June, 2015.

PASSED SECOND READING this 14th day of July, 2015.

LAMAR FISHER, MAYOR

ATTEST:

ASCELETA HAMMOND, CITY CLERK

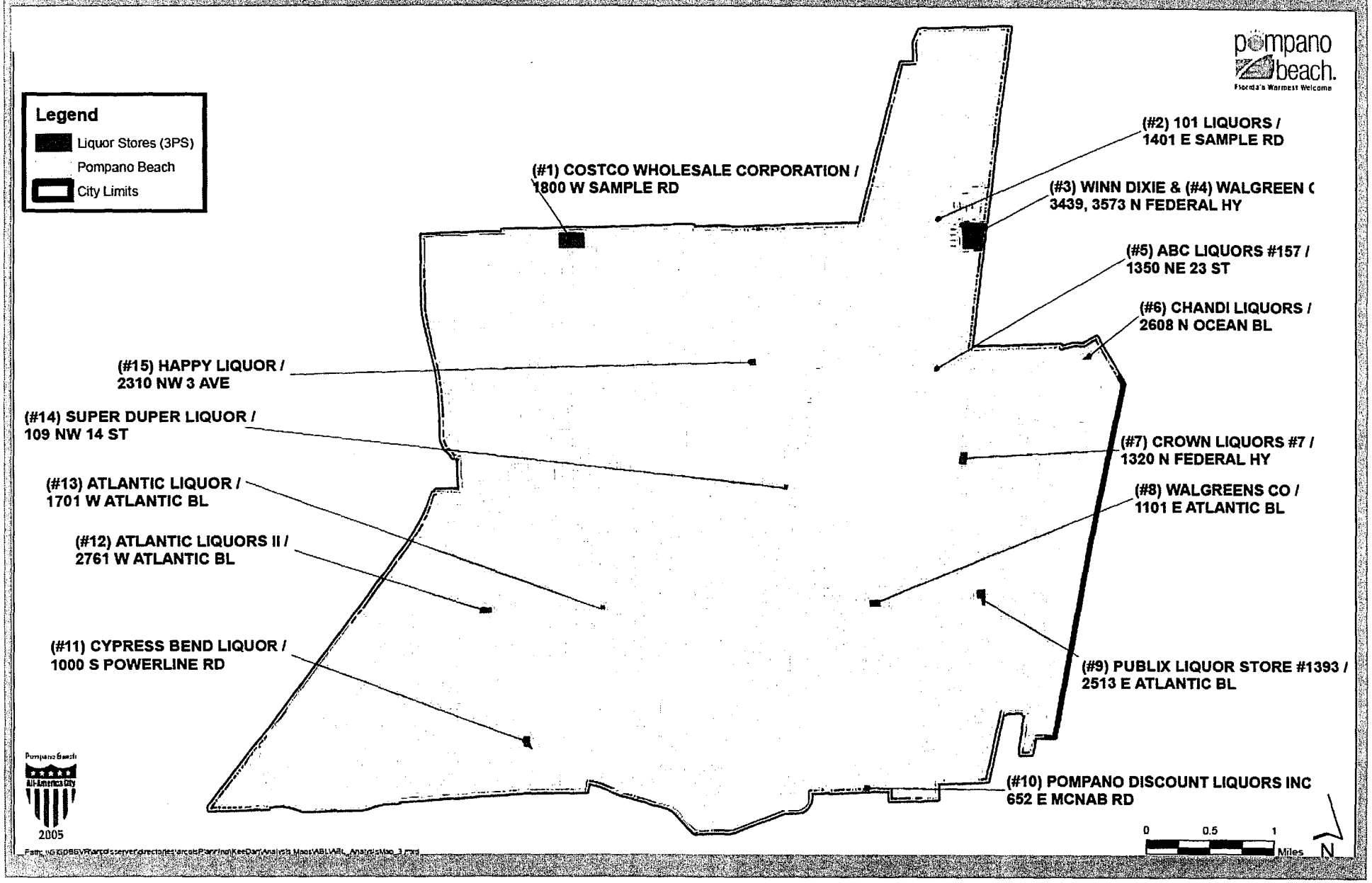
GBL/tal/ds:jrm
7/15/2015
l:ord/2015-367a

PowerPoint Presentation for the City Commission Hearing

The Right Use in the Right Location:
Liquor Stores, Convenience Stores, and other retail sales of alcoholic beverages

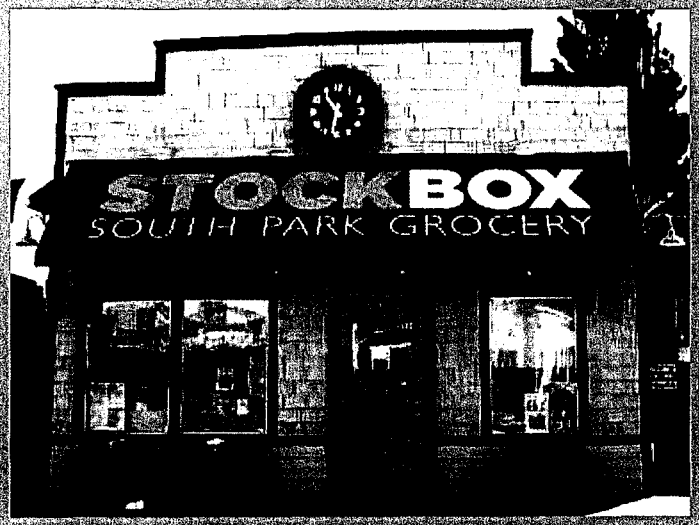
City Commission Hearing
February 9, 2016

Locations of 15 Existing Liquor Stores

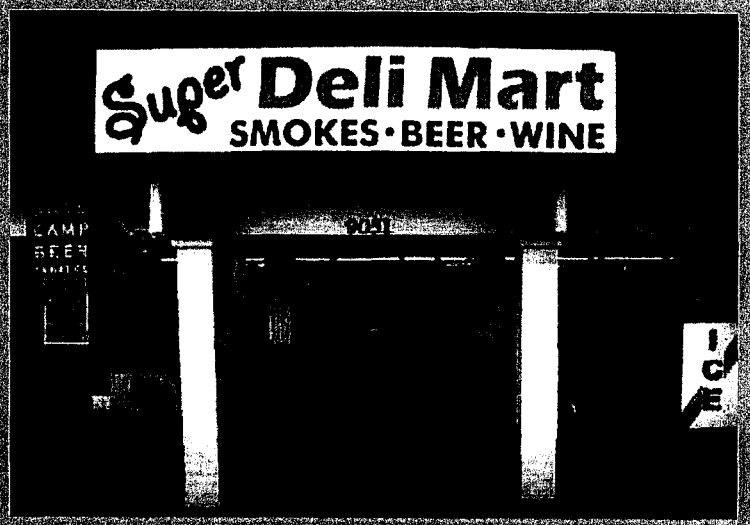


Beer Sales in Convenience Stores

How does city ensure that "Grocery or Convenience Store" is primarily for sales of foodstuffs and nonalcoholic beverages.



VS.



Recommendations

- Create two liquor store uses (local and regional)
  - Prohibit Drive-Through
  - Require Special Exception approval for Local Liquor Stores in all B Districts
  - Require Special Exception approval for Regional Liquor Stores in B-1 and B-2 Districts
  - Exempt Regional Liquor Stores from separation from other alcoholic beverage uses.
- Create use for sales of beer or wine
  - Prohibit Drive-Through
  - Require Special Exception approval in B-1, B-2, and B-3 Districts
  - Require separation from other alcoholic beverage uses
  - Create sub-category use "Specialty Store" which focuses on craft beverages or beverages from specific region and exempt from separation from other alcoholic beverage uses.
- Allow grocery stores or convenience stores to have up to 20% of merchandise display area devoted to beer or wine.
  - Any greater % is considered beer or wine store.
- Create accessory use for package sales at bar and lounges
  - Require Special Exception approval in B-1, B-2, and B-3 Districts
  - Require separation from other alcoholic beverage uses
- Create accessory use for sales of beer, wine, or liquor at breweries, wineries, or distilleries
  - Permit as accessory use
  - Exempt from separation from other alcoholic beverage uses

Meeting Date: March 8, 2016 Agenda Item 17

REQUESTED COMMISSION ACTION:

Consent	X Ordinance	Resolution	Consideration/ Discussion	Presentation
___	___	___	___	___

SHORT TITLE

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH AMENDING CHAPTER 155 "ZONING CODE", BY AMENDING SECTION 155.4209, "INSTITUTIONAL; HEALTH CARE USES"; BY AMENDING SECTION 155.4221, "COMMERCIAL: RETAIL SALES AND SERVICE USES - PERSONAL SERVICES,"; BY AMENDING SECTION 155.4303, "STANDARDS FOR SPECIFIC ACCESSORY USES AND STRUCTURES"; BY AMENDING SECTION 155.5102, "OFF-STREET PARKING AND LOADING"; BY AMENDING PART 5, "TERMS AND USES DEFINED"; BY AMENDING APPENDIX A: "CONSOLIDATED USE TABLE"; PROVIDING SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

Summary of Purpose and Why:

In order to allow sufficient time to study the provision of health care uses in the City, on July 14, 2015 the City Commission adopted Ordinance 2015-67, which enacted a temporary moratorium on health care uses. Staff has undertaken a study of health care uses and has prepared text amendments based on the findings of the study (A copy of the study is attached). The text amendments propose regulating health care uses based on their intensity, increasing minimum parking requirements, permitting most health care uses in the I-1 and OIP Districts, and requiring most health care uses be separated by 500 feet from certain residential uses. Staff will present a brief PowerPoint presentation highlighting the proposed recommendations; a copy of which is included at the end of the back-up for this item. The text amendments were recommended by a vote of five to two at the November 30, 2015 Planning and Zoning Board meeting (A copy of the draft minutes from the Planning and Zoning Board meeting are attached.).

(1) Origin of request for this action: Development Services Dept.
(2) Primary staff contact: Robin M. Bird/ Karen Friedman KF Ext. 7792
(3) Expiration of contract, if applicable: N/A
(4) Fiscal impact and source of funding: N/A

DEPARTMENTAL COORDINATION	DATE	DEPARTMENTAL RECOMMENDATION	DEPARTMENTAL HEAD SIGNATURE
Dev. Services	11/19/2015	Approval	Memo #15-621
City Attorney	01/26/2016	Approval 1/28/16	Memo #2016-435
X Planning and Zoning Board		Approval	Memo #15-075 (01/11/2016)
X City Manager			

Ordinance Workshop	Resolution	Consideration	
1st Reading 2/9/16	1st Reading	Results:	Results:
Approved -2/23/16-Approved			
2nd Reading 3/8/16			

City Attorney's Communication #2016-435

January 26, 2016

TO: Karen Friedman, AICP, Principal Planner

FROM: Carrie L. Sarver, Assistant City Attorney

RE: Ordinance Amending Section 155, Zoning Code

As requested, the following form of Ordinance, relative to the above-referenced matter, has been prepared and is attached:

> **AN ORDINANCE AMENDING CHAPTER 155, "ZONING CODE," OF THE CODE OF ORDINANCES OF THE CITY OF POMPANO BEACH, FLORIDA, BY AMENDING SECTION 155.4209, "INSTITUTIONAL: HEALTH CARE USES" TO ADD AND DELETE CERTAIN DEFINITIONS, TO MODIFY DISTRICTS WHERE PERMITTED AND APPLICABLE STANDARDS; BY AMENDING SECTION 155.4221, "COMMERCIAL: RETAIL SALES AND SERVICE USES – PERSONAL SERVICES" TO MODIFY THE DEFINITION OF PERSONAL SERVICES ESTABLISHMENT; BY AMENDING SECTION 155.4303, "STANDARDS FOR SPECIFIC ACCESSORY USES AND STRUCTURES" TO MODIFY DEFINITION OF LIMITED MENTAL HEALTH TREATMENT FACILITY, RETAIL CLINICS AND DISTRICTS WHERE PERMITTED; BY AMENDING SECTION 155.5102, "OFF-STREET PARKING AND LOADING" TO AMEND CHART TO REFLECT SAID CHANGES AND MODIFY PARKING REQUIREMENTS; BY AMENDING PART 5, "TERMS AND USES DEFINED," BY REVISING TERMS USED OR REFERENCED IN THIS ORDINANCE; BY AMENDING APPENDIX A: "CONSOLIDATED USE TABLE," TO REVISE TABLE TO CONFORM TO AMENDMENTS MADE BY THIS ORDINANCE; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.**

Please carefully review the ordinance to ensure that it meets with your requirements.

CARRIE L. SARVER

/jrm

l:cor/dev-srv/2016-435
Attachment

ORDINANCE NO. 2016-_____

CITY OF POMPANO BEACH
Broward County, Florida

AN ORDINANCE AMENDING CHAPTER 155, "ZONING CODE," OF THE CODE OF ORDINANCES OF THE CITY OF POMPANO BEACH, FLORIDA, BY AMENDING SECTION 155.4209, "INSTITUTIONAL: HEALTH CARE USES" TO ADD AND DELETE CERTAIN DEFINITIONS, TO MODIFY DISTRICTS WHERE PERMITTED AND APPLICABLE STANDARDS; BY AMENDING SECTION 155.4221, "COMMERCIAL: RETAIL SALES AND SERVICE USES – PERSONAL SERVICES" TO MODIFY THE DEFINITION OF PERSONAL SERVICES ESTABLISHMENT; BY AMENDING SECTION 155.4303, "STANDARDS FOR SPECIFIC ACCESSORY USES AND STRUCTURES" TO MODIFY DEFINITION OF LIMITED MENTAL HEALTH TREATMENT FACILITY, RETAIL CLINICS AND DISTRICTS WHERE PERMITTED; BY AMENDING SECTION 155.5102, "OFF-STREET PARKING AND LOADING" TO AMEND CHART TO REFLECT SAID CHANGES AND MODIFY PARKING REQUIREMENTS; BY AMENDING PART 5, "TERMS AND USES DEFINED," BY REVISING TERMS USED OR REFERENCED IN THIS ORDINANCE; BY AMENDING APPENDIX A: "CONSOLIDATED USE TABLE," TO REVISE TABLE TO CONFORM TO AMENDMENTS MADE BY THIS ORDINANCE; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

WHEREAS, in accordance with Florida Statutes, Section 166.041(3)(c)2, advertisements in accordance with said statute have been published in a newspaper of general paid circulation in the City of Pompano Beach and of general interest and readership in the community, notifying the public of two public hearings on this proposed Ordinance; and

WHEREAS, two public hearings have been held pursuant to said published hearings and all persons so desiring had the opportunity to be, and were, in fact, heard; now, therefore,

BE IT ENACTED BY THE CITY OF POMPANO BEACH, FLORIDA:

SECTION 1. That Section 155.4209., "Institutional: Health Care Uses," of Chapter 155, "Zoning Code," of the Code of Ordinances of the City of Pompano Beach is hereby amended to read as follows:

§ 155.4209. INSTITUTIONAL: HEALTH CARE USES

~~A. BLOOD/TISSUE COLLECTION CENTER~~

~~1. Districts Where Permitted~~

												~~P~~	~~P~~	~~P~~	~~P~~

						~~P~~							~~P~~	~~P~~	~~P~~	

~~2. Definition~~

~~A blood/tissue collection center is a state-licensed facility where human blood, organs, skin, or other human tissue are either withdrawn or collected from patients or assembled after being withdrawn or collected elsewhere from patients for subsequent delivery to a clinical laboratory for examination. A collection facility is maintained at a separate physical location not on the grounds or premises of the main licensed laboratory or institution which performs the testing.~~

~~B. DRUG OR ALCOHOL TREATMENT FACILITY~~

~~1. Districts Where Permitted~~

														~~P~~	~~P~~

						~~P~~		~~P~~					~~P~~	~~P~~	~~P~~	

~~2. Definition~~

~~A drug or alcohol treatment facility is a state-licensed substance abuse treatment facility that provides residential treatment, intensive outpatient treatment and addictions receiving facility, as defined in Fla. Stat. § 397.311.~~

A. MEDICAL OFFICE

1. Districts Where Permitted

RS-1	RS-2	RS-3	RS-4	RS-L	RD-1	RM-7	RM-12	RM-20	RM-30	RM-45	MH-12	B-1	B-2	B-3	B-4
												P	P	P	P

M-1	CR	I-1	I-IX	OIP	M-2	TO	PR	CF	PU	T	BP	RP UD	PC D	PD-TO	LA C	PD-I
		P		P		P		P					P	P	P	P

2. Definition

A medical office is a small-scale office providing medical or dental treatment. A small-scale office shall mean a maximum gross floor area of 5,000 sq ft. This use shall not include any uses specified as a Specialty Medical Facility. An office which is greater than 5,000 sq gfa shall be considered a Specialty Medical Facility.

3. Standards

A medical office shall comply with the following standards:

a. Separation from Residential Uses. A medical office is not required to be separated from residential uses.

b. Overnight Treatment. Overnight Treatment is prohibited.

c. Hours of Operations.

i. Medical offices shall not offer treatment or similar services between the hours of 10:00 p.m. and 7:00 a.m.

ii. Medical offices within 500 feet of a Single Family (RS) or Two-Family (RD) Zoning District shall not offer treatment or similar services between the hours of 7:00 p.m. and 7:00 a.m.

B. SPECIALTY MEDICAL FACILITY

1. Districts Where Permitted

RS-1	RS-2	RS-3	RS-4	RS-L	RD-1	RM-7	RM-12	RM-20	RM-30	RM-45	MH-12	B-1	B-2	B-3	B-4
														S	P

M-1	CR	I-1	I-IX	OIP	M-2	TO	PR	CF	PU	T	BP	RP UD	PC D	PD-TO	LA C	PD-I
		P		P				P					P		P	P

2. Definition

A specialty medical facility is a facility, regardless of size, offering specialized treatment and services including, but not limited to, ambulatory surgical facilities, dialysis centers, substance abuse treatment facilities, outpatient rehabilitation facilities, birthing facilities, and urgent care facilities (not including a 24-hour urgent care facility). This use also includes medical or dental offices which are larger than 5,000 sq ft gfa.

3. Standards

A specialty medical facility shall comply with the following standards:

a. Separation from Residential Uses. The facility shall be at least 500 feet from a Single Family (RS) or Two-Family (RD) Zoning District.

b. Overnight Treatment. Overnight Treatment is prohibited.

c. Hours of Operations. The Facility shall not offer treatment or similar services between the hours of 10:00 p.m. and 7:00 a.m.

C. URGENT CARE FACILITY 24-HOURS

1. Districts Where Permitted

RS-1	RS-2	RS-3	RS-4	RS-L	RD-1	RM-7	RM-12	RM-20	RM-30	RM-45	MH-12	B-1	B-2	B-3	B-4
														S	P

M-1	CR	I-1	I-IX	OIP	M-2	TO	PR	CF	PU	T	BP	RP UD	PC D	PD-TO	LA C	PD-I
		P		P				P					P		P	P

2. Definition

An urgent care facility 24-hours is a facility which holds itself out to the general public as a walk-in, extended-hour access facility where immediate, but not emergent, care is provided. Patients shall be served solely on an outpatient basis and such services shall not include overnight stays

3. Standards

An urgent care facility 24-hours shall comply with the following standards:

a. Separation from Residential Uses. The facility shall be at least 500 feet from a Single Family (RS) or Two-Family (RD) Zoning District.

b. Overnight Treatment. Overnight Treatment is prohibited.

c. Hours of Operations. The facility may be open 24 hours per day.

d. Vehicular access and circulation systems and exterior signage shall be designed to provide safe and separate emergency vehicle access to the facility, with minimal conflicts with other vehicular or pedestrian traffic in the area.

D. SPECIALTY HOSPITAL

1. Districts Where Permitted

RS-1	RS-2	RS-3	RS-4	RS-L	RD-1	RM-7	RM-12	RM-20	RM-30	RM-45	MH-12	B-1	B-2	B-3	B-4
														S	P

M-1	CR	I-1	I-IX	OIP	M-2	TO	PR	CF	PU	T	BP	RP UD	PC D	PD-TO	LA C	PD-I
		P		P				P					P		P	

2. Definition

A specialty hospital is a hospital which offers a restricted range of services appropriate to the diagnosis, care, and treatment of patients with specific categories of medical or psychiatric illnesses or disorders which include: Specialty medical hospitals; Specialty rehabilitation hospitals; Specialty psychiatric hospitals, which may

include beds licensed to offer Intensive Residential Treatment programs; Specialty substance abuse hospitals, which may include beds licensed to offer Intensive Residential Treatment programs; and an Addictions Receiving Facility.

3. Standards

A specialty hospital shall comply with the following standards:

a. Separation from Residential Uses. The hospital shall be at least 500 feet from a Residential Zoning District.

b. Overnight Treatment. Overnight Treatment is permitted.

c. Hours of Operations. The hospital may be open 24 hours per day.

d. The specialty hospital shall be located on a site that has an area of at least three acres and fronts on or has direct access to and from an arterial or collector street.

e. Vehicular access and circulation systems and exterior signage shall be designed to provide safe and separate emergency vehicle access to the specialty hospital, with minimal conflicts with other vehicular or pedestrian traffic in the area.

f. A Perimeter Security Plan is required and shall address at a minimum vehicular and pedestrian access to site, parking areas, and lighting.

g. Outdoor recreation and/or passive space shall be provided for both patients and visitors.

~~C~~ E. GENERAL HOSPITAL

1. Districts Where Permitted

RS-1	RS-2	RS-3	RS-4	RS-L	RD-1	RM-7	RM-12	RM-20	RM-30	RM-45	MH-12	B-1	B-2	B-3	B-4
														~~P~~ S	P

M-1	CR	I-1	I-IX	OIP	M-2	TO	PR	CF	PU	T	BP	RP UD	PC D	PD-TO	LA C	PD-I
		P		P		~~S~~		P					P	~~P~~	P	

2. Definition

A general hospital is a state-licensed institution that provides primary health services and medical or surgical care to humans, primarily inpatients, who are sick or injured, and including as an integral part of the institution, related facilities such as clinical laboratories, outpatient facilities, training facilities, central services facilities, and staff offices. Hospitals offer facilities and beds for use beyond 24 hours by persons needing medical treatment or service. ~~This use type does not include nursing home facilities, medical treatment facilities, medical clinics, drug or alcohol treatment facilities, or psychiatric treatment facilities.~~

3. Standards

A general hospital shall comply with the following standards:

a. Separation from Residential Uses. The hospital shall be at least 500 feet from a Residential Zoning District.

b. Overnight Treatment. Overnight Treatment is permitted.

c. Hours of Operations. The hospital may be open 24 hours per day.

~~a~~ d. The hospital shall be located on a site that has an area of at least five acres and fronts on or has direct access to and from an arterial or collector street.

~~b~~ e. Vehicular access and circulation systems and exterior signage shall be designed to provide safe and separate emergency vehicle access to the hospital, with minimal conflicts with other vehicular or pedestrian traffic in the area.

f. A Perimeter Security Plan is required and shall address at a minimum vehicular and pedestrian access to site, parking areas, and lighting.

g. Outdoor recreation and/or passive space shall be provided for both patients and visitors.

~~**D. MASSAGE THERAPY ESTABLISHMENT**~~

~~**1. Districts Where Permitted**~~

												~~P~~	~~P~~	~~P~~	~~P~~

	~~P~~					~~P~~		~~P~~				~~P~~	~~P~~	~~P~~	~~P~~	~~P~~

~~**2. Definition**~~

~~A massage therapy establishment is a state-licensed establishment that offers, sells, or provides manipulation of the tissues or other tactile stimulation of the human body with the hand, foot, arm, leg, elbow, or part of the torso, whether or not aided by any electrical or mechanical device, by persons who are licensed as a massage therapist under Chapter 480 of the Florida Statutes. A massage may also include bathing, hydrotherapy (including colonic irrigation), thermal therapy, or application of chemicals, oils, lotions, or similar preparations to the human body.~~

~~**E. MEDICAL OR DENTAL CLINIC**~~

~~**1. Districts Where Permitted**~~

												~~P~~	~~P~~	~~P~~	~~P~~

						~~P~~		~~P~~					~~P~~	~~P~~	~~P~~	~~P~~

~~**2. Definition**~~

~~A medical or dental clinic is a small-scale facility where patients are admitted for examination and treatment by one or more physicians, dentists, or other health practitioners on a short-term basis. The use includes the offices of physicians, dentists, chiropractors, optometrists, podiatrists, audiologists, speech pathologists, physical therapists, acupuncturists, psychologists, and other health practitioners. It also includes facilities providing short-term outpatient care and treatment (which may or may not be overnight), such as urgent care centers, kidney dialysis centers, ambulatory surgical clinics, biofeedback centers, sleep disorder~~

~~clinics, family planning clinics, community health clinics, and health maintenance organization (HMO) medical clinics. Such facilities that provide overnight care and treatment may include sleeping rooms for care workers and members of patients' families. This use does not include hospitals (which are much larger in scale) or blood/tissue collection centers, drug or alcohol treatment facilities, massage therapy establishments, or psychiatric treatment facilities (which provide specialized medical services).~~

F. MEDICAL OR DENTAL LAB

1. Districts Where Permitted

RS-1	RS-2	RS-3	RS-4	RS-L	RD-1	RM-7	RM-12	RM-20	RM-30	RM-45	MH-12	B-1	B-2	B-3	B-4
														~~P~~ S	P

M-1	CR	I-1	I-IX	OIP	M-2	TO	PR	CF	PU	T	BP	RP UD	PC D	PD-TO	LA C	PD-I
		P		P		~~P~~		P					P	~~P~~	P	

2. Definition

A medical or dental lab consists of facilities and offices ~~for performing diagnostic or therapeutic medical procedures of a non-surgical nature.~~ providing diagnostic analysis of medical tests (such as blood test urinalysis, CT Scan, X-ray or other medical tests related to diagnostic treatment); collecting or withdrawing human blood, organs, skin, or other human tissue; or producing such items as dentures, caps, bridges and optical prescriptions.

. . .

~~H. RESERVED~~

~~I. PSYCHIATRIC TREATMENT FACILITY~~

~~1. Districts Where Permitted~~

														~~P~~	~~P~~

						~~S~~		~~P~~					~~P~~	~~P~~	~~P~~	

~~**2. Definition**~~

~~A psychiatric treatment facility is an inpatient facility that provides care for persons with psychiatric problems and that may include outpatient follow-up care to the facility's patients.~~

SECTION 2. That Section 155.4221., "Commercial: Retail Sales and Service Uses – Personal Services," of Chapter 155, "Zoning Code," of the Code of Ordinances of the City of Pompano Beach is hereby amended to read as follows:

§ 155.4221. COMMERCIAL: RETAIL SALES AND SERVICE USES – PERSONAL SERVICES

. . .

K. PERSONAL SERVICES ESTABLISHMENTS

1. Districts Where Permitted

. . .

2. Definition

A personal services establishment is an establishment primarily engaged in the provision of frequent or recurrent needed services of a personal nature that are not typically medically related. Examples include but are not limited to, hair salons, tanning salons, ~~and~~ nail care salons, barber shops, yoga studios, martial arts studios, massage therapy (by persons who are licensed as a massage therapist under Chapter 480 of the Florida Statutes), hearing aids and/or optometry services, and similar establishments—but not including any sexually oriented business.

. . .

SECTION 3. That Section 155.4303., "Standards for Specific Accessory Uses and Structures," of Chapter 155, "Zoning Code," of the Code of Ordinances of the City of Pompano Beach is hereby amended to read as follows:

§ 155.4303. STANDARDS FOR SPECIFIC ACCESSORY USES AND STRUCTURES

. . .

RR. LIMITED MENTAL HEALTH TREATMENT FACILITY

. . .

2. Definition

A limited mental health treatment facility is an accessory use for the practice of mental health counseling, practice of marriage and family therapy, and/or practice of clinical social work, as defined in F. S. § 491.003, on ~~an~~ a non-intensive out-patient basis only. This use strictly prohibits the on-site dispensing of both medicinal and non-medicinal drugs. This use strictly prohibits the written order or prescription for any medicinal and non-medicinal drugs.

. . .

UU. RETAIL CLINIC

1. Districts Where Permitted

RS-1	RS-2	RS-3	RS-4	RS-L	RD-1	RM-7	RM-12	RM-20	RM-30	RM-45	MH-12	B-1	B-2	B-3	B-4
												A	A	A	A

M-1	CR	I-1	I-IX	OIP	M-2	TO	PR	CF	PU	T	BP	RP UD	PC D	PD-TO	LA C	PD-I
		A				A						A	A	A	A	A

2. Definition

A retail clinic is an accessory use located within a grocery store, pharmacy, or large retail store for the diagnosis and treatment of common household illnesses such as strep throat and eye, ear, sinus and other similar infections; the treatment of minor wounds; abrasions and joint sprains; the injection of common vaccinations; wellness services; and routine lab tests.

SECTION 4. That Section 155.5102., "Off-Street Parking and Loading," of Chapter 155, "Zoning Code," of the Code of Ordinances of the City of Pompano Beach is hereby amended to read as follows:

§ 155.5102. OFF-STREET PARKING AND LOADING

. . .

D. OFF-STREET PARKING SPACE REQUIREMENTS

1. Minimum Number of Off-Street Parking Spaces

. . .

TABLE 155.5102.D.1: MINIMUM NUMBER OF OFF-STREET PARKING SPACES		
Use Category	**Use Type**	**Minimum Number of Parking**
INSTITUTIONAL USES		
. . .	. . .	. . .
Health Care Uses	~~Blood/tissue collection facility~~	~~1 per 300 sq ft~~
	~~Drug or alcohol treatment facility~~	
	Medical office	1 per 200 sq ft
	Specialty medical facility	1 per 200 sq ft floor area for treatment + 1 per 300 sq ft for remaining areas
	Urgent care facility 24-hour	
	Specialty hospital	1 per 1 bed + 1 per 250 sq ft of areas not used for beds or Parking Study per Section 155.5102.D.2
	General hospital	~~1 per 3 inpatient beds~~ 1 per 1 bed + 1 per 250 sq ft of areas not used for beds or Parking Study per Section 155.5102.D.2
	~~Massage therapy establishment~~	~~1 per 300 sq ft~~
	~~Medical or dental clinic~~ [10]	
	Medical or dental lab	1 per ~~300~~ 500 sq ft
	Nursing home facility	1 per 5 beds
	~~Psychiatric treatment facility~~	~~1 per 3 beds~~
. . .	. . .	. . .
INDUSTRIAL USES		
Accessory Uses	. . .	. . .
	Dormitory (as accessory to educational use	See Section 155.5102.D.2.
	Limited mental health treatment facility	1 per 200 sq ft
	Retail clinic	1 per 200 sq ft
. . .		

SECTION 5. That Article 9, "Definitions and Interpretations, Part 5, "Terms and Uses Defined," of Chapter 155, "Zoning Code," of the Code of Ordinances of the City of Pompano Beach is hereby amended to read as follows:

ARTICLE 9: DEFINITIONS AND INTERPRETATION

. . .

PART 5 TERMS AND USES DEFINED

The following words, terms, and phrases, when used in this Code, shall have the meaning ascribed to them in this section.

. . .

~~**BLOOD/TISSUE COLLECTION CENTER**~~

~~A state-licensed facility where human blood, organs, skin, or other human tissue are either withdrawn or collected from patients or assembled after being withdrawn or collected elsewhere from patients for subsequent delivery to a clinical laboratory for examination. A collection facility is maintained at a separate physical location not on the grounds or premises of the main licensed laboratory or institution which performs the testing.~~

. . .

~~**DRUG OR ALCOHOL TREATMENT FACILITY**~~

~~A state-licensed substance abuse treatment facility that provides residential treatment, intensive outpatient treatment and addictions receiving facility, as defined in Fla. Stat. §397.311.~~

. . .

GAZEBO

An ornamental garden pavilion, with a covered roof and open sides, constructed of wood, metal, or vinyl. This term also includes a chickee hut, which has a thatched roof of palm or palmetto materials.

GENERAL HOSPITAL

A state-licensed institution that provides primary health services and medical or surgical care to humans, primarily inpatients, who are sick or injured, and including as an integral part of the institution, related facilities such as clinical laboratories, outpatient facilities, training facilities, central services facilities, and staff offices. Hospitals offer facilities and beds for use beyond 24 hours by persons needing medical treatment or service. ~~This~~

~~use type does not include nursing home facilities, medical treatment facilities, medical clinics, drug or alcohol treatment facilities, or psychiatric treatment facilities.~~

. . .

LIMITED MENTAL HEALTH TREATMENT FACILITY

An accessory use for the practice of mental health counseling, practice of marriage and family therapy, and/or practice of clinical social work, as defined in F. S. § 491.003, on a non-intensive out-patient basis only. This use strictly prohibits the on-site dispensing of both medicinal and non-medicinal drugs. This use strictly prohibits the written order or prescription for any medicinal and non-medicinal drugs.

. . .

~~**MASSAGE THERAPY ESTABLISHMENT**~~

~~a state-licensed establishment that offers, sells, or provides manipulation of the tissues or other tactile stimulation of the human body with the hand, foot, arm, leg, elbow, or part of the torso, whether or not aided by any electrical or mechanical device, by persons who are licensed as a massage therapist under Chapter 480 of the Florida Statutes. A massage may also include bathing, hydrotherapy (including colonic irrigation), thermal therapy, or application of chemicals, oils, lotions, or similar preparations to the human body.~~

. . .

~~**MEDICAL OR DENTAL CLINIC**~~

~~a small-scale facility where patients are admitted for examination and treatment by one or more physicians, dentists, or other health practitioners on a short-term basis. The use includes the offices of physicians, dentists, chiropractors, optometrists, podiatrists, audiologists, speech pathologists, physical therapists, acupuncturists, psychologists, and other health practitioners. It also includes facilities providing short-term outpatient care and treatment (which may or may not be overnight), such as urgent care centers, kidney dialysis centers, ambulatory surgical clinics, biofeedback centers, sleep disorder clinics, family planning clinics, community health clinics, and health maintenance organization (HMO) medical clinics. Such facilities that provide overnight care and treatment may include sleeping rooms for care workers and members of patients' families. This use does not include hospitals (which are much larger in scale) or blood/tissue collection centers, drug or alcohol treatment facilities, massage therapy establishments, or psychiatric treatment facilities (which provide specialized medical services).~~

. . .

MEDICAL OR DENTAL LAB

Consists of ~~f~~Facilities and offices ~~for performing diagnostic or therapeutic medical procedures of a non-surgical nature.~~ providing diagnostic analysis of medical tests (such as blood test urinalysis, CT Scan, X-ray or other medical tests related to diagnostic

treatment); collecting or withdrawing human blood, organs, skin, or other human tissue; or producing such items as dentures, caps, bridges and optical prescriptions.

. . .

MEDICAL OFFICE

A small-scale office providing medical or dental treatment. A small-scale office shall mean a maximum gross floor area of 5,000 sq ft. This use shall not include any uses specified as a Specialty Medical Facility. An office which is greater than 5,000 sq gfa shall be considered a Specialty Medical Facility.

. . .

PERSONAL SERVICES ESTABLISHMENT

An establishment primarily engaged in the provision of frequent or recurrent needed services of a personal nature that are not typically medically related. Examples include but are not limited to, hair salons, tanning salons, ~~and~~ nail care~~,~~ salons, barber shops, yoga studios, martial arts studios, massage therapy (by persons who are licensed as a massage therapist under Chapter 480 of the Florida Statutes), hearing aids and/or optometry services, and similar establishments—but not including any sexually oriented business.

. . .

~~**PSYCHIATRIC TREATMENT FACILITY**~~

~~An inpatient facility that provides care for persons with psychiatric problems and that may include outpatient follow-up care to the facility's patients.~~

. . .

RESTAURANT

An establishment where meals or prepared food, including beverages and confections, are served to customers. Accessory uses may include bars, banquet rooms, catering services, pick-up facilities for take-out orders, windows for walk-up service, outdoor seating, and facilities providing for drive-through service. An establishment that sells both alcoholic beverages and food is classified as a bar or lounge if it derives no more than ten percent of its gross revenue from the sale of food consumed on the premises.

RETAIL CLINIC

An accessory use located within a grocery store, pharmacy, or large retail store for the diagnosis and treatment of common household illnesses such as strep throat and eye, ear, sinus and other similar infections; the treatment of minor wounds; abrasions and joint sprains; the injection of common vaccinations; wellness services; and routine lab tests.

. . .

SPECIALTY EATING OR DRINKING ESTABLISHMENT

An establishment selling specialty food or beverage items that normally do not constitute a full meal – including, but not limited to, ice cream parlors, dessert cafes, snack shops, juice and coffee houses, and retail bakeries. Accessory uses may include pick-up facilities for take-out orders, windows for walk-up service, outdoor seating, and facilities providing for drive-through service.

SPECIALTY HOSPITAL

A hospital which offers a restricted range of services appropriate to the diagnosis, care, and treatment of patients with specific categories of medical or psychiatric illnesses or disorders which include: Specialty medical hospitals; Specialty rehabilitation hospitals; Specialty psychiatric hospitals, which may include beds licensed to offer Intensive Residential Treatment programs; Specialty substance abuse hospitals, which may include beds licensed to offer Intensive Residential Treatment programs; and an Addictions Receiving Facility.

SPECIALTY MEDICAL FACILITY

A specialty medical facility is a facility, regardless of size, offering specialized treatment and services including, but not limited to, ambulatory surgical facilities, dialysis centers, substance abuse treatment facilities, outpatient rehabilitation facilities, birthing facilities, and urgent care facilities (not including a 24-hour urgent care facility). This use also includes medical or dental offices which are larger than 5,000 sq ft gfa.

. . .

UNCOVERED PORCHES, DECKS, PATIOS, TERRACES, OR WALKWAYS

Hard surfaces often adjacent to an enclosed structure and used for outdoor seating and access.

URGENT CARE FACILITY 24-HOURS

A facility which holds itself out to the general public as a walk-in, extended-hour access facility where immediate, but not emergent, care is provided. Patients shall be served solely on an outpatient basis and such services shall not include overnight stays

. . .

SECTION 6. That Appendix A, "Consolidated Use Table," of Chapter 155, "Zoning Code," of the Code of Ordinances of the City of Pompano Beach is hereby amended to read as follows:

APPENDIX A: CONSOLIDATED USE TABLE

P = PERMITTED PRINCIPAL USE S = USE ALLOWED AS A SPECIAL EXCEPTION A = PERMITTED ACCESSORY USE
T = TEMPORARY USE ALLOWED WITH A MAJOR TEMPORARY USE PERMIT t = TEMPORARY USE ALLOWED WITH A MINOR TEMPORARY USE PERMIT
√ = TEMPORARY USE ALLOWED WITHOUT TEMPORARY USE PERMIT
I = INTERIM USE ALLOWED WITH AN INTERIM USE PERMIT BLANK CELL = PROHIBITED USE

USE CATEGORY (PRINCIPAL USES) AND/OR USE TYPE		RESIDENTIAL DISTRICTS												COMMERCIAL DISTRICTS						INDUSTRIAL DISTRICTS				SPECIAL DISTRICTS						PLANNED DEVELOPMENT DISTRICTS					USE-SPECIFIC STANDARDS
		RS-1	RS-2	RS-3	RS-4	RS-L	RD-1	RM-7	RM-12	RM-20	RM-30	RM-45	MH-12	B-1	B-2	B-3	B-4	M-1	CR	I-1	I-IX	OIP	M-2	TO	PR	CF	PU	T	BP	RPUD	PCD	PD-TO	LAC	PD-1	
PRINCIPAL USES																																			
INSTITUTIONAL USES																																			
***																																			
Health Care Uses	~~Blood/tissue collection center~~													~~P~~	~~P~~	~~P~~	~~P~~							~~P~~							~~P~~	~~P~~	~~P~~		~~155.4209.A~~
	~~Drug or alcohol treatment facility~~															~~P~~	~~P~~							~~S~~		~~P~~					~~P~~	~~P~~	~~P~~		~~155.4209.B~~
	Medical office													P	P	P	P			P		P		P		P					P	P	P	P	155.4209.A
	Specialty medical facility															S	P			P		P				P					P		P	P	155.4209.B
	Urgent care facility 24 hours															S	P			P		P				P					P		P	P	155.4209.C
	Specialty hospital															S	P			P		P				P					P		P		155.4209.D
	General hospital															~~P~~ S	P			P		P		~~S~~		P					P	~~P~~	P		155.4209.~~C~~E
	~~Massage therapy establishment~~													~~P~~	~~P~~	~~P~~	~~P~~		~~P~~					~~P~~		~~P~~				~~P~~	~~P~~	~~P~~	~~P~~	~~P~~	~~155.4209.D~~
	~~Medical or dental clinic~~													~~P~~	~~P~~	~~P~~	~~P~~							~~P~~		~~P~~					~~P~~	~~P~~	~~P~~	~~P~~	~~155.4209.E~~
	Medical or dental lab															~~P~~ S	P			P		P		~~P~~		P					P	~~P~~	P		155.4209.F
	Nursing home facility								P	P	P	P				P								P		P					P	P	P		155.4209.G
	~~Psychiatric treatment facility~~															~~P~~	~~P~~							~~S~~		~~P~~					~~P~~	~~P~~	~~P~~		~~155.4209.I~~

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USE CATEGORY (PRINCIPAL USES) AND/OR USE TYPE	RESIDENTIAL DISTRICTS												COMMERCIAL DISTRICTS						INDUSTRIAL DISTRICTS				SPECIAL DISTRICTS						PLANNED DEVELOPMENT DISTRICTS					USE-SPECIFIC STANDARDS
	RS-1	RS-2	RS-3	RS-4	RS-L	RD-1	RM-7	RM-12	RM-20	RM-30	RM-45	MH-12	B-1	B-2	B-3	B-4	M-1	CR	I-1	I-IX	OIP	M-2	TO	PR	CF	PU	T	BP	RPUD	PCD	PD-TO	LAC	PD-I	
ACCESSORY USES AND STRUCTURES																																		
. . .																																		
Recycling drop-off stations															A	A	A		A	A	A	A			A	A	A	A		A	A	A	A	155.4303.AA
Retail clinic													A	A	A	A			A				A						A	A	A	A	A	155.4303.UU
. . .																																		

SECTION 7. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance that 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 8. This Ordinance shall become effective upon passage.

PASSED FIRST READING this _____ day of _____, 2016.

PASSED SECOND READING this _____ day of _____, 2016.

_____

LAMAR FISHER, MAYOR

ATTEST:

_____

ASCELETA HAMMOND, CITY CLERK

:jrm
1/26/16 - 1/6/16
L:ord/ch155/2016-80

PLANNING AND ZONING BOARD/ LOCAL PLANNING AGENCY
MEMORANDUM #15-075

DATE: January 11, 2016

TO: City Commission

FROM: Planning and Zoning Board/ Local Planning Agency

SUBJECT: Proposed Text Amendments to Zoning Code, Health Care Uses

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At the special set meeting of the Planning and Zoning Board/ Local Planning Agency held on November 30, 2015 to review the Moratorium Studies and Recommendations, the Board considered proposed text amendments to the Article 3 (Zoning Districts), Article 4 (Use Standards), Article 5 (Development Standards), Article 9 (Definitions and Interpretation), and Appendix A (Consolidated Use Table) of the Zoning Code, as set forth in the Department of Development Services Administrative Report 15-621 as well as the Staff Report entitled "The Right Use in the Right Location: Health Care Uses".

Within Article 3 (Zoning Districts) Staff recommends revising the Atlantic Boulevard Overlay District and Downtown Pompano Beach Overlay District to prohibit "Specialty Medical Facility", "Medical or Dental Lab", "Urgent Care Facility – 24 Hours", "Specialty Hospital", and "General Hospital"; add standards for "Medical Offices"; and standards for "Personal Services Establishment which only offer Massage Therapy".

Within Article 4 (Use Standards) Staff recommends deleting "Blood/tissue collection center," "Drug or Alcohol Treatment Facility," "Massage therapy establishment," "Medical or dental clinic," and "Psychiatric treatment facility"; adding "Medical office," "Specialty Medical facility," Urgent care facility 24-hours"; and modifying "Hospital" and "Medical or dental lab"; revising the definition of "Personal Services Establishment"; revising the definition of "Limited mental health treatment facility"; and adding "Retail Clinic".

Within other Articles Staff recommends revising Table 155.5102.D.1 "Minimum number of off-street parking spaces"; revising Article 9 Part 5; and revising Appendix A: Consolidated Use Table.

With a 5-2 vote for the approval of the amendments, Jerry Mills and Dwight Evans casting the dissenting votes, it is the recommendation of the Board that the text amendments be approved.

Fred Stacer
Chairman
Planning and Zoning Board/ Local Planning Agency

kem
G:\Zoning 2009\Code Rewrite\Code Amendments\Moratorium - June 2015\P&Z_Special Set Hearing - Staff Reports\P&Z Approval Memos\PZ Approval Memo_Health Care Uses.doc

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PLANNING AND ZONING BOARD/LOCAL PLANNING AGENCY

November 30th, 2015
Monday

City Commission Chambers

7:00 P.M.

SPECIAL MEETING AGENDA

A. Call to order by the Chairman of the Board, Mr. Fred Stacer at 7:03pm.

B. **ROLL CALL:**

Elizabeth Anderson
M. Dwight Evans
Richard Klosiewicz
Joan Kovac
Jerold Mills
Fred Stacer
Tobi Aycock *for Jeff Torrey*

Also Present

Karen Friedman
Robin Bird
Carrie Sarver
Kerrie MacNeil
Cecelia Ward
Patrick Jovanov
Tara Patton
Vincente Thrower

Mr. Evans asked for a vocal or silent moment for prayer. Mr. Stacer called for a moment of silence.

C. INDIVIDUALS TESTIFYING PLACED UNDER OATH

Mr. Robin Bird reminded the Chairman that this is not a quasi-judicial hearing and it is not necessary to place individuals under oath. Carrie Sarver agreed that placing the audience who wishes to speak under oath is above the requirements.

City Staff and members of the public testifying before the Board at the meeting were placed under oath by Kerrie MacNeil, Zoning Technician and Notary Public in the State of Florida.

D. OTHER BUSINESS

1. Temporary Moratorium - Staff Reports

Staff has prepared reports and recommendations regarding several uses subject to the Temporary Moratorium. The reports are as follows: Health Care Uses, Thrift and Consignment Shops, and Liquor Stores (and other retail sales of alcoholic beverages), and Alternative Financing Uses.

Mr. Robin Bird introduced himself to the Board as the Director of Development Services and reviewed the temporary moratorium and the reasons why it was enacted. Mr. Bird stated that four reports are being presented tonight and a significant size team worked on the reports. Mr. Bird added that staff reserves the ability to bring items back to the next Planning and Zoning Board meeting.

Mrs. Kovac asked why restaurants were not included in the reports. Mr. Bird replied that the City Commission did not select restaurants to be placed under moratorium.

Mrs. Friedman, Principal Planner, introduced herself to the Board and stated that she would be presenting condensed versions of the reports that were included in staff's back up material and she will be focusing mostly on the recommendations. Mrs. Friedman stated that the various recommendations have the same theme: the City's need to balance access to these uses, economic development, protect single family neighborhoods and regulate secondary effects of the uses. Distance requirements.

Mrs. Friedman introduced the first topic: Thrift and consignment shops. Mrs. Friedman stated that often times the difference between thrift and consignment shops is not understood. Mrs. Friedman delivered a PowerPoint presentation to the Board which included staff's recommendations.

Mrs. Friedman introduced the next topic and began the PowerPoint presentation on Alternative Financing Uses. Mrs. Friedman presented the definition, location, history, problems, and staff's recommendations for these uses.

Mrs. Friedman gave the next presentation on Liquor Stores and other retail sales of alcoholic beverages.

Mrs. Friedman presented the next report on Health Care Uses.

Mr. Bird informed the Board that there will be four separate ordinances and suggested that the Board discuss and vote on one topic at a time. The Board agreed to discuss the reports in the order that they were presented in by staff. Mr. Stacer asked the Board if they had any questions for staff regarding Thrift and Consignment shops.

Mrs. Anderson if the consignment stores that were in B-3 that will now be considered thrift stores are considered nonconforming. Mrs. Friedman replied that they would likely be treated under the lawfully existing special exception use. Mrs. Anderson asked if this would be true even if they do not apply and Mrs. Friedman responded that it is just the designation.

Dr. Mills stated that he is unclear on the difference between consignment and thrift shop. Mrs. Friedman explained the difference between the two. Dr. Mills asked if no new business can be established under the moratorium and what is the length of the Moratorium. Mrs. Friedman responded that the Moratorium was enacted by the City Commission on July 14, 2015 and it is set to expire on January 14, 2016 unless further action is taken by the Commission. Dr. Mills asked if no new business can be established during this time and Mrs. Friedman replied that no new permits and no new business tax receipts were issued to any of the uses that have been subject to the Temporary Moratorium.

Mrs. Aycock asked why consignment boutiques are prohibited from fronting Atlantic Boulevard in the AOD but not thrift. Mrs. Friedman responded that they Thrift Shops are a prohibited use in the AOD; therefore, we would not have to regulate where they would be located.

Mr. Klosiewicz asked who will determine what is considered "luxury merchandise." Mrs. Friedman responded that staff will be looking to see if the business is focusing on selling one type of merchandise or if they focusing on multiple items (this is a way to determine the difference between thrift and consignment). Mrs. Friedman added that this is a standard used by several other cities in South Florida and staff will make their best determination. Mr. Klosiewicz expressed that he does not believe the word luxury should be included because the word luxury may be interpreted differently by different people. Mr. Klosiewicz stated that he suggests the word be stricken from the text amendment.

Dr. Mills asked what happens to the places that are not in compliance once this goes into effect. Mrs. Friedman responded that the use will become a legal non-conforming use or lawfully existing special exception use. Mrs. Friedman added that we do not force them to comply.

Mr. Evans asked for the distinction between a shop and a boutique and if a boutique is a more specialized. Mrs. Friedman answered that it is a more specialized type of retail establishment (ex. vintage clothing or furniture).

Mrs. Anderson asked if the lawfully existing special exception is held to the same improvement as the legal nonconforming use. Mr. Bird responded that a lawful special exception use is held to a different standard.

Mr. Stacer asked if staff is looking for a recommendation to extend the Moratorium and Mrs. Friedman responded that they are only looking for a recommendation on the text amendments.

Mr. Stacer opened up the discussion to the public.

Patrick Jovanov (411 NE 18th Avenue Pompano Beach, FL) introduced himself to the Board and complimented Mrs. Friedman and the rest of the team on their research. Patrick stated that he has visited the Salvation Army over the years and he wishes that staff would come up with more equitable regulations. Patrick stated that this was a part of history. Patrick stated that "this is very good."

Tara Patton introduced herself to the Board as the representative of Festival Flea Market (2900 West Sample Road Pompano Beach, FL) and asked how outlet stores like Nordstrom Rack are categorized since they are selling goods below market value. Mrs. Friedman responded that there is a use in the code called "other retail establishment" that does not take into account the prices of the items sold. Mrs. Patton asked if there was an umbrella that grouped alike types of "luxury items." Mrs. Friedman answered that it would be related accessories (example: purses and jewelry). Mrs. Patton asked that her concern was who gets to make that determination.

Mrs. Kovac asked if clothing, jewelry and purses would be considered consignment and Mrs. Friedman confirmed.

Dr. Mills asked staff why the moratorium is necessary. Mr. Bird answered that staff and the City Commission have determined that the location of many of these uses were creating side effects that were concerning. The moratorium gives staff time to study the issues and decide how to go forward. Dr. Mills asked if we are currently under moratorium and Mr. Bird confirmed.

Mr. Klosiewicz asked the Chairman if the Board is going to have the opportunity, at this time, to amend the language in the text amendments. Mr. Stacer confirmed.

Mr. Stacer closed the public hearing.

MOTION made by Richard Klosiewicz and seconded by Dwight Evans to recommend approval of the proposed text amendments to Thrift and Consignment shops with the word "luxury" stricken from code sections 155.4222.E.2 and Article 9, Part 5. All vote in favor of the above motion; therefore, the motion passed.

Mr. Stacer asked the Board if anyone had questions on the Alternative Financing presentation and recommendations.

Dr. Mills asked if the proposed changes would mean that he cannot go into a bank and cash a check. Mrs. Friedman answered that one would be able to cash a check at a bank and they are separate uses. Dr. Mills asked why staff is recommending to modify the definition of bank to exclude these items. Mrs. Friedman answered that the definition of "Bank or Financial Institution" today includes a check cashing store. If we do not exclude them, we would be treating them under two different categories. We are not taking the ability to cash a check away from a bank, but we are removing the description of a check cashing facility from the "Bank or Financial Institution" use.

Mrs. Aycock asked staff why there is no separation distance between these uses and residential uses. Mrs. Friedman responded that she found separation of like uses in her research and the intent of this is to prevent clustering.

Mr. Evans asked if staff stated that these uses cause an area to become blighted. Mrs. Friedman confirmed that this is what the report indicated and the secondary effects blight the area, attract crime, cause deterioration of shopping centers, and they have certain appearance issues that may cause blighting (ex. bullet proof glass windows). Mr. Evans asked about the benefits staff identified on page 8 of the report and stated that he thinks there is a greater benefit to keeping the uses rather than removing them. Mr. Evans asked if we have this blight in Pompano. Mrs. Friedman responded that we have four distinct clusters of these uses and three of four are within or directly adjacent to the Northwest CRA which is a blighted area of the City. Mr. Evans asked if there was more than one facility located on Atlantic Blvd just west of Dixie Highway. Mrs. Friedman pulled up the map and responded that there are multiple locations in Cluster #4.

Mr. Klosiewicz stated that he believes that these stores would not have opened if they were not needed and that competition may benefit the people that are being served.

Mr. Stacer asked staff about an inconsistency between what is permitted in the PD-I in the appendix and the backup material. Mrs. Friedman stated that check cashing facility should not be permitted in the PD-I and confirmed it is an error and the Appendix is correct.

Mrs. Anderson asked if staff considered implanting design criteria for these uses. Mrs. Friedman responded design guidelines were not one of the considerations.

Mr. Klosiewicz asked if the State of Florida has some control over the rates that can be charged. Mrs. Friedman answered that the state has some rates but she does not know them off hand. Mr. Klosiewicz asked why people would use this type of service. Mrs. Kovac answered that it is possible that clients of these uses do not have checking accounts. Mr. Klosiewicz asked what people would do if this use is reduced or eliminated. Mrs. Friedman responded that staff's recommendation is not to eliminate the use.

Mrs. Kovac asked staff for confirmation that we are only talking about going forward and not talking about closing any existing Alternative Financing stores. Mrs. Friedman confirmed.

Mrs. Anderson asked if any of the existing uses will become nonconforming due to the separation requirements and Mrs. Friedman confirmed (legal non-conforming use).

Mr. Klosiewicz stated that he did not say anything that expressed that he believed that the uses were being eliminated.

Mrs. Aycock stated that, according to the research, the goal is to spread them out in order to lower the crime rates and help with appearance.

Mr. Klosiewicz asked how many stores on the map would be nonconforming. Mrs. Friedman responded that she could not provide that information at that very moment; however she could return with the requested information. Mr. Bird suggested a cover memo to the Board.

Mr. Stacer opened up the discussion to the public.

Vincente Thrower (1890 NW 6 AV Pompano Beach, FL) stated that the check cashing stores are needed in the minority community. Vincente stated that he believes this is a neighborhood discussion and not a board discussion on whether the neighbors want the stores in the area. Vincente expressed that the check cashing stores are important for people who have bad credit and are not able to open a bank account.

Patrick Jovanov (411 NE 18th Avenue Pompano Beach, FL) asked staff why the research includes military bases if there are no military bases in Pompano Beach. Mr. Jovanov expressed that he does not understand why there is a reference to military bases. Mr. Jovanov shared a quote from Mark Twain and stated that what is being proposed is a recurring prejudice that was discussed at City Commission meetings several times. The lack of financial institutions in the Northwest CRA was planned or discouraged.

The Chairman closed the public hearing and asked if the Board had any additional questions.

MOTION made by Joan Kovac and seconded by Tobi Aycock to recommend approval of the text amendments to Alternative Financing Uses. All voted in favor of the above motion with the exception of Jerry Mills and Dwight Evans.

The Board moved on to discussing Liquor Stores and other retail sales of alcoholic beverages.

Dr. Mills asked if these amendments will affect the American Legion, the Elks Lodge etc. Mrs. Friedman responded that these uses are not included. Dr. Mills if regular bars are included. Mrs. Friedman responded that bars with accessory package sales will be affected because the package sales will now be a new accessory use that would require approval.

Mr. Stacer asked staff for clarification on the difference between a brew pub and a distillery. Mrs. Friedman answered that the City has both brew pubs and food and beverage manufacturing and she briefly explained the differences between the two.

Patrick Jovanov (411 NE 18th Avenue Pompano Beach, FL) asked how the Costco Liquor store would be grouped. Mrs. Friedman stated that we treat these membership stores as retail establishments.

The Chairman closed the public hearing and asked if any Board members had any additional questions.

MOTION made by Richard Klosiewicz and seconded by Dwight Evans to recommend approval of the text amendments to Liquor Stores and other retail sales of alcoholic beverages. All voted in favor of the above motion; therefore, the motion passed.

The Chair asked the Board if they had any questions concerning the proposed text amendments regarding Health Care uses.

Dr. Mills asked for the geographic definition of the AOD and Mr. Bird provided Dr. Mills with an explanation. Dr. Mills asked if he could open a one story office and have treatment on the first floor. Dr. Mills also asked why someone would not be able to have a doctor's office open after 7pm and expressed that he does not agree with the proposed changes.

Mrs. Friedman stated that the intent is to balance the various needs including access (ex. hours of operation) as well as taking into consideration the impact on neighboring properties (especially the residential community). Mrs. Friedman answered that the hours of operation in the AOD would be affected. Dr. Mills mentioned that there are many senior citizens living east and he expressed that he thinks the restrictions are wrong.

Cecelia Ward introduced herself to the Board as the Planning Consultant for the Pompano CRA and stated that she would like to address a few of the comments. Mrs. Ward stated that they have performed an extensive analysis of the medical facilities in the AOD and the DPOD. The research discovered that facilities exist that close before 7pm and open after 7am. Mrs. Ward informed the Board that the purpose of the restriction on the hours of operation is to utilize the evening activity to support the pedestrian oriented uses that will help revitalize the area. The research shows that the restriction on the hours is consistent with the current operating hours of the existing facilities.

Mr. Stacer asked why Health Care uses are not proposed to be permitted in the I-1X zoning district. Mrs. Friedman stated that this district is intended for heavier uses. Mr. Bird added that no I-1X locations would be on a major corridor.

The Chairman opened up the discussion to the public.

Vincente Thrower (1890 NW 6th Ave Pompano Beach, FL) asked if someone would be prohibited from building an urgent care facility on Martin Luther King Boulevard. Mrs. Friedman responded that on MLK, a Specialty Medical Facility would be prohibited in the Downtown Pompano Beach Overlay District. Mr. Thrower asked staff why we would prohibit an urgent care facility from being constructed when there are no existing facilities in the Northwest CRA community. Mr. Bird stated that this would not prohibit an urgent

care center in the Northwest CRA, only in the downtown overlay district (DPOD). Mr. Thrower stated that he objects this item. Mr. Thrower asked the Chair what the logic is behind this regulation.

Mr. Stacer asked staff if it is permitted today. Mr. Bird responded that it is allowed today. Mr. Thrower asked if the text amendment is adopted it will not be permitted. Mr. Bird responded that the use would be permitted west of I-95 on MLK but not east of I-95.

Mr. Thrower asked why there would not be urgent care center allowed near the new residential development across from the E. Pat Larkins Center. Mr. Thrower asked the Board to not support the text amendment. Mr. Thrower asked if the item will need to pass the City Commission and staff confirmed. Mr. Thrower stated that he believes that it does not make economic sense to restrict the urgent care centers from the MLK corridor in the DPOD.

Patrick Jovanov (411 NE 18th Avenue Pompano Beach, FL) stated that the slide 17 of the presentation lists the "Lamb of God Recovery Centers" as being licensed since 2007 when it has been here for decades. Mr. Jovanov shared a personal account regarding a sober home and an attempted kidnapping of a small child. Mr. Stacer asked what part of the code Mr. Jovanov is referring to. Mr. Jovanov stated that the issue is allowing sober homes to be located in a residential district adjacent to schools. Mr. Jovanov stated that he does not have proof, but it is the only explanation for something like this happening in his neighborhood. Mr. Jovanov asked if sober homes are still permitted in the City under the temporary moratorium. Mrs. Friedman answered that the recommended text amendments do not deal with any housing uses and added that the question is unrelated to the topic at hand. Mr. Jovanov stated that he agrees with Mr. Thrower that not allowing urgent care is discrimination, prejudice, etc.

Mr. Stacer asked if this will happen in the east and west CRA. Mrs. Friedman responded that the use "Specialty medical facility" would be a special exception in B-3, permitted in B-4, I-1 and OIP. However, it would be prohibited in the AOD and DPOD. Mrs. Friedman stated that it is consistent with the goals of these districts in terms of promoting pedestrian activity uses and active night life activity. Mr. Stacer asked which uses are allowed in the AOD and DPOD and Mrs. Friedman answered that retail clinics, personal care services, and medical offices are all permitted uses in these districts.

Mr. Klosiewicz asked if an urgent medical facility open from 7am to 7pm would be permitted and Mrs. Friedman responded that it would not because the hours of operation are not the only issue. Other issues are ambulances (noise) and medical waste etc.

Mrs. Friedman answered that it is also ambulances, medical waste, (specialty medical uses), more intense that a regular doctor's office. Go here in lieu of the ER. Mr. K asked if these uses are permitted in the area that Vincente was worried about.

Mr. Evans said he thought that being transported in an ambulance to an urgent care facility occurs very infrequently. Mrs. Friedman stated that these uses have some deleterious secondary effects and we need to treat them with more regulation. Mr. Evans asked why

it is necessary to go outside of the core area if there are not significant adverse effects. Mr. Bird stated that these uses will negatively affect redevelopment efforts.

Mrs. Kovac asked how many blocks from Martin Luther King Boulevard could there be an urgent care center.

Cecilia Ward explained the purpose of the redevelopment efforts for the DPOD area.

Mrs. Friedman explained the boundaries of the DPOD.

Mr. Evans asked if the zoning regulations of the area should adjust in the area as time goes on and be updated to reflect changes. Mrs. Friedman stated that this is what staff is trying to do and the point of the moratorium. Mr. Evans asked staff if it is their belief if a specialty medical facility located in the DPOD on MLK Boulevard would adversely affect development of the area.

Mr. Bird stated that there are many uses within the specialty medical facility (not just the urgent care center). Dr. Mills stated that he is asking specifically about medical offices and how these text amendments would eliminate these uses from the area. Mrs. Friedman stated that these uses are not consistent with the redevelopment efforts in the AOD and DPOD.

Mrs. Kovac asked if Dr. Mills is aware the urgent care centers close at 7pm as well.

Dr. Evans asked if the Board will be making a recommendation regarding one of staff's recommendations and Mrs. Friedman responded that those (that Mr. Evans is referring to) are the overriding recommendations and the proposed text amendments came from these recommendations. Mrs. Friedman stated that the Board could think of them as "Considerations 1, 2, 3 and 4" and the text amendments were prepared from these considerations.

Mr. Stacer asked if staff mapped the locations of the medical facilities. Mrs. Friedman replied that staff did mapping and staff was able to conclude from the mapping is that the change in the location of uses has not changed significantly from 2005 to 2015. The maps would not be useful because they would be so cluttered with the multiple locations.

Mr. Stacer closed the discussion to the public.

MOTION made by Elizabeth Anderson and seconded by Richard Klosiewicz to recommend approval of the proposed text amendments. All voted in favor of the above motion, with the exception of Jerry Mills and Dwight Evans, therefore the motion passed.

Mr. Stacer stated that he has questions for staff that are specific to the AOD. Mrs. Friedman placed a document on the screens for the Board to see and Mr. Stacer directed her to page 2, item number 3. Mr. Stacer asked what uses fall under 3b. Mrs. Friedman stated that the changes that were made reflected the changes coming out of the moratorium. Mrs.

Friedman stated that staff will meet with the CRA and discuss visitor accommodation uses being permitted in a residential mixed use project.

Dr. Mills asked for clarification on the outcome of the most recent vote on health care uses and Mr. Stacer and Carrie Sarver clarified that there were two "Nays" or a 5-2 vote.

Mr. Stacer stated that, referring to page 3 and the parking exemptions, he is concerned about big projects that would theoretically not have to provide parking. Mrs. Friedman responded that this is an incentive for smaller projects that are looking to do adaptive reuse. Mrs. Friedman stated that this is an effective mechanism to get sites to convert their use to a more desirable use without meeting the parking requirements.

Mr. Stacer said that he considers it to be potentially dangerous to not require parking for new projects such as a large retail redevelopment project (100,000 square feet of retail).

Mr. Bird stated that this regulation has been in effect for 5 years and we have seen neither benefits nor deleterious effects. Mr. Bird used Delray Beach as an example of a City not requiring restaurants to provide additional parking and there were still new parking garages constructed. Mr. Stacer stated that he is still concerned about this concept. Mr. Bird suggested having staff come back before the Board with a separate report on this item. Mr. Stacer said that he is ok with this proposal.

Mrs. Aycock suggested staff look at the parking scheme in downtown Gainesville for ideas.

Mr. Klosiewicz complimented Mr. Bird and staff for their hard work regarding the reports on the moratorium uses.

E. AUDIENCE TO BE HEARD

Mr. Stacer asked if there was anyone in the audience who wished to speak and no one responded.

F. BOARD MEMBERS DISCUSSION

Mr. Stacer asked if the Board members had anything to discuss and there was no response.

G. REPORTS BY STAFF

Mr. Stacer asked if staff had anything to report and Ms. MacNeil announced that the next regularly scheduled meeting is December 16th, 2015.

H. ADJOURNMENT

MOTION made by Richard Klosiewicz and seconded by Dwight Evans to adjourn the meeting at 9:29pm; all voted in favor of the above motion.

Any person who decides to appeal any decision of the PLANNING AND ZONING BOARD/LOCAL PLANNING AGENCY with respect to any matter considered at this meeting will need a record of the proceedings and for such purpose 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. // kem

Approved at the meeting held on January 27, 2016.

_____

Fred Stacer
Chairman
Planning and Zoning Board/Local Planning Agency

DRAFT

Any person who decides to appeal any decision of the PLANNING AND ZONING BOARD/LOCAL PLANNING AGENCY with respect to any matter considered at this meeting will need a record of the proceedings and for such purpose 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. // kem

pompano beach
Florida's Warmest Welcome

MEMORANDUM

Development Services

ADMINISTRATIVE MEMORANDUM NO. 15-621

DATE: November 19, 2015

TO: Planning and Zoning Board

VIA: Robin M. Bird, Director of Development Services RB

FROM: Karen Friedman, AICP, Principal Planner KBF

RE: Temporary Moratorium – Staff Reports

Staff has prepared reports and recommendations regarding several uses subject to the temporary Moratorium. A copy of each report and supporting text amendments is following.

Staff's Request
Staff is requesting the Board approve the recommended changes to the Zoning Code to the City Commission for adoption.

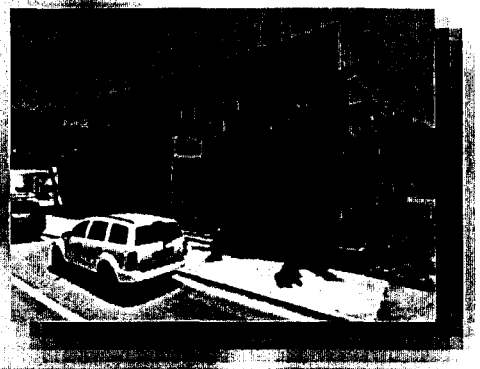
pompanobeachfl.gov 100 West Atlantic Boulevard | Pompano Beach, FL 33060 | Phone: 954-786-4600

Copy of Study

The Right Use in the Right Location:

Health Care Uses

November 2015



Introduction and Purpose

Ordinance 2015-67, Temporary Moratorium on all Health Care Uses

WHEREAS, the moratorium is intended to allow sufficient time to study the provision of these uses for the citizens of Pompano Beach and to create a long term strategy to ensure adequate access to such services is provided; and,

WHEREAS, the moratorium is intended to allow sufficient time to study the provision and location of these uses does not result in an over-concentration of these uses that will result in the blighting or downgrading of the surrounding neighborhood; and

WHEREAS, the moratorium is intended to allow sufficient time to study the provision of these uses to ensure that there is a balance between the existing residential uses and the projected demand for and location of these uses;

The health care industry is one of the largest industries in the country. It includes high paying jobs and needed services for residents and visitors alike. However as the health care industry expands and evolves, it is apparent that not all health care uses are alike. This report analyzes the changing trends of the health care industry, the state of health care uses in the city, and proposes a new Zoning scheme for classifying health care uses. The purpose of this report is to determine the right place in the city for the right health care uses.

Contents

- Trends - Changing provision of health care uses
- Analysis of health care uses in Pompano Beach
  - Data from City's Business Tax Receipts Division; Florida Department of Health; Florida Department of Children and Families; and Florida Agency for Health Care Administration
  - Maps of changing locations of health care uses in city
- Recommendations
  - Recommended Principal Health Care Uses
  - Recommended Accessory Health Care Uses
  - Recommended Uses, Not Health Care
- Focus on Redevelopment Areas

City's Zoning Code: *Existing Health Care Uses* *(Page 1 of 2)*

CONSOLIDATED USE TABLE

P = PERMITTED PRINCIPAL USE S = USE ALLOWED AS A SPECIAL EXCEPTION A = PERMITTED ACCESSORY USE BLANK CELL = PROHIBITED USE

USE TYPE	RM-12	RM-20	RM-30	RM-45	B-1	B-2	B-3	B-4	CR	I-1	I-K	OIP	TO	CF	RPUD	PCD	PD-TO	LAC	PD-I	PARKING	USE-SPECIFIC STANDARD	DEFINITION
Blood/ tissue collection center					P	P	P	P					P			P	P	P		1 per 300 sq ft	None	A state-licensed facility where human blood, organs, skin, or other human tissue are either withdrawn or collected from patients or assembled after being withdrawn or collected elsewhere from patients for subsequent delivery to a clinical laboratory for examination. A collection facility is maintained at a separate physical location not on the grounds or premises of the main licensed laboratory or institution which performs the testing.
Drug or alcohol treatment facility							P	P					S	P		P	P	P		1 per 300 sq ft	None	A state-licensed substance abuse treatment facility that provides residential treatment, intensive outpatient treatment and addictions receiving facility, as defined in Fla. Stat. §397.311.
Hospital							P	P					S	P		P	P	P		1 per 3 inpatient beds	Min. 5 acres and fronts arterial or collector	A state-licensed institution that provides primary health services and medical or surgical care to humans, primarily inpatients, who are sick or injured, and including as an integral part of the institution, related facilities such as clinical laboratories, outpatient facilities, training facilities, central services facilities, and staff offices. Hospitals offer facilities and beds for use beyond 24 hours by persons needing medical treatment or service. This use type does not include nursing home facilities, medical treatment facilities, medical clinics, drug or alcohol treatment facilities, or psychiatric treatment facilities.
Massage therapy establishment					P	P	P	P	P				P	P	P	P	P	P	P	1 per 300 sq ft	None	A state-licensed establishment that offers, sells, or provides manipulation of the tissues or other tactile stimulation of the human body with the hand, foot, arm, leg, elbow, or part of the torso, whether or not aided by any electrical or mechanical device, by persons who are licensed as a massage therapist under Chapter 480 of the Florida Statutes. A massage may also include bathing, hydrotherapy (including colonic irrigation), thermal therapy, or application of chemicals, oils, lotions, or similar preparations to the human body.
Medical or dental clinic					P	P	P	P					P	P		P	P	P	P	1 per 300 sq ft	None	A small-scale facility where patients are admitted for examination and treatment by one or more physicians, dentists, or other health practitioners on a short-term basis. The use includes the offices of physicians, dentists, chiropractors, optometrists, podiatrists, audiologists, speech pathologists, physical therapists, acupuncturists, psychologists, and other health practitioners. It also includes facilities providing short-term outpatient care and treatment (which may or may not be overnight), such as urgent care centers, kidney dialysis centers, ambulatory surgical clinics, biofeedback centers, sleep disorder clinics, family planning clinics, community health clinics, and health maintenance organization (HMO) medical clinics. Such facilities that provide overnight care and treatment may include sleeping rooms for care workers and members of patients' families. This use does not include hospitals (which are much larger in scale) or blood/tissue collection centers, drug or alcohol treatment facilities, massage therapy establishments, or psychiatric treatment facilities (which provide specialized medical services).

City's Zoning Code: *Existing Health Care Uses* *(Page 2 of 2)*

CONSOLIDATED USE TABLE

P = Permitted Principal Use S = Use Allowed as a Special Exception A = Permitted Accessory Use Blank Cell = Prohibited Use

Use Type	RM-12	RM-20	RM-30	RM-45	B-1	B-2	B-3	B-4	CR	I-1	I-X	OIP	TO	CF	RPUD	PCD	PD-TO	LAC	PD-1	Parking	Use-Specific Standard	Definition
Medical or dental lab							P	P					P			P	P	P		1 per 300 sq ft	None	Consists of facilities and offices for performing diagnostic or therapeutic medical procedures of a non-surgical nature
Nursing home facility	P	P	P	P			P		P				P	P		P	P	P		1 per 5 beds	None	A state-licensed facility or any identifiable component of any facility in which the primary function is the provision, on a continuing basis, of nursing services and health-related services for the treatment and inpatient care of two or more non-related individuals, including facilities known by varying designations such as rest homes, convalescent homes, skilled care facilities, intermediate care facilities, extended care facilities, and infirmaries. Accessory uses may include dining rooms and recreation and physical therapy facilities for residents, and offices and storage facilities for professional and supervisory staff. This use type does not include the home or residence of any individual who cares for or maintains only persons related to him or her by blood or marriage. It also does not include assisted living facilities.
Psychiatric treatment facility							P	P					S	P		P	P	P		1 per 3 beds	None	An inpatient facility that provides care for persons with psychiatric problems and that may include outpatient follow-up care to the facility's patients.
Limited mental health treatment facility (Accessory Use)										A		A								1 per 300 sq ft	Located adjacent to either a collector or arterial roadway, and within ¼ mile of a mass-transit stop.	An accessory use for the practice of mental health counseling, practice of marriage and family therapy, and/or practice of clinical social work, as defined in F. S. § 491.003, on an out-patient basis only. This use strictly prohibits the on-site dispensing of both medicinal and non-medicinal drugs. This use strictly prohibits the written order or prescription for any medicinal and non-medicinal drugs.

Trends:
Changing Provision of Health Care Uses

Major Trends in Health Care Services

- Per CDC, in 1960 only 5% of the GDP was for health care expenditures; in 2013 the amount was 17.4%
- Significant increase in percentage of population with health insurance due to:
  - Continuing growth in the Medicare-eligible population
  - Affordable Care Act (ACA)
  - From September 2013 to February 2015, 22.8 million Americans became newly insured and 5.9 million lost coverage, for a net gain of 16.9 million more insured.
- Significant increase in provision of mental health and substance abuse treatment due to:
  - Mental Health Parity and Addiction Equity Act
  - An increasing component of substance abuse treatment is the use of medication assisted treatment
- Additional treatment/focus on chronic care due to aging population
- Many insurance companies no longer require referrals to see specialists
- Medical Marijuana legalized in several states, and may be legalized in Florida
- Significant increase in obesity and related diseases
- More intensive Health Care uses moving into vacant shopping center locations due to cost of land, available space, and desired increase in access to population.

The locations of health care uses have not changed; however, the services offered at the locations have.

ACA and Mental Health Parity and Addiction Equity Act

	Individuals who will gain mental health, substance use disorder, or both benefits under the Affordable Care Act, including federal parity protections	Individuals with existing mental health and substance use disorder benefits who will benefit from federal parity protections	Total individuals who will benefit from federal parity protections as a result of the Affordable Care Act
Individuals currently in individual plans	3.9 million	7.1 million	11 million
Individuals currently in small group plans	1.2 million	23.3 million	24.5 million
Individuals currently uninsured	27 million	n/a	27 million
Total	**32.1 million**	**30.4 million**	62.5 million

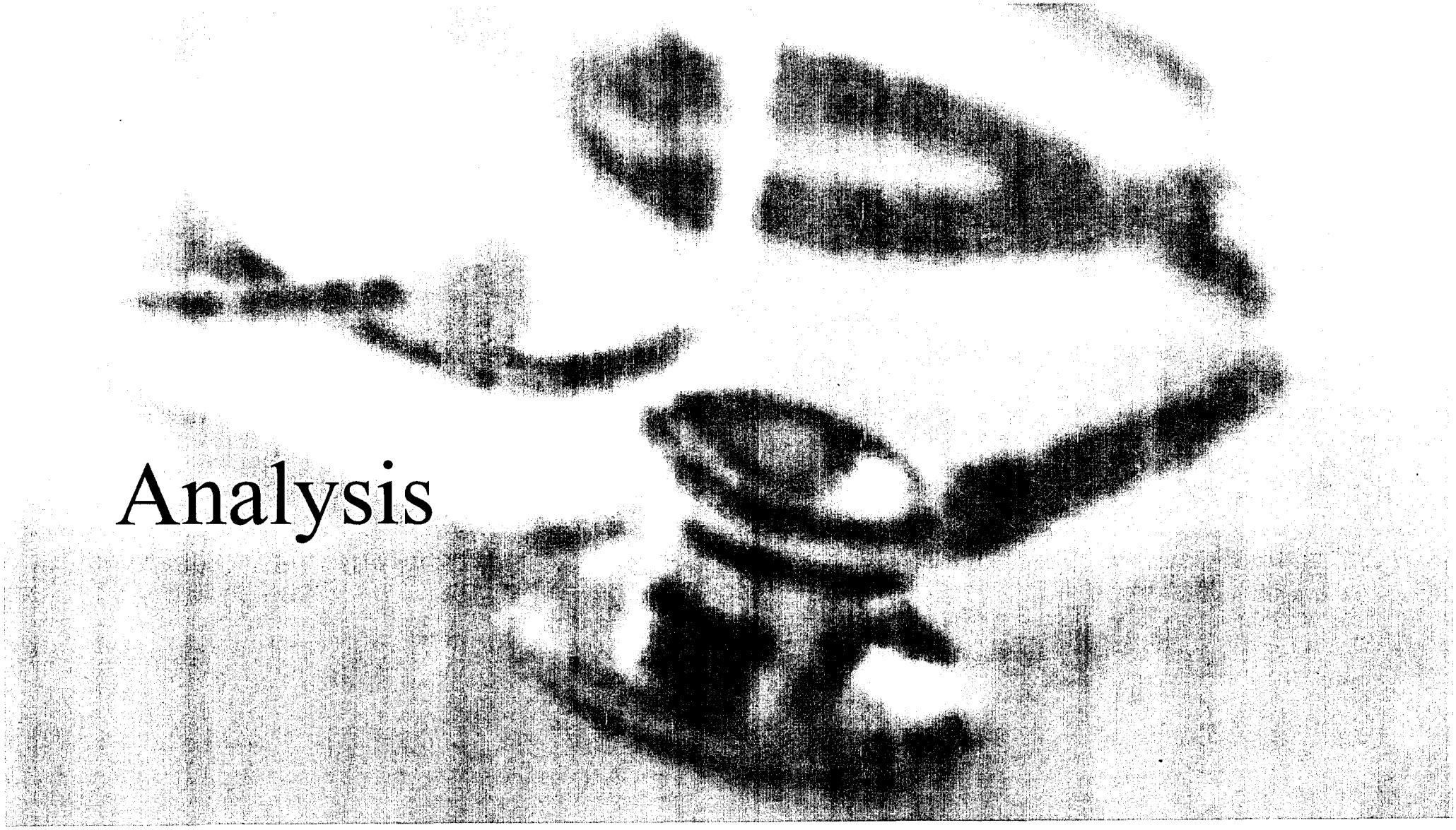
Source: US HUD – Office of the Assistant Secretary for Planning and Evaluation – Issue Brief (February 20, 2013) – "Affordable Care Act Expands Mental Health and Substance Use Disorder Benefits and Federal Parity Protections for 62 Million Americans"

Comment: This information provided by HUD clarifies how federal acts will result in the expansion of mental health services and substance abuse treatment services, due to the amount of individuals whose insurance will now cover these services

Hospitals, schools filling up empty shopping centers: Sun-Sentinel, 7/17/2015

- Across South Florida, service businesses are moving into former retail space left vacant when stores died in the recession or moved online.
- Service uses become a good replacement for many former "Big Box" retailer sites.
- Local hospitals are leading the move into storefronts
- Hospitals have installed at least a dozen urgent care centers and clinics in shopping areas in Broward and Palm Beach counties – with more to come.
- Last fall, Holy Cross Hospital in Fort Lauderdale opened an urgent care and imaging center in a former Boca Raton mattress store after starting its first urgent care facility in a closed Blockbuster near downtown Fort Lauderdale.
- Hospitals, like other service businesses, have found that converting stores can be cheaper and easier than buying land and site planning 'ground-up' construction.

Comment: This article highlights the new trend of intensive healthcare uses (as well as other institutional uses) moving into vacant shopping centers.



Analysis

Health Care Uses in Pompano Beach:
City & State Records Analysis

- In order to analyze the amount, location, and types of health care uses in Pompano Beach, four sources of information were reviewed:
  1. City Business Tax Receipts – 2005 and 2015
  2. Florida Department of Children and Families (DCF) – 2015
  3. Florida Department of Health (DOH) – 2015
  4. Florida Agency for Health Care Administration (AHCA) – 2015
- Each of the agencies use their own categories, and may license different components of one health care facility.
  - i.e. DCF might license a facility as a Substance Abuse Treatment Center, while FL DOH licenses the professionals working at the facility, including the doctor, social workers, and mental health therapists, and the facility may also be licensed by AHCA if it preforms in-house lab work.
- It is not possible to simply "add" the various licenses from the various state agencies.
- The City's BTRs are *only* useful for tracking licensed professionals
  - The City's BTR Dept. categorizes health care "facilities" as a professional offices
  - A doctor's office will have two BTRs: a Professional Office and a Doctor.
  - Therefore the review of the City BTR solely analyses the health care professions category.

City Business Tax Receipts – 2005 and 2015

37 categories for Health Care Professionals

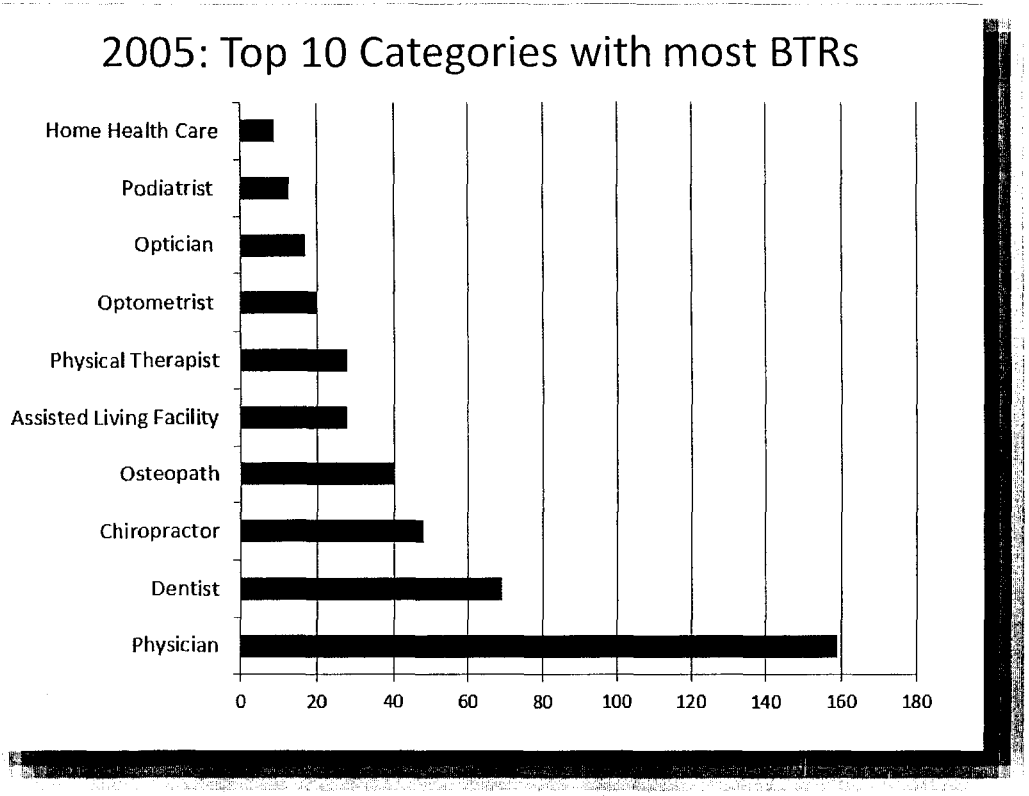
- Acupuncture
- Alf (Assisted Living Facility)
- Anesthesiologist
- Blood Bank
- Chiropractor
- Chiropractor Assistant
- Colon Irrigationist
- Dental Lab
- Dentist
- Nursing (RN,LPN,PRIVT duty)
- Nursing Home
- Nutritionist
- Occupational Therapist
- Ophthalmologist
- Optical Dispensary
- Optician
- Optometrist
- Osteopath
- Physical Therapist
- Dietitian
- Hearing Aid Specialist
- Home Health Care
- Lab Technician (DNTL/MEDCL)
- Marriage Family Therapist
- Massage Therapist
- Medical Lab
- Mental Health Counselor
- Nurse Practitioner
- Physical Therapist Assistant
- Physician
- Physician Assistant
- Podiatrist
- Psychiatrist
- Psychologist
- Psychotherapist
- Radiologist
- Speech therapist

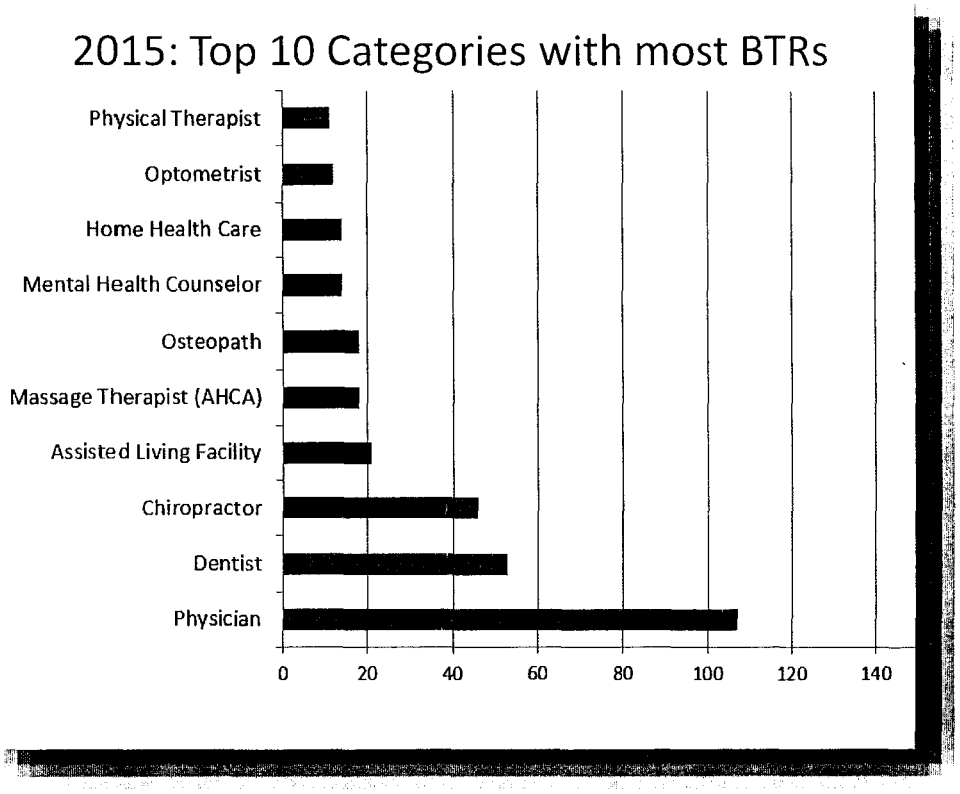
Total Number of Health Care BTRs

FY 2005 – 503

FY 2015 – 397

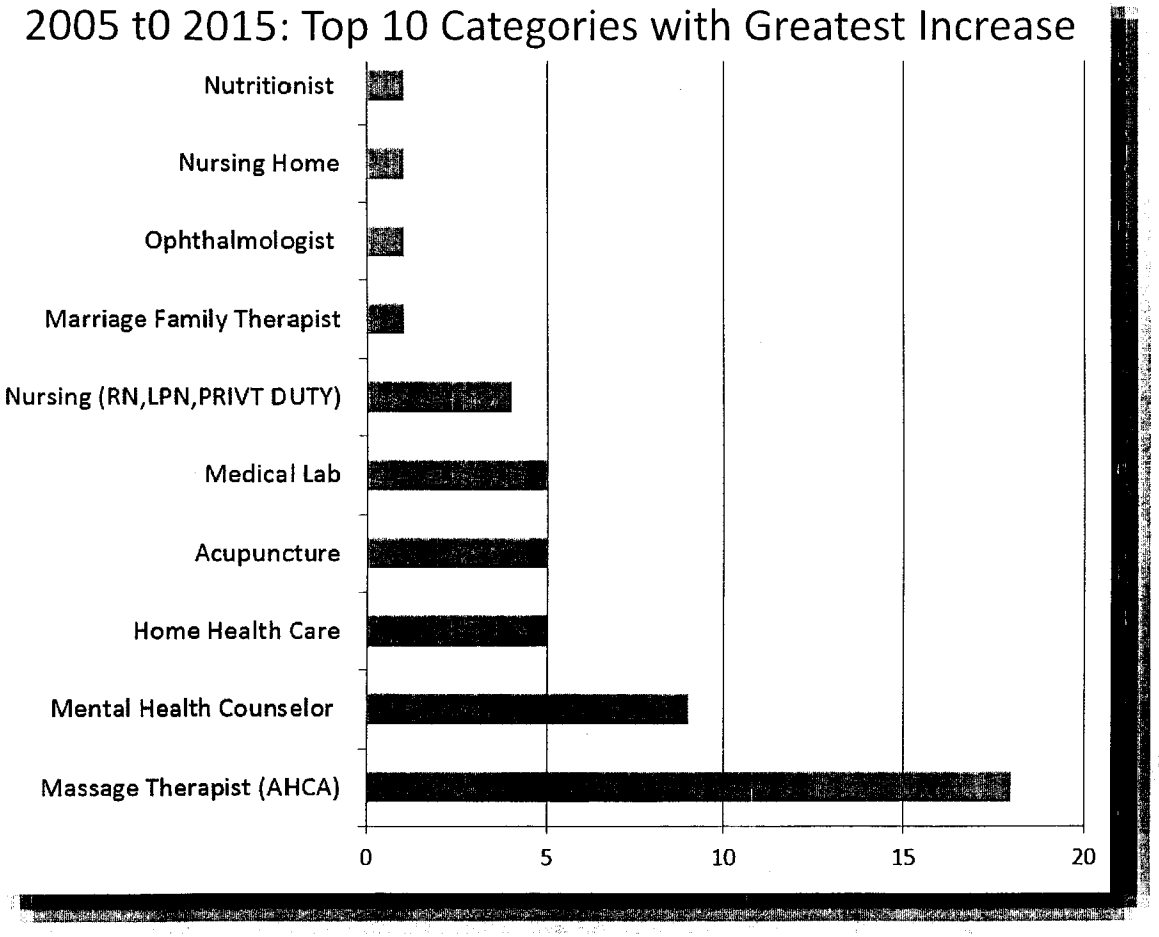
City Business Tax Receipts – 2005 and 2015





Comment: The above tables show the top 10 categories in 2005 and 2015. Physicians, Dentists, and Chiropractors continue to be the largest healthcare categories. In 2015, Massage Therapists and Mental Health Counselors joined the top 10 list and Optician and Podiatrist dropped off the list.

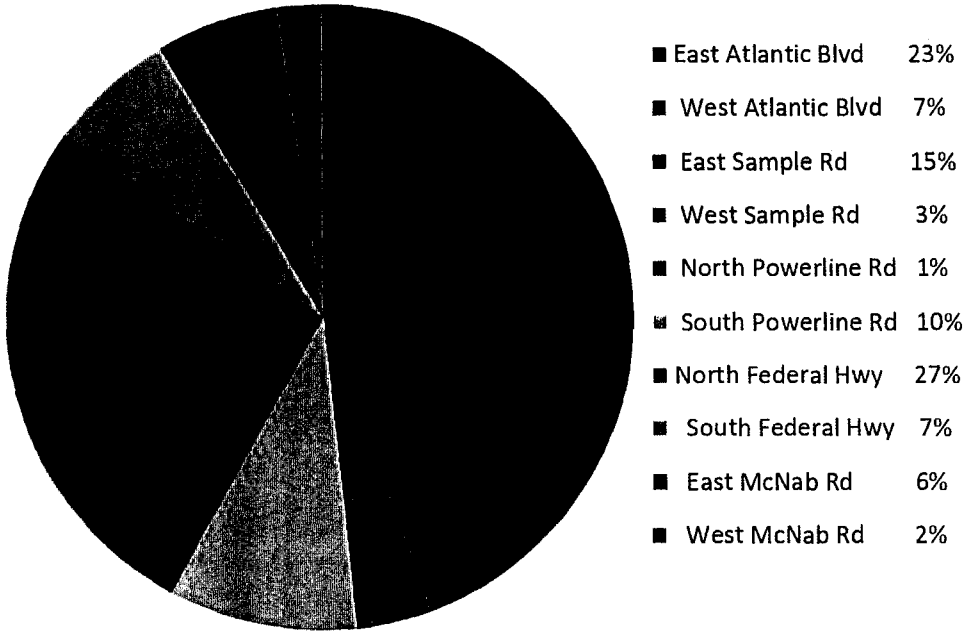
City Business Tax Receipts – 2005 and 2015



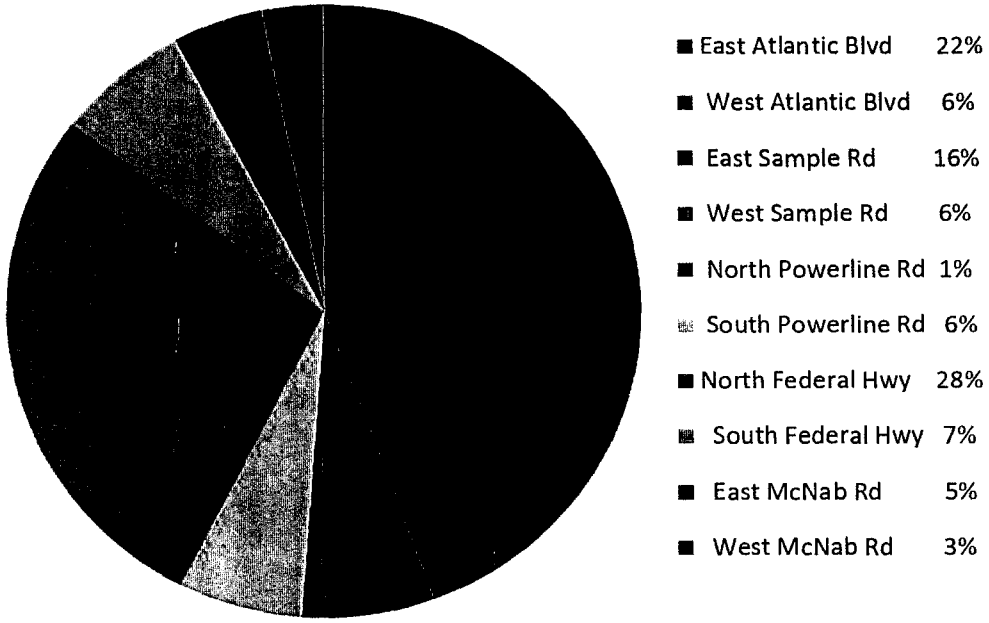
Comment: This table includes the top 10 categories with the biggest increases between 2005 and 2015. This table shows that the categories with the biggest increases are those within the "alternative" or mental health treatment realm, including massage therapists, mental health counselors, acupuncture, marriage family therapists, and nutritionists.

City Business Tax Receipts – 2005 and 2015

2005: Locations of BTRs on Major Corridors



2015: Locations of BTRs on Major Corridors



Comment: The pie charts indicate the locations of health care services along the city's major corridors have not changed since 2005. This substantiates the trend previously noted; *The locations of health care uses have not changed; however, the services offered at the locations have.*

FL Department of Children and Families

12 Licensure Categories

- Addictions Receiving Facility
- Detoxification
- Intensive Inpatient Treatment
- Residential Treatment (1 to 5*)
- Day/Night Treatment with Community Housing*
- Day/Night Treatment
- Intensive Outpatient Treatment*
- Outpatient Treatment
- Medication & Methadone Maintenance Treatment
- Aftercare
- Intervention
- Prevention

FAQ re DCF Terminology

Residential Treatment Level 5

Residential programs that provide only housing and meals at one location and who provide treatment services at alternate locations in facilities that are owned and operated by the same provider. ***(Substance abuse provider is required to own and operates the housing)***

Day/Night Treatment with Community Housing

Clients live in a supportive, community housing location while participating in treatment. No treatment takes place in the housing where the clients live. The housing is utilized solely for the purpose of assisting clients in making a transition to independent living. ***(Substance abuse provider is not required to own and operate the housing)***

Intensive Outpatient Treatment

Each client shall receive at least nine hours of substance abuse, mental health, and other related services per week.

Comment: The city has seen a rise in certain categories (as is shown on the next slide). A description of three common categories is provided above.

FL Department of Children and Families:

Substance Abuse and Mental Health Program Office

Licensed Substance Abuse or Behavioral Health Facilities – July 2015

Licensee	City BTR Year	Street Address	Treatment Offered									
			Day or Night Treatment	Day or Night Treatment with Community Housing	Outpatient Treatment	Intensive Outpatient Treatment	Residential Level				Detox	
							2	3	5	Intensive	Outpatient	Inpatient
Bridges of America – The Turning Point Bridge, Inc	2000	400 SW 2nd Street			Yes							
Metro Treatment of Florida LP (Behavioral Health only)	2003	380 S. Andrews Av			Yes							
Simple Path Recovery	2004	1990 N Federal Highway			Yes	Yes						
Lamb of God Recovery Centers	2007	971 S Dixie Highway	Yes							Yes		
Addiction Solutions by the Sea, Inc.	2011	3665 N Federal Highway	Yes	Yes	Yes	Yes						
Portner Counseling Group / Counseling of SWFL	2011	1800 N Federal Highway			Yes							
Holistix By The Sea, LLC	2011	3217 NE 9th Street							Yes			
The Right Place Residential Detox	2012	213 NW 8th Court							Yes		Yes	Yes
Ocean Breeze Recovery, LLC	2013	2413 E Atlantic Blvd	Yes	Yes	Yes	Yes			Yes		Yes	
Almost There, LLC dba Lakehaven Recovery Center	2013	150 E. Sample Rd		Yes	Yes	Yes						
Northstar IOP	2013	1661 E. Sample Rd				Yes						
Henderson/Summit (Behavioral Health only)	2013	868 SW 10th Street								Yes		
Banyan Treatment and Recovery	2014	950 N Federal Highway	Yes		Yes	Yes						
Sovereign Health of Florida	2014	555 SW 12 Street		Yes	Yes	Yes						
Holistix By The Sea, LLC	2015	803 NW 2nd Ave		Yes	Yes	Yes			Yes			
Pompano Treatment Center / Methadone Clinic	2015	555 S. Andrews Av			Yes						Yes	
Banyan Health Systems	2015	214 SW 2nd Street					Yes					
Banyan Health Systems / Spectrum Programs	2015	220 SW 2nd Street					Yes	Yes				
(Approved by City) Changes Treatment	2015	2310 E Atlantic Blvd		Yes		Yes						
(Proposed) PMG Grace	2015	3773 N Federal Highway		Yes								Yes
(Approved by City) Ready for Recovery Treatment Center	2015	1940 SE 2nd Street		Yes		Yes						

Comment: Prior to 2011 the city only had three licensed substance abuse facilities and one behavioral health facility. Since 2011 the city has an additional 17 facilities, with seven of those opening in 2015 alone.

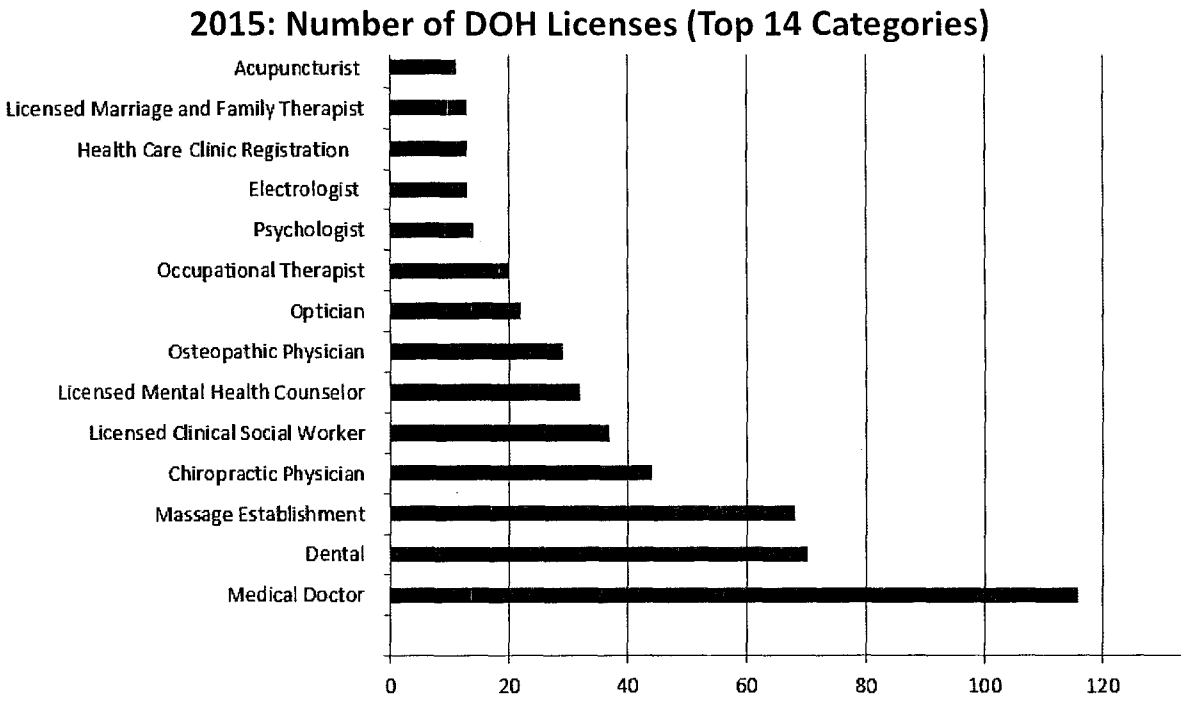
FL Department of Health

27 Licensure Categories

- Registered Nurse
- Medical Doctor
- Dental
- Massage Establishment
- Chiropractic Physician
- Licensed Clinical Social Worker
- Licensed Mental Health Counselor
- Osteopathic Physician
- Optician
- Occupational Therapist
- Psychologist
- Electrologist
- Health Care Clinic Registration
- Licensed Marriage and Family Therapist
- Acupuncturist
- Optical Establishment Permit
- Optometrist
- Dietetics/ Nutrients
- Medical Related Process Entity
- Pain Management Clinic
- Apprentice Optician
- Hearing Aid Specialist
- Approved Massage School
- Audiologist
- Nutrition Counselor
- Office Surgery Registration

Total Number of FL DOH Licensed Health Care Professionals in 2015
1,102

FL Department of Health



Comment: The top 14 DOH categories for the City are shown (Registered Nurse is #1, but not shown due to the 500+ licenses). Combined, the number of licensed Clinical Social Workers, Licensed Mental Health Counselors, Licensed Marriage and Family Therapists, and Psychologists is equal to the number of dentists in the city.

FL Agency for Health Care Administration

18 Licensure Categories

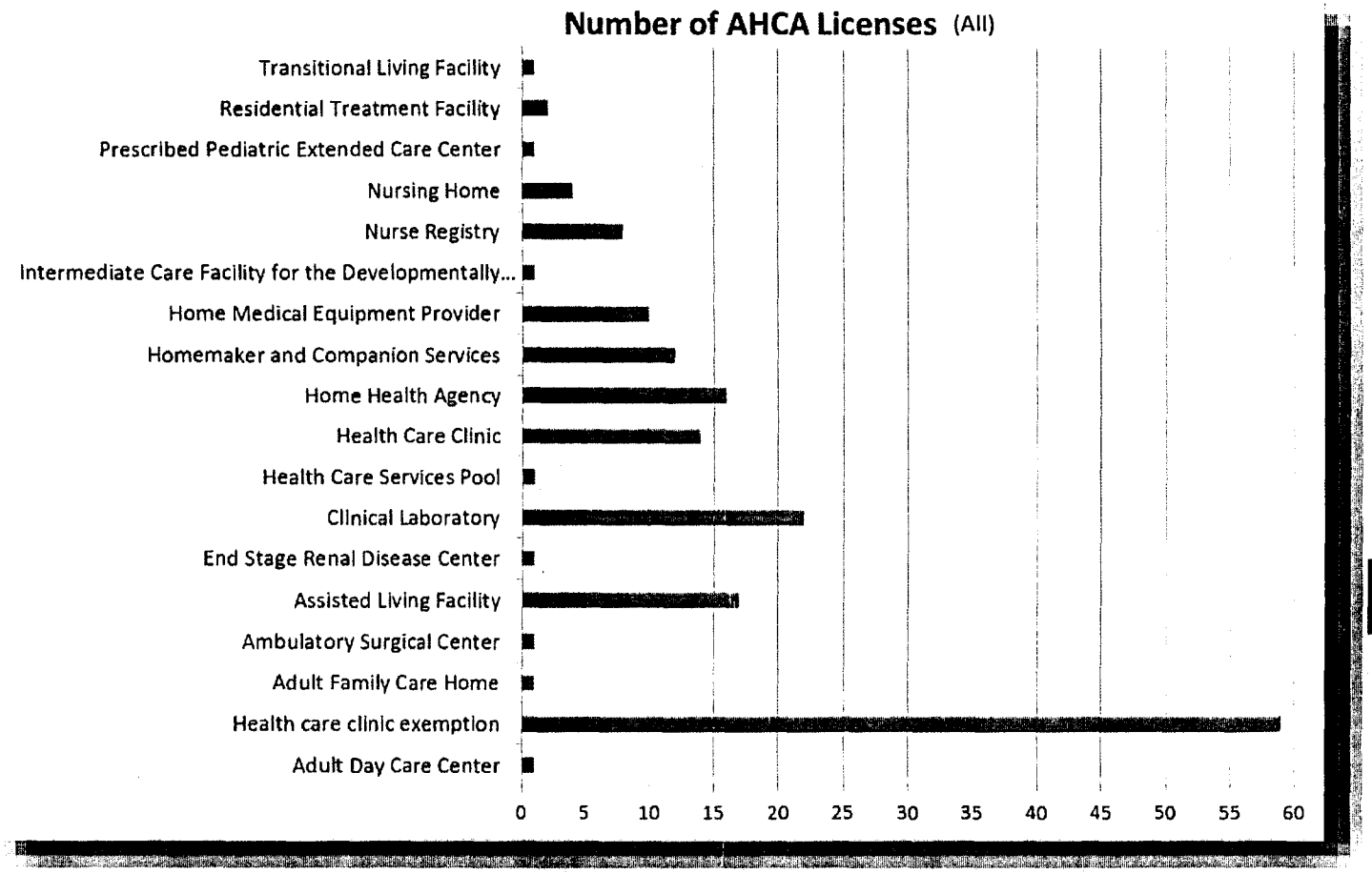
- Health Care Clinic Exemption
- Adult Day Care Center
- Adult Family Care Home
- Ambulatory Surgical Center
- End-Stage Renal Disease Center
- Clinical Laboratory
- Assisted Living Facility
- Health Care Clinic
- Health Care Services Pool
- Home Health Agency
- Home Medical Equipment Provider
- Homemaker and Companion Services
- Intermediate Care Fac. for the Dev. Disabled
- Nurse Registry
- Nursing Home
- Prescribed Pediatric Extended Care Center
- Residential Treatment Facility
- Transitional Living Facility

Total Number of AHCA Licensed Health Care Facilities in 2015

172

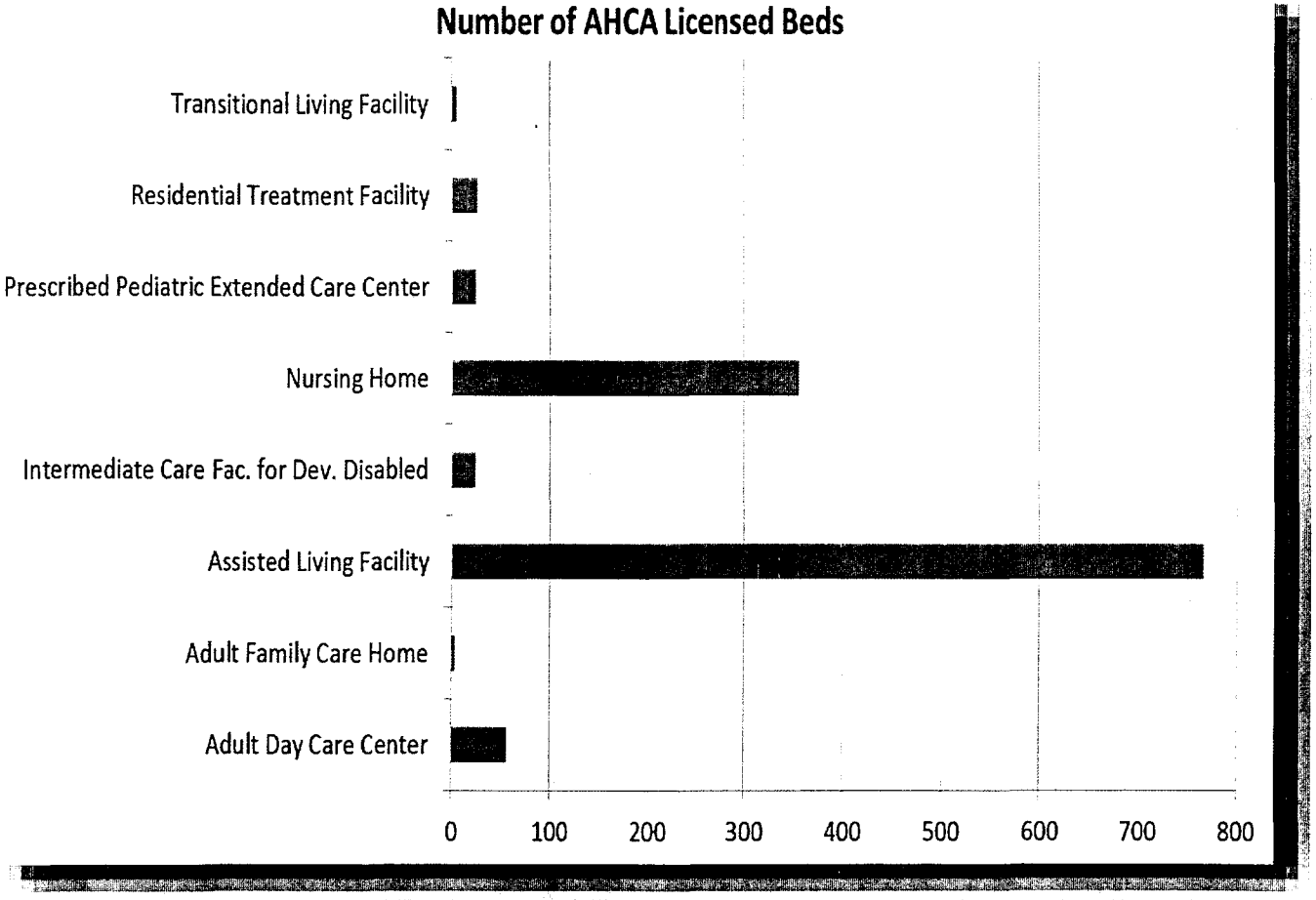
Comment: AHCA does not license professionals, rather it licenses health care facilities. This information is very useful since the City's BTR category for doctor's offices is "professional office". Therefore this data, plus facilities licensed by DCF, gives a better picture of the number of health care facilities in the city.

FL Agency for Health Care Administration



Comment: This chart shows the types and number of AHCA facilities in the city.

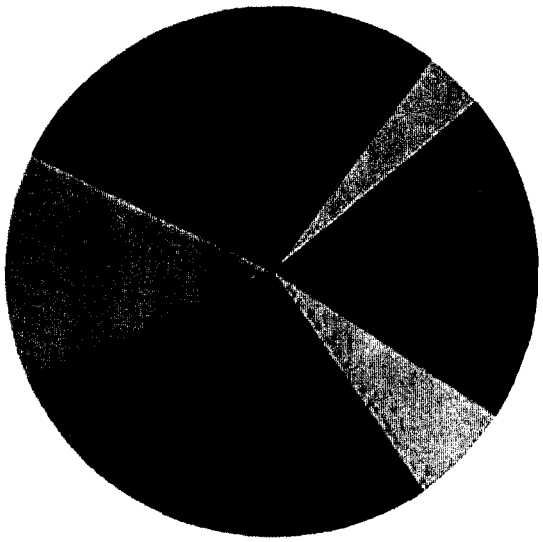
FL Agency for Health Care Administration



Comment: This chart indicates there are over 700 ALF beds in the city, plus beds for other licensed uses.

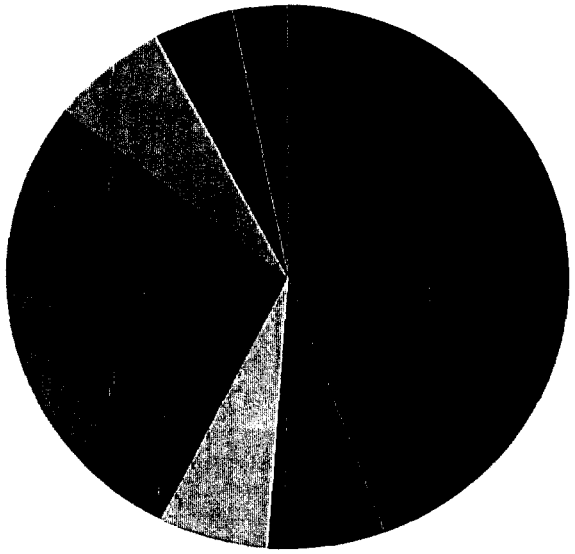
Florida Agency for Health Care Administration:
Locations compared to City BTR locations

2015: Locations of AHCA licenses on Major Corridors



- East Atlantic Blvd 10%
- West Atlantic Blvd 4%
- East Sample Rd 15%
- West Sample Rd 5%
- North Powerline Rd 0%
- South Powerline Rd 6%
- North Federal Hwy 28%
- South Federal Hwy 14%
- East McNab Rd 6%
- West McNab Rd 11%

2015: Locations of BTRs on Major Corridors



- East Atlantic Blvd 22%
- West Atlantic Blvd 6%
- East Sample Rd 16%
- West Sample Rd 6%
- North Powerline Rd 1%
- South Powerline Rd 6%
- North Federal Hwy 28%
- South Federal Hwy 7%
- East McNab Rd 5%
- West McNab Rd 3%

Comment: These tables indicate that the locations of licensed AHCA facilities are consistent with the locations of the City's BTRs for healthcare professionals. The only notable differences are E. Atlantic Blvd and W. McNab Rd.

Recommendations

Recommendation #1:
Regulate Health Care Uses by Intensity

APA "Planners Dictionary": Intensity

Intensity is the degree to which land is occupied. There is no single measure of intensity of land use. Rather a land use is relatively more or less intense than another use. Generally, a particular use may be more intense due to one or more characteristics, such as:

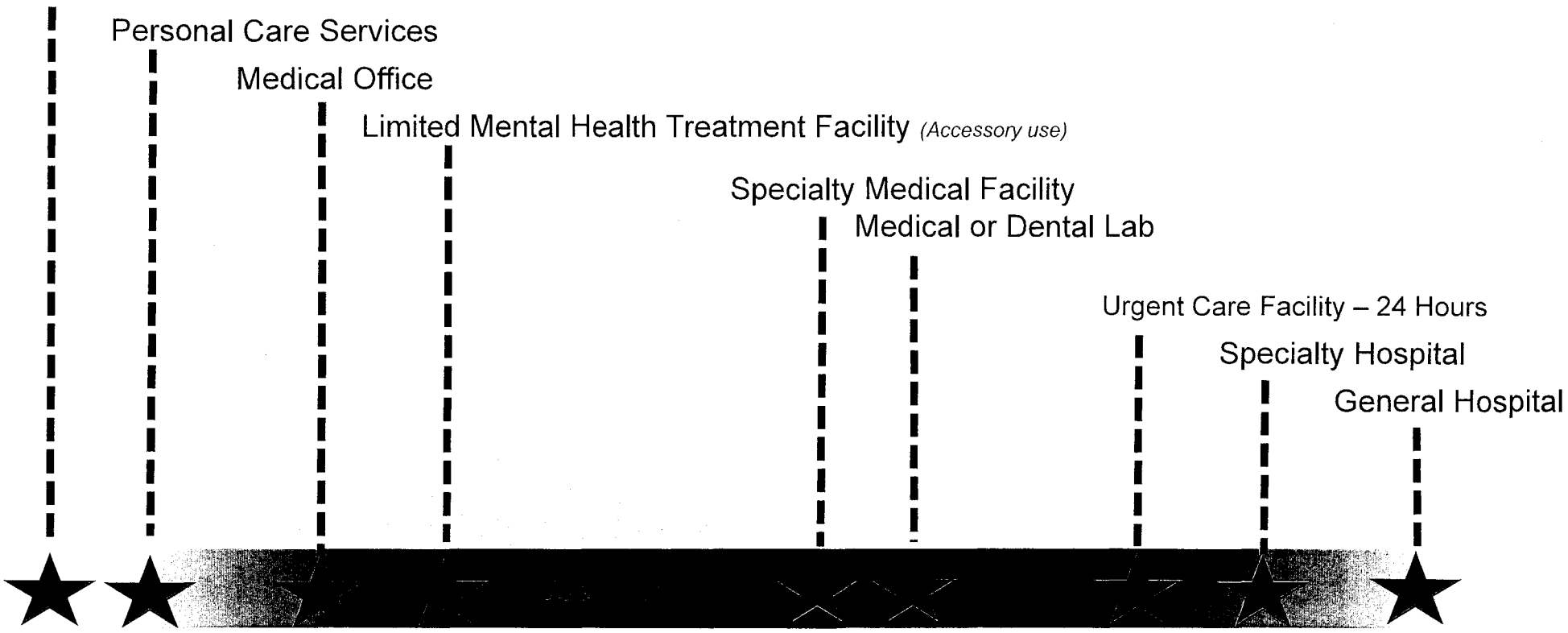
- Traffic generated
- Amount of impervious surface
- Bulk of the structures
- Number of employees
- Density
- Nuisance such as pollution, noise, light, etc…

Intensity of Health Care Uses:

- Total Number of healthcare professionals
- Number of patients per healthcare professional
- Hours of Operation
- Overnight treatment
- Type of Services Provided
- Treatment Length
- Facility Size

Recommendation #1:
Regulate Health Care Uses by Intensity

Proposed / Revised Uses



Recommendation #2:

Permit Most Health Care Uses in City's Industrial Districts

- City's Land Use Plan does permit Office Uses, Medical or Dental Laboratories, and Community Facilities within the Industrial Land Use designation.
- City's Zoning Code does not permit health care uses in I-1 or OIP.
- A quick review of other Florida municipalities indicates some do permit healthcare uses in Industrial Districts.
- Staff is recommending most health care uses be permitted in I-1 and OIP.

Florida Cities which permit medical uses in Industrial Districts

Use	City / County	Permitted
Medical or Dental Lab/ Hospital and Specialty Hospital (in Office Park only)	Deerfield Beach	Permitted
Ophthalmologists & optometrists, emergency clinics, Osteopathic physicians, Ambulatory surgical facilities, Birthing facilities, alcohol and drug treatment, aids treatment, outpatient clinics, birth control centers, Marriage counselors, diet counseling, human services, social services, youth counselors, Hospitals, Psychiatric treatment	Orange County	Permitted
Office, medical	Tampa	Permitted
Health care facility, group III - Outpatient care facilities	Lee County	Special Exception
Hospitals or clinics	Sunrise	Special Exception
Medical Center, Rehab Center, Hospital, and Emergency Facilities	Doral	Permitted

Recommendation #3:
Revise Parking Standards for Health Care Uses

- City currently requires parking as either 1 per 300 sq ft or 1 per 3 beds
- Staff researched parking standards in other Florida cities and other best practices.
- Staff is recommending revisions to parking requirements including:
  - ✓ Increased off-street parking
  - ✓ Reservation of spaces for emergency vehicles

Comment: While staff is recommending increasing the number of off-street parking spaces required, the impact on existing sites established for health care uses should be considered.

ANALYSIS OF FLORIDA STANDARDS

USE	CITY / COUNTY	PARKING
Medical clinics	Deerfield Beach	1 per 50 sq ft floor area for Group Counseling or treatment + 1 per 200 sq ft of remaining floor area
Medical Office (Doctor, dentist, clinic)	Fort Lauderdale	1 per 150 sf GFA
Dental clinic / Medical and dental offices / Medical clinic	Coral Springs	1 per 200 sq ft GFA
Medical offices, urgent care centers, dental clinics	Sunrise	1 per 150 sq ft GFA
Eye and hearing doctors, and outpatient medical clinics not open to the general public	Sunrise	1 per 250 sq ft GFA
Medical and dental office buildings or clinics; medical or dental laboratories	Plantation	1 per 150 sq ft GFA
Medical dental, optical clinics and offices	Orange County	1 per employee + 2 per exam room
Outpatient care facilities / Medical office	Lee County	1 per 222 sq ft GFA (Single Use Bldg) OR 1 per 250 sq ft GFA (Mulit-Use Bldg.)
Medical, dental, eye, veterinary and other health-related uses	Tampa	1 per 167 sq ft GFA
Clinic	Tampa	1 per 143 sq ft GFA
Hospitals, sanitariums, and convalescent homes	Deerfield Beach	1 per bed + 1 / 250 sq ft
Hospital, specialty	Deerfield Beach	1 per 2 beds + 1 / 400 sq ft of remaining floor area
Hospital	Fort Lauderdale	2 per Bed (not including nursery beds)
Hospitals	Coral Springs	1.5 per bed
Hospitals	Sunrise	1 per bed
Hospitals	Plantation	2 per Bed (not including nursery beds)
Hospitals, sanitariums, rest and convalescent homes, foster group homes, all similar institutions	Orange County	2 per bedroom + 1 per 200 sq ft for office area
Hospitals.	Miami-Dade County	1 per bed for first 300 beds + 1 per 2 beds after 300 beds + 1 per 3 employees
Hospitals.	Lee County	1 per bed (except nursery) + 1 per employee on largest shift
Hospitals and associated uses	Tampa	1.2 per bed

Recommendation #4:
Separate Intense Uses from Residential Uses by 500 ft

Intensive health care uses are incompatible with residential uses due to:

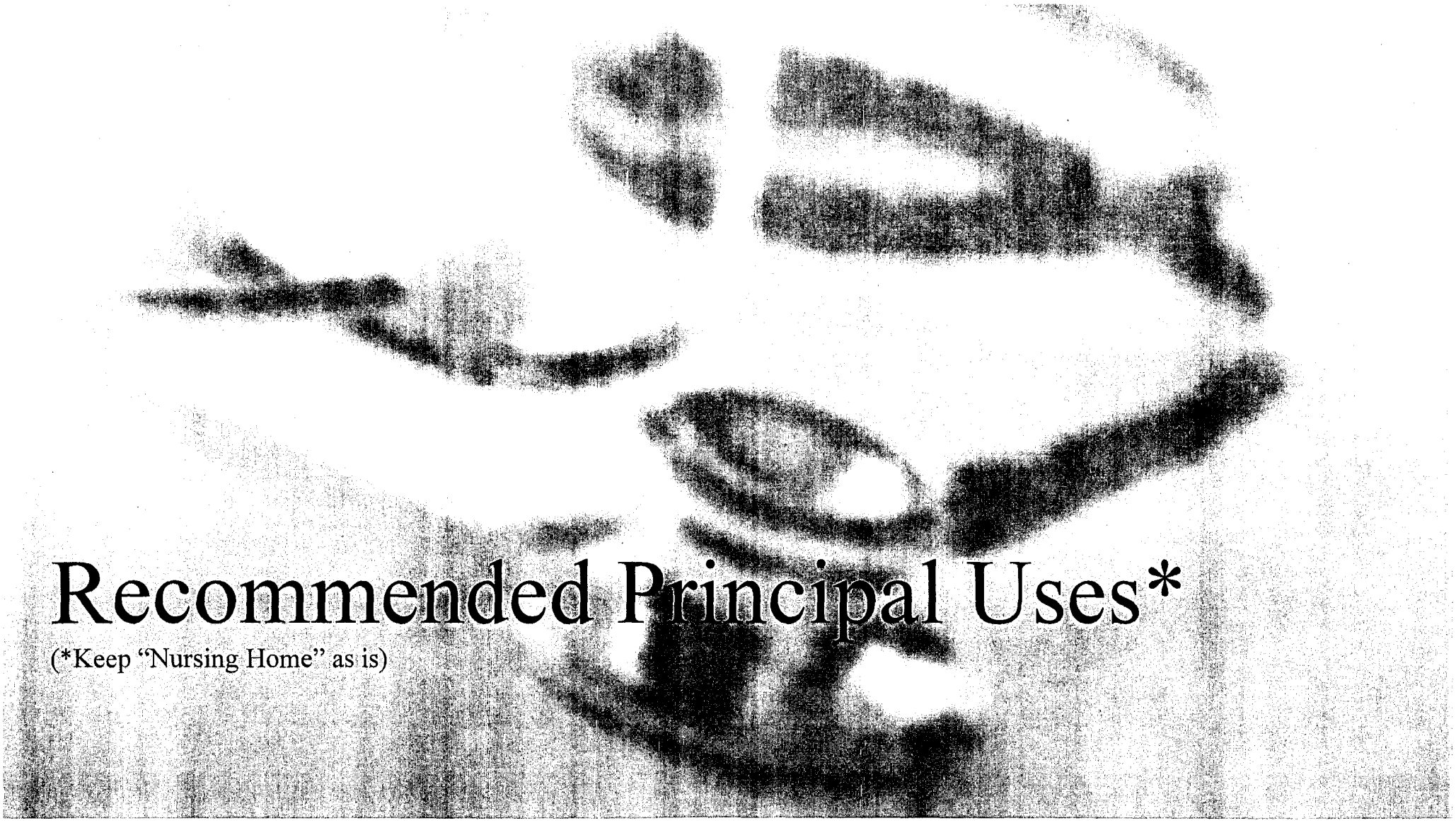
- Hours of operation
- Medical and Biomedical Waste
- Noise from ambulances, emergency vehicles, and heliports
- Lighting and glare from security lighting for patient / visitor safety and from vehicles entering and exiting facility
- Late-night deliveries
- Storage of fuel for generators and other explosive / flammable gasses

Why 500 ft?

- 500 ft is average length of a “block”
- Ensures that a use is reasonably accessible by residents, yet is far enough away to protect residents from impacts

Additional Considerations

- City's current Zoning Code treats in intensive health care uses the same as less intensive uses
  - Use Intensity is a reflection of quantitative and qualitative components, such as hours of operations, number of doctors and staff, building size, numbers of clients, types of services provided, noise generated, parking needs, architecture and exterior appearance
  - Health Care uses locally and nationally are trending towards more intensive uses which may have significant impacts on adjacent properties
- Intensity of health care uses is not always reflective of the "size" of the health care facility or the number of medical professionals. However facility size is a reasonable indicator of impacts.
- The proposed recommendations seek to balance the city's objectives of protecting residential areas, ensuring uses are in the appropriate location, encouraging high paying jobs, and focusing on economic development.
  - Existing Uses will likely not be impacted by code changes, either due to legal conforming use status or lawfully existing special exception status.
  - Existing uses that want to expand may be required to provide additional parking or comply with standards related to hours of operation.
  - While this report strongly recommends allowing health care uses in the I-1 and OIP Districts, many of the existing buildings / sites in these districts were developed with parking requirement for industrial uses (1 space per 1,000 sq ft). The city could implement an administrative relief procedure specific to parking in the Industrial Districts.



Recommended Principal Uses*

(*Keep "Nursing Home" as is)

RECOMMENDED USE: *Medical Office*

- ✓ "Small-scale offices" for medical professionals
- ✓ Defines "small-scale" as a maximum of 5,000 sq ft gfa.
- ✓ No overnight stays
- ✓ No treatment or similar services between 10:00 p.m. and 7:00 a.m.
- ✓ If within 500 feet from RS and RD Districts, the hours of operation are 7:00 p.m. until 7:00 a.m.

❖ PARKING: Change from 1 per 300 sq ft to 1 per 200 sq ft

A. MEDICAL OFFICE

1. Districts Where Permitted

RS-1	RS-2	RS-3	RS-4	RS-L	RD-1	RM-7	RM-12	RM-20	RM-30	RM-45	MH-12	B-1	B-2	B-3	B-4
												P	P	P	P

M-1	CR	I-1	I-IX	OIP	M-2	TO	PR	CF	PU	T	BP	RP UD	PC D	PD-TO	LA C	PD-I
		P		P		P		P					P	P	P	P

2. Definition

A medical office is a small-scale office providing medical or dental treatment. A small-scale office shall mean a maximum gross floor area of 5,000 sq ft. This use shall not include any uses specified as a Specialty Medical Facility. An office which is greater than 5,000 sq gfa shall be considered a Specialty Medical Facility.

3. Standards

A medical office shall comply with the following standards:

a. **Separation from Residential Uses.** A medical office is not required to be separated from residential uses.

b. **Overnight Treatment.** Overnight Treatment is prohibited.

c. **Hours of Operations.**

i. Medical offices shall not offer treatment or similar services between the hours of 10:00 p.m. and 7:00 a.m.

ii. Medical offices within 500 feet of a Single Family (RS) or Two-Family (RD) Zoning District shall not offer treatment or similar services between the hours of 7:00 p.m. and 7:00 a.m.

RECOMMENDED USE: *Specialty Medical Facility*

- ✓ More intensive than Medical Office, either due to higher ratio of patients per doctor (i.e. group treatment), or the length of treatment (typically greater than one hour), or the hours of operation (treatment occurs after 7:00 p.m.), or the size of the facility
- ✓ Regardless of size, includes Dialysis Centers, Substance Abuse Treatment Facilities, Outpatient Rehabilitation Centers, Urgent Care facilities (not 24 hours), Outpatient Surgical Centers, and Health and Wellness Centers.
- ✓ Also Includes medical offices that are larger than 5,000 sq ft gfa
- ✓ No overnight stays
- ✓ No treatment or similar services between 10:00 p.m. and 7:00 a.m.
- ✓ Major difference from Medical Office:
  - Must be at least 500 feet from RS and RD Districts
  - Special Exception in B-3.
  - Not permitted in B-1, B-2, and TO
- ❖ PARKING: Change from 1 per 300 sq ft to 1 per 200 sq ft floor area for treatment + 1 per 300 sq ft for remaining areas

B. SPECIALTY MEDICAL FACILITY

1. Districts Where Permitted

RS-1	RS-2	RS-3	RS-4	RS-L	RD-1	RM-7	RM-12	RM-20	RM-30	RM-45	MH-12	B-1	B-2	B-3	B-4
														S	P

M-1	CR	I-1	I-IX	OIP	M-2	TO	PR	CF	PU	T	BP	RP UD	PC D	PD-TO	LA C	PD-I
		P		P				P					P		P	P

2. Definition

A specialty medical facility is a facility, regardless of facility size, which offers specialized treatment and services including, but not limited to, ambulatory surgical facilities, dialysis centers, substance abuse treatment facilities, outpatient rehabilitation facilities, birthing facilities, and urgent care facilities (not including a 24-hour urgent care facility). This use also includes medical or dental offices which are larger than 5,000 sq ft gfa.

3. Standards

A specialty medical facility shall comply with the following standards:

a. **Separation from Residential Uses**. The facility shall be at least 500 feet from a Single Family (RS) or Two-Family (RD) Zoning District.

b. **Overnight Treatment**. Overnight Treatment is prohibited.

c. **Hours of Operations.** The Facility shall not offer treatment or similar services between the hours of 10:00 p.m. and 7:00 a.m.

RECOMMENDED USE: *Urgent Care Facility – 24 hours*

- ✓ More intensive than Specialty Medical Facility due to hours of operation
- ✓ 24 hour operations are permitted but no "residential" treatment
- ✓ 500 feet from RS and RD Districts
- ✓ Same parking as Specialty Medical Facility
- ✓ Major difference from Specialty Medical Facility:
  - Require use to address vehicular access, and particularly emergency vehicular access

❖ PARKING: Change from 1 per 300 sq ft to 1 per 200 sq ft floor area for treatment + 1 per 300 sq ft for remaining areas

C. URGENT CARE FACILITY 24-HOURS

1. Districts Where Permitted

RS-1	RS-2	RS-3	RS-4	RS-L	RD-1	RM-7	RM-12	RM-20	RM-30	RM-45	MH-12	B-1	B-2	B-3	B-4
														S	P

M-1	CR	I-1	I-IX	OIP	M-2	TO	PR	CF	PU	T	BP	RP UD	PC D	PD-TO	LA C	PD-I
		P		P				P					P		P	P

2. Definition

An urgent care facility 24-hours is a facility which holds itself out to the general public as a walk-in, extended-hour access facility where immediate, but not emergent, care is provided. Patients shall be served solely on an outpatient basis and such services shall not include overnight stays.

3. Standards

An urgent care facility 24-hours shall comply with the following standards:

a. **Separation from Residential Uses**. The facility shall be at least 500 feet from a Single Family (RS) or Two-Family (RD) Zoning District.

b. **Overnight Treatment**. Overnight Treatment is prohibited.

c. **Hours of Operations.** The facility may be open 24 hours per day.

d. Vehicular access and circulation systems and exterior signage shall be designed to provide safe and separate emergency vehicle access to the facility, with minimal conflicts with other vehicular or pedestrian traffic in the area.

RECOMMNEDED USE: *Specialty Hospital*

- ✓ More intensive than Urgent Care Facility 24-Hours due to overnight stays/residential treatment
- ✓ "Specialty Hospital" is a term found in FL SS / Hospital which offers a restricted range of services
  - Cancer Treatment Center of America
  - Fort Lauderdale Hospital (Psychiatric and Substance Abuse)
  - Children's Hospital
- ✓ 500 ft from all Residential Districts
- ✓ Minimum 3 acres
- ✓ Requires Perimeter Security Plan
- ✓ Requires outdoor recreation space

❖ PARKING: Change from 1 per 3 inpatient beds to 1 per 1 bed + 1 per 250 sq ft of areas not used for beds or applicant can submit Parking Study

D. SPECIALTY HOSPITAL

1. Districts Where Permitted

RS-1	RS-2	RS-3	RS-4	RS-L	RD-1	RM-7	RM-12	RM-20	RM-30	RM-45	MH-12	B-1	B-2	B-3	B-4
														S	P

M-1	CR	I-1	I-IX	OIP	M-2	TO	PR	CF	PU	T	BP	RP UD	PC D	PD-TO	LA C	PD-I
		P		P				P					P		P	

2. Definition

A specialty hospital is a hospital which offers a restricted range of services appropriate to the diagnosis, care, and treatment of patients with specific categories of medical or psychiatric illnesses or disorders which include: Specialty medical hospitals; Specialty rehabilitation hospitals; Specialty psychiatric hospitals, which may include beds licensed to offer Intensive Residential Treatment programs; Specialty substance abuse hospitals, which may include beds licensed to offer Intensive Residential Treatment programs; and an Addictions Receiving Facility.

3. Standards

A specialty hospital shall comply with the following standards:

a. **Separation from Residential Uses**. The hospital shall be at least 500 feet from a Residential Zoning District.
b. **Overnight Treatment**. Overnight Treatment is permitted.
c. **Hours of Operations.** The hospital may be open 24 hours per day.
d. The specialty hospital shall be located on a site that has an area of at least three acres and fronts on or has direct access to and from an arterial or collector street.
e. Vehicular access and circulation systems and exterior signage shall be designed to provide safe and separate emergency vehicle access to the specialty hospital, with minimal conflicts with other vehicular or pedestrian traffic in the area.
f. A Perimeter Security Plan is required and shall address at a minimum vehicular and pedestrian access to site, parking areas, and lighting.
g. Outdoor recreation and/or passive space shall be provided for both patients and visitors.

REVISED USE: *General Hospital*

- ✓More intensive than Specialty Hospital as this use is for broad range of services.
- ✓500 ft from all Residential Districts
- ✓Minimum 5 acres
- ✓Requires Perimeter Security Plan
- ✓Requires outdoor recreation space

- ❖PARKING: Change from 1 per 3 inpatient beds to 1 per 1 bed + 1 per 250 sq ft of areas not used for beds or applicant can submit Parking Study

~~C~~ E. GENERAL HOSPITAL

1. Districts Where Permitted

RS-1	RS-2	RS-3	RS-4	RS-L	RD-1	RM-7	RM-12	RM-20	RM-30	RM-45	MH-12	B-1	B-2	B-3	B-4
														~~P~~ S	P

M-1	CR	I-1	I-IX	OIP	M-2	TO	PR	CF	PU	T	BP	RP UD	PC D	PD-TO	LA C	PD-I
		P		P		~~S~~		S					P	~~P~~	P	

2. Definition

A general hospital is a state-licensed institution that provides primary health services and medical or surgical care to humans, primarily inpatients, who are sick or injured, and including as an integral part of the institution, related facilities such as clinical laboratories, outpatient facilities, training facilities, central services facilities, and staff offices. Hospitals offer facilities and beds for use beyond 24 hours by persons needing medical treatment or service. ~~This use type does not include nursing home facilities, medical treatment facilities, medical clinics, drug or alcohol treatment facilities, or psychiatric treatment facilities.~~

3. Standards

A hospital shall comply with the following standards:

a. **Separation from Residential Uses**. The hospital shall be at least 500 feet from a Residential Zoning District.

b. **Overnight Treatment**. Overnight Treatment is permitted.

c. **Hours of Operations.** The hospital may be open 24 hours per day.

~~a~~d. The hospital shall be located on a site that has an area of at least five acres and fronts on or has direct access to and from an arterial or collector street.

~~b~~e. Vehicular access and circulation systems and exterior signage shall be designed to provide safe and separate emergency vehicle access to the hospital, with minimal conflicts with other vehicular or pedestrian traffic in the area.

f. A Perimeter Security Plan is required and shall address at a minimum vehicular and pedestrian access to site, parking areas, and lighting.

g. Outdoor recreation and/or passive space shall be provided for both patients and visitors.

REVISED USE: *Medical or Dental Lab*

- ✓Revise Definition to include definitions of Blood and Tissue Collection Center and Blood Plasma Donation Centers
- ✓Make Special Exception in B-3
- ✓Permit in I-1 and OIP

❖PARKING: Change from 1 per 300 sq ft to 1 per 500 sq ft

F. MEDICAL OR DENTAL LAB

1. Districts Where Permitted

RS-1	RS-2	RS-3	RS-4	RS-L	RD-1	RM-7	RM-12	RM-20	RM-30	RM-45	MH-12	B-1	B-2	B-3	B-4
														~~P~~ S	P

M-1	CR	I-1	I-IX	OIP	M-2	TO	PR	CF	PU	T	BP	RP UD	PC D	PD-TO	LA C	PD-I
		P		P		~~P~~		P					P	~~P~~	P	

2. Definition

A medical or dental lab consists of facilities and offices ~~for performing diagnostic or therapeutic medical procedures of a non-surgical nature.~~ providing diagnostic analysis of medical tests (such as blood test urinalysis, CT Scan, X-ray or other medical tests related to diagnostic treatment); collecting or withdrawing human blood, organs, skin, or other human tissue; or producing such items as dentures, caps, bridges and optical prescriptions.

Recommended Accessory Uses

REVISED USE: *Limited Mental Health Treatment Facility*

✓ Revise Definition to exclude facilities with intensive outpatient

❖ PARKING: Require portion of building used for use to provide 1 per 200 sq ft

RR. LIMITED MENTAL HEALTH TREATMENT FACILITY

. . .

2. Definition

A limited mental health treatment facility is an accessory use for the practice of mental health counseling, practice of marriage and family therapy, and/or practice of clinical social work, as defined in F. S. § 491.003, on ~~an~~ a non-intensive out-patient basis only. This use strictly prohibits the on-site dispensing of both medicinal and non-medicinal drugs. This use strictly prohibits the written order or prescription for any medicinal and non-medicinal drugs.

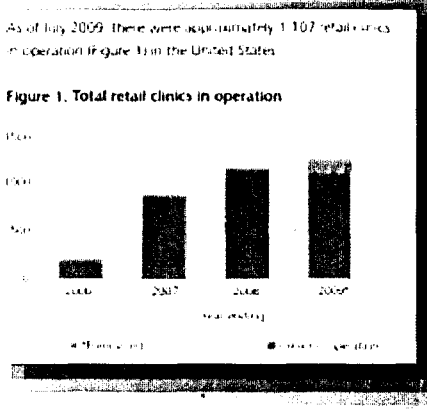
RECOMMENDED USE: *Retail Clinic*

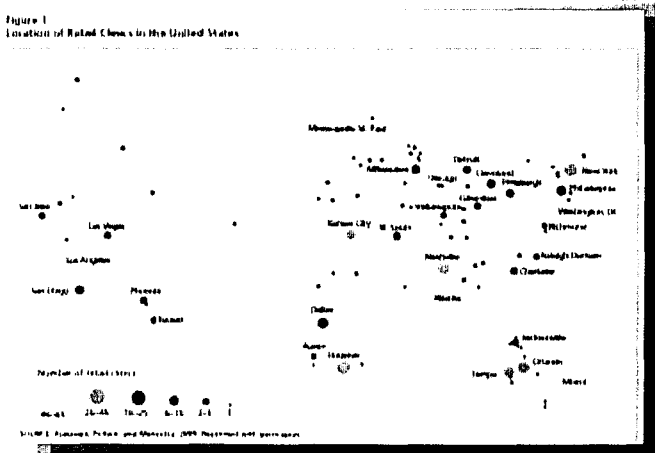
✓ Permitted locations – same as grocery stores, big box stores, and pharmacies

BACKGROUND INFORMATION:

- Retail clinics range in size from one exam room to multiple exam rooms, with sinks and exam tables. The clinics generally occupy 200-500 square feet and are outfitted with all the necessities of an outpatient health care office. Most of the clinics are open seven days a week – twelve hours a day during the workweek and eight hours on Saturday and Sunday.
- The clinics are primarily staffed by NPs, along with physician assistants (PAs) and physicians tied to a corporate entity.
- The first clinics opened in 2000.
- As of November 2014, there were approximately 1,805 retail clinics throughout the country, a number projected to reach upward of 2,800 by 2015
- Nearly half (44 percent) of all clinics were located in five states (Florida, California, Texas, Minnesota, and Illinois).

Health Care on Aisle 7, NY Report on Convenient Care, Retail clinics: Update and Implications





VV. RETAIL CLINIC

1. Districts Where Permitted

RS-1	RS-2	RS-3	RS-4	RS-L	RD-1	RM-7	RM-12	RM-20	RM-30	RM-45	MH-12	B-1	B-2	B-3	B-4
												A	A	A	A

M-1	CR	I-1	I-IX	OIP	M-2	TO	PR	CF	PU	T	BP	RPUD	PCD	PD-TO	LAC	PD-I
		A				A						A	A	A	A	A

2. Definition

A retail clinic is an accessory use located within a grocery store, pharmacy, or large retail store for the diagnosis and treatment of common household illnesses such as strep throat and eye, ear, sinus and other similar infections; the treatment of minor wounds; abrasions and joint sprains; the injection of common vaccinations; wellness services; and routine lab tests.

Recommended Uses, not Health Care

REVISED USE: *Personal Services Establishment*

✓Existing Commercial Use.

✓Revise Definition to include Massage Therapy, Optometrist, and Hearing Aide

- These services are typically offered in a retail setting and/or in conjunction with retail sales.

K. PERSONAL SERVICES ESTABLISHMENTS

1. Definition

A personal services establishment is an establishment primarily engaged in the provision of frequent or recurrent needed services of a personal nature that are not typically medically related. Examples include but are not limited to, hair salons, tanning salons, ~~and~~ nail care salons, barber shops, yoga studios, martial arts studios, massage therapy (by persons who are licensed as a massage therapist under Chapter 480 of the Florida Statutes), hearing aids and/or optometry services, and similar establishments—but not including any sexually oriented business.

Focus on Redevelopment Areas

Northwest Community Redevelopment Plan (1989)

- ✓ This district would strive to promote a cohesive development redevelopment of the historic downtown by implementing attractive and pedestrian oriented areas through incentives and guidelines regarding parking and landscaping.
- ✓ Viable commercial uses to revitalize MLK Boulevard and Old Downtown
- ✓ The NWCRA contains a substantial number of slums, deteriorated structures that are a menace to the health, safety or welfare of area residents. The existence of these slum and blighted conditions contribute substantially to the spread of disease and crime, decrease the tax base and substantially impair or arrest sound growth.
- ✓ Through programs aimed at the elimination of slum and blighted conditions and improving the standard of living of its residents, the CRA hopes to provide the catalyst for the revitalization of the entire area.
- ✓ Downtown has to be a unique, niche market. It offers the kind of historic character, walkable streets, and cultural amenities that are difficult to match in a conventional shopping center.
- ✓ A good downtown retail environment can also tap underserved markets that are typically not targeted by the typical consumer establishment. The uses best suited to this kind of an environment include:
  - Art, antiques, local crafts, and specialty gifts.
  - Dining and food specialties such as ice cream, bakeries, cafes
  - Entertainment, music, bars, and games
  - Specialty apparel and accessories
  - Tourist oriented items such as souvenirs, maritime themed goods etc.
  - Downtown has to be managed as a coordinated retail environment. A consistent image campaign, marketing program

East Community Redevelopment Plan (2001)

- ✓ The AOD allows for a wide range and mix of commercial entertainment, office, hotel and residential uses, creating a safe pedestrian oriented area
- ✓ The AOD is intended to foster a denser, mixed use and more pedestrian friendly character.
- ✓ Consistent approach to redevelopment that will reinforce the sense of the area as a distinctive commercial and entertainment district.
- ✓ Through programs aimed at the elimination of slum and blighted conditions and improving the standard of living, the CRA hopes to provide the catalyst for the revitalization of the entire area.
- ✓ The existence of these blighted conditions contributes substantially to the spread of crime, decrease the tax base and impair or arrest sound growth.
- ✓ The successful reprogramming and merchandising of the retail environment in the East CRA should also be mindful of certain trends and characteristics in traditional, pedestrian oriented retail districts.
- ✓ The Atlantic Boulevard corridor should also be managed as a coordinated retail environment. A consistent image campaign, marketing program, and area-wide promotions are essential.

Health Care Use Regulations from CRA's

Daytona Beach CRA:

- Added language to allow treatment facilities and residential care facilities as a conditional use.
- Prohibit massage parlors.
- The City of Daytona Redevelopment Midtown Zoning Districts prohibit:
    - Blood/tissue collection centers
    - Drug or alcohol treatment facility
    - Medical treatment facility
    - Psychiatric treatment facility.

Specific Concern: Massage Establishments

FLORIDA CRACKING DOWN ON MASSAGE PARLORS

"From May 13 to 15, across the state, a slew of "body rub" businesses was busted by the Department of Health for operating without proper massage licenses....More than a third of those orders — 24 of them — were in Broward and Palm Beach counties. "BROWARD/PALM BEACH NEW TIMES JULY 8, 2015

City of Hollywood, FL:

- Instituted distance requirements for massage establishments (2500 ft. from each use).

City of Mountain View, CA:

- Requires conditional review for massage establishments

General Recommendations for AOD and DPOD

- ✓Prohibit health care uses that do not foster pedestrian activity and tourism.
- ✓Prohibit health care uses that are not in accordance with CRA redevelopment plans.
- ✓Discourage the agglomeration of health care uses that the potential to inhibit the ability to foster tourism and mixed use development in accordance with CRA redevelopment plans.

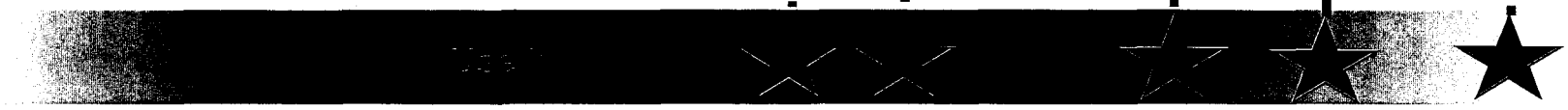
Specific Recommendations for AOD and DPOD

Uses Currently Prohibited

- Blood/tissue collection center
- Drug or Alcohol Treatment Facility which provides inpatient treatment
- Hospital
- Medical or Dental Clinic which provides overnight care and treatment
- Psychiatric Treatment Facility which provides inpatient treatment

Uses Proposed to Prohibited

- Specialty Medical Facility
- Medical or Dental Lab
- Urgent Care Facility – 24 Hours
- Specialty Hospital
- General Hospital



Recommended Use Specific Standards

In AOD and DPOD:

- Personal Services Establishment which only offer Massage Therapy shall be required to comply with the following use specific standards:
  - Require public entrance from the storefront (no side or rear public entrance)
  - SE approval required if they are less than 1,000 feet from another establishment only offering massage therapy (measured from public entrances)
- Medical Offices:
  - Hours of Operation are limited to 7:00 a.m. until 7:00 p.m.

In AOD only:

- Medical Offices:
  - For properties abutting Atlantic Blvd, only the "lobby" may be located on the 1st floor. No treatment maybe provided on 1st floor.

The Right Use in the Right Location:

Health Care Uses

November 2015

§ 155.4209. INSTITUTIONAL: HEALTH CARE USES

~~A. BLOOD/TISSUE COLLECTION CENTER~~

~~1. Districts Where Permitted~~

[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
												~~P~~	~~P~~	~~P~~	~~P~~

[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
						~~P~~							~~P~~	~~P~~	~~P~~	

~~2. Definition~~

~~A blood/tissue collection center is a state-licensed facility where human blood, organs, skin, or other human tissue are either withdrawn or collected from patients or assembled after being withdrawn or collected elsewhere from patients for subsequent delivery to a clinical laboratory for examination. A collection facility is maintained at a separate physical location not on the grounds or premises of the main licensed laboratory or institution which performs the testing.~~

~~B. DRUG OR ALCOHOL TREATMENT FACILITY~~

~~1. Districts Where Permitted~~

[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
														~~P~~	~~P~~

[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
						~~P~~		~~P~~					~~P~~	~~P~~	~~P~~	

~~2. Definition~~

~~A drug or alcohol treatment facility is a state-licensed substance abuse treatment facility that provides residential treatment, intensive outpatient treatment and addictions receiving facility, as defined in Fla. Stat. §397.311.~~

A. MEDICAL OFFICE

1. Districts Where Permitted

RS-1	RS-2	RS-3	RS-4	RS-L	RD-1	RM-7	RM-12	RM-20	RM-30	RM-45	MH-12	B-1	B-2	B-3	B-4
												P	P	P	P

M-1	CR	I-1	I-IX	OIP	M-2	TO	PR	CF	PU	T	BP	RP UD	PCD	PD-TO	LAC	PD-I
		P		P		P		P					P	P	P	P

2. Definition

A medical office is a small-scale office providing medical or dental treatment. A small-scale office shall mean a maximum gross floor area of 5,000 sq ft. This use shall not include any uses specified as a Specialty Medical Facility. An office which is greater than 5,000 sq gfa shall be considered a Specialty Medical Facility.

3. Standards

A medical office shall comply with the following standards:

a. **Separation from Residential Uses**. A medical office is not required to be separated from residential uses.

b. **Overnight Treatment**. Overnight Treatment is prohibited.

c. **Hours of Operations.**

i. Medical offices shall not offer treatment or similar services between the hours of 10:00 p.m. and 7:00 a.m.

ii. Medical offices within 500 feet of a Single Family (RS) or Two-Family (RD) Zoning District shall not offer treatment or similar services between the hours of 7:00 p.m. and 7:00 a.m.

B. SPECIALTY MEDICAL FACILITY

1. Districts Where Permitted

RS-1	RS-2	RS-3	RS-4	RS-L	RD-1	RM-7	RM-12	RM-20	RM-30	RM-45	MH-12	B-1	B-2	B-3	B-4
														S	P

M-1	CR	I-1	I-IX	OIP	M-2	TO	PR	CF	PU	T	BP	RPUD	PCD	PD-TO	LAC	PD-I
		P		P				P					P		P	P

2. Definition

A specialty medical facility is a facility, regardless of size, offering specialized treatment and services including, but not limited to, ambulatory surgical facilities, dialysis centers, substance abuse treatment facilities, outpatient rehabilitation facilities, birthing facilities, and urgent care facilities (not including a 24-hour urgent care facility). This use also includes medical or dental offices which are larger than 5,000 sq ft gfa.

3. Standards

A specialty medical facility shall comply with the following standards:

a. **Separation from Residential Uses**. The facility shall be at least 500 feet from a Single Family (RS) or Two-Family (RD) Zoning District.

b. **Overnight Treatment**. Overnight Treatment is prohibited.

c. **Hours of Operations.** The Facility shall not offer treatment or similar services between the hours of 10:00 p.m. and 7:00 a.m.

C. URGENT CARE FACILITY 24-HOURS

1. Districts Where Permitted

RS-1	RS-2	RS-3	RS-4	RS-L	RD-1	RM-7	RM-12	RM-20	RM-30	RM-45	MH-12	B-1	B-2	B-3	B-4
														S	P

M-1	CR	I-1	I-IX	OIP	M-2	TO	PR	CF	PU	T	BP	RP UD	PC D	PD-TO	LA C	PD-I
		P		P				P					P		P	P

2. Definition

An urgent care facility 24-hours is a facility which holds itself out to the general public as a walk-in, extended-hour access facility where immediate, but not emergent, care is provided. Patients shall be served solely on an outpatient basis and such services shall not include overnight stays

3. Standards

An urgent care facility 24-hours shall comply with the following standards:

a. **Separation from Residential Uses**. The facility shall be at least 500 feet from a Single Family (RS) or Two-Family (RD) Zoning District.

b. **Overnight Treatment**. Overnight Treatment is prohibited.

c. **Hours of Operations.** The facility may be open 24 hours per day.

d. Vehicular access and circulation systems and exterior signage shall be designed to provide safe and separate emergency vehicle access to the facility, with minimal conflicts with other vehicular or pedestrian traffic in the area.

D. SPECIALTY HOSPITAL

1. Districts Where Permitted

RS-1	RS-2	RS-3	RS-4	RS-L	RD-1	RM-7	RM-12	RM-20	RM-30	RM-45	MH-12	B-1	B-2	B-3	B-4
														S	P

M-1	CR	I-1	I-IX	OIP	M-2	TO	PR	CF	PU	T	BP	RP UD	PC D	PD-TO	LA C	PD-I
		P		P				P					P		P	

2. Definition

A specialty hospital is a hospital which offers a restricted range of services appropriate to the diagnosis, care, and treatment of patients with specific categories of medical or psychiatric illnesses or disorders which include: Specialty medical hospitals; Specialty rehabilitation hospitals; Specialty psychiatric hospitals, which may include beds licensed to offer Intensive Residential Treatment programs; Specialty substance abuse hospitals, which may include beds licensed to offer Intensive Residential Treatment programs; and an Addictions Receiving Facility.

3. Standards

A specialty hospital shall comply with the following standards:

a. **Separation from Residential Uses.** The hospital shall be at least 500 feet from a Residential Zoning District.

b. **Overnight Treatment.** Overnight Treatment is permitted.

c. **Hours of Operations.** The hospital may be open 24 hours per day.

d. The specialty hospital shall be located on a site that has an area of at least three acres and fronts on or has direct access to and from an arterial or collector street.

e. Vehicular access and circulation systems and exterior signage shall be designed to provide safe and separate emergency vehicle access to the specialty hospital, with minimal conflicts with other vehicular or pedestrian traffic in the area.

f. A Perimeter Security Plan is required and shall address at a minimum vehicular and pedestrian access to site, parking areas, and lighting.

g. Outdoor recreation and/or passive space shall be provided for both patients and visitors.

~~C~~ E. GENERAL HOSPITAL

1. Districts Where Permitted

RS-1	RS-2	RS-3	RS-4	RS-L	RD-1	RM-7	RM-12	RM-20	RM-30	RM-45	MH-12	B-1	B-2	B-3	B-4
														~~P~~ S	P

M-1	CR	I-1	I-IX	OIP	M-2	TO	PR	CF	PU	T	BP	RP UD	PCD	PD-TO	LAC	PD-I
		P		P		~~S~~		S					P	~~P~~	P	

2. **Definition**

A general hospital is a state-licensed institution that provides primary health services and medical or surgical care to humans, primarily inpatients, who are sick or injured, and including as an integral part of the institution, related facilities such as clinical laboratories, outpatient facilities, training facilities, central services facilities, and staff offices. Hospitals offer facilities and beds for use beyond 24 hours by persons needing medical treatment or service. ~~This use type does not include nursing home facilities, medical treatment facilities, medical clinics, drug or alcohol treatment facilities, or psychiatric treatment facilities.~~

3. **Standards**

A hospital shall comply with the following standards:

a. **Separation from Residential Uses**. The hospital shall be at least 500 feet from a Residential Zoning District.

b. **Overnight Treatment**. Overnight Treatment is permitted.

c. **Hours of Operations.** The hospital may be open 24 hours per day.

~~a~~d. The hospital shall be located on a site that has an area of at least five acres and fronts on or has direct access to and from an arterial or collector street.

~~b~~e. Vehicular access and circulation systems and exterior signage shall be designed to provide safe and separate emergency vehicle access to the hospital, with minimal conflicts with other vehicular or pedestrian traffic in the area.

f. A Perimeter Security Plan is required and shall address at a minimum vehicular and pedestrian access to site, parking areas, and lighting.

g. Outdoor recreation and/or passive space shall be provided for both patients and visitors.

~~D. MASSAGE THERAPY ESTABLISHMENT~~

~~1. Districts Where Permitted~~

[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
												~~P~~	~~P~~	~~P~~	~~P~~

[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
	~~P~~					~~P~~		~~P~~				~~P~~	~~P~~	~~P~~	~~P~~	~~P~~

~~2. Definition~~

~~A massage therapy establishment is a state-licensed establishment that offers, sells, or provides manipulation of the tissues or other tactile stimulation of the human body with the hand, foot, arm, leg, elbow, or part of the torso, whether or not aided by any electrical or mechanical device, by persons who are licensed as a massage therapist under Chapter 480 of the Florida Statutes. A massage may also include bathing, hydrotherapy (including colonic irrigation), thermal therapy, or application of chemicals, oils, lotions, or similar preparations to the human body.~~

~~E. MEDICAL OR DENTAL CLINIC~~

~~1. Districts Where Permitted~~

[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
												~~P~~	~~P~~	~~P~~	~~P~~

[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
						~~P~~		~~P~~					~~P~~	~~P~~	~~P~~	~~P~~

~~2. Definition~~

~~A medical or dental clinic is a small-scale facility where patients are admitted for examination and treatment by one or more physicians, dentists, or other health practitioners on a short-term basis. The use includes the offices of physicians, dentists, chiropractors, optometrists, podiatrists, audiologists, speech pathologists, physical therapists, acupuncturists, psychologists, and other health practitioners. It also includes facilities providing short-term outpatient care and treatment (which may or may not be overnight), such as urgent care centers, kidney dialysis centers, ambulatory surgical clinics, biofeedback centers, sleep disorder clinics, family planning clinics, community health clinics, and health maintenance organization (HMO) medical clinics. Such facilities that provide overnight care and treatment may include sleeping rooms for care workers and members of patients' families. This use does not include hospitals (which are much larger in scale) or blood/tissue collection centers, drug or alcohol treatment facilities, massage therapy establishments, or psychiatric treatment facilities (which provide specialized medical services).~~

F. MEDICAL OR DENTAL LAB

1. Districts Where Permitted

RS-1	RS-2	RS-3	RS-4	RS-L	RD-1	RM-7	RM-12	RM-20	RM-30	RM-45	MH-12	B-1	B-2	B-3	B-4
														~~P~~ S	P

M-1	CR	I-1	I-IX	OIP	M-2	TO	PR	CF	PU	T	BP	RP UD	PC D	PD-TO	LA C	PD-I
		P		P		~~P~~		P					P	~~P~~	P	

2. Definition

A medical or dental lab consists of facilities and offices ~~for performing diagnostic or therapeutic medical procedures of a non-surgical nature.~~ providing diagnostic analysis of medical tests (such as blood test urinalysis, CT Scan, X-ray or other medical tests related to diagnostic treatment); collecting or withdrawing human blood, organs, skin, or other human tissue; or producing such items as dentures, caps, bridges and optical prescriptions.

G. NURSING HOME FACILITY

...

~~H. RESERVED~~

~~I. PSYCHIATRIC TREATMENT FACILITY~~

~~1. Districts Where Permitted~~

[illegible]															
														~~P~~	~~P~~

[illegible]															
						~~S~~		~~P~~					~~P~~	~~P~~	~~P~~	

~~2. Definition~~

~~A psychiatric treatment facility is an inpatient facility that provides care for persons with psychiatric problems and that may include outpatient follow-up care to the facility's patients.~~

. . .

§ 155.4221. COMMERCIAL: RETAIL SALES AND SERVICE USES – PERSONAL SERVICES

. . .

K. PERSONAL SERVICES ESTABLISHMENTS

1. Definition

A personal services establishment is an establishment primarily engaged in the provision of frequent or recurrent needed services of a personal nature that are not typically medically related. Examples include but are not limited to, hair salons, tanning salons, ~~and~~ nail care salons, barber shops, yoga studios, martial arts studios, massage therapy (by persons who are licensed as a massage therapist under Chapter 480 of the Florida Statutes), hearing aids and/or optometry services, and similar establishments—but not including any sexually oriented business.

. . .

§155.4303. STANDARDS FOR SPECIFIC ACCESSORY USES AND STRUCTURES

. . .

RR. LIMITED MENTAL HEALTH TREATMENT FACILITY

. . .

2. Definition

A limited mental health treatment facility is an accessory use for the practice of mental health counseling, practice of marriage and family therapy, and/or practice of clinical social work, as defined in F. S. § 491.003, on ~~an~~ a non-intensive out-patient basis only. This use strictly prohibits the on-site dispensing of both medicinal and non-medicinal drugs. This use strictly prohibits the written order or prescription for any medicinal and non-medicinal drugs.

. . .

VV. RETAIL CLINIC

1. Districts Where Permitted

RS-1	RS-2	RS-3	RS-4	RS-L	RD-1	RM-7	RM-12	RM-20	RM-30	RM-45	MH-12	B-1	B-2	B-3	B-4
												A	A	A	A

M-1	CR	I-1	I-IX	OIP	M-2	TO	PR	CF	PU	T	BP	RP UD	PC D	PD-TO	LA C	PD-I
		A				A						A	A	A	A	A

2. Definition

A retail clinic is an accessory use located within a grocery store, pharmacy, or large retail store for the diagnosis and treatment of common household illnesses such as strep throat and eye, ear, sinus and other similar infections; the treatment of minor wounds; abrasions and joint sprains; the injection of common vaccinations; wellness services; and routine lab tests.

§ 155.5102 OFF-STREET PARKING AND LOADING

D. OFF-STREET PARKING SPACE REQUIREMENTS

1. Minimum Number of Off-Street Parking Spaces

. . .

TABLE 155.5102.D.1: MINIMUM NUMBER OF OFF-STREET PARKING SPACES		
Use Category	**Use Type**	**Minimum Number of Parking**
. . .		
Health Care Uses	~~Blood/tissue collection facility~~	~~1 per 300 sq ft~~
	~~Drug or alcohol treatment facility~~	~~1 per 300 sq ft~~
	Medical Office	1 per 200 sq ft
	Specialty Medical Facility	1 per 200 sq ft floor area for treatment + 1 per 300 sq ft for remaining areas
	Urgent Care Facility 24-Hour	
	Specialty Hospital	1 per 1 bed + 1 per 250 sq ft of areas not used for beds or Parking Study per Section 155.5102.D.2
	Hospital	~~1 per 3 inpatient beds~~ 1 per 1 bed + 1 per 250 sq ft of areas not used for beds or Parking Study per Section 155.5102.D.2
	~~Massage therapy establishment~~	~~1 per 300 sq ft~~
	~~Medical or dental clinic~~[10]	~~1 per 300 sq ft~~
	Medical or dental lab	1 per ~~300~~ 500 sq ft
	Nursing home facility	1 per 5 beds
	~~Psychiatric treatment facility~~	~~1 per 3 beds~~
***		
Accessory Uses	. . .	
	Limited Mental Health Treatment Facility	1 per 200 sq ft.
	Retail Clinic	1 per 200 sq ft.
	. . .	

ARTICLE 9: DEFINITIONS AND INTERPRETATION

. . .

PART 5 TERMS AND USES DEFINED

The following words, terms, and phrases, when used in this Code, shall have the meaning ascribed to them in this section.

. . .

~~**BLOOD/TISSUE COLLECTION CENTER**~~
~~A state-licensed facility where human blood, organs, skin, or other human tissue are either withdrawn or collected from patients or assembled after being withdrawn or collected elsewhere from patients for subsequent delivery to a clinical laboratory for examination. A collection facility is maintained at a separate physical location not on the grounds or premises of the main licensed laboratory or institution which performs the testing.~~

. . .

~~**DRUG OR ALCOHOL TREATMENT FACILITY**~~
~~A state-licensed substance abuse treatment facility that provides residential treatment, intensive outpatient treatment and addictions receiving facility, as defined in Fla. Stat. §397.311.~~

. . .

GENERAL HOSPITAL
is a state-licensed institution that provides primary health services and medical or surgical care to humans, primarily inpatients, who are sick or injured, and including as an integral part of the institution, related facilities such as clinical laboratories, outpatient facilities, training facilities, central services facilities, and staff offices. Hospitals offer facilities and beds for use beyond 24 hours by persons needing medical treatment or service. ~~This use type does not include nursing home facilities, medical treatment facilities, medical clinics, drug or alcohol treatment facilities, or psychiatric treatment facilities.~~

. . .

LIMITED MENTAL HEALTH TREATMENT FACILITY
An accessory use for the practice of mental health counseling, practice of marriage and family therapy, and/or practice of clinical social work, as defined in F. S. § 491.003, on ~~an~~ a non-intensive out-patient basis only. This use strictly prohibits the on-site dispensing of both medicinal and non-medicinal drugs. This use strictly prohibits the written order or prescription for any medicinal and non-medicinal drugs.

. . .

~~**MASSAGE THERAPY ESTABLISHMENT**~~
~~a state-licensed establishment that offers, sells, or provides manipulation of the tissues or other tactile stimulation of the human body with the hand, foot, arm, leg, elbow, or part of the torso, whether or not aided by any electrical or mechanical device, by persons who are licensed as a massage therapist under Chapter 480 of the Florida Statutes. A massage may also include bathing, hydrotherapy (including colonic irrigation), thermal therapy, or application of chemicals, oils, lotions, or similar preparations to the human body.~~

. . .

~~**MEDICAL OR DENTAL CLINIC**~~

~~a small-scale facility where patients are admitted for examination and treatment by one or more physicians, dentists, or other health practitioners on a short-term basis. The use includes the offices of physicians, dentists, chiropractors, optometrists, podiatrists, audiologists, speech pathologists, physical therapists, acupuncturists, psychologists, and other health practitioners. It also includes facilities providing short-term outpatient care and treatment (which may or may not be overnight), such as urgent care centers, kidney dialysis centers, ambulatory surgical clinics, biofeedback centers, sleep disorder clinics, family planning clinics, community health clinics, and health maintenance organization (HMO) medical clinics. Such facilities that provide overnight care and treatment may include sleeping rooms for care workers and members of patients' families. This use does not include hospitals (which are much larger in scale) or blood/tissue collection centers, drug or alcohol treatment facilities, massage therapy establishments, or psychiatric treatment facilities (which provide specialized medical services).~~

. . .

MEDICAL OR DENTAL LAB

Consists of facilities and offices ~~for performing diagnostic or therapeutic medical procedures of a non-surgical nature.~~ providing diagnostic analysis of medical tests (such as blood test urinalysis, CT Scan, X-ray or other medical tests related to diagnostic treatment); collecting or withdrawing human blood, organs, skin, or other human tissue; or producing such items as dentures, caps, bridges and optical prescriptions.

. . .

MEDICAL OFFICE

A small-scale office providing medical or dental treatment. A small-scale office shall mean a maximum gross floor area of 5,000 sq ft. This use shall not include any uses specified as a Specialty Medical Facility. An office which is greater than 5,000 sq gfa shall be considered a Specialty Medical Facility.

. . .

PERSONAL SERVICES ESTABLISHMENT

An establishment primarily engaged in the provision of frequent or recurrent needed services of a personal nature that are not typically medically related. Examples include but are not limited to, hair salons, tanning salons, ~~and~~ nail care salons, barber shops, yoga studios, martial arts studios, massage therapy (by persons who are licensed as a massage therapist under Chapter 480 of the Florida Statutes), hearing aids and/or optometry services, and similar establishments—but not including any sexually oriented business.

. . .

~~**PSYCHIATRIC TREATMENT FACILITY**~~

~~An inpatient facility that provides care for persons with psychiatric problems and that may include outpatient follow-up care to the facility's patients.~~

. . .

RETAIL CLINIC

An accessory use located within a grocery store, pharmacy, or large retail store for the diagnosis and treatment of common household illnesses such as strep throat and eye, ear, sinus and other similar infections; the treatment of minor wounds; abrasions and joint sprains; the injection of common vaccinations; wellness services; and routine lab tests.

. . .

SPECIALTY HOSPITAL

A hospital which offers a restricted range of services appropriate to the diagnosis, care, and treatment of patients with specific categories of medical or psychiatric illnesses or disorders which include: Specialty medical hospitals; Specialty rehabilitation hospitals; Specialty psychiatric hospitals, which may include beds licensed to offer Intensive Residential Treatment programs; Specialty substance abuse hospitals, which may include beds licensed to offer Intensive Residential Treatment programs; and an Addictions Receiving Facility.

. . .

SPECIALTY MEDICAL FACILITY

A specialty medical facility is a facility, regardless of size, offering specialized treatment and services including, but not limited to, ambulatory surgical facilities, dialysis centers, substance abuse treatment facilities, outpatient rehabilitation facilities, birthing facilities, and urgent care facilities (not including a 24-hour urgent care facility). This use also includes medical or dental offices which are larger than 5,000 sq ft gfa.

. . .

URGENT CARE FACILITY 24-HOURS

A facility which holds itself out to the general public as a walk-in, extended-hour access facility where immediate, but not emergent, care is provided. Patients shall be served solely on an outpatient basis and such services shall not include overnight stays

APPENDIX A: CONSOLIDATED USE TABLE

P = PERMITTED PRINCIPAL USE S = USE ALLOWED AS A SPECIAL EXCEPTION A = PERMITTED ACCESSORY USE
T = TEMPORARY USE ALLOWED WITH A MAJOR TEMPORARY USE PERMIT t = TEMPORARY USE ALLOWED WITH A MINOR TEMPORARY USE PERMIT
√ = TEMPORARY USE ALLOWED WITHOUT TEMPORARY USE PERMIT
I = INTERIM USE ALLOWED WITH AN INTERIM USE PERMIT BLANK CELL = PROHIBITED USE

USE CATEGORY (PRINCIPAL USES) AND/OR USE TYPE		RESIDENTIAL DISTRICTS												COMMERCIAL DISTRICTS						INDUSTRIAL DISTRICTS				SPECIAL DISTRICTS						PLANNED DEVELOPMENT DISTRICTS					USE-SPECIFIC STANDARDS
		RS-1	RS-2	RS-3	RS-4	RS-L	RD-1	RM-7	RM-12	RM-20	RM-30	RM-45	MH-12	B-1	B-2	B-3	B-4	M-1	CR	I-1	I-IX	OIP	M-2	TO	PR	CF	PU	T	BP	RPUD	PCD	PD-TO	LAC	PD-I	
INSTITUTIONAL USES																																			
***																																			
Health Care Uses	~~Blood/Tissue Collection Center~~													~~P~~	~~P~~	~~P~~	~~P~~							~~P~~							~~P~~	~~P~~	~~P~~		~~155.4209.A~~
	~~Drug or Alcohol Treatment Facility~~															~~P~~	~~P~~							~~S~~		~~P~~					~~P~~	~~P~~	~~P~~		~~155.4209.B~~
	Medical Office													P	P	P	P			P		P		P		P					P	P	P	P	155.4209.A
	Specialty Medical Facility															S	P			P		P				P					P		P	P	155.4209.B
	Urgent Care Facility 24 Hours															S	P			P		P				P					P		P	P	155.4209.C
	Specialty Hospital															S	P			P		P				P					P		P		155.4209.D
	General Hospital															~~P~~ S	P			P		P		~~P~~		P					P	~~P~~	P		155.4209.~~C~~E
	~~Massage Therapy Establishment~~													~~P~~	~~P~~	~~P~~	~~P~~		~~P~~					~~P~~		~~P~~				~~P~~	~~P~~	~~P~~	~~P~~	~~P~~	~~155.4209.D~~
	~~Medical or Dental Clinic~~													~~P~~	~~P~~	~~P~~	~~P~~							~~P~~		~~P~~					~~P~~	~~P~~	~~P~~	~~P~~	~~155.4209.E~~
	Medical or Dental Lab															~~P~~ S	P			P		P		~~P~~		P					P	~~P~~	P		155.4209.F
	Nursing home facility								P	P	P	P				P								P		P					P	P	P		155.4209.G
	~~Psychiatric treatment facility~~															~~P~~	~~P~~							~~S~~		~~P~~					~~P~~	~~P~~	~~P~~		~~155.4209.I~~

APPENDIX A: CONSOLIDATED USE TABLE

P = PERMITTED PRINCIPAL USE S = USE ALLOWED AS A SPECIAL EXCEPTION A = PERMITTED ACCESSORY USE
T = TEMPORARY USE ALLOWED WITH A MAJOR TEMPORARY USE PERMIT t = TEMPORARY USE ALLOWED WITH A MINOR TEMPORARY USE PERMIT
√ = TEMPORARY USE ALLOWED WITHOUT TEMPORARY USE PERMIT
I = INTERIM USE ALLOWED WITH AN INTERIM USE PERMIT BLANK CELL = PROHIBITED USE

USE CATEGORY (PRINCIPAL USES) AND/OR USE TYPE	RESIDENTIAL DISTRICTS												COMMERCIAL DISTRICTS						INDUSTRIAL DISTRICTS				SPECIAL DISTRICTS						PLANNED DEVELOPMENT DISTRICTS					USE-SPECIFIC STANDARDS
	RS-1	RS-2	RS-3	RS-4	RS-L	RD-1	RM-7	RM-12	RM-20	RM-30	RM-45	MH-12	B-1	B-2	B-3	B-4	M-1	CR	I-1	I-IX	OIP	M-2	TO	PR	CF	PU	T	BP	RPUD	PCD	PD-TO	LAC	PD-I	
ACCESSORY USES AND STRUCTURES																																		
...																																		
Retail Clinic													A	A	A	A			A				A						A	A	A	A	A	155.4303.VV

Copy of Ord. 2015-67

ORDINANCE NO. 2015-67

CITY OF POMPANO BEACH
Broward County, Florida

AN ORDINANCE OF THE CITY OF POMPANO BEACH, FLORIDA, PROVIDING FOR IMPOSITION OF A MORATORIUM ON ISSUANCE OF DEVELOPMENT ORDERS AND PERMITS AND ON THE PROCESSING OF APPLICATIONS RELATING TO HEALTH CARE USES, CHECK CASHING STORES, CONVENIENCE STORES, LIQUOR OR PACKAGE STORES, PAWN SHOPS , THRIFT SHOPS AND DORMITORIES WITHIN THE CITY; PROVIDING FOR VESTED RIGHTS; APPEALS; AND EXHAUSTION OF ADMINISTRATIVE REMEDIES; PROVIDING FOR A SIX (6) MONTH TERM TO BE EXTENDED IF NECESSARY BY THE CITY COMMISSION; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Commission and the City's Planning and Zoning Board, the Local Planning Agency, have previously undertaken the necessary studies and adopted a Comprehensive Plan to guide and control growth in the City; and,

WHEREAS, the goals, objectives and policies contained within the City's adopted Comprehensive Plan require that the City:

i. Annually review and periodically update adopted land development regulations and established procedures that encourage the elimination or reduction of uses inconsistent with the City's character and Future Land Use Plan. (Future Land Use Element - Objective Inconsistent Land Uses - 01.03.00)

ii. Support and promote hotels, motels and other tourist accommodations in designated residential, commercial and commercial recreation land use designations. (Future Land Use Element – Policy - 01.03.10)

iii. Encourage the adoption of innovative land development regulations. Adopt new land use designations for Residential, Mixed Use, Transportation Oriented Districts, Transportation

Oriented Corridors and amend the land development regulations, including the creation of new zoning districts for these land use designations. (Future Land Use Element - Objective New Land Use Regulations - 01.07.00)

iv. Continually review and amend new land use designations for Residential, Mixed Use and Transportation Oriented Districts. (Future Land Use Element - Policy - 01.07.02)

v. Through ongoing updates to the land development regulations revise prohibited and permitted uses in the commercial, industrial and non-residential zoning districts. (Future Land Use Element - Policy - 01.07.07)

vi. Follow the recommendation of the Community Redevelopment Plans in all Land Use Plan amendments and rezonings. (Future Land Use Element – Community Redevelopment - 01.08.01)

vii. Redevelopment activities in the Community Redevelopment Areas shall be guided by their respective Community Redevelopment Plans, adopted pursuant to Chapter 163, Part III, Florida Statutes. (Future Land Use Element - Policy - 01.11.03)

viii. Establish criteria which encourage development of urban infill and community redevelopment areas to promote economic development, increase housing opportunities and maximize the use of existing public facilities and services. (Future Land Use Element - Objective Urban Infill Criteria - 01.12.00);

and,

WHEREAS, the City of Pompano Beach contains two (2) Community Redevelopment Areas: the West Pompano Beach District CRA, also known as the NW CRA, a 3,000 acre area established in 1989, and the East Pompano Beach District CRA, a 158 acre area, that was established in 2001; and

WHEREAS, the NW CRA and the EAST CRA areas were established for the purpose of removing existing slum and blight conditions and provide economic benefits to the City's residents; and

WHEREAS, the East CRA area encompasses the majority of lands contained within the Atlantic Boulevard Overlay District (AOD) and the NW CRA area encompasses the Transit Oriented Corridor District (TOC); and

WHEREAS, the City adopted land development regulations for the AOD and the TOC; and

WHEREAS, the projects and programs of the City's Community Redevelopment Agency in the East CRA and in the NW CRA are designed to solve underlying problems that have a blighting influence on the redevelopment areas as further expressed in East CRA Redevelopment Plan and in the NW CRA Redevelopment Plan; and

WHEREAS, the AOD encompasses the Atlantic Boulevard Corridor which was included in a 2008 Urban Land Institute Technical Advisory Panel wherein the ULI recommended medium density, mixed-use development on Atlantic Boulevard; lower-scale development between the medium density and single family; creating great public spaces that exemplify and promote pedestrian activity; maintaining a small town feel and encouraging smaller scale (not big box) uses; and

WHEREAS, the AOD was also the subject of the City's Beach Master Plan which was approved in September 2008, which included measures for the restoration of the dune system along the public beach; streetscape improvements and realignment for Pompano Beach Boulevard; streetscape improvements for the east end of Atlantic Boulevard; a mixed use project and parking garage with 500 parking spaces; a new Fire Station, Library and upgrades to North Riverside Drive Park; and

WHEREAS, the City's Community Redevelopment Agency adopted an East Financing and Implementation Plan, which sets forth financial resources required and necessary for the

CRA to attain its redevelopment goals in the East CRA, which includes the majority of the AOD area; and

WHEREAS, the City's Community Redevelopment Agency adopted a Northwest Financing and Implementation Plan, which sets forth financial resources required and necessary for the CRA to attain its redevelopment goals in the NW CRA; and

WHEREAS, in its adopted Comprehensive Plan, the City identified "Major Issue No. 5: City Sense of Place" wherein the City expressed that there is a unique opportunity for the City to capitalize on its key transportation corridors, its major attractions and the Northwest and East Redevelopment CRA's to improve on its sense of place; and

WHEREAS, the City also adopted a Strategic Plan for the City of Pompano, wherein the City adopted the following strategies in support of the CRA redevelopment plans:

i. 2.0 Tourism: Make the City more attractive to residents, visitors and tourists and expand visitor and tourism markets.

ii. 5.0 Corridor Redevelopment: Enhance Corridor Redevelopment

5.1 Begin implementation of corridor studies and plans for Federal Highway, Atlantic Boulevard and Dixie Highway

5.2 Promote Class A office space development on Atlantic Boulevard near I-95 and along the Dixie corridor

5.3 Support and facilitate development of an education corridor along MLK

5.4 Improve overall aesthetic appearances

iii. 6.0 CRA Redevelopment: Enhance CRA area redevelopment

6.1 Expand CRA incentive programs

WHEREAS, the City has contracted with The Renaissance Planning Group to prepare corridor studies for Atlantic Boulevard, Dixie Highway and Federal Highway to identify

elements crucial to economic development and redevelopment along these major city transportation corridors; and

WHEREAS, the Zoning Code of the City of Pompano Beach, is designed to promote health, and general welfare, and to promote adequate light and air, and to prevent the overcrowding of land, and to avoid the undue concentration of population, and to facilitate adequate transportation, water, sewage treatment, schools, parks and other public requirements; and

WHEREAS, the process of growth and change within the City requires the continuing analysis of living and working conditions; and

WHEREAS, the health, safety and welfare of the citizens of Pompano Beach are proper and necessary for the consideration of the City Commission; and

WHEREAS, the continual flux of patterns in the urban community requires intensive restudy of areas of the community; and

WHEREAS, the changing patterns often cause existing zoning districts to become outdated, inequitable, unbalanced and inappropriate as applied; and

WHEREAS, it is in the public interest to make a determination as to whether existing zoning uses are appropriate where it appears that changing patterns have cast doubt on their propriety; and

WHEREAS, it is in the public interest to review the Zoning Code so as to ensure that the City's economic redevelopment efforts are not frustrated due to a proliferation of incompatible uses; and

WHEREAS, it is in the public interest to protect the substantial financial investment the City has made in recent years to promote economic redevelopment; and

WHEREAS, the moratorium is intended to allow sufficient time to study the provision of these uses for the citizens of Pompano Beach and to create a long term strategy to ensure adequate access to such services is provided; and

WHEREAS, the moratorium is intended to allow sufficient time to study the provision and location of these uses in a manner that does not result in an over-concentration of these uses that will further result in the blighting or downgrading of the surrounding neighborhood; and

WHEREAS, the moratorium is intended to allow sufficient time to study the provision of these uses to ensure that there is a balance between the existing residential uses and the projected demand for and location of these uses; and

WHEREAS, the moratorium is also intended to allow sufficient time to study the provision of these uses within the AOD and the DPOD, TOC, East CRA, NW CRA, corridors connecting the CRA areas and the corridors being studied by The Renaissance Planning Group and to determine the impact of these uses on the economic redevelopment efforts included in the City's Comprehensive Plan, the City's Community Redevelopment Plans, the CRA East Financing and Implementation Plan, the CRA NW Financing and Implementation Plan, the City's Beach Master Plan, and the City's Strategic Plan; and

WHEREAS, while the study conducted by The Renaissance Planning Group will address the City's major transportation corridors, additional studies are needed to address the impact of permitted and prohibited uses in the City; and

WHEREAS, the City desires to ensure, while necessary studies are presently underway for the formulation and implementation of remedial measures referenced herein, that additional Applications, Orders and Permits, as specified in the City's Code of Ordinances ("CODE") listed

below not be processed or issued in the City within the scope of the moratorium which is described herein:

> Health Care Uses (Code Sec. 155.4209), Check Cashing Store (Code Sec. 155.4221.C), Convenience Store (Code Sec. 155.4222.F), Liquor or Package Store (Code Sec. 155.4222.K), Pawn Shop (Code Sec. 155.4222.L), Thrift Shop (Code Sec. 155.4222.M) and Dormitory (Code Sec. 155.4303.II);

and

WHEREAS, in accordance with Florida Statutes, Section 166.041 (3)(c)2, advertisement in accordance with said statute have been published in a newspaper of general paid circulation in the City of Pompano beach and of general interest and readership in the community, notifying the public of two public hearings on this proposed Ordinance; and

WHEREAS, two public hearings have been held pursuant to said published hearings and all persons so desiring had the opportunity to be and were, in fact, heard; now therefore,

BE IT ENACTED BY THE CITY OF POMPANO BEACH, FLORIDA:

SECTION 1. Moratorium Imposed; Applicability.

A. During the time that this Ordinance is in effect as specified herein, there shall be a moratorium upon the acceptance of applications and the issuance of Development Orders and Permits, as defined in Section 163.3164, Florida Statues, (collectively "Development Orders") approving Health Care Uses (Code Sec. 155.4209), Check Cashing Store (Code Sec. 155.4221.C), Convenience Store (Code Sec. 155.4222.F), Liquor or Package Store (Code Sec. 155.4222.K), Pawn Shop (Code Sec. 155.4222.L), Thrift Shop (Code Sec. 155.4222.M) and Dormitory (Code Sec. 155.4303.II).

SECTION 2. Vested Rights.

A. Nothing in this Ordinance shall be construed or applied to abrogate the vested right of a property owner to complete development where the property owner demonstrates each of the following:

1. A governmental act of development approval obtained prior to the effective date of this Ordinance; and

2. Upon which the owner has detrimentally relied, in good faith, by making such a substantial change in position or incurring such extensive obligations and expenses; and

3. That it would be highly inequitable to deny the property owner the right to complete development.

B. Except as provided by paragraph (C) below, any property owner claiming to have vested rights under this Section must file an application with the City Manager for a vested rights determination within thirty (30) days after the effective date of this Ordinance. The application shall be accompanied by a fee of $600.00 and contain a sworn statement as to the basis upon which the vested rights are asserted, together with documentation required by the City Manager and other documentary evidence supporting the claim. The City Manager shall review the application and, based upon the evidence submitted, shall make a determination as to whether the property owner has established vested rights. The City Manager's decision shall be subject to appeal by the applicant for vested rights determination or by a third party claiming to be adversely affected by the City Manager's decision, provided that the third party can demonstrate a legally recognizable interest which is or will be affected by the decision and that such interest, which while it may be shared in common generally with other members of the community, is definite and exceeds in degree the general interest in the community good shared by all persons. Such appeals may be made to the City Commission by notice of appeal filed with the City

Manager within ten (10) days after the City Manager's written decision. In the event of a timely appeal, the City Commission shall hold a public hearing on appeal and, based upon the evidence submitted, shall make a determination as to whether or not the property owner has established vested rights. To the extent that a property owner demonstrates vested rights, the moratorium shall not be applied to that owner.

C. Any property owner establishing vested rights under this Section shall not be subject to this moratorium and shall be authorized to apply for Orders, and Permits in accordance with a Vested Rights Determination Agreement to be executed by the City and the property owner. A copy of the Vested Rights Determination Agreement shall be filed with the City Clerk, accompanied by a letter which references this paragraph (C) within Forty-five (45) days after the effective date of the City Commission's determination under this Section.

SECTION 3. Appeals. Appeals from final decision by the City Commission under Section 2 of this Ordinance shall be by the filing of a Petition for Certiorari in the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County in accordance with the Florida Rules of Appellate Procedure for the review of the quasi-judicial rulings of municipalities.

SECTION 4. Exhaustion of Administrative Remedies. No property owner claiming that this Ordinance as applied constitutes or would constitute a temporary or permanent taking of private property or an abrogation of vested rights may pursue such claim unless he or she has first exhausted all administrative remedies provided for in Section 2.

SECTION 5. Term. The moratorium imposed by this Ordinance is temporary and, unless dissolved earlier by the City, shall automatically dissolve in six (6) months from the effective date of this Ordinance unless otherwise extended in accordance with applicable law.

The moratorium may be reasonably extended, if, necessary, by Ordinance of the City Commission.

SECTION 6. Conflicts. All Sections or parts of Sections of the Code of Ordinances, all Ordinances or parts of Ordinances, and all Resolutions, or parts of Resolutions, in conflict with this Ordinance are repealed to the extent of such conflict.

SECTION 7. Severability. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decisions shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

SECTION 8. Effective Date. This Ordinance shall become effective upon passage.

PASSED FIRST READING this 23rd day of June, 2015.

PASSED SECOND READING this 14th day of July, 2015.

LAMAR FISHER, MAYOR

ATTEST:

ASCELETA HAMMOND, CITY CLERK

GBL/tal/ds:jrm
7/15/2015
l:ord/2015-367a

PowerPoint Presentation for the City Commission Hearing

The Right Use in the Right Location:

Health Care Uses

City Commission Hearing

February 9, 2016

Recommendation:
Regulate Health Care Uses by Intensity

APA "Planners Dictionary": Intensity

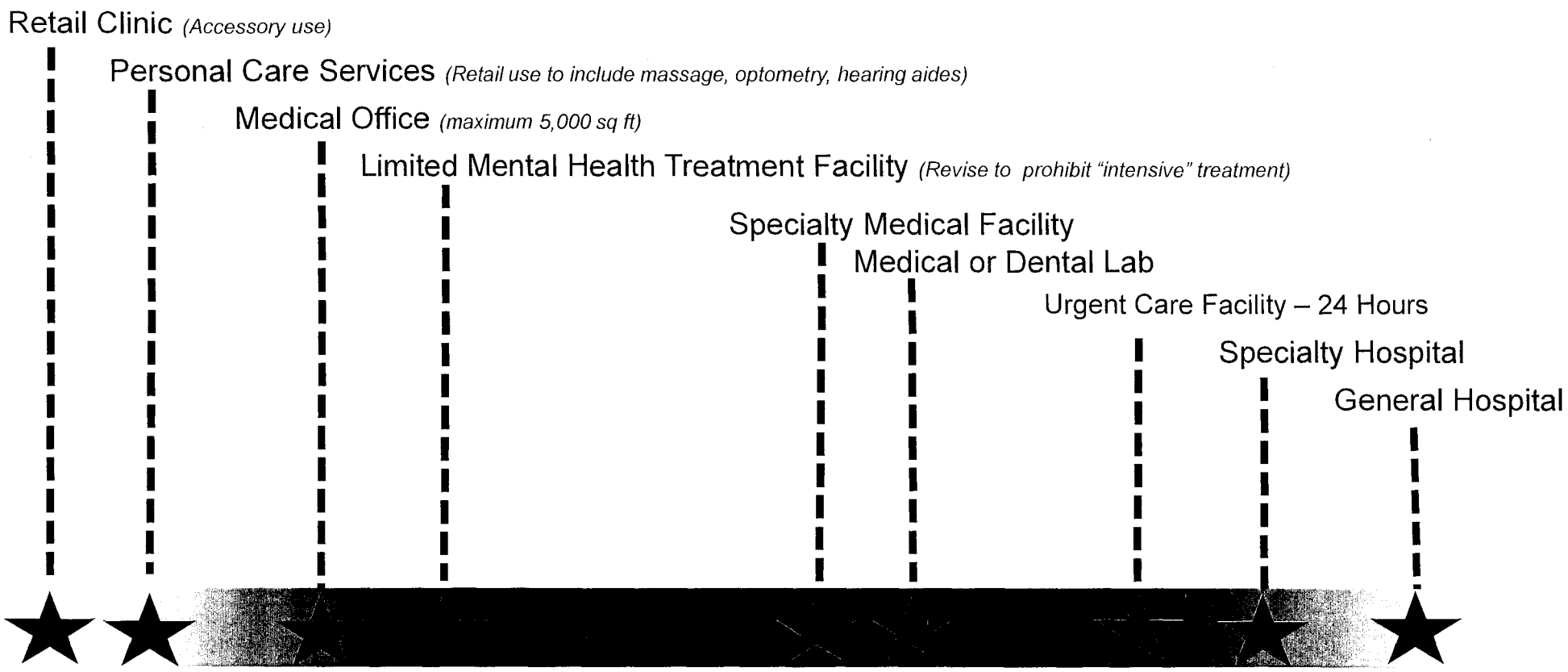
Intensity is the degree to which land is occupied. There is no single measure of intensity of land use. Rather a land use is relatively more or less intense than another use. Generally, a particular use may be more intense due to one or more characteristics, such as:

- Traffic generated
- Amount of impervious surface
- Bulk of the structures
- Number of employees
- Density
- Nuisance such as pollution, noise, light, etc…

Intensity of Health Care Uses:

- Total Number of healthcare professionals
- Number of patients per healthcare professional
- Hours of Operation
- Overnight treatment
- Type of Services Provided
- Treatment Length
- Facility Size

Recommended Health Care Uses



Additional Recommendations

- Separate from Single-Family and Two-Family Districts by 500 feet:
  - Medical Office if hours of operation exceed 7:00 p.m.
  - Specialty Medical Facility
  - Urgent Care Facility – 24 Hours
- Separate from all Residential Uses by 500 feet:
  - Specialty Hospital
  - General Hospital
- Permit most health care uses in I-1 and OIP Districts
- Revise parking standards for health care uses
  - While most uses will require more parking, medical lab's parking will be reduced similar to an industrial use
- Prohibit in AOD and DPOD
  - Limited Mental Health Treatment Center
  - Specialty Medical Facility
  - Medical Lab
  - Urgent Care Facility – 24 Hours
  - Specialty Hospital
  - General Hospital
- Massage in AOD and DPOD: Require Special Exception approval if within 1,000 feet of another massage use
- Medical Office in AOD: Standards regarding locations on Atlantic Blvd

Meeting Date: March 8, 2016 Agenda Item 18

REQUESTED COMMISSION ACTION:

Consent	X Ordinance	Resolution	Consideration/ Discussion	Presentation
____	____	____	____	____

SHORT TITLE

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH AMENDING CHAPTER 155 "ZONING CODE", BY AMENDING SECTION 155.3703, "ATLANTIC BOULEVARD OVERLAY DISTRICT (AOD)," TO MODIFY THE PERMITTED PRINCIPAL USES, PROHIBITED USES, AND STANDARDS; BY AMENDING SECTION 155.3708 "DOWNTOWN POMPANO BEACH OVERLAY DISTRICT (DP)" TO AMEND MODIFIED USE STANDARDS; PROVIDING SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

Summary of Purpose and Why:

In order to allow sufficient time to study the provision of health care uses, check cashing stores, convenience stores, liquor or package stores, pawn shops , thrift shops and dormitories in the City, on July 14, 2015 the City Commission adopted Ordinance 2015-67, which enacted a temporary moratorium on these uses. Staff has undertaken studies of the uses which analyzed these uses, including specific issues related to the AOD and DPOD Districts (A copy of the four relevant studies are included in the backup for four separate ordinances on tonight's agenda. A copy of the CRA's Supplement Support Document References is attached.). Based on the studies Staff is recommending revisions to the AOD and DPOD Districts including prohibiting Thrift Shops, Check Cashing or Payday Loan Stores, and all health care uses except Medical Offices. Use specific standards related to several uses are also proposed. Staff will present a brief PowerPoint presentation highlighting the proposed recommendations; a copy of which is included at the end of the back-up for this item. The text amendments were recommended at the November 30, 2015 Planning and Zoning Board meeting (A copy of the draft minutes from the Planning and Zoning Board meeting are attached.).

(1) Origin of request for this action: Development Services Dept.
(2) Primary staff contact: Robin M. Bird/ Karen Friedman KBF Ext. 7792
(3) Expiration of contract, if applicable: N/A
(4) Fiscal impact and source of funding: N/A

DEPARTMENTAL COORDINATION	DATE	DEPARTMENTAL RECOMMENDATION	DEPARTMENTAL HEAD SIGNATURE
Dev. Services	11/19/2015	Approval	Memo #15-621
City Attorney	01/26/2016	Approval 1/28/16	Memo #2016-434
X Planning and Zoning Board		Approval	Memos #15-075, #15-076, #15-077, and #15-078 (01/11/2016)
X City Manager			

Ordinance	Resolution	Consideration	
Workshop			
1st Reading 2/9/16 Approved -2/23/16-Approved	1st Reading	Results:	Results:
2nd Reading 3/8/16			

G:\Zoning 2009\Code Rewrite\Code Amendments\Moratorium - June 2015\CC - Feb 9 2016 - Text Amendments\CC Agenda sheet_AODandDPOD.doc

City Attorney's Communication #2016-434
January 26, 2016

TO: Karen Friedman, AICP, Principal Planner

FROM: Carrie L. Sarver, Assistant City Attorney

RE: Ordinance Amending Section 155, Zoning Code

As requested, the following form of Ordinance, relative to the above-referenced matter, has been prepared and is attached:

> **AN ORDINANCE AMENDING CHAPTER 155, "ZONING CODE," OF THE CODE OF ORDINANCES OF THE CITY OF POMPANO BEACH, FLORIDA, BY AMENDING SECTION 155.3703, "ATLANTIC BOULEVARD OVERLAY DISTRICT (AOD)," TO MODIFY THE PERMITTED PRINCIPAL USES, PROHIBITED USES, STANDARDS SPECIFIC TO COMMERCIAL/RESIDENTIAL MIXED-USE DEVELOPMENTS AND SEPARATION REQUIREMENT FOR SALES OF ALCOHOLIC BEVERAGES AND EXEMPTIONS; BY AMENDING SECTION 155.3708, "DOWNTOWN POMPANO BEACH OVERLAY DISTRICT (DP)," TO AMEND CHART TO REFLECT SAID CHANGES AND AMEND THE MODIFIED USE STANDARDS FOR THE DPOD; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.**

Please carefully review the ordinance to ensure that it meets with your requirements.

CARRIE L. SARVER

/jrm

l:cor/dev-srv/2016-434
Attachment

ORDINANCE NO. 2016-_____

CITY OF POMPANO BEACH
Broward County, Florida

AN ORDINANCE AMENDING CHAPTER 155, "ZONING CODE," OF THE CODE OF ORDINANCES OF THE CITY OF POMPANO BEACH, FLORIDA, BY AMENDING SECTION 155.3703, "ATLANTIC BOULEVARD OVERLAY DISTRICT (AOD)," TO MODIFY THE PERMITTED PRINCIPAL USES, PROHIBITED USES, STANDARDS SPECIFIC TO COMMERCIAL/RESIDENTIAL MIXED-USE DEVELOPMENTS AND SEPARATION REQUIREMENT FOR SALES OF ALCOHOLIC BEVERAGES AND EXEMPTIONS; BY AMENDING SECTION 155.3708, "DOWNTOWN POMPANO BEACH OVERLAY DISTRICT (DP)," TO AMEND CHART TO REFLECT SAID CHANGES AND AMEND THE MODIFIED USE STANDARDS FOR THE DPOD; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

WHEREAS, in accordance with Florida Statutes, Section 166.041(3)(c)2, advertisements in accordance with said statute have been published in a newspaper of general paid circulation in the City of Pompano Beach and of general interest and readership in the community, notifying the public of two public hearings on this proposed Ordinance; and

WHEREAS, two public hearings have been held pursuant to said published hearings and all persons so desiring had the opportunity to be, and were, in fact, heard; now, therefore,

BE IT ENACTED BY THE CITY OF POMPANO BEACH, FLORIDA:

SECTION 1. That Section 155.3703., "Atlantic Boulevard Overlay District (AOD)," of Chapter 155, "Zoning Code," of the Code of Ordinances of the City of Pompano Beach is hereby amended to read as follows:

§ 155.3703. ATLANTIC BOULEVARD OVERLAY DISTRICT (AOD)

. . .

C. MODIFIED USE STANDARDS

1. Permitted Uses

Uses in the Atlantic Boulevard Overlay district shall be subject to the use standards applicable in the underlying base zoning district except as otherwise provided below.

a. Permitted Principal Uses

Irrespective of the use standards applicable in the underlying base zoning district, and except as otherwise provided in subsection 2 below, the following modified use standards shall apply to principal uses in the Atlantic Boulevard Overlay district:

i. A hotel or motel shall be a permitted use in any underlying multifamily residential (RM-)or commercial base district.

ii A consignment ~~shop~~ boutique shall only be ~~a~~ permitted ~~use in any underlying base district allowing retail sales uses,~~ provided ~~the lot on which it is located~~ no portion of the use fronts on ~~a secondary street~~ Atlantic Boulevard.

. . .

v. A medical office shall only be permitted provided it complies with the following standards:

(A) Hours of operations for treatment are limited to 7:00 a.m. until 7:00 p.m.

(B) Medical offices located in a multistory building fronting Atlantic Boulevard shall not have any space used for treatment on the first floor.

(C) Medical offices located in a single story building fronting Atlantic Boulevard shall not have any space devoted to treatment in the portion of the building abutting Atlantic Boulevard.

vi. A personal services establishment whose principal services are massage therapy shall only be permitted provided it complies with the following standards:

(A) Hours of operations for treatment are limited to 7:00 a.m. until 7:00 p.m.

(B) Public access is limited to a storefront abutting a street.

(C) Special exception approval is required if the establishment is located less than 1,000 feet from another personal services establishment whose principal services are massage therapy. For purposes of this subsection, the distance shall be measured from public entrances.

. . .

2. Prohibited Uses

a. Prohibited Principal Uses.

Irrespective of subsection 1 above and the use standards applicable in the underlying base zoning district, the following principal uses shall be prohibited in the Atlantic Boulevard Overlay district:

i. Auction house

ii. ~~Blood/tissue collection center~~ Specialty Medical Facility

iii. ~~Drug or Alcohol Treatment Facility which provides inpatient treatment~~ Urgent Care Facility – 24 Hours

iv. Specialty Hospital

~~iv.~~ v. General Hospital

~~v.~~ vi Medical or Dental ~~Clinic which provides overnight care and treatment~~ Lab

~~vi. Psychiatric Treatment Facility which provides inpatient treatment~~

. . .

xiv. All use types within the Motor Vehicle Sales and Service Uses category, except Parking deck or

garage and Parking lot~~.~~

xv. Thrift Shops

xvi. Check Cashing or Pay Day Loan Store

. . .

3. Standards Specific to Commercial/Residential Mixed-Use Developments

a. General

. . .

b. On Land Classified Commercial by Land Use Plan

The following standards apply to commercial/residential mixed-use development located on land classified Commercial by the Land Use Plan:

i. Commercial principal uses shall be limited to:

(A) Eating or drinking establishments (including accessory outdoor seating areas);

(B) ~~Office~~ Professional office and travel agency uses; and

(C) Retail sales and service uses.

. . .

c. On Land Classified as Residential by Land Use Plan

The following standards apply to commercial/residential mixed-use development located on land classified Residential by the Land Use Plan:

i. Commercial principal uses shall be limited to:

(A) Eating or drinking establishments (including accessory outdoor seating areas);

(B) ~~Offices for architects, engineers, attorneys, real estate agents, insurance agents, and similar non-medical professionals~~ Professional offices;

(C) ~~Offices for physicians, dentists, and similar medical professionals~~ Medical offices; and

(D) Neighborhood-scale retail sales and service uses.

. . .

4. Separation Requirements for Sales of Alcoholic Beverages Not Applicable for Certain Eating or Drinking Establishments

The separation requirements applicable to uses involving the sale of alcoholic beverages (Section 155.4501) shall not apply to ~~such uses~~ bars or lounges, brewpubs, restaurants, or specialty eating or drinking establishments located within the Atlantic Boulevard Overlay district.

. . .

SECTION 2. That Section 155.3708., "Downtown Pompano Beach (DP) Overlay District," of Chapter 155, "Zoning Code," of the Code of Ordinances of the City of Pompano Beach is hereby amended to read as follows:

§ 155.3708. DOWNTOWN POMPANO BEACH (DP) OVERLAY DISTRICT

. . .

H. USE REGULATING PLAN AND MODIFIED USE STANDARDS.

. . .

2. Principal Uses Regulating Table

Table 155.3708.H.2 includes the principal uses permitted in the DPOD along with any required restrictions on such uses, for each of the use areas listed above. Principal uses not included in Table 155.3708.H.2. are not permitted in the DPOD. Principal uses in the DPOD shall be subject to the use-specific standards as provided for in Part 2, of Particle 4, unless specifically noted otherwise in Section 155.3708.H.5 (Modified Use Standards).

. . .

TABLE 155.3708.H.2: PRINCIPAL USES REGULATING TABLE

P = PERMITTED S = SPECIAL EXCEPTION BLANK = NOT PERMITTED 1 = 2nd Floor Only 2 = Not Permitted in Historic Core 3 = Not Permitted in Historic Transition

Use Types		Use Areas															
		MM1		MM2		MUR											
		1st & 2nd Floors	2nd Floor & above	1st floor	2nd Floor & above	1st & 2nd Floors	3rd Floor & above	MO	RM	RS	MUCP - All Floors	CC1 - All Floors	CC2 - All Floors	RO	CF	PU	TR
INSTITUTIONAL USES																	
Health Care Uses (155.4209)	~~Drug or alcohol treatment facility~~	~~S~~	~~S (1)~~	~~S~~	~~S~~	~~S~~		~~S~~			~~S~~	~~S~~	~~S~~				~~S~~
	~~Massage therapy establishment~~	~~P~~	~~P (1)~~	~~P~~	~~P~~	~~P~~		~~P~~			~~P~~	~~P~~	~~P~~				~~P~~
	Medical ~~or dental clinic~~ office	P	P (1)	P	P	P		P			P	P	P				P
	~~Medical or dental lab~~	~~P~~	~~P (1)~~	~~P~~	~~P~~	~~P~~		~~P~~			~~P~~	~~P~~	~~P~~				-
	***																
	~~Psychiatric treatment facility~~	~~S~~	~~S (1)~~	~~S~~	~~S~~	~~S~~		~~S~~			~~S~~	~~S~~	~~S~~				~~S~~
. . .																	
COMMERCIAL USES																	
. . .																	
Retail/Retail Sales (155.4222)	Consignment ~~shop~~ Boutique (2) (3)	P	P (1)	P	P	P		P			P	P	P				P
	~~Convenience store~~	~~P~~	~~P (1)~~	~~P~~	~~P~~	~~P~~		~~P~~			~~P~~	~~P~~	~~P~~				~~P~~
	~~Meat, poultry, or seafood market~~	~~P~~	~~P (1)~~	~~P~~	~~P~~	~~P~~		~~P~~			~~P~~	~~P~~	~~P~~				~~P~~
	~~Thrift shop (2) (3)~~	~~P~~	~~P (1)~~	~~P~~	~~P~~	~~P~~		~~P~~			~~P~~	~~P~~	~~P~~				~~P~~
	Regional Liquor or Package Store (2) (3)	S		S		S		S			S	S	S				S
	Beer or Wine Store	S		S		S		S			S	S	S				S

	Other retail sales establishment	P	P(1)	P	P	P		P		P	P	P			P

4. Modified Use Standards

The following use-specific standards are modified for the DPOD:

~~a. The following Health Care Uses are permitted provided there is no overnight treatment or stays:~~

~~i. Section 155.4209.B (Drug and Alcohol Treatment Facility)~~

~~ii. Section 155.4209.E (Medical or Dental Clinic)~~

~~iii. Section 155.4209.I (Psychiatric Treatment Facility)~~

a. Medical offices hours of operations for treatment are limited to 7:00 a.m. until 7:00 p.m.

i. A personal services establishment whose principal services are massage therapy shall only be permitted provided it complies with the following standards:

(A) Hours of operations for treatment are limited to 7:00 a.m. until 7:00 p.m.

(B) Public access is limited to a storefront abutting a street.

(C) Special exception approval is required if the establishment is located less than 1,000 feet from another personal services establishment whose principal services are massage therapy. For purposes of this subsection, the distance shall be measured from public entrances.

. . .

SECTION 3. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

SECTION 4. This Ordinance shall become effective upon passage.

PASSED FIRST READING this _____ day of _____, 2016.

PASSED SECOND READING this _____ day of _____, 2016.

_____

LAMAR FISHER, MAYOR

ATTEST:

_____

ASCELETA HAMMOND, CITY CLERK

:jrm
1/26/16 - 1/6/16
L:ord/ch155/2016-84

PLANNING AND ZONING BOARD/ LOCAL PLANNING AGENCY
MEMORANDUM #15-075

DATE: January 11, 2016

TO: City Commission

FROM: Planning and Zoning Board/ Local Planning Agency

SUBJECT: Proposed Text Amendments to Zoning Code,
Health Care Uses

At the special set meeting of the Planning and Zoning Board/ Local Planning Agency held on November 30, 2015 to review the Moratorium Studies and Recommendations, the Board considered proposed text amendments to the Article 3 (Zoning Districts), Article 4 (Use Standards), Article 5 (Development Standards), Article 9 (Definitions and Interpretation), and Appendix A (Consolidated Use Table) of the Zoning Code, as set forth in the Department of Development Services Administrative Report 15-621 as well as the Staff Report entitled "The Right Use in the Right Location: Health Care Uses".

Within Article 3 (Zoning Districts) Staff recommends revising the Atlantic Boulevard Overlay District and Downtown Pompano Beach Overlay District to prohibit "Specialty Medical Facility", "Medical or Dental Lab", "Urgent Care Facility – 24 Hours", "Specialty Hospital", and "General Hospital"; add standards for "Medical Offices"; and standards for "Personal Services Establishment which only offer Massage Therapy".

Within Article 4 (Use Standards) Staff recommends deleting "Blood/tissue collection center," "Drug or Alcohol Treatment Facility," "Massage therapy establishment," "Medical or dental clinic," and "Psychiatric treatment facility"; adding "Medical office," "Specialty Medical facility," Urgent care facility 24-hours"; and modifying "Hospital" and "Medical or dental lab"; revising the definition of "Personal Services Establishment"; revising the definition of "Limited mental health treatment facility"; and adding "Retail Clinic".

Within other Articles Staff recommends revising Table 155.5102.D.1 "Minimum number of off-street parking spaces"; revising Article 9 Part 5; and revising Appendix A: Consolidated Use Table.

With a 5-2 vote for the approval of the amendments, Jerry Mills and Dwight Evans casting the dissenting votes, it is the recommendation of the Board that the text amendments be approved.

Fred Stacer
Chairman
Planning and Zoning Board/ Local Planning Agency

kem
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PLANNING AND ZONING BOARD/ LOCAL PLANNING AGENCY
MEMORANDUM #15-076

DATE: January 11, 2016

TO: City Commission

FROM: Planning and Zoning Board/ Local Planning Agency

SUBJECT: Proposed Text Amendments to Zoning Code,
Liquor Stores and other retail sales of alcoholic beverages

At the special set meeting of the Planning and Zoning Board/ Local Planning Agency held on November 30, 2015 to review the Moratorium Studies and Recommendations, the Board considered proposed text amendments to the Article 4 (Use Standards), Article 5 (Development Standards), Article 9 (Definitions and Interpretation), and Appendix A (Consolidated Use Table) of the Zoning Code, as set forth in the Department of Development Services Administrative Report 15-621 as well as the Staff Report entitled "The Right Use in the Right Location: Liquor Stores (& other retail sales of alcoholic beverages)".

Within Article 3 (Zoning Districts) Staff recommends revising the Downtown Pompano Beach Overlay District to prohibit Local Liquor or Package Store, require Special Exception approval for Regional Liquor or Package Store and require Special Exception approval for Beer or Wine Store.

Within Article 4 (Use Standards) Staff recommends revising the standards of "Grocery or Convenience Store"; revising "Liquor or Package Store"; adding "Regional liquor or package store"; adding "Beer or wine store"; revising the definition of "Food and /or Beverage Products Manufacturing (without slaughtering)"; adding "Alcoholic beverage sales as an accessory use to a brewery, winery or distillery" and "Package sales as an accessory use to a bar or lounge"; and revising Table 155.4101.B: Exceptions to the minimum separation of uses involving the sale of alcoholic beverages from certain existing uses.

Within other Articles Staff recommends revising Table 155.5102.D.1 "Minimum number of off-street parking spaces"; revising Article 9 Part 5; and revising Appendix A: Consolidated Use Table.

With a unanimous vote for the approval of the amendment, it is the recommendation of the Board that the text amendments be approved.

Fred Stacer
Chairman
Planning and Zoning Board/ Local Planning Agency

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PLANNING AND ZONING BOARD/ LOCAL PLANNING AGENCY
MEMORANDUM #15-077

DATE: January 11, 2016

TO: City Commission

FROM: Planning and Zoning Board/ Local Planning Agency

SUBJECT: Proposed Text Amendments to Zoning Code, Alternative Financing Uses

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At the special set meeting of the Planning and Zoning Board/ Local Planning Agency held on November 30, 2015 to review the Moratorium Studies and Recommendations, the Board considered proposed text amendments to Article 4 (Use Standards), Article 5 (Development Standards), Article 9 (Definitions and Interpretation), and Appendix A (Consolidated Use Table) of the Zoning Code as set forth in the Department of Development Services Administrative Report 15-621 as well as the Staff Report entitled "Alternative Financing Uses".

Within Article 3 (Zoning Districts) Staff recommends revising the Atlantic Boulevard Overlay District and Downtown Pompano Beach Overlay District to prohibit "Check Cashing or Payday Loan Stores".

Within Article 4 (Use Standards) Staff recommends revising the definition of "Bank or Financial Institution"; adding "Check cashing or payday loan store"; and adding standards to "Pawn Shop."

Within other Articles Staff recommends revising Table 155.5102.D.1 "Minimum number of off-street parking spaces"; revising Article 9 Part 5; and revising Appendix A: Consolidated Use Table.

With a unanimous vote for the approval of the amendment, it is the recommendation of the Board that the text amendments be approved.

Fred Stacer
Chairman
Planning and Zoning Board/ Local Planning Agency

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PLANNING AND ZONING BOARD/ LOCAL PLANNING AGENCY
MEMORANDUM #15-078

DATE: January 11, 2016

TO: City Commission

FROM: Planning and Zoning Board/ Local Planning Agency

SUBJECT: Proposed Text Amendments to Zoning Code,
Thrift and Consignment Shops

At the special set meeting of the Planning and Zoning Board/ Local Planning Agency held on November 30, 2015 to review the Moratorium Studies and Recommendations, the Board considered proposed text amendments to the Article 4 (Use Standards), Article 5 (Development Standards), Article 9 (Definitions and Interpretation), and Appendix A (Consolidated Use Table) of the Zoning Code, as set forth in the Department of Development Services Administrative Report 15-621 as well as the Staff Report entitled "The Right Use in the Right Location: Thrift and Consignment Shops".

Within Article 3 (Zoning Districts) Staff recommends revising the Atlantic Boulevard Overlay District to add standards for "Consignment Boutique".

Within Article 4 (Use Standards) Staff recommends revising "Consignment Shop" and revising the definition and standards of "Thrift Shop."

Within other Articles Staff recommends revising Table 155.5102.D.1 "Minimum number of off-street parking spaces"; revising Article 9 Part 5; and revising Appendix A: Consolidated Use Table.

With a unanimous vote for the approval of the amendment, it is the recommendation of the Board that the text amendments be approved with the following revision:

§155.4222.E.2 & Article 9, Part 5: Consignment Boutique
The Board recommends striking the word luxury from the definition of Consignment Boutique in the above mentioned code sections.

Fred Stacer
Chairman
Planning and Zoning Board/ Local Planning Agency

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PLANNING AND ZONING BOARD/LOCAL PLANNING AGENCY — November 30th, 2015 Monday

City Commission Chambers — 7:00 P.M.

SPECIAL MEETING AGENDA

A. Call to order by the Chairman of the Board, Mr. Fred Stacer at 7:03pm.

B. **ROLL CALL:**

Elizabeth Anderson
M. Dwight Evans
Richard Klosiewicz
Joan Kovac
Jerold Mills
Fred Stacer
Tobi Aycock *for Jeff Torrey*

Also Present

Karen Friedman
Robin Bird
Carrie Sarver
Kerrie MacNeil
Cecelia Ward
Patrick Jovanov
Tara Patton
Vincente Thrower

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Mr. Evans asked for a vocal or silent moment for prayer. Mr. Stacer called for a moment of silence.

C. INDIVIDUALS TESTIFYING PLACED UNDER OATH

Mr. Robin Bird reminded the Chairman that this is not a quasi-judicial hearing and it is not necessary to place individuals under oath. Carrie Sarver agreed that placing the audience who wishes to speak under oath is above the requirements.

City Staff and members of the public testifying before the Board at the meeting were placed under oath by Kerrie MacNeil, Zoning Technician and Notary Public in the State of Florida.

D. OTHER BUSINESS

1. Temporary Moratorium - Staff Reports

Staff has prepared reports and recommendations regarding several uses subject to the Temporary Moratorium. The reports are as follows: Health Care Uses, Thrift and Consignment Shops, and Liquor Stores (and other retail sales of alcoholic beverages), and Alternative Financing Uses.

Mr. Robin Bird introduced himself to the Board as the Director of Development Services and reviewed the temporary moratorium and the reasons why it was enacted. Mr. Bird stated that four reports are being presented tonight and a significant size team worked on the reports. Mr. Bird added that staff reserves the ability to bring items back to the next Planning and Zoning Board meeting.

Mrs. Kovac asked why restaurants were not included in the reports. Mr. Bird replied that the City Commission did not select restaurants to be placed under moratorium.

Mrs. Friedman, Principal Planner, introduced herself to the Board and stated that she would be presenting condensed versions of the reports that were included in staff's back up material and she will be focusing mostly on the recommendations. Mrs. Friedman stated that the various recommendations have the same theme: the City's need to balance access to these uses, economic development, protect single family neighborhoods and regulate secondary effects of the uses. Distance requirements.

Mrs. Friedman introduced the first topic: Thrift and consignment shops. Mrs. Friedman stated that often times the difference between thrift and consignment shops is not understood. Mrs. Friedman delivered a PowerPoint presentation to the Board which included staff's recommendations.

Mrs. Friedman introduced the next topic and began the PowerPoint presentation on Alternative Financing Uses. Mrs. Friedman presented the definition, location, history, problems, and staff's recommendations for these uses.

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Mrs. Friedman gave the next presentation on Liquor Stores and other retail sales of alcoholic beverages.

Mrs. Friedman presented the next report on Health Care Uses.

Mr. Bird informed the Board that there will be four separate ordinances and suggested that the Board discuss and vote on one topic at a time. The Board agreed to discuss the reports in the order that they were presented in by staff. Mr. Stacer asked the Board if they had any questions for staff regarding Thrift and Consignment shops.

Mrs. Anderson if the consignment stores that were in B-3 that will now be considered thrift stores are considered nonconforming. Mrs. Friedman replied that they would likely be treated under the lawfully existing special exception use. Mrs. Anderson asked if this would be true even if they do not apply and Mrs. Friedman responded that it is just the designation.

Dr. Mills stated that he is unclear on the difference between consignment and thrift shop. Mrs. Friedman explained the difference between the two. Dr. Mills asked if no new business can be established under the moratorium and what is the length of the Moratorium. Mrs. Friedman responded that the Moratorium was enacted by the City Commission on July 14, 2015 and it is set to expire on January 14, 2016 unless further action is taken by the Commission. Dr. Mills asked if no new business can be established during this time and Mrs. Friedman replied that no new permits and no new business tax receipts were issued to any of the uses that have been subject to the Temporary Moratorium.

Mrs. Aycock asked why consignment boutiques are prohibited from fronting Atlantic Boulevard in the AOD but not thrift. Mrs. Friedman responded that they Thrift Shops are a prohibited use in the AOD; therefore, we would not have to regulate where they would be located.

Mr. Klosiewicz asked who will determine what is considered "luxury merchandise." Mrs. Friedman responded that staff will be looking to see if the business is focusing on selling one type of merchandise or if they focusing on multiple items (this is a way to determine the difference between thrift and consignment). Mrs. Friedman added that this is a standard used by several other cities in South Florida and staff will make their best determination. Mr. Klosiewicz expressed that he does not believe the word luxury should be included because the word luxury may be interpreted differently by different people. Mr. Klosiewicz stated that he suggests the word be stricken from the text amendment.

Dr. Mills asked what happens to the places that are not in compliance once this goes into effect. Mrs. Friedman responded that the use will become a legal non-conforming use or lawfully existing special exception use. Mrs. Friedman added that we do not force them to comply.

Mr. Evans asked for the distinction between a shop and a boutique and if a boutique is a more specialized. Mrs. Friedman answered that it is a more specialized type of retail establishment (ex. vintage clothing or furniture).

Mrs. Anderson asked if the lawfully existing special exception is held to the same improvement as the legal nonconforming use. Mr. Bird responded that a lawful special exception use is held to a different standard.

Mr. Stacer asked if staff is looking for a recommendation to extend the Moratorium and Mrs. Friedman responded that they are only looking for a recommendation on the text amendments.

Mr. Stacer opened up the discussion to the public.

Patrick Jovanov (411 NE 18th Avenue Pompano Beach, FL) introduced himself to the Board and complimented Mrs. Friedman and the rest of the team on their research. Patrick stated that he has visited the Salvation Army over the years and he wishes that staff would come up with more equitable regulations. Patrick stated that this was a part of history. Patrick stated that "this is very good."

Tara Patton introduced herself to the Board as the representative of Festival Flea Market (2900 West Sample Road Pompano Beach, FL) and asked how outlet stores like Nordstrom Rack are categorized since they are selling goods below market value. Mrs. Friedman responded that there is a use in the code called "other retail establishment" that does not take into account the prices of the items sold. Mrs. Patton asked if there was an umbrella that grouped alike types of "luxury items." Mrs. Friedman answered that it would be related accessories (example: purses and jewelry). Mrs. Patton asked that her concern was who gets to make that determination.

Mrs. Kovac asked if clothing, jewelry and purses would be considered consignment and Mrs. Friedman confirmed.

Dr. Mills asked staff why the moratorium is necessary. Mr. Bird answered that staff and the City Commission have determined that the location of many of these uses were creating side effects that were concerning. The moratorium gives staff time to study the issues and decide how to go forward. Dr. Mills asked if we are currently under moratorium and Mr. Bird confirmed.

Mr. Klosiewicz asked the Chairman if the Board is going to have the opportunity, at this time, to amend the language in the text amendments. Mr. Stacer confirmed.

Mr. Stacer closed the public hearing.

MOTION made by Richard Klosiewicz and seconded by Dwight Evans to recommend approval of the proposed text amendments to Thrift and Consignment shops with the word "luxury" stricken from code sections 155.4222.E.2 and Article 9, Part 5. All vote in favor of the above motion; therefore, the motion passed.

Mr. Stacer asked the Board if anyone had questions on the Alternative Financing presentation and recommendations.

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Dr. Mills asked if the proposed changes would mean that he cannot go into a bank and cash a check. Mrs. Friedman answered that one would be able to cash a check at a bank and they are separate uses. Dr. Mills asked why staff is recommending to modify the definition of bank to exclude these items. Mrs. Friedman answered that the definition of "Bank or Financial Institution" today includes a check cashing store. If we do not exclude them, we would be treating them under two different categories. We are not taking the ability to cash a check away from a bank, but we are removing the description of a check cashing facility from the "Bank or Financial Institution" use.

Mrs. Aycock asked staff why there is no separation distance between these uses and residential uses. Mrs. Friedman responded that she found separation of like uses in her research and the intent of this is to prevent clustering.

Mr. Evans asked if staff stated that these uses cause an area to become blighted. Mrs. Friedman confirmed that this is what the report indicated and the secondary effects blight the area, attract crime, cause deterioration of shopping centers, and they have certain appearance issues that may cause blighting (ex. bullet proof glass windows). Mr. Evans asked about the benefits staff identified on page 8 of the report and stated that he thinks there is a greater benefit to keeping the uses rather than removing them. Mr. Evans asked if we have this blight in Pompano. Mrs. Friedman responded that we have four distinct clusters of these uses and three of four are within or directly adjacent to the Northwest CRA which is a blighted area of the City. Mr. Evans asked if there was more than one facility located on Atlantic Blvd just west of Dixie Highway. Mrs. Friedman pulled up the map and responded that there are multiple locations in Cluster #4.

Mr. Klosiewicz stated that he believes that these stores would not have opened if they were not needed and that competition may benefit the people that are being served.

Mr. Stacer asked staff about an inconsistency between what is permitted in the PD-I in the appendix and the backup material. Mrs. Friedman stated that check cashing facility should not be permitted in the PD-I and confirmed it is an error and the Appendix is correct.

Mrs. Anderson asked if staff considered implanting design criteria for these uses. Mrs. Friedman responded design guidelines were not one of the considerations.

Mr. Klosiewicz asked if the State of Florida has some control over the rates that can be charged. Mrs. Friedman answered that the state has some rates but she does not know them off hand. Mr. Klosiewicz asked why people would use this type of service. Mrs. Kovac answered that it is possible that clients of these uses do not have checking accounts. Mr. Klosiewicz asked what people would do if this use is reduced or eliminated. Mrs. Friedman responded that staff's recommendation is not to eliminate the use.

Mrs. Kovac asked staff for confirmation that we are only talking about going forward and not talking about closing any existing Alternative Financing stores. Mrs. Friedman confirmed.

Mrs. Anderson asked if any of the existing uses will become nonconforming due to the separation requirements and Mrs. Friedman confirmed (legal non-conforming use).

Mr. Klosiewicz stated that he did not say anything that expressed that he believed that the uses were being eliminated.

Mrs. Aycock stated that, according to the research, the goal is to spread them out in order to lower the crime rates and help with appearance.

Mr. Klosiewicz asked how many stores on the map would be nonconforming. Mrs. Friedman responded that she could not provide that information at that very moment; however she could return with the requested information. Mr. Bird suggested a cover memo to the Board.

Mr. Stacer opened up the discussion to the public.

Vincente Thrower (1890 NW 6 AV Pompano Beach, FL) stated that the check cashing stores are needed in the minority community. Vincente stated that he believes this is a neighborhood discussion and not a board discussion on whether the neighbors want the stores in the area. Vincente expressed that the check cashing stores are important for people who have bad credit and are not able to open a bank account.

Patrick Jovanov (411 NE 18th Avenue Pompano Beach, FL) asked staff why the research includes military bases if there are no military bases in Pompano Beach. Mr. Jovanov expressed that he does not understand why there is a reference to military bases. Mr. Jovanov shared a quote from Mark Twain and stated that what is being proposed is a recurring prejudice that was discussed at City Commission meetings several times. The lack of financial institutions in the Northwest CRA was planned or discouraged.

The Chairman closed the public hearing and asked if the Board had any additional questions.

MOTION made by Joan Kovac and seconded by Tobi Aycock to recommend approval of the text amendments to Alternative Financing Uses. All voted in favor of the above motion with the exception of Jerry Mills and Dwight Evans.

The Board moved on to discussing Liquor Stores and other retail sales of alcoholic beverages.

Dr. Mills asked if these amendments will affect the American Legion, the Elks Lodge etc. Mrs. Friedman responded that these uses are not included. Dr. Mills if regular bars are included. Mrs. Friedman responded that bars with accessory package sales will be affected because the package sales will now be a new accessory use that would require approval.

Mr. Stacer asked staff for clarification on the difference between a brew pub and a distillery. Mrs. Friedman answered that the City has both brew pubs and food and beverage manufacturing and she briefly explained the differences between the two.

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Patrick Jovanov (411 NE 18th Avenue Pompano Beach, FL) asked how the Costco Liquor store would be grouped. Mrs. Friedman stated that we treat these membership stores as retail establishments.

The Chairman closed the public hearing and asked if any Board members had any additional questions.

MOTION made by Richard Klosiewicz and seconded by Dwight Evans to recommend approval of the text amendments to Liquor Stores and other retail sales of alcoholic beverages. All voted in favor of the above motion; therefore, the motion passed.

The Chair asked the Board if they had any questions concerning the proposed text amendments regarding Health Care uses.

Dr. Mills asked for the geographic definition of the AOD and Mr. Bird provided Dr. Mills with an explanation. Dr. Mills asked if he could open a one story office and have treatment on the first floor. Dr. Mills also asked why someone would not be able to have a doctor's office open after 7pm and expressed that he does not agree with the proposed changes.

Mrs. Friedman stated that the intent is to balance the various needs including access (ex. hours of operation) as well as taking into consideration the impact on neighboring properties (especially the residential community). Mrs. Friedman answered that the hours of operation in the AOD would be affected. Dr. Mills mentioned that there are many senior citizens living east and he expressed that he thinks the restrictions are wrong.

Cecelia Ward introduced herself to the Board as the Planning Consultant for the Pompano CRA and stated that she would like to address a few of the comments. Mrs. Ward stated that they have performed an extensive analysis of the medical facilities in the AOD and the DPOD. The research discovered that facilities exist that close before 7pm and open after 7am. Mrs. Ward informed the Board that the purpose of the restriction on the hours of operation is to utilize the evening activity to support the pedestrian oriented uses that will help revitalize the area. The research shows that the restriction on the hours is consistent with the current operating hours of the existing facilities.

Mr. Stacer asked why Health Care uses are not proposed to be permitted in the I-1X zoning district. Mrs. Friedman stated that this district is intended for heavier uses. Mr. Bird added that no I-1X locations would be on a major corridor.

The Chairman opened up the discussion to the public.

Vincente Thrower (1890 NW 6th Ave Pompano Beach, FL) asked if someone would be prohibited from building an urgent care facility on Martin Luther King Boulevard. Mrs. Friedman responded that on MLK, a Specialty Medical Facility would be prohibited in the Downtown Pompano Beach Overlay District. Mr. Thrower asked staff why we would prohibit an urgent care facility from being constructed when there are no existing facilities in the Northwest CRA community. Mr. Bird stated that this would not prohibit an urgent

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care center in the Northwest CRA, only in the downtown overlay district (DPOD). Mr. Thrower stated that he objects this item. Mr. Thrower asked the Chair what the logic is behind this regulation.

Mr. Stacer asked staff if it is permitted today. Mr. Bird responded that it is allowed today. Mr. Thrower asked if the text amendment is adopted it will not be permitted. Mr. Bird responded that the use would be permitted west of I-95 on MLK but not east of I-95.

Mr. Thrower asked why there would not be urgent care center allowed near the new residential development across from the E. Pat Larkins Center. Mr. Thrower asked the Board to not support the text amendment. Mr. Thrower asked if the item will need to pass the City Commission and staff confirmed. Mr. Thrower stated that he believes that it does not make economic sense to restrict the urgent care centers from the MLK corridor in the DPOD.

Patrick Jovanov (411 NE 18th Avenue Pompano Beach, FL) stated that the slide 17 of the presentation lists the "Lamb of God Recovery Centers" as being licensed since 2007 when it has been here for decades. Mr. Jovanov shared a personal account regarding a sober home and an attempted kidnapping of a small child. Mr. Stacer asked what part of the code Mr. Jovanov is referring to. Mr. Jovanov stated that the issue is allowing sober homes to be located in a residential district adjacent to schools. Mr. Jovanov stated that he does not have proof, but it is the only explanation for something like this happening in his neighborhood. Mr. Jovanov asked if sober homes are still permitted in the City under the temporary moratorium. Mrs. Friedman answered that the recommended text amendments do not deal with any housing uses and added that the question is unrelated to the topic at hand. Mr. Jovanov stated that he agrees with Mr. Thrower that not allowing urgent care is discrimination, prejudice, etc.

Mr. Stacer asked if this will happen in the east and west CRA. Mrs. Friedman responded that the use "Specialty medical facility" would be a special exception in B-3, permitted in B-4, I-1 and OIP. However, it would be prohibited in the AOD and DPOD. Mrs. Friedman stated that it is consistent with the goals of these districts in terms of promoting pedestrian activity uses and active night life activity. Mr. Stacer asked which uses are allowed in the AOD and DPOD and Mrs. Friedman answered that retail clinics, personal care services, and medical offices are all permitted uses in these districts.

Mr. Klosiewicz asked if an urgent medical facility open from 7am to 7pm would be permitted and Mrs. Friedman responded that it would not because the hours of operation are not the only issue. Other issues are ambulances (noise) and medical waste etc.

Mrs. Friedman answered that it is also ambulances, medical waste, (specialty medical uses), more intense that a regular doctor's office. Go here in lieu of the ER. Mr. K asked if these uses are permitted in the area that Vincente was worried about.

Mr. Evans said he thought that being transported in an ambulance to an urgent care facility occurs very infrequently. Mrs. Friedman stated that these uses have some deleterious secondary effects and we need to treat them with more regulation. Mr. Evans asked why

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it is necessary to go outside of the core area if there are not significant adverse effects. Mr. Bird stated that these uses will negatively affect redevelopment efforts.

Mrs. Kovac asked how many blocks from Martin Luther King Boulevard could there be an urgent care center.

Cecilia Ward explained the purpose of the redevelopment efforts for the DPOD area.

Mrs. Friedman explained the boundaries of the DPOD.

Mr. Evans asked if the zoning regulations of the area should adjust in the area as time goes on and be updated to reflect changes. Mrs. Friedman stated that this is what staff is trying to do and the point of the moratorium. Mr. Evans asked staff if it is their belief if a specialty medical facility located in the DPOD on MLK Boulevard would adversely affect development of the area.

Mr. Bird stated that there are many uses within the specialty medical facility (not just the urgent care center). Dr. Mills stated that he is asking specifically about medical offices and how these text amendments would eliminate these uses from the area. Mrs. Friedman stated that these uses are not consistent with the redevelopment efforts in the AOD and DPOD.

Mrs. Kovac asked if Dr. Mills is aware the urgent care centers close at 7pm as well.

Dr. Evans asked if the Board will be making a recommendation regarding one of staff's recommendations and Mrs. Friedman responded that those (that Mr. Evans is referring to) are the overriding recommendations and the proposed text amendments came from these recommendations. Mrs. Friedman stated that the Board could think of them as "Considerations 1, 2, 3 and 4" and the text amendments were prepared from these considerations.

Mr. Stacer asked if staff mapped the locations of the medical facilities. Mrs. Friedman replied that staff did mapping and staff was able to conclude from the mapping is that the change in the location of uses has not changed significantly from 2005 to 2015. The maps would not be useful because they would be so cluttered with the multiple locations.

Mr. Stacer closed the discussion to the public.

MOTION made by Elizabeth Anderson and seconded by Richard Klosiewicz to recommend approval of the proposed text amendments. All voted in favor of the above motion, with the exception of Jerry Mills and Dwight Evans, therefore the motion passed.

Mr. Stacer stated that he has questions for staff that are specific to the AOD. Mrs. Friedman placed a document on the screens for the Board to see and Mr. Stacer directed her to page 2, item number 3. Mr. Stacer asked what uses fall under 3b. Mrs. Friedman stated that the changes that were made reflected the changes coming out of the moratorium. Mrs.

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Friedman stated that staff will meet with the CRA and discuss visitor accommodation uses being permitted in a residential mixed use project.

Dr. Mills asked for clarification on the outcome of the most recent vote on health care uses and Mr. Stacer and Carrie Sarver clarified that there were two "Nays" or a 5-2 vote.

Mr. Stacer stated that, referring to page 3 and the parking exemptions, he is concerned about big projects that would theoretically not have to provide parking. Mrs. Friedman responded that this is an incentive for smaller projects that are looking to do adaptive reuse. Mrs. Friedman stated that this is an effective mechanism to get sites to convert their use to a more desirable use without meeting the parking requirements.

Mr. Stacer said that he considers it to be potentially dangerous to not require parking for new projects such as a large retail redevelopment project (100,000 square feet of retail).

Mr. Bird stated that this regulation has been in effect for 5 years and we have seen neither benefits nor deleterious effects. Mr. Bird used Delray Beach as an example of a City not requiring restaurants to provide additional parking and there were still new parking garages constructed. Mr. Stacer stated that he is still concerned about this concept. Mr. Bird suggested having staff come back before the Board with a separate report on this item. Mr. Stacer said that he is ok with this proposal.

Mrs. Aycock suggested staff look at the parking scheme in downtown Gainesville for ideas.

Mr. Klosiewicz complimented Mr. Bird and staff for their hard work regarding the reports on the moratorium uses.

E. AUDIENCE TO BE HEARD

Mr. Stacer asked if there was anyone in the audience who wished to speak and no one responded.

F. BOARD MEMBERS DISCUSSION

Mr. Stacer asked if the Board members had anything to discuss and there was no response.

G. REPORTS BY STAFF

Mr. Stacer asked if staff had anything to report and Ms. MacNeil announced that the next regularly scheduled meeting is December 16th, 2015.

H. ADJOURNMENT

MOTION made by Richard Klosiewicz and seconded by Dwight Evans to adjourn the meeting at 9:29pm; all voted in favor of the above motion.

DRAFT

Approved at the meeting held on January 27, 2016.

_____

Fred Stacer
Chairman
Planning and Zoning Board/Local Planning Agency

DRAFT

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MEMORANDUM

Development Services

ADMINISTRATIVE MEMORANDUM NO. 15-621

DATE: November 19, 2015

TO: Planning and Zoning Board

VIA: Robin M. Bird, Director of Development Services

FROM: Karen Friedman, AICP, Principal Planner KBF

RE: Temporary Moratorium – Staff Reports

Staff has prepared reports and recommendations regarding several uses subject to the temporary Moratorium. A copy of each report and supporting text amendments is following.

Staff's Request
Staff is requesting the Board approve the recommended changes to the Zoning Code to the City Commission for adoption.

pompanobeachfl.gov 100 West Atlantic Boulevard | Pompano Beach, FL 33060 | Phone: 954-786-4600

Article 3: Zoning Districts

***

Part 7: Overlay Zoning Districts

***

155.3703. ATLANTIC BOULEVARD OVERLAY DISTRICT (AOD)

***

C. Modified Use Standards

1. Permitted Uses

a. Permitted Principal Uses

Irrespective of the use standards applicable in the underlying base zoning district, and except as otherwise provided in subsection 2 below, the following modified use standards shall apply to principal uses in the Atlantic Boulevard Overlay district:

***

ii. A consignment ~~shop~~ boutique shall only be ~~a~~ permitted ~~use in any underlying base district allowing retail sales uses,~~ provided ~~the lot on which it is located~~ no portion of the use fronts on ~~a secondary street~~ Atlantic Boulevard.

***

v. A medical office shall only be permitted provided it complies with the following standards:

(A) Hours of operations for treatment are limited to 7:00 a.m. until 7:00 p.m.

(B) Medical offices located in a multistory building fronting Atlantic Boulevard shall not have any space used for treatment on the first floor.

(C) Medical offices located in a single story building fronting Atlantic Boulevard shall not have any space devoted to treatment in the portion of the building abutting Atlantic Boulevard.

vi. A personal services establishment whose principal services are massage therapy shall only be permitted provided it complies with the following standards:

(A) Hours of operations for treatment are limited to 7:00 a.m. until 7:00 p.m.

(B) Public access is limited to a storefront abutting a street.

(C) Special exception approval is required if the establishment is located less than 1,000 feet from another personal services establishment principal services are massage therapy. For purposes of this subsection, the distance shall be measured from public entrances.

***

2. Prohibited Uses

a. Prohibited Principal Uses.

***

ii. ~~Blood/tissue collection center~~ Specialty Medical Facility

iii. ~~Drug or Alcohol Treatment Facility which provides inpatient treatment~~ Urgent Care Facility – 24 Hours
iv. Specialty Hospital
~~iv.~~ General Hospital
vi. Medical or Dental ~~Clinic which provides overnight care and treatment~~ Lab
~~vi. Psychiatric Treatment Facility which provides inpatient treatment~~

***

xv. Thrift Shops
xvi. Check Cashing or Pay Day Loan Store

***

3. Standards Specific to Commercial/Residential Mixed-Use Developments

***

b. On Land Classified Commercial by Land Use Plan
The following standards apply to commercial/residential mixed-use development located on land classified Commercial by the Land Use Plan:

i. Commercial principal uses shall be limited to:
(A) Eating or drinking establishments (including accessory outdoor seating areas);
(B) ~~Office~~ Professional office and travel agency uses; and
(C) Retail sales and service uses.

c. On Land Classified as Residential by Land Use Plan
The following standards apply to commercial/residential mixed-use development located on land classified Residential by the Land Use Plan:
i. Commercial principal uses shall be limited to:
(A) Eating or drinking establishments (including accessory outdoor seating areas);
(B) ~~Offices for architects, engineers, attorneys, real estate agents, insurance agents, and similar non-medical professionals~~ Professional offices;
(C) ~~Offices for physicians, dentists, and similar medical professionals~~ Medical offices; and
(D) Neighborhood-scale retail sales and service uses.

4. Separation Requirements for Sales of Alcoholic Beverages Not Applicable for certain Eating or Drinking Establishments
The separation requirements applicable to uses involving the sale of alcoholic beverages (Section 155.4501) shall not apply to ~~such uses~~ bar or lounges, brewpubs, restaurants, or specialty eating or drinking establishments located within the Atlantic Boulevard Overlay district.

E. Modified Development Standards

***

2. Off-Street Parking

a. Minimum Number of Spaces Required

i. Multifamily Dwellings

No off-street parking spaces are required for any multifamily dwellings that are constructed by—or have a valid building permit as of—January 4, 2016. Multifamily dwellings permitted thereafter shall provide a minimum of one off-street parking space per 1,000 square feet of gross floor area.

ii. Nonresidential and Mixed-Use Development constructed by or having a valid building permit as of January 4, 2016

No off-street parking spaces are required for any nonresidential or mixed-use development constructed by—or have a valid building permit as of—January 4, 2016. ~~Nonresidential or mixed-use development permitted thereafter shall be subject to the following standards for minimum number of off-street parking spaces:~~

~~(A) Nonresidential development with a gross floor area totaling less than 25,000 square feet: No parking spaces required.~~

~~(B) Nonresidential development with a gross floor area totaling 25,000 square feet or more: one space per 1,000 square feet of gross floor area, or major fraction thereof.~~

~~(C) Mixed-use development: one space per 500 square feet of gross floor area devoted to nonresidential uses, or major fraction thereof, and one space per 1,000 square feet of gross floor area devoted to residential uses, or major fraction thereof.~~

iii. Retail sales and service uses and Eating and Drinking establishments constructed by or having a valid building permit as of January 4, 2021

No off-street parking spaces are required for any retail sales and service uses and eating and drinking establishments constructed by—or have a valid building permit as of—January 4, 2021.

155.3708. DOWNTOWN POMPANO BEACH OVERLAY DISTRICT (DP)

***

H. Use Regulating Plan and Modified Use Standards.

***

2. Principal Uses Regulating Table

TABLE 155.3708.H.2: PRINCIPAL USES REGULATING TABLE

P = PERMITTED S = SPECIAL EXCEPTION BLANK = NOT PERMITTED 1 = 2nd Floor Only 2 = Not Permitted in Historic Core 3 = Not Permitted in Historic Transition

Use Types		Use Areas															
		MM1		MM2		MUR		MO	RM	RS	MUCP - All Floors	CC1 - All Floors	CC2 - All Floors	RO	CF	PU	TR
		1st & 2nd Floors	2nd Floor & above	1st floor	2nd Floor & above	1st & 2nd Floors	3rd Floor & above										
Health Care Uses (155.4209)	~~Drug or alcohol treatment facility~~	~~S~~	~~S (1)~~	~~S~~	~~S~~	~~S~~		~~S~~			~~S~~	~~S~~	~~S~~				S
	~~Massage therapy establishment~~	~~P~~	~~P (1)~~	~~P~~	~~P~~	~~P~~		~~P~~			~~P~~	~~P~~	~~P~~				~~P~~
	Medical ~~or dental clinic~~ office	P	P (1)	P	P	P		P			P	P	P				P
	~~Medical or dental lab~~	~~P~~	~~P (1)~~	~~P~~	~~P~~	~~P~~		~~P~~			~~P~~	~~P~~	~~P~~				-
	***																
	~~Psychiatric treatment facility~~	~~S~~	~~S (1)~~	~~S~~	~~S~~	~~S~~		~~S~~			~~S~~	~~S~~	~~S~~				~~S~~
Retail / Retail Sales (155.4222)	***																
	Consignment ~~shop~~ Boutique (2) (3)	P	P (1)	P	P	P		P			P	P	P				P
	~~Convenience store~~	~~P~~	~~P (1)~~	~~P~~	~~P~~	~~P~~		~~P~~			~~P~~	~~P~~	~~P~~				~~P~~
	***																
	~~Meat, poultry, or seafood market~~	~~P~~	~~P (1)~~	~~P~~	~~P~~	~~P~~		~~P~~			~~P~~	~~P~~	~~P~~				~~P~~
	***																
	~~Thrift shop (2) (3)~~	~~P~~	~~P (1)~~	~~P~~	~~P~~	~~P~~		~~P~~			~~P~~	~~P~~	~~P~~				~~P~~
	Regional Liquor or Package Store (2) (3)	S		S		S		S			S	S	S				S
	Beer or Wine Store	S		S		S		S			S	S	S				S

4. Modified Use Standards

The following use-specific standards are modified for the DPOD:

~~a. The following Health Care Uses are permitted provided there is no overnight treatment or stays:~~

~~i. Section 155.4209.B (Drug and Alcohol Treatment Facility)~~

~~ii. Section 155.4209.E (Medical or Dental Clinic)~~

~~iii. Section 155.4209.I (Psychiatric Treatment Facility)~~

a. Medical offices hours of operations for treatment are limited to 7:00 a.m. until 7:00 p.m.

***

i. A personal services establishment whose principal services are massage therapy shall only be permitted provided it complies with the following standards:

(A) Hours of operations for treatment are limited to 7:00 a.m. until 7:00 p.m.

(B) Public access is limited to a storefront abutting a street.

(C) Special exception approval is required if the establishment is located less than 1,000 feet from another personal services establishment principal services are massage therapy. For purposes of this subsection, the distance shall be measured from public entrances.

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MEMORANDUM

Development Services

ADMINISTRATIVE MEMORANDUM NO. 15-626

DATE: November 30, 2015

TO: Planning and Zoning Board

VIA: Robin M. Bird, Director of Development Services

FROM: Karen Friedman, AICP, Principal Planner KBF

RE: City of Pompano Beach Community Redevelopment Agency
Pompano Beach Moratorium Studies
Supplemental Support Document References

Attached please find a Bibliography of the research prepared by the City of Pompano Beach Community Redevelopment Agency for the Moratorium Studies.

pompanobeachfl.gov 100 West Atlantic Boulevard | Pompano Beach, FL 33060 | Phone: 954-786-4600

Bibliography

City of Pompano Beach Community Redevelopment Agency
Pompano Beach Moratorium Studies
Supplemental Support Document References

11.18.15

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- ILLEGAL DUMPING RILES THRIFT STORE OWNERS: VENTURA-
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Copy of Ord. 2015-67

ORDINANCE NO. 2015-67

CITY OF POMPANO BEACH
Broward County, Florida

AN ORDINANCE OF THE CITY OF POMPANO BEACH, FLORIDA, PROVIDING FOR IMPOSITION OF A MORATORIUM ON ISSUANCE OF DEVELOPMENT ORDERS AND PERMITS AND ON THE PROCESSING OF APPLICATIONS RELATING TO HEALTH CARE USES, CHECK CASHING STORES, CONVENIENCE STORES, LIQUOR OR PACKAGE STORES, PAWN SHOPS , THRIFT SHOPS AND DORMITORIES WITHIN THE CITY; PROVIDING FOR VESTED RIGHTS; APPEALS; AND EXHAUSTION OF ADMINISTRATIVE REMEDIES; PROVIDING FOR A SIX (6) MONTH TERM TO BE EXTENDED IF NECESSARY BY THE CITY COMMISSION; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Commission and the City's Planning and Zoning Board, the Local Planning Agency, have previously undertaken the necessary studies and adopted a Comprehensive Plan to guide and control growth in the City; and,

WHEREAS, the goals, objectives and policies contained within the City's adopted Comprehensive Plan require that the City:

i. Annually review and periodically update adopted land development regulations and established procedures that encourage the elimination or reduction of uses inconsistent with the City's character and Future Land Use Plan. (Future Land Use Element - Objective Inconsistent Land Uses - 01.03.00)

ii. Support and promote hotels, motels and other tourist accommodations in designated residential, commercial and commercial recreation land use designations. (Future Land Use Element – Policy - 01.03.10)

iii. Encourage the adoption of innovative land development regulations. Adopt new land use designations for Residential, Mixed Use, Transportation Oriented Districts, Transportation

Oriented Corridors and amend the land development regulations, including the creation of new zoning districts for these land use designations. (Future Land Use Element - Objective New Land Use Regulations - 01.07.00)

iv. Continually review and amend new land use designations for Residential, Mixed Use and Transportation Oriented Districts. (Future Land Use Element - Policy - 01.07.02)

v. Through ongoing updates to the land development regulations revise prohibited and permitted uses in the commercial, industrial and non-residential zoning districts. (Future Land Use Element - Policy - 01.07.07)

vi. Follow the recommendation of the Community Redevelopment Plans in all Land Use Plan amendments and rezonings. (Future Land Use Element – Community Redevelopment - 01.08.01)

vii. Redevelopment activities in the Community Redevelopment Areas shall be guided by their respective Community Redevelopment Plans, adopted pursuant to Chapter 163, Part III, Florida Statutes. (Future Land Use Element - Policy - 01.11.03)

viii. Establish criteria which encourage development of urban infill and community redevelopment areas to promote economic development, increase housing opportunities and maximize the use of existing public facilities and services. (Future Land Use Element - Objective Urban Infill Criteria - 01.12.00);

and,

WHEREAS, the City of Pompano Beach contains two (2) Community Redevelopment Areas: the West Pompano Beach District CRA, also known as the NW CRA, a 3,000 acre area established in 1989, and the East Pompano Beach District CRA, a 158 acre area, that was established in 2001; and

WHEREAS, the NW CRA and the EAST CRA areas were established for the purpose of removing existing slum and blight conditions and provide economic benefits to the City's residents; and

WHEREAS, the East CRA area encompasses the majority of lands contained within the Atlantic Boulevard Overlay District (AOD) and the NW CRA area encompasses the Transit Oriented Corridor District (TOC); and

WHEREAS, the City adopted land development regulations for the AOD and the TOC; and

WHEREAS, the projects and programs of the City's Community Redevelopment Agency in the East CRA and in the NW CRA are designed to solve underlying problems that have a blighting influence on the redevelopment areas as further expressed in East CRA Redevelopment Plan and in the NW CRA Redevelopment Plan; and

WHEREAS, the AOD encompasses the Atlantic Boulevard Corridor which was included in a 2008 Urban Land Institute Technical Advisory Panel wherein the ULI recommended medium density, mixed-use development on Atlantic Boulevard; lower-scale development between the medium density and single family; creating great public spaces that exemplify and promote pedestrian activity; maintaining a small town feel and encouraging smaller scale (not big box) uses; and

WHEREAS, the AOD was also the subject of the City's Beach Master Plan which was approved in September 2008, which included measures for the restoration of the dune system along the public beach; streetscape improvements and realignment for Pompano Beach Boulevard; streetscape improvements for the east end of Atlantic Boulevard; a mixed use project and parking garage with 500 parking spaces; a new Fire Station, Library and upgrades to North Riverside Drive Park; and

WHEREAS, the City's Community Redevelopment Agency adopted an East Financing and Implementation Plan, which sets forth financial resources required and necessary for the

CRA to attain its redevelopment goals in the East CRA, which includes the majority of the AOD area; and

WHEREAS, the City's Community Redevelopment Agency adopted a Northwest Financing and Implementation Plan, which sets forth financial resources required and necessary for the CRA to attain its redevelopment goals in the NW CRA; and

WHEREAS, in its adopted Comprehensive Plan, the City identified "Major Issue No. 5: City Sense of Place" wherein the City expressed that there is a unique opportunity for the City to capitalize on its key transportation corridors, its major attractions and the Northwest and East Redevelopment CRA's to improve on its sense of place; and

WHEREAS, the City also adopted a Strategic Plan for the City of Pompano, wherein the City adopted the following strategies in support of the CRA redevelopment plans:

i. 2.0 Tourism: Make the City more attractive to residents, visitors and tourists and expand visitor and tourism markets.

ii. 5.0 Corridor Redevelopment: Enhance Corridor Redevelopment

5.1 Begin implementation of corridor studies and plans for Federal Highway, Atlantic Boulevard and Dixie Highway

5.2 Promote Class A office space development on Atlantic Boulevard near I-95 and along the Dixie corridor

5.3 Support and facilitate development of an education corridor along MLK

5.4 Improve overall aesthetic appearances

iii. 6.0 CRA Redevelopment: Enhance CRA area redevelopment

6.1 Expand CRA incentive programs

WHEREAS, the City has contracted with The Renaissance Planning Group to prepare corridor studies for Atlantic Boulevard, Dixie Highway and Federal Highway to identify

elements crucial to economic development and redevelopment along these major city transportation corridors; and

WHEREAS, the Zoning Code of the City of Pompano Beach, is designed to promote health, and general welfare, and to promote adequate light and air, and to prevent the overcrowding of land, and to avoid the undue concentration of population, and to facilitate adequate transportation, water, sewage treatment, schools, parks and other public requirements; and

WHEREAS, the process of growth and change within the City requires the continuing analysis of living and working conditions; and

WHEREAS, the health, safety and welfare of the citizens of Pompano Beach are proper and necessary for the consideration of the City Commission; and

WHEREAS, the continual flux of patterns in the urban community requires intensive restudy of areas of the community; and

WHEREAS, the changing patterns often cause existing zoning districts to become outdated, inequitable, unbalanced and inappropriate as applied; and

WHEREAS, it is in the public interest to make a determination as to whether existing zoning uses are appropriate where it appears that changing patterns have cast doubt on their propriety; and

WHEREAS, it is in the public interest to review the Zoning Code so as to ensure that the City's economic redevelopment efforts are not frustrated due to a proliferation of incompatible uses; and

WHEREAS, it is in the public interest to protect the substantial financial investment the City has made in recent years to promote economic redevelopment; and

WHEREAS, the moratorium is intended to allow sufficient time to study the provision of these uses for the citizens of Pompano Beach and to create a long term strategy to ensure adequate access to such services is provided; and

WHEREAS, the moratorium is intended to allow sufficient time to study the provision and location of these uses in a manner that does not result in an over-concentration of these uses that will further result in the blighting or downgrading of the surrounding neighborhood; and

WHEREAS, the moratorium is intended to allow sufficient time to study the provision of these uses to ensure that there is a balance between the existing residential uses and the projected demand for and location of these uses; and

WHEREAS, the moratorium is also intended to allow sufficient time to study the provision of these uses within the AOD and the DPOD, TOC, East CRA, NW CRA, corridors connecting the CRA areas and the corridors being studied by The Renaissance Planning Group and to determine the impact of these uses on the economic redevelopment efforts included in the City's Comprehensive Plan, the City's Community Redevelopment Plans, the CRA East Financing and Implementation Plan, the CRA NW Financing and Implementation Plan, the City's Beach Master Plan, and the City's Strategic Plan; and

WHEREAS, while the study conducted by The Renaissance Planning Group will address the City's major transportation corridors, additional studies are needed to address the impact of permitted and prohibited uses in the City; and

WHEREAS, the City desires to ensure, while necessary studies are presently underway for the formulation and implementation of remedial measures referenced herein, that additional Applications, Orders and Permits, as specified in the City's Code of Ordinances ("CODE") listed

below not be processed or issued in the City within the scope of the moratorium which is described herein:

> Health Care Uses (Code Sec. 155.4209), Check Cashing Store (Code Sec. 155.4221.C), Convenience Store (Code Sec. 155.4222.F), Liquor or Package Store (Code Sec. 155.4222.K), Pawn Shop (Code Sec. 155.4222.L), Thrift Shop (Code Sec. 155.4222.M) and Dormitory (Code Sec. 155.4303.II);

and

WHEREAS, in accordance with Florida Statutes, Section 166.041 (3)(c)2, advertisement in accordance with said statute have been published in a newspaper of general paid circulation in the City of Pompano beach and of general interest and readership in the community, notifying the public of two public hearings on this proposed Ordinance; and

WHEREAS, two public hearings have been held pursuant to said published hearings and all persons so desiring had the opportunity to be and were, in fact, heard; now therefore,

BE IT ENACTED BY THE CITY OF POMPANO BEACH, FLORIDA:

SECTION 1. Moratorium Imposed; Applicability.

A. During the time that this Ordinance is in effect as specified herein, there shall be a moratorium upon the acceptance of applications and the issuance of Development Orders and Permits, as defined in Section 163.3164, Florida Statues, (collectively "Development Orders") approving Health Care Uses (Code Sec. 155.4209), Check Cashing Store (Code Sec. 155.4221.C), Convenience Store (Code Sec. 155.4222.F), Liquor or Package Store (Code Sec. 155.4222.K), Pawn Shop (Code Sec. 155.4222.L), Thrift Shop (Code Sec. 155.4222.M) and Dormitory (Code Sec. 155.4303.II).

SECTION 2. Vested Rights.

A. Nothing in this Ordinance shall be construed or applied to abrogate the vested right of a property owner to complete development where the property owner demonstrates each of the following:

1. A governmental act of development approval obtained prior to the effective date of this Ordinance; and

2. Upon which the owner has detrimentally relied, in good faith, by making such a substantial change in position or incurring such extensive obligations and expenses; and

3. That it would be highly inequitable to deny the property owner the right to complete development.

B. Except as provided by paragraph (C) below, any property owner claiming to have vested rights under this Section must file an application with the City Manager for a vested rights determination within thirty (30) days after the effective date of this Ordinance. The application shall be accompanied by a fee of $600.00 and contain a sworn statement as to the basis upon which the vested rights are asserted, together with documentation required by the City Manager and other documentary evidence supporting the claim. The City Manager shall review the application and, based upon the evidence submitted, shall make a determination as to whether the property owner has established vested rights. The City Manager's decision shall be subject to appeal by the applicant for vested rights determination or by a third party claiming to be adversely affected by the City Manager's decision, provided that the third party can demonstrate a legally recognizable interest which is or will be affected by the decision and that such interest, which while it may be shared in common generally with other members of the community, is definite and exceeds in degree the general interest in the community good shared by all persons. Such appeals may be made to the City Commission by notice of appeal filed with the City

Manager within ten (10) days after the City Manager's written decision. In the event of a timely appeal, the City Commission shall hold a public hearing on appeal and, based upon the evidence submitted, shall make a determination as to whether or not the property owner has established vested rights. To the extent that a property owner demonstrates vested rights, the moratorium shall not be applied to that owner.

C. Any property owner establishing vested rights under this Section shall not be subject to this moratorium and shall be authorized to apply for Orders, and Permits in accordance with a Vested Rights Determination Agreement to be executed by the City and the property owner. A copy of the Vested Rights Determination Agreement shall be filed with the City Clerk, accompanied by a letter which references this paragraph (C) within Forty-five (45) days after the effective date of the City Commission's determination under this Section.

SECTION 3. Appeals. Appeals from final decision by the City Commission under Section 2 of this Ordinance shall be by the filing of a Petition for Certiorari in the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County in accordance with the Florida Rules of Appellate Procedure for the review of the quasi-judicial rulings of municipalities.

SECTION 4. Exhaustion of Administrative Remedies. No property owner claiming that this Ordinance as applied constitutes or would constitute a temporary or permanent taking of private property or an abrogation of vested rights may pursue such claim unless he or she has first exhausted all administrative remedies provided for in Section 2.

SECTION 5. Term. The moratorium imposed by this Ordinance is temporary and, unless dissolved earlier by the City, shall automatically dissolve in six (6) months from the effective date of this Ordinance unless otherwise extended in accordance with applicable law.

The moratorium may be reasonably extended, if, necessary, by Ordinance of the City Commission.

SECTION 6. Conflicts. All Sections or parts of Sections of the Code of Ordinances, all Ordinances or parts of Ordinances, and all Resolutions, or parts of Resolutions, in conflict with this Ordinance are repealed to the extent of such conflict.

SECTION 7. Severability. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decisions shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

SECTION 8. Effective Date. This Ordinance shall become effective upon passage.

PASSED FIRST READING this 23rd day of June, 2015.

PASSED SECOND READING this 14th day of July, 2015.

LAMAR FISHER, MAYOR

ATTEST:

ASCELETA HAMMOND, CITY CLERK

GBL/tal/ds:jrm
7/15/2015
l:ord/2015-367a

PowerPoint Presentation for the City Commission Hearing

Temporary Moratorium

Recommendations for AOD and DPOD

City Commission Hearing
February 9, 2016

AOD

- Thrift Shops
  - No change, continue to prohibit
- Consignment Boutiques
  - Prohibit from fronting Atlantic Blvd
- Check Cashing or Pay Day Loan Store
  - Prohibit
- Pawn Shop
  - No change, continue to prohibit
- Beer or Wine Store, Local Liquor Store, and Regional Liquor Store
  - Require SE approval
- Limit uses exempt from Alcoholic Beverage Separation Standards
  - Bars or Lounges, brewpubs, restaurants, or specialty eating or drinking establishments
- Specialty Medical Facility, Urgent Care Facility - 24 Hours, Specialty Hospital, General Hospital, Medical or Dental Lab
  - Prohibit
- Medical Office
  - Limit Hours of Operation to 7:00 a.m. until 7:00 p.m.
  - Restrict locations on first floor, if abutting Atlantic Blvd.
- Massage Therapy
  - Require Special Exception if within 1,000 feet of another establishment

DPOD

- Thrift Shops
  - No change, continue to prohibit
- Consignment Boutiques
  - No change, continue to prohibit from Historic Areas
- Check Cashing or Pay Day Loan Store
  - Prohibit
- Pawn Shop
  - No change, continue to prohibit
- Local Liquor Store
  - Prohibit
- Beer or Wine Store or Regional Liquor Store
  - Require SE approval
- Specialty Medical Facility, Urgent Care Facility - 24 Hours, Specialty Hospital, General Hospital, Medical or Dental Lab
  - Prohibit
- Medical Office
  - Limit Hours of Operation to 7:00 a.m. until 7:00 p.m.
- Massage Therapy
  - Require Special Exception if within 1,000 feet of another establishment

#19

pompano beach
Florida's Warmest Welcome

MEMORANDUM

Development Services

2016 MAR -1 AM 9:39

DATE: February 29, 2016

TO: Dennis W. Beach, City Manager

FROM: Jennifer Gomez, Assistant Development Services Director JG

VIA: Robin M. Bird, Development Services Director RB

RE: CRS Consultation Services for the City's Conversion to 2013 CRS Manual

---

The Development Services Department intends to contract with CRS Max Consultants, Inc., for the City's Conversion to 2013 CRS Manual. This will be a multi-year contract requiring an Ordinance and Commission approval.

This item was tabled to the March 8, 2016, meeting. However, at this time, we are asking that the Commission strike this item from the agenda while the vendor revises its scope of work to more clearly define its deliverables apart from the obligations of the City.

Thank you.

G:\Development Services\Contract Management\CRS Max\City Manager Memo 2-29-16.docx

Meeting Date: March 8, 2016 Agenda Item 2D

REQUESTED COMMISSION ACTION:

Consent	X Ordinance	Resolution	Consideration/ Discussion	Presentation
____	____	____	____	____

SHORT TITLE

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH AMENDING CHAPTER 155 "ZONING CODE", BY AMENDING SECTION 155.2305, "PUBLIC HEARING SCHEDULING AND NOTICE" TO EXPAND THE TIME PERIOD FOR REQUIRED PUBLIC NOTICE; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

Summary of Purpose and Why:

Several applications currently require notices to be mailed five (5) calendar days prior to the Advisory Board Hearing. Due to recent routing changes with the USPS, this number of days appears to no longer provide adequate notice of hearings. During the Audience To Be Heard portion of the October 27, 2015 City Commission hearing, Staff was directed to increase the mailed noticing deadlines from five (5) calendar days to six (6) business days (copy of Minutes attached). Staff has already implemented this new procedure and the text amendment will codify the requirement. The text amendments were unanimously recommended at the December 16, 2015 Planning and Zoning Board meeting (A copy of the draft Minutes are attached).

(1) Origin of request for this action: Development Services Dept.
(2) Primary staff contact: Robin M. Bird/ Karen Friedman KBF Ext. 7792
(3) Expiration of contract, if applicable: N/A
(4) Fiscal impact and source of funding: N/A

DEPARTMENTAL COORDINATION	DATE	DEPARTMENTAL RECOMMENDATION	DEPARTMENTAL HEAD SIGNATURE
Dev. Services	12/08/2015	Approval	Memo #15-649
City Attorney		✓	Memo #2016-366
X Planning and Zoning Board		Approval	Memo #16-003 (01/12/2016)
X City Manager			

Ordinance Workshop	Resolution	Consideration	
1st Reading	1st Reading	Results:	Results:
2nd Reading			

G:\Zoning 2009\Code Rewrite\Code Amendments\Mailed Notices 155-2305\March 8 2016 CC\CC Agenda sheet.doc

City Attorney's Communication #2016-366

January 11, 2016

TO: Karen Friedman, AICP, Principal Planner

FROM: Mark E. Berman, City Attorney

RE: Ordinance Amending Section 155.2305., "Public Hearing Scheduling and Notice"

As requested in your memorandum of December 17, 2015, Department of Development Services Memorandum No. 15-668, the following form of Ordinance, relative to the above-referenced matter, has been prepared and is attached:

> **AN ORDINANCE AMENDING CHAPTER 155, "ZONING CODE," OF THE CODE OF ORDINANCES OF THE CITY OF POMPANO BEACH, FLORIDA, BY AMENDING SECTION 155.2305., "PUBLIC HEARING SCHEDULING AND NOTICE," TO EXPAND THE TIME PERIOD FOR REQUIRED PUBLIC NOTICE OF PUBLIC HEARINGS ON ZONING RELATED MATTERS; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.**

Please carefully review the ordinance to ensure that it meets with your request.

MARK E. BERMAN

/jrm
l:cor/dev-srv/2016-366

Attachment

ORDINANCE NO. 2016-_____

CITY OF POMPANO BEACH
Broward County, Florida

AN ORDINANCE AMENDING CHAPTER 155, "ZONING CODE," OF THE CODE OF ORDINANCES OF THE CITY OF POMPANO BEACH, FLORIDA, BY AMENDING SECTION 155.2305., "PUBLIC HEARING SCHEDULING AND NOTICE," TO EXPAND THE TIME PERIOD FOR REQUIRED PUBLIC NOTICE OF PUBLIC HEARINGS ON ZONING RELATED MATTERS; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

WHEREAS, pursuant to law, ten (10) days' notice has been given by publication in a paper of general circulation in the City, notifying the public of this proposed ordinance and of a public hearing in the City Commission Chambers of the City of Pompano Beach; and

WHEREAS, a public hearing before the City Commission was held pursuant to the published notice described above, at which hearing the parties in interest and all other citizens so desiring had an opportunity to be and were, in fact, heard; now, therefore,

BE IT ENACTED BY THE CITY OF POMPANO BEACH, FLORIDA:

SECTION 1. That Section 155.2305., "Public Hearing Scheduling and Notice," of Chapter 155, "Zoning Code," of the Code of Ordinances of the City of Pompano Beach is hereby amended to read as follows:

§ 155.2305. PUBLIC HEARING SCHEDULING AND NOTICE

. . .

C. PUBLIC HEARING NOTICE

1. General Notice Requirements

Public notice of the public hearing on an application shall be required as shown in Table 155.2305.C: Public Hearing Notice Requirements, for the type of application and the type of notice. In computing the time periods prescribed for notices, the day the notice is published or postmarked shall not be included, but the day of the hearing shall be included.

TABLE 155.2305.C: PUBLIC HEARING NOTICE REQUIREMENTS [1] CC = CITY COMMISSION ZBA = ZONING BOARD OF APPEALS P&Z = PLANNING AND ZONING BOARD AAC = ARCHITECTURAL APPEARANCE COMMITTEE HPC = HISTORIC PRESERVATION COMMITTEE			
APPLICATION TYPE	NOTICE REQUIREMENT		
	TIMING OF PUBLISHED NOTICES	MAILED NOTICES	
		TIMING	RECIPIENTS
. . .	. . .	. . .	. . .
City-initiated General Zoning Map Amendment (Rezoning) proposing to reclassify parcel(s) involving less than 10 contiguous acres	• Publish notice of the P&Z public hearing at least 5 calendar days before the hearing date • Publish notice of the CC public hearing at least 10 calendar days before the hearing date	• Mail notice of the P&Z public hearing at least ~~5 calendar~~ 6 business days before the hearing date • Mail notice of the first CC public hearing at least 30 calendar days before the hearing date	• Applicant • Owner(s) of land subject to the application • Owners of real property within 500 ft of the parcel(s) subject to the application [5] • Local planning agency of the county or adjacent municipality, if its jurisdictional boundary lies within 500 ft of the parcel(s) subject to the application
City-initiated Site - Specific Zoning Map Amendment (Rezoning) proposing to reclassify parcel(s) involving less than 10 contiguous acres			
General Zoning Map Amendment (Rezoning) initiated by other than the city		• Mail notice of the P&Z public hearing at least ~~5 calendar~~ 6 business days before the hearing date • Mail notice of the first CC public hearing at least 10 calendar days before the hearing date	
Site-Specific Zoning Map Amendment (Rezoning) initiated by other than the city			
Planned Development			
Special Exception	Publish notice of the public hearing at least 5 calendar days before the hearing date	Mail notice of the public Hearing at least ~~5 calendar~~ 6 business days before the hearing date	
Variance			
Major Administrative Adjustment			
Major Certificate of Appropriateness			
Major Temporary Use Permit		Mail notice of the public Hearing at least ~~5 calendar~~ 6 business days before the hearing date	• Applicant • Owner(s) of land subject to the application • Owners of real property within 500 ft of the parcel(s) subject to the application [5] • Local planning agency of the county or adjacent municipality, if its jurisdictional boundary lies within 500 ft of the parcel(s) subject to the application
Interim Use Permit			
Appeal [2]			
. . .	. . .	. . .	. . .

SECTION 2. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance that 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 3. This Ordinance shall become effective upon passage.

PASSED FIRST READING this _____ day of _____, 2016.

PASSED SECOND READING this _____ day of _____, 2016.

_____

LAMAR FISHER, MAYOR

ATTEST:

_____

ASCELETA HAMMOND, CITY CLERK

:jrm
1/5/16
L:ord/ch155/2016-83

meant for the Land Use Plan Amendment and not intended for this part of the presentation.

Mr. Stacer mentioned downzoning and that we have to be careful when downzoning a property. Mr. Syrek asked about the one acre sites being exempt from the affordable housing requirements. Mrs. Gomez stated that this code change was voted on and recommended by this Board very recently.

6. Chapter 155 Zoning Code Text Amendments, Public Hearing Notice Requirements

Staff is recommending text amendments to the Zoning Code regarding increasing the public hearing noticing deadline from five (5) calendar days to six (6) business days.

Karen Friedman introduced herself to the Board and stated that Staff is recommending text amendments to the Zoning Code regarding public hearing notice requirements. Staff was given direction by the City Commission at a recent hearing to revise the mailed notice requirements for several applications that are noticed for the advisory boards. Several applications currently require notices to be mailed five (5) calendar days prior to the Advisory Board Hearing. Due to recent routing changes with the USPS, this number of days appears to no longer provide adequate notice of hearings. The City Commission directed Staff to increase the mailed noticing deadlines from five (5) calendar days to six (6) business days. Mrs. Friedman added that Staff is recommending approval.

Mr. Evans asked how the six business days were derived. Karen Friedman stated that it was a balance between requiring the additional notification days and trying to keep a reasonable application deadline. Mrs. Friedman added that Staff has informally been implementing this change in the office since the direction from the City Commission was given to Staff.

Mr. Evans asked if there are statutory requirements set forth by the State. Carrie Carver (City of Pompano Beach Assistant City Attorney) stated that we have home rule powers so we put our notice requirements in the land use code and the City Attorney's office is very supportive of the code change to six business days. This is more notice than other local governments are providing. Per Florida Statutes, we need to provide "reasonable notice." Mrs. Sarver added that this change is only for the mailed notices.

Mr. Syrek asked if we could advertise the Planning and Zoning Board items on Channel 78 (include item name and address and omit legal description). More discussion took place concerning the display of the agenda items on television. Mrs. Sarver stated that we could advertise on television as long as we have met our noticing requirements set forth by the code (mailed notices and/or publishing in the Sun Sentinel). Mrs. Sarver told Mr. Syrek that she can relay his suggestions to the Public Information Officer.

DRAFT

Mr. Evans asked if the neighborhood associations in the City are accounted for and Mr. Syrek responded that there is a list on the City's website. More discussion took place concerning neighborhood associations.

Mr. Stacer clarified that the Atlantic Tower building is proposed to be eight stories and not fifteen as Mr. Syrek alluded to.

MOTION was made by Richard Klosiewicz and seconded by Dwight Evans to recommend approval of the proposed text amendments to increase the public hearing noticing deadlines. All voted in favor of the above motion; therefore, the motion passed.

7. Chapter 155 Text Amendments, Special Exception Review Criteria

Staff is recommending revisions to the Special Exception review criteria in the Zoning Code.

Karen Friedman introduced herself to the Board and stated that this proposed text amendment is related to the temporary moratorium and the standards and recommendations that were reviewed by the Planning and Zoning Board at the special set hearing (November 30th). Staff is recommending requiring Special Exception approval for several existing uses (that are currently permitted uses) as well as for several new uses that will be identified in the code which will require special exception approval. Staff reviewed the Special Exception Review Criteria, specifically Staff analyzed the existing review standards and the review criteria utilized by the City between 1994 through 2012. Mrs. Friedman stated that a line by line analysis was done and it is included in the Board's backup. Based on this analysis, Staff is recommending revisions to the review criteria:

Criteria #5 – The text amendment would clarify that appropriateness and compatibility is with neighboring lands (a definition of neighboring is also inserted as Criteria #12). The text amendment would clarify how appropriateness and compatibility is determined.

Criteria #7 – The text amendment would clarify how the properties would need to be buffered that addresses compatibility with neighboring lands.

Criteria #9 – The text amendment would clarify that traffic and issues related to vehicular movement would need to address the neighborhood.

Criteria #10 – The text amendment adds back in the consideration of the need for this use in the neighborhood, including the availability of the use.

Mrs. Friedman stated that staff is requesting the Board approve the recommended changes to the Zoning Code to the City Commission for adoption.

Mr. Stacer asked if the Board had any questions and received no response.

DRAFT

PLANNING AND ZONING BOARD/ LOCAL PLANNING AGENCY
MEMORANDUM #16-003

DATE: January 12, 2016

TO: City Commission

FROM: Planning and Zoning Board/ Local Planning Agency

SUBJECT: Proposed Text Amendments to Zoning Code,
Table 155.2305.C: Public Hearing Notice Requirements

At the meeting of the Planning and Zoning Board/ Local Planning Agency held on December 16, 2015, the Board considered proposed text amendments to Article 2 (Administration) of the Zoning Code, as set forth in the Department of Development Services Administrative Report 15-649.

Within Article 2 (Administration) Staff recommends revising Table 155.2305.C: Public Hearing Requirements to increase the mailed noticing deadlines from five (5) calendar days to six (6) business days.

With a unanimous vote for the approval of the amendments, it is the recommendation of the Board that the text amendments be approved.

Fred Stacer
Chairman
Planning and Zoning Board/ Local Planning Agency

kem
G:\Zoning 2009\Code Rewrite\Code Amendments\Mailed Notices 155-2305\December 16 2015 P&Z\PZ Approval Memo_Mailed Notices.doc

pompano beach
Florida's Warmest Welcome

MEMORANDUM

Development Services

ADMINISTRATIVE MEMORANDUM NO. 15-649

DATE: December 8, 2015

TO: Planning and Zoning Board

VIA: Robin M. Bird, Director of Development Services RB

FROM: Karen Friedman, AICP, Principal Planner KBF

RE: Text Amendments to Zoning Code
Table 155.2305.C: Public Hearing Notice Requirements

Staff is recommending text amendments to the Zoning Code regarding public hearing notice requirements.

Several applications currently require notices to be mailed five (5) calendar days prior to the Advisory Board Hearing. Due to recent routing changes with the USPS, this number of days appears to no longer provide adequate notice of hearings. During the *Audience To Be Heard* portion of the October 27, 2015 City Commission hearing, Staff was directed to increase the mailed noticing deadlines from five (5) calendar days to six (6) business days. Staff has already implemented this new procedure and the text amendment will codify the requirement.

Staff's Request
Staff is requesting the Board approve the recommended changes to the Zoning Code to the City Commission for adoption.

pompanobeachfl.gov 100 West Atlantic Boulevard | Pompano Beach, FL 33060 | Phone: 954-786-4600

155.2305. PUBLIC HEARING SCHEDULING AND NOTICE

C. Public Hearing Notice

1. General Notice Requirements

Public notice of the public hearing on an application shall be required as shown in Table 155.2305.C: Public Hearing Notice Requirements, for the type of application and the type of notice. In computing the time periods prescribed for notices, the day the notice is published or postmarked shall not be included, but the day of the hearing shall be included.

TABLE 155.2305.C: PUBLIC HEARING NOTICE REQUIREMENTS [1] CC = City Commission ZBA = Zoning Board of Appeals P&Z = Planning and Zoning Board AAC = Architectural Appearance Committee HPC = Historic Preservation Committee			
Application Type	Notice Requirement		
	Timing of Published Notices	Mailed Notices	
	Timing	Recipients	
...			
City-initiated General Zoning Map Amendment (Rezoning) proposing to reclassify parcel(s) involving less than 10 contiguous acres	• Publish notice of the public hearing at least 5 calendar days before the hearing date • Publish notice of the CC public hearing at least 10 calendar days before the hearing date	• Mail notice of the P&Z public hearing at least ~~5 calendar~~ 6 business days before the hearing date • Mail notice of the first CC public hearing at least 30 calendar days before the hearing date	• Applicant • Owner(s) of land subject to the application • Owners of real property within 500 ft of the parcel(s) subject to the application [5] • Local planning agency of the county or adjacent municipality, if its jurisdictional boundary lies within 500 ft of the parcel(s) subject to the application
City-initiated Site - Specific Zoning Map Amendment (Rezoning) proposing to reclassify parcel(s) involving less than 10 contiguous acres			
General Zoning Map Amendment (Rezoning) initiated by other than the city		• Mail notice of the P&Z public hearing at least ~~5 calendar~~ 6 business days before the hearing date • Mail notice of the first CC public hearing at least 10 calendar days before the hearing date	
Site -Specific Zoning Map Amendment (Rezoning) initiated by other than the city			
Planned Development			
Special Exception	Publish notice of the public hearing at least 5 calendar days before the hearing date	Mail notice of the public hearing at least ~~5 calendar~~ 6 business days before the hearing date	• Applicant • Owner(s) of land subject to the application • Owners of real property within 500 ft of the parcel(s) subject to the application [5] • Local planning agency of the county or adjacent municipality, if its jurisdictional boundary lies within 500 ft of the parcel(s) subject to the application
Variance			
Major Administrative Adjustment			
Major Certificate of Appropriateness			
Major Temporary Use Permit			
Interim Use Permit			
Appeal [2]			
...			

AUDIENCE TO BE HEARD – CONTINUED

Zoning Board of Appeals Notices – M. Ross Shulmister, 560 Southeast 12th Street, Pompano Beach, FL, stated that he is addressing the Commission in the capacity as a resident of Pompano Beach. He stated that on October 15, 2015, the Zoning Board of Appeals (ZBA) considered a controversial measure, which has been spoken about earlier by a number of speakers. He then explained in detail the procedure followed by both the Chairperson and the request to be heard by a resident and the outcome of the ruling to proceed with the variance.

Additionally, Mr. Shulmister informed that he provided a proposal to the City Commission to consider the seven points of changing Section 155.2305 as follows:

1) Instead of five (5) calendar days mailing, change it to six (6) business days. He indicated that the proposal defines what a business day is.

2) The staff's affidavit is only prima facie evidence, not conclusive, and it should be prima facie.

3) The postmark defines the mailing, if there is a postmark.

4) If there were no postmarks, it would be considered one to be mailed one (1) day after the date in the affidavit. If there is a controversy with the ZBA as to the date of the notice, that should be considered before going any further. The Board would then have three alternatives – they could proceed, table or a combination of tabling and proceeding.

Comr. Phillips asked if the Commission has the ability to change those types of ordinances.

Mayor Fisher responded that the Commission does have the ability to change ordinances of the City.

AUDIENCE TO BE HEARD – CONTINUED

Additionally, Mayor Fisher thanked those members who attended the meeting and spoke earlier on an issue with the mailing of the notice for public hearing that needed to be addressed. As well as, he thanked Mr. Shulmister for his suggestions and indicated that the Commission will discuss them to determine how it can be corrected for the future. So there will be enough notice irrespective of where a person resides, whether on the beach or in the western communities.

Comr. Dockswell indicated that Mr. Shulmister has provided the suggestion of how the Code of Ordinances could be changed in the future by providing six business days of notice rather than five calendar days. Therefore, he is inclined to think that the City could work with this or consider something similar to allow more time on the notice, especially since the mailing is taking longer these days. In moving forward, he suggested that the City consider a greater notice requirement so that the affected residents around a zoning or variance change, etc. would be adequately noticed.

Additionally, Comr. Dockswell indicated that with regard to the project, a variance was approved. Since there was an assertion of inadequate notice, which has been dealt with at the hearing, he asked whether the variance is considered not appealable.

Mark E. Berman, City Attorney, responded that it is appealable and explained his understanding of the issue on hand, because he did watch the video of the hearing. He noted that the Assistant City Attorney checked with staff that placed on the record that it was mailed during the appropriate time required by the ordinance. Based on the testimonies provided earlier, it may or may not have resulted in residents getting their mail on time.

Furthermore, they were given the opportunity to speak and apparently, they did not have an opportunity to hire a counsel or take other measures that might have been done. The ZBA chairman was advised by the Assistant City Attorney at the meeting that under the Board rules, the Board could on its own, if it felt in the interest of fairness, to table the matter. No member of the Board made a motion to do that at the meeting. The Chairman did not do that as well. They felt that after the testimony that was presented by the Clerk for the Board everything had been timely mailed; therefore, they could proceed, which they did.

Meeting Date: March 8, 2016 Agenda Item 21

REQUESTED COMMISSION ACTION:

Consent	X Ordinance	Resolution	Consideration/ Discussion	Presentation
___	___	___	___	___

SHORT TITLE

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH AMENDING CHAPTER 155 "ZONING CODE", BY AMENDING SECTION 155.4204, "INSTITUTIONAL COMMUNICATION USES" TO MODIFY THE SEPARATION AND SCREENING REQUIREMENTS FOR FREESTANDING TELECOMMUNICATION TOWERS; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

Summary of Purpose and Why:

The proposed text amendments address new freestanding tower or telecommunication facilities. Staff has determined that the standards related to separation from other towers inadvertently require only those towers in the Public Utility District to be separated from another tower. This requirement is an inverse requirement from that which was included in Ord 1997-68. Therefore Staff is recommending revising the separation language to require new towers located outside of the PU District to be separated. Staff is also recommending the standard related to chain link fences installed in conjunction with these towers be permitted only when not visible from adjacent streets. Finally, chain link fences would not be permitted as part of a required landscaped buffer. The text amendments were unanimously recommended at the January 27, 2016 Planning and Zoning Board meeting (A copy of the draft Minutes are attached).

(1) Origin of request for this action: Development Services Dept.
(2) Primary staff contact: Robin M. Bird/ Karen Friedman RBF Ext. 7792
(3) Expiration of contract, if applicable: N/A
(4) Fiscal impact and source of funding: N/A

DEPARTMENTAL COORDINATION	DATE	DEPARTMENTAL RECOMMENDATION	DEPARTMENTAL HEAD SIGNATURE
Dev. Services	01/20/2016	Approval	Memo #16-040
City Attorney	02/11/2016		Memo #16-501
X Planning and Zoning Board		Approval	Memo #16-013 (02/12/2016)
X City Manager			

Ordinance Workshop		Resolution		Consideration	
1st Reading		1st Reading		Results:	Results:
2nd Reading					

City Attorney's Communication #2016-501
February 11, 2016

TO: Karen Friedman, AICP, Principal Planner

FROM: Mark E. Berman, City Attorney

RE: Ordinance Amending Section 155.4204., "Institutional: Communication Uses"

As requested in your memorandum of January 28, 2016, Department of Development Services Memorandum No. 16-061, the following form of Ordinance, relative to the above-referenced matter, has been prepared and is attached:

> **AN ORDINANCE AMENDING CHAPTER 155, "ZONING CODE," OF THE CODE OF ORDINANCES OF THE CITY OF POMPANO BEACH, FLORIDA, BY AMENDING SECTION 155.4204., "INSTITUTIONAL: COMMUNICATION USES," TO MODIFY SEPARATION AND SCREENING REQUIREMENTS FOR FREESTANDING TELECOMMUNICATION TOWERS; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.**

Please feel free to contact me if I may be of further assistance.

MARK E. BERMAN

/jrm
l:cor/dev-srv/2016-501

Attachment

ORDINANCE NO. 2016-_____

CITY OF POMPANO BEACH
Broward County, Florida

AN ORDINANCE AMENDING CHAPTER 155, "ZONING CODE," OF THE CODE OF ORDINANCES OF THE CITY OF POMPANO BEACH, FLORIDA, BY AMENDING SECTION 155.4204., "INSTITUTIONAL: COMMUNICATION USES," TO MODIFY SEPARATION AND SCREENING REQUIREMENTS FOR FREESTANDING TELECOMMUNICATION TOWERS; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

WHEREAS, pursuant to law, ten (10) days' notice has been given by publication in a paper of general circulation in the City, notifying the public of this proposed ordinance and of a public hearing in the City Commission Chambers of the City of Pompano Beach; and

WHEREAS, a public hearing before the City Commission was held pursuant to the published notice described above, at which hearing the parties in interest and all other citizens so desiring had an opportunity to be and were, in fact, heard; now, therefore,

BE IT ENACTED BY THE CITY OF POMPANO BEACH, FLORIDA:

SECTION 1. That Section 155.4204., "Institutional: Communication Uses," of Chapter 155, "Zoning Code," of the Code of Ordinances of the City of Pompano Beach is hereby amended to read as follows:

155.4204. INSTITUTIONAL: COMMUNICATION USES

. . .

F. TELECOMMUNICATIONS FACILITY, ON NEW FREESTANDING TOWER

. . .

3. Standards

In addition to the general standards for all telecommunications facilities in Section 155.4204.C.5, a freestanding telecommunications tower shall also comply with the following standards:

. . .

f. Separation Requirements

. . .

ii. Separation from other Towers

The base of any new monopole tower ~~in the Public Utility (PU) zoning district~~ or any new lattice tower shall be separated from the base of any existing telecommunications tower by at least the minimum separation distance set forth in Table ~~155.3704.F.3.a.iii(B)~~ 155.2404.F.3.f.ii, Minimum Separation from Existing Telecommunication Towers, for the relative heights of the two towers. The base of any new monopole tower or any new lattice tower located within the Public Utility (PU) zoning district shall be exempt from this requirement.

TABLE ~~155.3704.F.3.A.III(B)~~ 155.2404.F.3.f.ii: MINIMUM SEPARATION FROM EXISTING TELECOMMUNICATION TOWERS			
HEIGHT OF EXISTING TOWER	MINIMUM SEPARATION DISTANCE (FEET)		
	HEIGHT OF PROPOSED TOWER		
	LESS THAN 50 FEET	50 TO 100 FEET	MORE THAN 100 FT
Less than 50 feet	300	500	650
50 to 100 feet	500	750	866
Over 100 feet	750	1,000	1,300

. . .

i. Fence or Wall

A new lattice or monopole tower, including any guy anchor supports, and any associated ground-based equipment buildings shall be enclosed by security fencing no less than eight feet high. Such fencing may be chain link, provided the chain link fencing is ~~fully screened from~~ not visible from adjacent streets ~~by landscaping material in accordance with Section 155.5302.F.3, Fence and Wall Landscaping~~ and not incorporated into a required buffer.

. . .

SECTION 2. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance that 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 3. This Ordinance shall become effective upon passage.

PASSED FIRST READING this _____ day of _____, 2016.

PASSED SECOND READING this _____ day of _____, 2016.

_____
LAMAR FISHER, MAYOR

ATTEST:

_____
ASCELETA HAMMOND, CITY CLERK

:jrm
2/11/16
L:ord/ch155/2016-126

evening do not include this change. Mrs. Friedman stated that the document with the red and blue fonts is a request from the CRA to Development Services. Mrs. Evans asked Mrs. Ward to provide an explanation of the purpose of the restriction. Mrs. Ward answered that there may be a conflict with the definition (Professional Office) as a result of the text amendments heard at the Special Set meeting in November. The CRA is not proposing to change the definition in a manner that is inconsistent with the Moratorium issues that were presented to this Board in November. Mrs. Ward stated that Development Services needs to go back and amend the definition of Professional Office. However, they are not doing so this evening.

Dr. Mills stated that he would like to ask a question about Professional Offices. Mrs. Friedman stated that staff is not recommending changes to the definition of Professional Office at this time. This information is just part of the backup that came from the CRA.

Mr. Stacer stated that the Chair will entertain a motion.

MOTION was made by Joan Kovac to and seconded by Elizabeth Anderson to recommend approval of the proposed text amendments. All voted in favor of the above motion; therefore, the motion passed.

9. Chapter 155 Zoning Code Text Amendments, New Freestanding Tower or Telecommunication Facility

Staff is recommending text amendments addressing new freestanding tower or telecommunication facilities. In particular, the text amendments address separation requirements and the allowance of chain link fences.

Mrs. Friedman introduced herself to the Board and stated that this text amendment proposal is a matter of housekeeping by Development Services. The Code requires towers within the public utility district to be separated from each other. Mrs. Friedman stated that this is an inverse intent of what the City adopted in 1997, which was to allow towers to congregate in the public utility district while towers outside of this district were required to be separated from each other. Staff is requesting that this language be corrected.

Mrs. Friedman stated that the second item relates to chain link fences and how they are permitted to be used in relation to telecommunication facilities. The proposed text amendments help clarify that chain link fences should not be visible from a right-of-way.

There were no questions for staff.

MOTION made by Joan Kovac and seconded by Jeff Torrey to recommend approval of the proposed text amendments. All voted in favor of the proposed text amendments; therefore, the motion passed.

10. Sunshine Law Presentation

PLANNING AND ZONING BOARD/ LOCAL PLANNING AGENCY
MEMORANDUM #16-013

DATE: February 16, 2016

TO: City Commission

FROM: Planning and Zoning Board/ Local Planning Agency

SUBJECT: Proposed Text Amendments to the Zoning Code,
New Freestanding Tower or Telecommunication Facility

At the meeting of the Planning and Zoning Board/ Local Planning Agency held on January 27, 2016, the Board considered proposed text amendments to Article 4 (Use Standards) of the Zoning Code, as set forth in the Department of Development Services Administrative Report 16-040.

Staff is recommending revising the language in §155.4204. F.3.g.ii to require any new tower, except those in the PU districts, to comply with the separation standards.

Staff also recommends revising the language in §155.4204.F.3.i to clarify that chain link fences are only permitted when not visible from adjacent streets. Further when required to provide a buffer, a chain link fence may not be provided.

With a unanimous vote for the approval of the amendment, it is the recommendation of the Board that the text amendments be approved.

Fred Stacer
Chairman
Planning and Zoning Board/ Local Planning Agency

kem
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pompano beach
Florida's Warmest Welcome

MEMORANDUM

Development Services

ADMINISTRATIVE MEMORANDUM NO. 16-040

DATE: January 20, 2016

TO: Planning and Zoning Board

VIA: Robin M. Bird, Director of Development Services RB

FROM: Karen Friedman, AICP, Principal Planner KBF

RE: Proposed Revisions to §155.4204.F, New Freestanding Tower or Telecommunication Facility

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Staff has prepared text amendments addressing new freestanding tower or telecommunication facilities. In particular the text amendments address separation requirements and the allowance of chain link fences.

Separation Requirements:
Staff has determined that the standards related to separation from other towers in §155.4204.F.3.g.ii inadvertently require only those towers in the Public Utility (PU) District to be separated from another tower. This requirement is an inverse requirement from that which was included in Ord 1997-68 (see page 17), which stated the following:

> *For the purpose of this subsection, the separation distances shall be measured by drawing or following a straight line between the base of the existing or approved structure and the proposed base, pursuant to a site plan of the proposed tower. The minimum tower separation distance shall not apply to new monopole towers in the Public Utilities (PU) Districts nor to stealth towers in any allowable district.*

Further, the need for separation is not necessary in the PU District, as it is the intent of that district is to accommodate those utility uses necessary to serve the community.

Therefore Staff is recommending revising the language in §155.4204. F.3.g.ii to require any new tower, except those in the PU Districts, to comply with the separation standards.

Chain Link Fences:
The City limits the use of chain link fences in nonresidential and multifamily developments. In particular §155.5302.F.3 states that chain link fences located within 15 feet of a street right-of-way shall be screened with landscaping. Further, §155.5302.G prohibits chain link fences to be installed along properties abutting arterial or collector street designated on the Broward County Trafficways Plan.

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Therefore Staff is recommending revising the language in §155.4204.F.3.i to clarify that chain link fences are only permitted when not visible from adjacent streets. Further when required to provide a buffer, a chain link fence may not be provided.

Staff's Request
Staff is requesting the Board approve the recommended changes to the Zoning Code to the City Commission for adoption.

155.4204. INSTITUTIONAL: COMMUNICATION USES

...

F. Telecommunications Facility, on New Freestanding Tower

...

3. Standards

In addition to the general standards for all telecommunications facilities in Section 155.4204.C.5, a freestanding telecommunications tower shall also comply with the following standards:

...

f. Separation Requirements

...

ii. Separation from other Towers

The base of any new monopole tower ~~in the Public Utility (PU) zoning district~~ or any new lattice tower shall be separated from the base of any existing telecommunications tower by at least the minimum separation distance set forth in Table ~~155.3704.F.3.a.iii(B)~~ 155.2404.F.3.f.ii, Minimum Separation from Existing Telecommunication Towers, for the relative heights of the two towers. The base of any new monopole tower or any new lattice tower located within the Public Utility (PU) zoning district shall be exempt from this requirement.

TABLE ~~155.3704.F.3.A.III(B)~~ 155.2404.F.3.f.ii: MINIMUM SEPARATION FROM EXISTING TELECOMMUNICATION TOWERS

TABLE ~~155.3704.F.3.A.III(B)~~ 155.2404.F.3.f.ii: MINIMUM SEPARATION FROM EXISTING TELECOMMUNICATION TOWERS			
Height of Existing Tower	Minimum Separation Distance (feet)		
	Height of Proposed Tower		
	Less than 50 feet	50 to 100 feet	More than 100 ft

...

i. Fence or Wall

A new lattice or monopole tower, including any guy anchor supports, and any associated ground-based equipment buildings shall be enclosed by security fencing no less than eight feet high. Such fencing may be chain link, provided the chain link fencing is ~~fully screened from~~ not visible from adjacent streets and not incorporated into a required buffer ~~by landscaping material in accordance with Section 155.5302.F.3, Fence and Wall Landscaping~~.

Original

ORDINANCE NO. 97-68

CITY OF POMPANO BEACH
Broward County, Florida

AN ORDINANCE AMENDING CHAPTER 155, "ZONING CODE", OF THE CODE OR ORDINANCES OF THE CITY OF POMPANO BEACH, FLORIDA, BY CREATING SECTION 155.072, "TELECOMMUNICATIONS TOWERS AND ANTENNAS"; PROVIDING MINIMUM STANDARDS FOR LOCATION AND APPROVAL OF TELECOMMUNICATIONS TOWERS; PROVIDING MINIMUM STANDARDS FOR LOCATION AND APPROVAL OF TELECOMMUNICATIONS ANTENNAS; PROVIDING FOR SHARED USE OF TELECOMMUNICATIONS TOWERS AND ANTENNA SUPPORT STRUCTURES; PROVIDING ADDITIONAL USES AND REQUIREMENTS; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

WHEREAS, it is the desire of the City Commission of the City of Pompano Beach to promote the health, safety and general welfare of the citizens of Pompano Beach by:

A. Regulating the siting of telecommunications facilities and telecommunications towers; and

B. By limiting the proliferation of additional telecommunication towers within the City while concurrently not prohibiting the provision of services by telecommunications service providers; and

C. By providing for the appropriate location and development of telecommunications antennas and towers with the City; and

WHEREAS, in accordance with Florida Statutes, Section 166.041(3)(c)2, advertisements in accordance with said statute have been published in a newspaper of general

paid circulation in the City of Pompano Beach and of general interest and readership in the community, notifying the public of two public hearings on this proposed Ordinance; and

WHEREAS, two public hearings have been held pursuant to said published hearings and all persons so desiring had an opportunity to be and were, in fact, heard; now, therefore

BE IT ENACTED BY THE CITY OF POMPANO BEACH, FLORIDA:

SECTION 1: That Section 155.072, "Telecommunications Towers and Antennas", of the City of Pompano Beach Code of Ordinances is hereby created to read as follows:

SECTION 155.072 TELECOMMUNICATIONS TOWERS AND ANTENNAS.

(A) Intent. The regulations and requirements of this section are intended to regulate the placement, construction and modification of towers and telecommunications facilities in order to protect the health safety and welfare of the public, while at the same time not unreasonably interfering with the development of the competitive wireless telecommunications marketplace in the City of Pompano Beach and

(1) to minimize the total number of towers throughout the community;

(2) to encourage the location of towers in non-residential areas;

(3) to encourage users of towers and antennas to locate them, to the extent possible, in areas where the potential adverse impact on the community is minimal;

(4) to minimize adverse visual impacts of towers and telecommunications facilities through careful design, sitting, landscape screening, and innovative camouflaging techniques;

(5) to promote and encourage shared use/co-location of towers and antenna support structures as a primary option rather than construction of additional single-use towers;

(6) to avoid potential damage to adjacent properties caused by towers and telecommunications facilities by ensuring such structures are soundly and carefully designed, constructed, modified, maintained and removed when no longer used or determined to be structurally unsound.

(7) to ensure that towers and telecommunications facilities are compatible with surrounding land uses.

(B) Definitions.

(1) Antenna: a transmitting and/or receiving device that radiates or captures electromagnetic waves, including directional antennas, such as panel and microwave dish antennas, and omni-directional antennas, such as whips; but excluding, radar antennas, amateur radio antennas, satellite earth stations, MMDS antennas, television receiving antennas and direct broadcast satellite dishes.

(2) Antenna support structure: any building or structure other than a tower which can be utilized for location of telecommunications facilities.

(3) Equipment building: a cabinet or other structure containing electronics and other support equipment necessary for a telecommunications antenna to provide service.

(4) Existing towers and Existing telecommunications facilities: any tower or telecommunications facilities for which a permit has been properly issued prior to the effective date of this ordinance, including permitted towers or telecommunications facilities that have not yet been constructed so long as such approval is current and not expired. After the effective date of this ordinance, any tower or telecommunications facility approved and constructed pursuant to the provisions of this ordinance shall be treated as an existing tower or telecommunications facility for purposes of regulation pursuant to this ordinance.

(5) Guyed tower: a telecommunications tower that is supported, in whole or in part, by guy wires and ground anchors.

(6) Microwave dish antenna: a dish-like antenna used to link personal wireless service sites together by wireless transmission of voice or date.

(7) Monopole tower: a telecommunications tower consisting of a single pole or spire self supported by a permanent foundation, constructed without guy wires and ground anchors.

(8) New towers and New telecommunications facilities: any tower or telecommunications facility for which an application for construction or location has been submitted to the City after the effective date of this ordinance. Once such application is approved and the subject tower or telecommunications facility is constructed or located, the tower or telecommunications facility shall be treated as an existing tower or telecommunications facility for purposes of regulation pursuant to this ordinance.

(9) Panel antenna: a planar array of antennas designed to concentrate a radio signal in a particular area.

(10) Self-support/lattice tower: a telecommunications tower that is constructed without guy wires and ground anchors.

(11) Stealth facility: any telecommunications facility which is designed to blend into the surrounding environment. Examples of stealth facilities include: architecturally screened roof-mounted antennas, antennas integrated into architectural elements, painting antennas to blend in with the existing structure, and telecommunications towers designed to look like trees.

(12) Telecommunications Facility: a telecommunications antenna design and any electronics or other equipment necessary at the antenna site for the provision of service, including any equipment building.

(13) Telecommunications tower: a guyed, monopole or self-support/lattice tower, or extension thereto, constructed as a free-standing structure, containing one or more antennas used in the provision of personal wireless services.

(14) Whip antenna: a cylindrical antenna that transmits signals in 360 degrees.

(C) Applicability.

(1) New Towers and Telecommunications Facilities. All new towers or telecommunications facilities in the City shall be subject to these regulations.

(2) Re-located Towers and Telecommunications Facilities. An owner of an existing tower or telecommunications facility seeking to re-locate on the same parent tract within the City must meet the requirements of this ordinance. All re-located towers or telecommunications facilities are subject to these regulations.

(3) Modified Tower. An owner of an existing tower seeking to extend the height of said tower must meet the requirements of this ordinance. All modified towers are subject to these regulations.

(4) Applications for Telecommunications Facilities. Every owner/operator seeking to locate a telecommunications facility within the City must attempt to locate on an existing tower or antenna support structure as required by Section F of this ordinance.

(D) General Requirements. The following requirements apply to all existing, re-located, modified or new towers and telecommunications facilities:

(1) Non-essential Services. Towers and antennas will be regulated and permitted pursuant to this ordinance and not regulated or permitted as essential services, public utilities or private utilities.

(2) Conditional Use. Telecommunications towers and their related telecommunications facilities shall be permitted as a conditional use in the (I-1) General Industrial and (I-1X) Special Industrial District subject to the conditions set forth in this ordinance, which follow and the procedure and requirements of code Section 157.32, Development of Land.

(3) Accessory Use. Telecommunication towers and their related telecommunications facilities shall be considered a permitted accessory use in the following zoning districts:

(a) (CF) Community Facility. On property owned by the city, the city shall authorize the application and use of city property after the applicant executes a lease agreement acceptable to the city. The city shall have no obligation whatsoever to execute such lease even if the applicant can meet the criteria set forth herein.

(b) (PU) Public Utilities. On property owned by the city, the city shall authorize the application and use of city property after the applicant executes a lease agreement acceptable to the city. The city shall have no obligation whatsoever to execute such lease even if the applicant can meet the criteria set forth herein.

(4) Special Exception Use. Telecommunication towers and their related telecommunications facilities may be permitted as a Special Exception Use in the (B-4) Heavy Business District subject to the conditions set forth in this ordinance and subject to the standards, conditions and procedures as set out in Code Sections 155.080 through 155.084, inclusive.

(5) Telecommunications facilities not located on towers. Telecommunications facilities on antenna support structures may be permitted in the following zoning districts not to exceed more than 15 feet above the highest point of the roof, including mechanical rooms:

(a) General Industrial District (I-1)

(b) Special Industrial District (I-1X)

(c) General Business (B-3)

(d) Commercial Business (B-2)

(e) High Density Multi-Family (RM-45)

(f) Medium-High Density Multi-Family (RM-30)

(g) Community Facilities

(h) Public Utilities

(6) Inventory of Existing Sites. Each applicant for a telecommunications facility or tower site shall provide to the City's Planning and Zoning Director an inventory of its existing towers, telecommunications facilities or sites for telecommunications facilities or towers, that are either within the jurisdiction of the City or within one mile of the City limits, including specific information about the location, height, and design of each telecommunications facility or tower.

(7) Aesthetics. Towers and telecommunications facilities shall meet the following requirements:

(a) Signs. No commercial signs or advertising shall be allowed on a tower or a telecommunications facility.

(b) Lighting. No signals, lights, or illumination shall be permitted on a tower or a telecommunications facility, unless required by the Federal Aviation Administration or other applicable authority. If lighting is required, the lighting alternatives and design chosen must cause the least obtrusive to the surrounding community.

(c) Graffiti. Any graffiti or other unauthorized inscribed materials shall be removed or otherwise covered in a manner substantially similar to, and consistent, with the original exterior finish. The City shall provide the tower owner and/or operator written notice to remove or cover the graffiti within a specific period of time or as required by other appropriate sections of the Pompano Beach Code of Ordinances as presently existing or as may be periodically amended. In the event the graffiti has not been removed or painted over by the owner and/or operator within the specified time period, the City shall have the right to remove or paint over the graffiti or other inscribed materials. In the event the City has to remove or paint over the graffiti, then the owner and/or operator of the tower or associated equipment building or structure on which the graffiti existed, shall be responsible for all costs incurred.

(8) State or Federal Requirements. All towers and telecommunications facilities must meet or exceed the standards and regulations

of the Federal Aviation Administration, the Federal Communications Commission, and any other agency of the state or federal government with the authority to regulate telecommunications towers and facilities. If such standards and regulations change, then the owners of the towers and telecommunications facilities must bring such towers and facilities into compliance with such revised standards and regulations within six (6) months of the effective date of such standards and regulations, unless a different compliance schedule is mandated by the controlling state or federal agency. Failure to bring towers and telecommunications facilities into compliance with such revised standards and regulations shall constitute grounds for removal of the tower or telecommunications facility at the owner's expense.

(9) Licenses or Franchise. Owners and/or operators of towers and telecommunications facilities must certify that all licenses and/or franchises required by law for the construction and/or operation of a wireless communications system in the City have been obtained and shall file a copy of all such licenses and/or franchises with the City's Planning and Zoning Director. An owner and/or operator of a tower or telecommunications facility must notify the City's Planning and Zoning Director in writing within 48 hours of any revocation or failure to renew any such license or franchise.

(10) In the event the use of a tower or telecommunications facility is discontinued, the owner and/or operator shall provide written notice to the City of its intent to discontinue use and the date when the use shall be discontinued.

(11) Abandoned Tower or Facility. The City may require removal of any abandoned or unused tower or telecommunications facility by the tower owner/operator within thirty (30) days after notice from the City of abandonment. A tower or telecommunications facility shall be considered abandoned if use has been discontinued for one hundred eighty (180) consecutive days.

(a) Where a tower or telecommunications facility is abandoned but not removed within the specified time frame, the City may remove the facility or remove or demolish the tower and place a lien on the property following the procedures (but not the criteria) for demolition of unsafe building/structure of the Unsafe Structures Board of the City. Towers being utilized for other purposes, including but not limited to light standards and power poles, may be exempt from this provision.

(b) Where a tower or facility is removed by an owner, said owner shall restore the area to as good a condition as prior to the placement of the tower or facility, unless otherwise instructed by the City.

(12) Signal Interference. Tower and antenna support structure owners and/or operators shall encourage telecommunications facility owners and/or

operators located at their sites to minimize any potential signal interference at multiple user sites. Telecommunications facility owners and/or operators shall minimize, when technologically feasible, any potential signal interference with public safety communications and the usual and customary transmission or reception of radio and television service enjoyed by adjacent residential and non-residential properties. If the City receives any signal interference complaints from the public, the City will notify the telecommunications facility owners and/or operators suspected of causing such interference. Any owners and/or operators so notified forward shall immediately investigate and minimize the interference problem. Within 10 days of a signal interference notification, any owner and/or operators notified by the City of a signal interference problem shall file a statement with the City's Planning and Zoning Director prepared by a Florida registered engineer identifying any interference detected, the steps taken to minimize any interference detected and, if the interference cannot be reduced, the technical reasons for such a conclusion.

(13) FCC emissions standards. At all times, owners and/or operators of towers and telecommunications facilities shall comply with the radio frequency emissions standards of the Federal Communications Commission.

(14) Maintenance. All towers, telecommunications facilities and antenna support structures shall at all times be kept and maintained in good condition, order, and repair, and, maintained in stealth condition if originally required, so that the same shall not menace or endanger the life or property of any person, and retains its original characteristics. All maintenance or construction on a tower, telecommunications facilities or antenna support structure shall be performed by licensed maintenance and construction personnel.

(15) Exterior finish and Stealth Requirement. Except where superseded by the requirements of other county, state, or federal regulatory agencies possessing jurisdiction over telecommunications towers, towers and associated equipment buildings or structures shall be painted or constructed in neutral colors, including but not limited to noncontrasting gray, designed to blend into the surrounding environment. Towers and associated equipment buildings or structures not requiring Federal Aviation Administration painting or marking that are located in a land use area requiring that such tower and equipment building or structure be a stealth facility, shall have an exterior finish and/or design as approved by the appropriate reviewing body.

(16) Review. The City shall process all applications for telecommunications towers and telecommunications facilities in a timely manner and in accordance with established procedures. The reason for the denial of any application filed in accordance with this provision shall be set forth in writing.

(a) Antennas, including rooftop, building-mounted or co-locations or re-locations within the same site on existing telecommunications towers shall be subject to minor site plan approval procedures established in Chapter 157, Development of Land.

(b) Telecommunication towers shall be subject to major site plan approval procedures established in Chapter 157, Development of Land.

(17) Appeals. Pursuant to Section 155.024, Code of Ordinances, Appeals to the Zoning Board of Appeals may be taken by any person aggrieved by any decision of an administrative officer. A notice of appeal stating the grounds thereof shall be filed with the Planning & Zoning Division.

(18) Variances. The procedure for requesting variances shall be as set forth in Section 155.022 through 155.025, Code of Ordinances.

(19) Revocation. A material breach of any terms and conditions of a permit issued for a tower or antenna under this section, or other material violations of this section, may result in the revocation, by the City of the right to operate, utilize or maintain the particular tower or antenna within the City following written notification of the violation to the owner or operator, and after failure to cure or otherwise correct said violation within the specified allotted time period.

(20) Emergency. City reserves the right to enter upon and disconnect, dismantle or otherwise remove any tower or telecommunications facility should same become an immediate hazard to the safety of persons or property due to emergency circumstances, as determined by the Building Official or his designee, such as natural or manmade disasters or accidents, when the owner of any such facility is not available to immediately remedy the hazard. The City shall notify any said owner of any such action within twenty-four (24) hours. The owner and/or operator shall reimburse the City for the costs incurred by the City for action taken pursuant to this Section of the ordinance.

(E) Existing Towers.

(1) Any owner of a tower containing additional capacity suitable for installation or co-location of telecommunications facilities shall permit telecommunications providers to install or co-locate said facilities on such towers; said co-location shall, however be subject to mutually agreeable terms and conditions negotiated between the parties.

(2) Any existing tower may be modified to accommodate co-location of additional telecommunications facilities as follows:

(a) Application for a development permit shall be made to the Development Review Committee which shall have the authority to issue a development permit without further approval by the Planning & Zoning Board.

(b) The total height of the modified tower and telecommunications facilities attached thereto shall not exceed the maximum height allowed by this Chapter.

(c) Permission to exceed the existing height shall not require an additional distance separation from designated areas as set forth in this article. The tower's pre-modification height shall be used to calculate such distance separations.

(d) A tower which is being rebuilt to accommodate the co-location of additional telecommunications facilities may be moved on the same parent tract subject to compliance with the requirements of this article.

(e) A tower that is relocated on the same parent tract shall continue to be measured from the original tower location for the purpose of calculating the separation distances between towers as provided herein.

(3) Mobile or immobile equipment or materials of any nature not used in direct support of a tower facility shall not be stored or parked on the site of the telecommunication tower, unless immediate repairs to the tower are being made.

(4) Annual registration requirement.

(a) To enable the City to keep accurate, up-to-date records of the placement of telecommunications towers and facilities within City limits, on an annual basis, no later than October 1 of each year, the owner/operator of any tower shall submit documentation to the City's Building Department providing:

1. Certification in writing that the tower is structurally sound and conforms to the requirements of the South Florida Building Code and all other construction standards set forth by the City's Code, federal and state law by filing, a sworn and certified statement by an engineer to that effect. The tower owner may be required by city to submit more frequent certifications should there be reason to believe that the structural and electrical integrity of the tower is jeopardized.

(b) The number of providers located on the tower.

(c) The type and use of any antennae located on the tower.

(d) The name, address and telephone number of any new owner, if there has been a change of ownership of the tower.

(e) Annual payment of a registration fee for all towers located within the City of $300.00 shall be required and shall be submitted to the City's Development Services Department at the time of submission of the documentation as required in Sections (a), (b), (c) and (d) above.

(5) The City reserves the right upon reasonable notice to the owner/operator of the tower to conduct inspections for the purpose of determining whether the tower and/or equipment building complies with the South Florida Building Code and all other construction standards provided by local, state or federal law.

(6) Security.

(a) If high voltage is necessary for the operation of the telecommunications tower or any accessory structures, "HIGH VOLTAGE - DANGER" warnings signs shall be permanently attached to the fence or wall and shall be spaced no more than forty (40) feet apart.

(b) NO TRESPASSING" warning signs shall be permanently attached to the fence or wall and shall be spaced no more than forty (40) feet apart.

(c) The letters for the 'HIGH VOLTAGE - DANGER" and "NO TRESPASSING" warning signs shall be at least six (6) inches in height. The two warning signs may be combined into one sign. The warning signs shall be installed at least five (5) feet above the finished grade of the fence.

(7) Application to Locate Telecommunications Facility on Existing Tower.

(a) In order to locate a new telecommunications facility within the City, an applicant must first attempt to locate same on an existing tower.

(b) An application to locate or re-locate a telecommunications facility must be in writing and contain the following:

1. The information required in Section F(7) of this ordinance;

2. The inventory of existing sites required in Section D(6) of this ordinance;

3. Copies of the licenses or franchises required to be filed with the City pursuant to Section D(9);

4. A scaled site plan clearly indicating the location, type and height of the proposed telecommunications facility, on-site land uses and zoning, elevation drawings of the proposed telecommunications facility and tower or antenna support structure, topography, and any other information deemed by the City to be necessary to assess compliance with this ordinance;

5. A certification that the applicant will comply with all applicable federal, state or local laws including all the provisions of this ordinance; and

6. A certification that the site described in the application is located on an existing tower and the owner/operator agrees to the co-location of its facility.

(c) An application for permit to locate or re-locate a telecommunications facility that proposes to co-locate said facility on an existing tower and that satisfies the requirements set forth in Section E(7)(b) of this ordinance, shall receive expedited treatment in the review process.

(d) So as to further expedite the permitting process and to promote the efficient use of existing sites, the City encourages the users of towers and antenna support structures to submit a single application for approval of multiple users on a single existing site. Applications for approval at multiple user sites shall be given priority in the review process. The fee to be submitted with a multiple user application shall be the fee specified in Section F(8) multiplied by the number of users listed in such application.

(F) Antenna Support Structures.

(1) Any applicant who is unable to locate or co-locate its telecommunications facility on any of the available sites on existing towers may then apply for a waiver to locate or co-locate its facility on an existing antenna support structure. The petition for waiver must contain the following information:

(a) The information required pursuant to Section (E)(7)(b);

(b) The specific technical or geographic reasons why the available tower sites are unsuitable; and

(c) If the proposed site is within a designated stealth-requirement area, the applicant must submit the proposed design for camouflaging its telecommunications facility.

(2) A petitioner shall submit any additional information requested by the City for purposes of evaluating the waiver request.

(3) All telecommunications facilities to be located on a building or rooftop shall be subject to the following minimum standards:

(a) Telecommunications facilities shall only be permitted on buildings which are at least 50 feet tall.

(b) If an equipment building associated with the telecommunications facility is located on the roof of the building, the area of the equipment building shall not exceed ten feet in height, 500 square feet in area nor occupy more than twenty-five (25) percent of the roof area.

(4) Equipment or materials of any nature not used in direct support or operation of a telecommunications facility shall not be stored at the site of an antenna unless immediate repairs are being made.

(5) Antenna dimensions.

(a) Omni-Directional (whip) antennas and their supports must not exceed 15' in height and 3" in diameter and must be constructed of a material or color which matches the exterior of the building.

(b) Directional or Panel antennas and their supports must not exceed 8' in height or 2.5' in width and must be constructed of (a material or color which matches the exterior of the building or structure) materials and coloration which achieves maximum compatibility and minimum visibility.

(c) Satellite and microwave dish antennas located below sixty-five (65) feet above the ground may not exceed six (6) feet in diameter. Satellite and dish antennas located sixty-five (65) feet and higher above the ground may not exceed eight (8) feet in diameter.

(6) Antennas and related equipment buildings located on antenna support structures shall be located or screened to minimize the visual impact of the antenna upon adjacent properties. Any such screening shall be of a material and color which matches the exterior of the building or structure upon which it is situated. In land use areas where antennas and related equipment buildings are required to be stealth facilities, such antenna and related equipment building shall

have an exterior finish and/or design as approved by the Development Review Committee.

(7) Annual registration requirement.

(a) To enable the City to keep accurate, up-to-date records of the location of telecommunications facilities within City limits, on an annual basis, no later than October 1 of each year, the owner/operator shall submit documentation to the City's Development Services Department providing:

1. Certification in writing that the telecommunications facility conforms to the requirements of the South Florida Building Code and all other construction standards set forth by the City's Code, federal and state law by filing, a sworn and certified statement by an engineer to that effect. The telecommunications facility owner/operator may be required by city to submit more frequent certification should there be reason to believe that the structural and electrical integrity of the telecommunications facility is jeopardized. The City reserves the right upon reasonable notice to the owner/operator of the telecommunications facility to conduct inspections for the purpose of determining whether the telecommunications facility complies with the South Florida Building Code and all other construction standards provided by local, state or federal laws.

2. The name, address and telephone number of any new owner, if there has been a change of ownership of the telecommunications facility.

3. The type and use of the antenna of the telecommunications facility.

(8) Annual payment of a registration fee for each telecommunications facility located with the City of $300.00 shall be required and shall be submitted to the City's Development Services Department at the time of submission of the documentation as required in Section E.(7)(b), F(1) and F(7) above.

(G) Construction of New Towers.

(1) Construction of new telecommunication towers within the City may be utilized only as a final option, after all other options have been exhausted. Authorization for construction of a new tower may be given only when the applicant has proven to the City that the construction of the new tower is required because of technological reasons and is essential for the applicant to provide its telecommunications service.

(2) To be eligible to construct a new tower within the City limits, an applicant must first demonstrate to the reasonable satisfaction of the City that no suitable existing tower or antenna support structure site is available and no reasonable alternative technology exists that can accommodate the applicant's telecommunications facility on an existing site.

(3) The applicant must submit any and all technical information requested by the City or its designated engineering consultant as part of the review and evaluation process for construction of a new tower.

(4) An application to develop a tower must be in writing and contain the following information:

(a) The information required in Section E(4) of this ordinance, except that the initial fee submitted shall be the fee established for an application for site plan approval as specified in Chapter 157 along with $1,500.00 to cover the costs of review of the application by the City's engineering consultant. Funds not utilized by said consultant shall be refunded to the applicant within thirty (30) days after completion of review of the application.

(b) The inventory of existing sites required in Section D(6) of this ordinance;

(c) Copies of the licenses or franchises required to be filed with the City pursuant to Section D(9);

(d) A scaled site plan clearly indicating the location, type and height of the proposed tower, on-site land uses and zoning, elevation drawings of the proposed tower, topography, and any other information deemed by the City to be necessary to assess compliance with this ordinance;

(e) A certification that the applicant will comply with all applicable federal, state or local laws including all the provisions of this ordinance; and

(f) The names, addresses and telephone numbers of all owners of other towers or antenna support structures within a radius equal to the minimum distance between towers as required by this ordinance of the proposed new tower site, including city-owned property.

(g) Written documentation in the form of an affidavit that the applicant made diligent, but unsuccessful efforts for permission to install or collocate the applicant's telecommunications facilities on all city-owned towers or antenna support structures located within a radius equal to the minimum distance between towers as required by this ordinance of the proposed tower site.

(h) Written, technical evidence from an engineer that the proposed tower or telecommunications facilities cannot be installed or collocated on another tower or antenna support structure located within a radius equal to the minimum distance between towers as required by this ordinance of the proposed tower site and must be located at the proposed site in order to meet the coverage requirements of the applicant's wireless communications system.

(i) Each application to allow construction of a tower shall include a written statement from an engineer that the construction and placement of the tower shall produce minimal signal interference with public safety communications and the usual and customary transmission or reception of radio, television, or other communications services enjoyed by adjacent residential and non-residential properties.

(5) Conditions of approval for telecommunications towers.

(a) Setbacks.

1. All towers up to one hundred (100) feet in height shall be set back on all sides a distance equal to the underlying setback requirement in the applicable zoning district; towers in excess of one hundred (100) feet in height shall be set back one additional foot per each foot of tower height in excess of one hundred (100) feet.

2. Setback requirements for towers shall be measured from the base of the tower to the property line of the parcel of land on which it is located.

(b) Structural requirements. All tower designs must be certified by an engineer licensed to practice in the State of Florida to be structurally sound and, at minimum, in conformance with the city's Building Code, the South Florida Building Code, and any other standards outlined in this Article.

(c) Height. The height of a telecommunications tower shall not exceed 130 feet. Measurement of tower height for the purpose of determining compliance with all requirements of this article shall include the tower structure itself, the base pad and any other telecommunications facilities attached thereto. Tower height shall be measured from grade as defined in this chapter.

(d) Separation requirements.

1. Non-stealth towers shall be separated from all residentially-zoned lands by a minimum of two hundred (200) feet or 200% of the height of the proposed tower, whichever is greater. The minimum tower

separation distance shall be calculated and applied irrespective of city and county jurisdictional boundaries.

2. Measurement of tower separation distances for the purpose of compliance with this article shall be measured from the base of a tower to the closest point of a designated area.

3. Proposed towers must meet the following minimum separation requirements from existing towers or towers previously approved but not yet constructed at the time a development permit is granted pursuant to this article:

MINIMUM TOWER SEPARATION DISTANCE

Height of Existing Tower	Height of Proposed Tower	Minimum Separation
Less than 50'	Less than 50'	300'
Less than 50'	50'-100'	500'
Less than 50'	101'-130'	650'
50'-100'	Less than 50'	500'
50'-100'	50'-100'	750'
50'-100'	101'-130'	866'
101'-150'	Less than 50'	750'
101'-150'	50'-100'	1000'
101'-150'	101'-130'	1300'

For the purpose of this subsection, the separation distances shall be measured by drawing or following a straight line between the base of the existing or approved structure and the proposed base, pursuant to a site plan of the proposed tower. The minimum tower separation distance shall not apply to new monopole towers in the Public Utilities (PU) District, nor to stealth towers in any allowable district.

(e) Co-location. All new towers shall be constructed with excess capacity for co-location as indicated in G(5)(l). Any owner of a telecommunications tower shall permit other telecommunications providers to install or co-locate antennae or facilities on such towers; said co-location shall be subject to mutually agreeable terms and conditions negotiated between the parties.

(f) Illumination. Towers shall not be artificially lighted except as required by the Federal Aviation Administration (FAA).

(g) Fencing. An eight (8) foot fence or wall constructed in accordance with Zoning Code, as measured from the finished grade of the site, shall be required around the base of any tower other than stealth and may be permitted around any accessory buildings or structures.

(h) Landscaping. All landscaping on a parcel of land containing towers, antenna support structures or telecommunications facilities shall be in accordance with the applicable landscaping requirements in the zoning district where the tower, antenna support structure or telecommunications facilities are located. A solid hedge shall be installed along the outside of the fence or wall.

(i) Access. A parcel of land upon which a tower is located shall provide one (1) paved vehicular parking space on site, unless same interferes with other use or enjoyment of the parcel of land or surrounding property as determined by the City.

(j) Tower design and type.

1. All towers shall be of the monopole type in Industrial Districts.

2. Stealth design shall be required in all Community Facility and Planned Industrial Districts.

3. Lattice towers shall be permitted in the Utility District, in addition to monopole towers.

(k) Towers shall be prohibited on any property whose principal use includes the storage, distribution, or sale of volatile, flammable, explosive, or hazardous materials such as LP gas, propane, gasoline, natural gas, and corrosive or dangerous chemicals, when in the opinion of the Fire Marshal, the location of towers on any said property creates, intensifies or contributes to, a hazardous condition.

(l) The development of a tower upon any parcel of land within the city shall be subject to the following additional restrictions:

1. All new monopole towers shall be designed and built to accommodate at least two telecommunications providers.

2. All new lattice towers shall be designed and built to accommodate at least three telecommunications providers.

(m) Aircraft hazard. Prior to the issuance of a building permit by the building department the applicant shall provide evidence that the

telecommunication towers or facilities are in compliance with Federal Aviation Administration (FAA) regulations.

(n) Approval required from other governmental agencies. Each application for a telecommunication tower may be required to include written approval or a statement of no objection from other federal or state agencies that may regulate telecommunication tower sitting, design and construction.

SECTION 2. The remaining periods of any and all previously enacted suspensions of review of site plans and issuance of building permits for telecommunications towers, antennae or similar structures and installation of telecommunication lines, equipment or hardware, shall terminate upon the passage of this ordinance.

SECTION 3. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

SECTION 4. This Ordinance shall become effective upon passage.

PASSED FIRST READING this 8th **day of** July**, 1997.**

PASSED SECOND READING this 22nd **day of** July**, 1997.**

WILLIAM F. GRIFFIN, MAYOR

ATTEST

MARY L. CHAMBERS, CITY CLERK

MEB/jrm
7/14/97
l:ord/ch155/97-321

Meeting Date: March 8, 2016 Agenda Item 22

REQUESTED COMMISSION ACTION:

Consent	X Ordinance	Resolution	Consideration/ Discussion	Presentation

SHORT TITLE

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH AMENDING CHAPTER 155 "ZONING CODE", BY AMENDING SECTION 155.4302, "GENERAL"; BY AMENDING SECTION 155.4303 "STANDARDS FOR SPECIFIC ACCESSORY USES AND STRUCTURES"; BY CREATING SECTION 155.9301 "REAR PROPERTY LINE AS RELATED TO MEASUREMENTS" TO PROVIDE MEASUREMENT AND BOUNDARY STANDARDS FOR PROPERTIES ABUTTING THE BEACH; BY AMENDING SECTION 155.9401 "MEASUREMENT"; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

Summary of Purpose and Why:

The proposed text amendments address the rear property line for properties abutting the beach. Staff determined these revisions were necessary in order to ensure the Zoning regulations for beachfront properties was consistent with the City's Comprehensive Plan, Coastal Zone Management Element. For properties whose property lines are seaward of the city's historic sand dune system, the Dune Vegetation Line will be considered the rear property line for all measurements and considerations. For those properties that are both seaward of the dune system and the state-determined Erosion Control Line, the Erosion Control Line will be considered the rear property line for measuring density. The text amendments also address accessory structures setback from the Dune Vegetation Line. Finally, the text amendments clarify that only at-grade walkways or paved areas can be situated seaward for the Dune Vegetation Line, with limitations on the location and amount of pavement. The text amendments were unanimously recommended at the January 27, 2016 Planning and Zoning Board meeting (A copy of the draft Minutes are attached).

(1) Origin of request for this action: Development Services Dept.
(2) Primary staff contact: Robin M. Bird/ Karen Friedman RBF Ext. 7792
(3) Expiration of contract, if applicable: N/A
(4) Fiscal impact and source of funding: N/A

DEPARTMENTAL COORDINATION	DATE	DEPARTMENTAL RECOMMENDATION	DEPARTMENTAL HEAD SIGNATURE
Dev. Services	01/26/2016	Approval	Memo #16-050
City Attorney			Memo 2016-531
X Planning and Zoning Board		Approval	Memo #16-009 (02/12/2016)
X City Manager			

Ordinance Workshop		Resolution		Consideration	
1st Reading		1st Reading		Results:	Results:
2nd Reading					

City Attorney's Communication #2016-531
February 17, 2016

TO: Karen Friedman, AICP, Principal Planner

FROM: Mark E. Berman, City Attorney

RE: Ordinance Amending Sections 155.4302., 155.4303., 155.9301. and 155.9401

As requested in your e-mail of February 17, 2016, the following form of Ordinance, relative to the above-referenced matter, has been revised and is attached:

> **AN ORDINANCE AMENDING CHAPTER 155, "ZONING CODE," OF THE CODE OF ORDINANCES OF THE CITY OF POMPANO BEACH, FLORIDA, BY AMENDING SECTION 155.4302., "GENERAL," TO PROVIDE RESTRICTIONS FOR LOCATION OF ACCESSORY USES AND STRUCTURES NEAR DUNE VEGETATION LINES; BY AMENDING SECTION 155.4303., "STANDARDS FOR SPECIFIC ACCESSORY USES AND STRUCTURES," TO PROVIDE STANDARDS FOR UNCOVERED PORCHES, DECKS, PATIOS, TERRACES AND WALKWAYS ON PROPERTIES WHICH INCLUDE AREA SEAWARD OF DUNE VEGETATION LINES; BY CREATING SECTION 155.9301., "REAR PROPERTY LINE AS RELATED TO MEASUREMENTS," TO PROVIDE MEASUREMENT AND BOUNDARY STANDARDS FOR PROPERTIES ABUTTING THE BEACH; BY AMENDING SECTION 155.9401., "MEASUREMENT," TO MODIFY REQUIREMENTS FOR MEASUREMENT OF LOT AREA AND LOT COVERAGE FOR PROPERTIES ABUTTING THE BEACH; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.**

Please feel free to contact me if I may be of further assistance.

MARK E. BERMAN

/jrm
l:cor/dev-srv/2016-531

Attachment

ORDINANCE NO. 2016-_____

CITY OF POMPANO BEACH
Broward County, Florida

AN ORDINANCE AMENDING CHAPTER 155, "ZONING CODE," OF THE CODE OF ORDINANCES OF THE CITY OF POMPANO BEACH, FLORIDA, BY AMENDING SECTION 155.4302., "GENERAL," TO PROVIDE RESTRICTIONS FOR LOCATION OF ACCESSORY USES AND STRUCTURES NEAR DUNE VEGETATION LINES; BY AMENDING SECTION 155.4303., "STANDARDS FOR SPECIFIC ACCESSORY USES AND STRUCTURES," TO PROVIDE STANDARDS FOR UNCOVERED PORCHES, DECKS, PATIOS, TERRACES AND WALKWAYS ON PROPERTIES WHICH INCLUDE AREA SEAWARD OF DUNE VEGETATION LINES; BY CREATING SECTION 155.9301., "REAR PROPERTY LINE AS RELATED TO MEASUREMENTS," TO PROVIDE MEASUREMENT AND BOUNDARY STANDARDS FOR PROPERTIES ABUTTING THE BEACH; BY AMENDING SECTION 155.9401., "MEASUREMENT," TO MODIFY REQUIREMENTS FOR MEASUREMENT OF LOT AREA AND LOT COVERAGE FOR PROPERTIES ABUTTING THE BEACH; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

WHEREAS, pursuant to law, ten (10) days' notice has been given by publication in a paper of general circulation in the City, notifying the public of this proposed ordinance and of a public hearing in the City Commission Chambers of the City of Pompano Beach; and

WHEREAS, a public hearing before the City Commission was held pursuant to the published notice described above, at which hearing the parties in interest and all other citizens so desiring had an opportunity to be and were, in fact, heard; now, therefore,

BE IT ENACTED BY THE CITY OF POMPANO BEACH, FLORIDA:

SECTION 1. That Section 155.4302., "General," of Chapter 155, "Zoning Code," of the Code of Ordinances of the City of Pompano Beach is hereby amended to read as follows:

§ 155.4302. GENERAL

. . .

B. GENERAL STANDARDS FOR ALL ACCESSORY USES AND STRUCTURES

. . .

2. Prohibited Location of Accessory Uses and Structures

Unless otherwise provided for in Section 155.4403 (Standards for Specific Accessory Uses and Structures), accessory uses and structures shall not be located within the following:

. . .

g. In front of the principal structure; ~~and~~

h. Within 15 feet of a waterway or canal~~.~~; and

i. Within 25 feet of a Dune Vegetation Line.

. . .

SECTION 2. That Section 155.4303., "Standards for Specific Accessory Uses and Structures," of Chapter 155, "Zoning Code," of the Code of Ordinances of the City of Pompano Beach is hereby amended to read as follows:

§ 155.4303. STANDARDS FOR SPECIFIC ACCESSORY USES AND STRUCTURES

. . .

KK. UNCOVERED PORCHES, DECKS, PATIOS, TERRACES, AND WALKWAYS

. . .

3. Standards

Uncovered porches, decks, patios, terraces, and walkways are subject to the following standards:

a. They may be located in a required rear yard setback, but they shall be located at least by a distance equal to or greater than the uncovered structures height.

. . .

d. For properties which include area seaward of the Dune Vegetation Line as defined herein, uncovered at-grade

porches, patios, and walkways may be located seaward of the Dune Vegetation Line subject to all the following standards:

i. A minimum of 80% of the property seaward of the Dune Vegetation Line shall be pervious.

ii. The at-grade porch, patio, and walkway shall be designed to have minimal impact on the existing dune. Any impact to the dune shall be mitigated.

iii. An elevated walkway may be permitted only if necessary to protect the existing dune.

. . .

SECTION 3. That Section 155.9301., "Rear Property Line as Related to Measurements," of Chapter 155, "Zoning Code," of the Code of Ordinances of the City of Pompano Beach is hereby created to read as follows:

ARTICLE 9: DEFINITIONS AND INTERPRETATION

PART 3 ~~RESERVED~~ MEASUREMENTS FOR PROPERTIES ABUTTING BEACH

§ 155.9301. REAR PROPERTY LINE AS RELATED TO MEASUREMENTS.

A. For properties which include area seaward of the Dune Vegetation Line as defined herein, the Dune Vegetation Line is considered the rear property line for the purposes of calculating lot area, lot coverage, and the pervious area, and for purposes of measuring the rear yard corner triangle.

B. For properties which include area seaward of the Erosion Control Line as defined in Section 161.151 of the State Statutes, the Erosion Control Line is considered the rear property line for the purposes of calculating density.

SECTION 4. That Section 155.9401., "Measurement," of Chapter 155, "Zoning Code," of the Code of Ordinances of the City of Pompano Beach is hereby amended to read as follows:

ARTICLE 9: DEFINITIONS AND INTERPRETATION

PART 4 MEASUREMENT, EXCEPTIONS, AND VARIATIONS OF INTENSITY AND DIMENSIONAL STANDARDS

§ 155.9401. MEASUREMENT

A. Lot Area

Lot area shall be determined by measuring the total horizontal land area (in square feet) within the lot lines of the lot—excluding any area within existing or proposed public street rights-of-way or private street easements. ~~If the property includes area seaward of the Erosion Control Line as defined in Section 161.151 of the State Statutes, the Erosion Control Line will become the rear property line for the purposes of calculating lot area.~~

. . .

E. Lot Coverage

Lot coverage (expressed as a percentage of lot area) shall be determined by measuring the total horizontal land area (in square feet) covered by all principal and accessory structures on the lot, dividing that coverage area by the total lot area (See subsection A above.), and multiplying the result by 100. ~~If the property includes area seaward of the Dune Vegetation Line as defined herein, the Dune Vegetation Line will become the rear property line for the purposes of calculating lot coverage.~~

. . .

SECTION 5. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance that 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 6. This Ordinance shall become effective upon passage.

PASSED FIRST READING this _____ day of _____, 2016.

PASSED SECOND READING this _____ day of _____, 2016.

_____
LAMAR FISHER, MAYOR

ATTEST:

_____
ASCELETA HAMMOND, CITY CLERK

/jrm
2/17/16
L:ord/ch155/2016-127

Mehran Farahmandpour (3996 Orchard Lane Long Grove, Illinois) introduced himself to the Board as the project's architect. The Applicant stated that the architecture will be consistent with the Laundromat and the three parcels are now one. The Applicant displayed an elevation on the projector and gave a brief explanation of the architectural features. The Applicant stated that he agrees with the conditions of Staff.

Mr. Stacer asked the Board if they had any questions of the applicant and received no response.

MOTION made by Dwight Evans and seconded by Richard Klosiewicz to approve the major site plan request, subject to the eight (8) conditions of staff. All voted in favor of the above motion; therefore, the motion passed.

I. OTHER BUSINESS

7. Chapter 155 Zoning Code Text Amendments, Properties Abutting the Beach

Staff is recommending text amendments to the Zoning Code regarding properties abutting the beach. The proposed revisions are consistent with the City's Comprehensive Plan, Coastal Zone Management Element, and in particular with Objective 10.04.00 and Policy 10.04.02.

Mrs. Friedman introduced herself to the Board and stated that the proposed text amendments addressed properties abutting the beach and they are all consistent with Objective 10.04.00 of the Coastal Zone Management Element which speaks to the City's desire to maintain the dune system. The text amendments will address how accessory structures will be treated. The Dune Vegetation Line will be treated as the rear property line when it comes to the allowance of accessory structures. There are additional considerations given for specific accessory structures. For example, an at-grade porch or walkway. Additionally, a new section of the code will be created that includes all of the standards related to how the rear property lines are measured for properties abutting the beach. The Dune Vegetation Line would be considered the rear lot line for purposes of calculating the: lot area, lot coverage, pervious area and the rear yard corner triangle. For those lots that exceed the Dune Vegetation Line and abuts the Erosion Control Line, they will be able to use the Erosion Control Line for purposes of measuring density.

Mrs. Friedman added that there is also a proposed text amendment for the definition of lot coverage. The intent is to clarify that only roofed structures are included in the calculation for lot coverage.

Mr. Stacer asked if there were any questions for Staff. Mr. Evans asked if Policy 10.04.02 refers to new development. Mrs. Friedman answered that this policy shows the City's longstanding support for maintaining the dune system. The recommendations regarding setbacks and lot coverage all relate to the dune vegetation line. The recommendations impact all development (building permit, minor site plan and major site plan). Mr. Evans asked if this will affect existing development. Mrs. Friedman answered

that people will not have to tear apart parts of their properties if they are exceeding the standards.

Mr. Evans asked about the "Minimal impact on the dune" and if there is a definition for "Minimal impact." Mrs. Friedman stated that those types of determinations are made by the Urban Forester and the Registered Landscape Architects on the Development Services Staff.

Mr. Evans asked why the text amendment for the clarification to the definition of lot coverage is included when it affects more than only the properties abutting the beach. Mrs. Friedman answered that lot coverage is related to the issue at hand. Mr. Evans asked if there should be a separate proposal or a notice requirement since it will affect the entire City. Mrs. Friedman responded that if the subject matter was misleading, Staff could bring the item back to the Board independently. Mr. Evans responded that this would be preferable.

Mr. Stacer asked if these text amendments would impact the two restaurants approved to be built north of the pier. Mrs. Friedman responded that she is not familiar enough with the projects to answer the question. Mrs. Gomez responded that these projects have already received a variance for their rear setback requirements and therefore would not be impacted by the code changes at hand.

MOTION made by Joan Kovac and seconded by Dwight Evans to recommend approval of the proposed text amendments, excluding the addition of the word "roofed" to Code Section 155.9401.E Lot Coverage. All voted in favor of the above motion; therefore, the motion passed.

8. Chapter 155 Zoning Code Text Amendments, Revisions to AOD Parking Modifications

Staff is recommending text amendments to the Zoning Code, requested by the CRA, regarding parking modifications in the AOD for Hotels and Residential Uses provided as part of a mixed-use development.

Mrs. Friedman introduced herself to the Board and stated that this will be the third time this Board has been asked to consider changes to the parking standards in the Atlantic Boulevard Overlay District. Previously, at the November 30th, 2015 Special Set hearing, the item was tabled. At the December 16th, 2015 Planning and Zoning Board Hearing, several text amendments were presented. Since then, the Pompano Beach CRA has requested additional uses be eligible for parking modifications. Mrs. Friedman explained that any of the text changes in the backup that are highlighted in yellow are new proposed changes.

Mrs. Friedman stated that the proposed reductions would reduce parking for Hotels as follows:

PLANNING AND ZONING BOARD/ LOCAL PLANNING AGENCY
MEMORANDUM #16-009

DATE: February 12, 2016

TO: City Commission

FROM: Planning and Zoning Board/ Local Planning Agency

SUBJECT: Proposed Text Amendments to the Zoning Code, Properties Abutting the Beach

---

At the meeting of the Planning and Zoning Board/ Local Planning Agency held on January 27, 2016, the Board considered proposed text amendments to Article 4 (Use Standards) and Article 9 (Definitions and Interpretation) of the Zoning Code, as set forth in the Department of Development Services Administrative Report 16-050.

Staff recommends requiring accessory structures to be setback twenty-five feet from the Dune Vegetation Line (DVL) with exceptions for uncovered, at-grade porches and walkways which meet specific criteria.

Regarding properties seaward of the DVL, Staff recommends clarifying that the DVL is considered the rear property line for purposes of calculating Lot Area, Lot Coverage, Pervious Area, and the Rear Yard Corner Triangle.

Regarding properties seaward of the Erosion Control Line (ECL), Staff recommends clarifying that the ECL is considered the rear property line for purposes of calculating Density.

Additionally, staff recommends a text amendment that clarifies the definition of Lot Coverage.

With a unanimous vote for the approval of the amendment, it is the recommendation of the Board that the text amendments be approved, excluding the addition of the word "roofed" to Zoning Code Section 155.9401.E Lot Coverage. The Board prefers this text amendment be heard as a separate request because it affects properties City-wide and not only those abutting the beach.

Fred Stacer
Chairman
Planning and Zoning Board/ Local Planning Agency

kem
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pompano beach
Florida's Warmest Welcome

MEMORANDUM

Development Services

ADMINISTRATIVE MEMORANDUM NO. 16-050

DATE: January 26, 2016

TO: Planning and Zoning Board

VIA: Robin M. Bird, Director of Development Services RB

FROM: Karen Friedman, AICP, Principal Planner KBF

RE: Proposed Revisions to §155.4302 and Article 9 Regarding Properties Abutting Beach ***(Amended)***

Staff has prepared text amendments addressing properties abutting the beach. The proposed revisions are consistent with the City's Comprehensive Plan, Coastal Zone Management Element, and in particular with Objective 10.04.00 and Policy 10.04.02 (below):

> ***Objective Beach Protection***
> ***10.04.00*** *The City will continue to actively work toward stabilizing the beach area and /or decreasing the amount of erosion taking place along the shoreline; beach renourishment shall be undertaken only if the sand dynamics (current accretion) changes.*
>
> ***Policy 10.04.02*** *Modify the Land Development Regulations to require beachfront properties to construct a sand dune system along the beach frontage as part of redevelopment.*

The proposed text amendments, therefore, address the following:

- Require accessory structures to be setback 25 feet from the Dune Vegetation Line (DVL)
  - The Zoning Code Interpretation addressing Accessory Structure Setbacks for Properties Abutting a Waterway or Canal, dated May 5, 2015, will be amended to also apply to the DVL setback ***(copy of existing Interpretation attached)***
  - Uncovered, at-grade porches and walkways will be permitted to extend beyond the DVL provided they do not cover more than 20% of the area east of the DVL. They also have to have minimal impact on the dune. An elevated walkway would be permitted only if it is to ensure no impact to dune.
- For properties which are seaward of the DVL, clarify that the DVL is considered the rear property line for purposes of calculating Lot Area, Lot Coverage, Pervious Area, and Rear Yard Corner Triangle
  - Principal structures are required to be setback 25 feet from the DVL
  - This is consistent with Ord. 72-44 and how the City has historically measured these calculations. ***(copy of Ordinance attached)***
- For properties which are seaward of the Erosion Control Line, clarify that the Erosion Control Line is considered the rear property line for purposes of calculating Density.
  - All land seaward of the ECL is owned by the State per FL SS 161.191(1) which states "...Title to all lands seaward of the erosion control line shall be deemed to be vested in the state by right of its sovereignty..." ***(copy of FL SS 161.191(1) attached)***

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- Measuring density from the ECL is consistent with Broward County Planning Council's calculations which will calculate density to the property line.

Finally, the proposed amendments also include clarifying how the City measures Lot Coverage citywide. The revision clarifies that only "roofed" structures are included in the calculation.

Staff's Request

Staff is requesting the Board approve the recommended changes to the Zoning Code to the City Commission for adoption.

ARTICLE 9: USE STANDANRDS

§155.4302. GENERAL

...

B. GENERAL STANDARDS FOR ALL ACCESSORY USES AND STRUCTURES

2. Prohibited Location of Accessory Uses and Structures

Unless otherwise provided for in Section 155.4403 (Standards for Specific Accessory Uses and Structures), accessory uses and structures shall not be located within the following:

...

g. In front of the principal structure; ~~and~~

h. Within 15 feet of a waterway or canal~~.~~; and

i. Within 25 feet of a Dune Vegetation Line.

...

§155.4303. STANDARDS FOR SPECIFIC ACCESSORY USES AND STRUCTURES

KK. UNCOVERED PORCHES, DECKS, PATIOS, TERRACES, AND WALKWAYS

3. Standards

Uncovered porches, decks, patios, terraces, and walkways are subject to the following standards:

a. They may be located in a required rear yard setback, but they shall be located at least by a distance equal to or greater than the uncovered structures height.

b. They may be located in a required front yard setback, required street side yard setback, or required interior side yard setback if they are less than 12 inches in height.

c. They may be located in an easement or in front of the principal structure if they are less than 12 inches in height and/or at grade.

d. For properties which include area seaward of the Dune Vegetation Line as defined herein, uncovered at-grade porches, patios, and walkways may be located seaward of the Dune Vegetation Line subject to all the following standards:

i. A minimum of 80% of the property seaward of the Dune Vegetation Line shall be pervious.

ii. The at-grade porch, patio, and walkway shall be designed to have minimal impact on the existing dune. Any impact to the dune shall be mitigated.

iii. An elevated walkway may be permitted only if necessary to protect the existing dune.

ARTICLE 9: DEFINITIONS AND INTERPRETATION

...

PART 3 ~~RESERVED~~ MEASUREMENTS FOR PROPERTIES ABUTTING BEACH

§155.9301. REAR PROPERTY LINE AS RELATED TO MEASUREMENTS.

A. For properties which include area seaward of the Dune Vegetation Line as defined herein, the Dune Vegetation Line is considered the rear property line for the purposes of calculating lot area, lot coverage, and the pervious area, and for purposes of measuring the rear yard corner triangle.

B. For properties which include area seaward of the Erosion Control Line as defined in Section 161.151 of the State Statutes, the Erosion Control Line is considered the rear property line for the purposes of calculating density.

...

§155.9401. MEASUREMENT

A. Lot Area

Lot area shall be determined by measuring the total horizontal land area (in square feet) within the lot lines of the lot—excluding any area within existing or proposed public street rights-of-way or private street easements. ~~If the property includes area seaward of the Erosion Control Line as defined in Section 161.151 of the State Statutes, the Erosion Control Line will become the rear property line for the purposes of calculating lot area~~.

...

E. Lot Coverage

Lot coverage (expressed as a percentage of lot area) shall be determined by measuring the total horizontal land area (in square feet) covered by all roofed principal and roofed accessory structures on the lot, dividing that coverage area by the total lot area (See subsection A above.), and multiplying the result by 100. ~~If the property includes area seaward of the Dune Vegetation Line as defined herein, the Dune Vegetation Line will become the rear property line for the purposes of calculating lot coverage.~~

pompano beach
Florida's Warmest Welcome

MEMORANDUM

Development Services

§155.2423, Zoning Code Interpretation

Title: Accessory Structure Setbacks for properties abutting a waterway or canal, 155.4302.B.2

Effective Date: May 12, 2015

155.4302 General

B. General Standards for All Accessory Uses and Structures

2. Prohibited Location of Accessory Uses and Structures

Unless otherwise provided for in Section 155.4403 (Standards for Specific Accessory Uses and Structures), accessory uses and structures shall not be located within the following:

f. A required yard setback;

h. Within 15 feet of a waterway or canal.

The following interpretations are effective this date:

- For properties located along a waterway or canal, the prevailing "prohibited location" for accessory structures is the distance from the waterway or canal (155.4302.B.2.h).
- All above-ground accessory structures, except for fences, shall be setback at least 15 feet from the waterway or canal.
- All at or below-ground accessory structures, including swimming pools and decks / patios, may follow the use-specific modified rear-yard setback as the setback from waterways or canals.

Robin M. Bird, Development Services Director

ORDINANCE NO. 72 - 44

CITY OF POMPANO BEACH
Broward County, Florida

AN ORDINANCE AMENDING CODE OF ORDINANCES SECTIONS 50.02(81a) AND 50.02(14) BY DEFINING THE OCEANFRONT LOT LINE AND THE AREA, NET SITE; PROVIDING A SAVINGS CLAUSE; REPEALING ALL ORDINANCES IN CONFLICT.

WHEREAS, there is a need to more clearly define the "Oceanfront Lot Line" and the "area, Net Site" for purposes of establishing other zoning criteria, and

WHEREAS, public notice of this proposed amendment to the zoning code has been given and a public hearing held, and

WHEREAS, the City Commission finds that future maintenance of zoning criteria including setbacks, building area, coverage (open area and green area), density and similar computations requires dependence upon a stable land area to sustain oceanfront building development, and

WHEREAS, the vegetation line has historical and engineering stability and shores seaward of the vegetation line are naturally unstable and undependable, and

WHEREAS, the City Commission finds it in the public interest, based upon the facts presented at the hearing, to make certain changes in definition in the Code of Ordinances; now, therefore,

BE IT ENACTED BY THE CITY OF POMPANO BEACH, FLORIDA:

Section 1: Code of Ordinances, Section 50.02(14) is hereby amended to read as follows:

50.02(14) **Area, net site:**

The net site area is the total area within the lot lines of a project excluding external streets or alleys. **The net site area shall not include area seaward of the oceanfront lot line.**

Section 2: Code of Ordinances, Section 50.02(81a) is hereby amended to read as follows:

50.02(81a) Oceanfront Lot Line.

Oceanfront lot line is the line of vegetation as established by the City Engineer upon the survey photograph map filed with the City Clerk, dated October 14, 1959, adopted and confirmed herewith.

Section 3: Should any section or provision of this ordinance or any portion of any paragraph, sentence or word be declared by a court of competent jurisdiction to be invalid such decision shall not affect the validity of the remainder hereof or any part hereof other than the part declared to be invalid.

Section 4: All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

PASSED FIRST READING this 23 day of May , 1972.

PASSED SECOND READING this 6 day of June , 1972.

J. MAXIM RYDER, Mayor

ATTEST:

JOYCE R. ANSLEY, City Clerk

Select Year: 2015 Go

The 2015 Florida Statutes

Title XI COUNTY ORGANIZATION AND INTERGOVERNMENTAL RELATIONS	Chapter 161 BEACH AND SHORE PRESERVATION	View Entire Chapter

161.191 Vesting of title to lands.—

(1) Upon the filing of a copy of the board of trustees' resolution and the recording of the survey showing the location of the erosion control line and the area of beach to be protected as provided in s. 161.181, title to all lands seaward of the erosion control line shall be deemed to be vested in the state by right of its sovereignty, and title to all lands landward of such line shall be vested in the riparian upland owners whose lands either abut the erosion control line or would have abutted the line if it had been located directly on the line of mean high water on the date the board of trustees' survey was recorded.

(2) Once the erosion control line along any segment of the shoreline has been established in accordance with the provisions of ss. 161.141-161.211, the common law shall no longer operate to increase or decrease the proportions of any upland property lying landward of such line, either by accretion or erosion or by any other natural or artificial process, except as provided in s. 161.211(2) and (3). However, the state shall not extend, or permit to be extended through artificial means, that portion of the protected beach lying seaward of the erosion control line beyond the limits set forth in the survey recorded by the board of trustees unless the state first obtains the written consent of all riparian upland owners whose view or access to the water's edge would be altered or impaired.

History.—s. 6, ch. 70-276; s. 1, ch. 70-439; s. 3, ch. 79-233.

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Meeting Date: March 8, 2016 Agenda Item 23

REQUESTED COMMISSION ACTION:

Consent	X Ordinance	Resolution	Consideration/ Discussion	Presentation
____	____	____	____	____

SHORT TITLE

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH AMENDING CHAPTER 155 "ZONING CODE", BY AMENDING SECTION 155.3703, "ATLANTIC BOULEVARD OVERLAY DISTRICT (AOD)" TO MODIFY STANDARDS FOR OFF-STREET PARKING; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

Summary of Purpose and Why:

In order to stimulate redevelopment within the AOD, Ord. 2011-31 exempt multifamily residential use, nonresidential uses, and mixed use development permitted between March 22, 2011 and January 4, 2016 from providing off-street parking spaces. Due to the expiration of this parking incentive, along with the results of the various studies undertaken during the temporary moratorium, Staff is recommending to re-adopt parking incentives that are tailored to incentivize those uses that further the purpose of the district and incentivize the redevelopment of properties that are the most challenging in terms of providing parking (i.e. existing development and/or small lots). Therefore the proposed parking incentives will only be available for certain Eating and Drinking Establishments, Retail Sales and Service Uses, Professional Offices, Hotels and Mixed-Use Developments. The text amendments were unanimously recommended at both the December 16, 2015 and January 27, 2016 Planning and Zoning Board meetings (A copy of the draft Minutes are attached).

(1) Origin of request for this action: Development Services Dept.
(2) Primary staff contact: Robin M. Bird/ Karen Friedman KBF Ext. 7792
(3) Expiration of contract, if applicable: N/A
(4) Fiscal impact and source of funding: N/A

DEPARTMENTAL COORDINATION	DATE	DEPARTMENTAL RECOMMENDATION	DEPARTMENTAL HEAD SIGNATURE
Dev. Services	12/11/15 & 1/14/16	Approval	Memo #15-661 and #16-030
City Attorney			Memo #2016-500
X Planning and Zoning Board		Approval	Memos #16-005 (1/12/16) & #16-010 (2/12/2016)
X City Manager			

Ordinance Workshop	Resolution	Consideration	
1st Reading	1st Reading	Results:	Results:
2nd Reading			

City Attorney's Communication #2016-500
February 11, 2016

TO: Karen Friedman, AICP, Principal Planner

FROM: Mark E. Berman, City Attorney

RE: Ordinance Amending Section 155.3703., "Atlantic Boulevard Overlay District (AOD)"

As requested in your memorandum of January 28, 2016, Department of Development Services Memorandum No. 16-063, the following form of Ordinance, relative to the above-referenced matter, has been prepared and is attached:

> **AN ORDINANCE AMENDING CHAPTER 155, "ZONING CODE," OF THE CODE OF ORDINANCES OF THE CITY OF POMPANO BEACH, FLORIDA, BY AMENDING SECTION 155.3703., "ATLANTIC BOULEVARD OVERLAY DISTRICT (AOD)," TO MODIFY STANDARDS FOR OFF-STREET PARKING IN THE ATLANTIC BOULEVARD OVERLAY DISTRICT; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.**

Please feel free to contact me if I may be of further assistance.

MARK E. BERMAN

/jrm
l:cor/dev-srv/2016-500

Attachment

ORDINANCE NO. 2016-_____

CITY OF POMPANO BEACH
Broward County, Florida

AN ORDINANCE AMENDING CHAPTER 155, "ZONING CODE," OF THE CODE OF ORDINANCES OF THE CITY OF POMPANO BEACH, FLORIDA, BY AMENDING SECTION 155.3703., "ATLANTIC BOULEVARD OVERLAY DISTRICT (AOD)," TO MODIFY STANDARDS FOR OFF-STREET PARKING IN THE ATLANTIC BOULEVARD OVERLAY DISTRICT; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

WHEREAS, pursuant to law, ten (10) days' notice has been given by publication in a paper of general circulation in the City, notifying the public of this proposed ordinance and of a public hearing in the City Commission Chambers of the City of Pompano Beach; and

WHEREAS, a public hearing before the City Commission was held pursuant to the published notice described above, at which hearing the parties in interest and all other citizens so desiring had an opportunity to be and were, in fact, heard; now, therefore,

BE IT ENACTED BY THE CITY OF POMPANO BEACH, FLORIDA:

SECTION 1. That Section 155.3703., "Atlantic Boulevard Overlay District (AOD)," of Chapter 155, "Zoning Code," of the Code of Ordinances of the City of Pompano Beach is hereby amended to read as follows:

§ 155.3703. ATLANTIC BOULEVARD OVERLAY DISTRICT (AOD)

. . .

E. Modified Development Standards

. . .

2. Off-Street Parking

a. Minimum Number of Spaces Required

. . .

~~ii. **Nonresidential and Mixed-Use Development**~~

~~No off-street parking spaces are required for any nonresidential or mixed-use development constructed by or have a valid building permit as of January 4, 2016. Nonresidential or mixed-use development permitted thereafter shall be subject to the following standards for minimum number of off-street parking spaces:~~

~~(A) Nonresidential development with a gross floor area totaling less than 25,000 square feet: No parking spaces required.~~

~~(B) Nonresidential development with a gross floor area totaling 25,000 square feet or more: one space per 1,000 square feet of gross floor area, or major fraction thereof.~~

~~(C) Mixed-use development: one space per 500 square feet of gross floor area devoted to nonresidential uses, or major fraction thereof, and one space per 1,000 square feet of gross floor area devoted to residential uses, or major fraction thereof.~~

ii. Selected off-street parking reductions for Retail Sales and Service Uses, Eating and Drinking Establishments, Professional Office, or Hotel uses constructed by or having a valid building permit as of January 4, 2021.

(A) **Retail Sales and Service Use:** Off-Street parking is reduced only for the following.

(1) No off-street parking spaces are required for a change in use of an existing building.

(2) No off-street parking spaces are required for a new principal structure or accessory structure located on property of one-acre or less

(3) The above reductions in (1) and (2) are not applicable to Funeral Home or Mortuary, Laundromat, or Consignment Boutique.

(B) **Eating and Drinking Establishments:** Off-Street parking is reduced as follows:

(1) No off-street parking spaces are required for a change in use of an existing building.

(2) No off-street parking spaces are required for a new principal structure or accessory structure located on property of one-acre or less

(3) One parking space per 8 persons of maximum occupancy capacity of customer service area is required for a new principal or accessory structure located on property greater than one-acre.

(4) The above reductions in (1), (2), and (3) are not applicable to Nightclub or Hall For Hire.

(C) **Professional Office Use:** No off-street parking spaces are required for a change in use of an existing building on the 2nd floor or above.

(D) **Hotel Use:** Off-Street parking is reduced as follows

(1) No off-street parking spaces are required for a change in use of an existing building.

(2) No off-street parking spaces are required for a new principal structure or accessory structure located on property of one-acre or less

iii. Selected off-street parking reductions for Residential Uses vertically integrated within a Mixed Use Development constructed by or having a valid building permit as of January 4, 2021.

(A) For purposes of this subsection, Mixed Use Development shall mean developments that vertically integrate residential uses with Retail Sales and Service Uses, Professional Office Uses, Bar or Lounges, Brewpubs, Restaurants, or Specialty eating or drinking establishments.

(B) The off-street parking requirement for the residential use is reduced as follows:

(1) No off-street parking spaces are required for a change in use of an existing building.

(2) No off-street parking spaces are required for a new principal structure or accessory structure located on property of one-acre or less

. . .

SECTION 2. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance that 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 3. This Ordinance shall become effective upon passage.

PASSED FIRST READING this _____ day of _____, 2016.

PASSED SECOND READING this _____ day of _____, 2016.

_____

LAMAR FISHER, MAYOR

ATTEST:

_____

ASCELETA HAMMOND, CITY CLERK

/jrm
2/11/16
L:ord/ch155/2016-128

ORDINANCE NO. 2011-31

CITY OF POMPANO BEACH
Broward County, Florida

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, AMENDING CHAPTER 155, "ZONING CODE," BY AMENDING SECTION 155.003 "DEFINITIONS," TO PROVIDE ADDITIONAL DEFINITIONS; BY AMENDING SECTION 155.069, "ALCOHOLIC BEVERAGE ESTABLISHMENTS," TO AMEND ESTABLISHMENTS EXEMPT FROM SEPARATION REQUIREMENTS; BY AMENDING SECTION 155.074, "OUTDOOR RESTAURANTS AND BARS," TO PROVIDE FOR APPROVAL OF OUTDOOR RESTAURANTS AND BARS AND OPERATIONAL CONDITIONS; PROVIDING FOR SIDEWALK CAFES, REVIEW AND APPROVAL AND OPERATIONAL CONDITIONS; BY AMENDING SECTION 155.111, "PARKING SPACE SIZE," TO PROVIDE FOR PARKING SPACE REQUIREMENTS IN THE ATLANTIC BOULEVARD OVERLAY DISTRICT; BY AMENDING SECTION 155.113, "REQUIREMENTS IN VARIOUS ZONES," TO AMEND REQUIREMENTS FOR CERTAIN USES WITHIN THE ATLANTIC BOULEVARD OVERLAY DISTRICT; BY AMENDING SECTION 155.114, "INGRESS AND EGRESS," TO PROVIDE FOR ACCESS DRIVEWAY REGULATIONS IN THE ATLANTIC BOULEVARD OVERLAY DISTRICT; BY AMENDING SECTION 155.132, "EXISTING USES," RELATING TO LANDSCAPE STRIPS IN THE ATLANTIC BOULEVARD OVERLAY DISTRICT; AND BY AMENDING SECTION 155.179, "ATLANTIC BOULEVARD OVERLAY DISTRICT," TO AMEND USES, REGULATIONS, DEVELOPMENT STANDARDS AND DESIGN STYLE WITHIN THE ATLANTIC BOULEVARD OVERLAY DISTRICT; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

WHEREAS, in accordance with Florida Statutes, Section 166.041(3)(c)2, advertisements in accordance with said statute have been published in a newspaper of general paid circulation in the City of Pompano Beach and of general interest and readership in the community, notifying the public of two public hearings on this proposed Ordinance; and

~~(4) The Atlantic Boulevard Overlay District falls within the Beach Master Parking Area. Additional reductions requiring parking fees paid in lieu of provision of parking may be requested in accordance with § 155.115.~~

(1) In order to stimulate redevelopment within the AOD, no off-street parking spaces shall be required for multifamily residential use, nonresidential uses, and mixed use development for a period expiring on January 4, 2016. Upon expiration of this exemption time period, off-street parking shall be required to be provided in the AOD, as per Section 155.113 (A) (5) and (B) (17) Off Street Parking requirements.

(2) When a development proposes to include off-street parking, the dimensional standards for off-street parking shall be in accordance with Section 155.111 (C) Parking Space Size, and as approved by the City Engineer.

(3) When a development includes structured parking, the design of structured parking facilities shall comply with the following:

(a) Structured parking facilities shall be either screened from view by placing them at the interior of the lot, or shall be architecturally designed to be compatible with nearby buildings.

(b) At least 75% of a building frontage on a street shall consist of commercial or civic uses that are accessible to the public from the street, which may also include display windows.

(c) Street level vehicular accessways to parking structures should occur only on side streets and be minimized to accommodate necessary vehicle entrances and pedestrian access only.

(d) Structured parking facilities where the occupied space is located above a ground floor parking area are not permitted unless the street frontage is provided with occupied space at least 20 feet deep.

(e) Upper floor elevations of structured parking facilities that are visible from a public street shall be treated with a high-quality architectural design, screening and finish intended to mitigate the appearance of an open structured parking facility.

(f) Tandem parking may be permitted within a structured parking facility. Parking spaces need not be immediately accessible provided spaces are arranged so that no more than two parking spaces would be crossed in parking any vehicle.

(4) On-Street Parking. On-street parking is encouraged on all streets within the AOD, with the exception of Atlantic Boulevard and Federal Highway. On-street parking improvements will be constructed by the City and/or the East CRA, in conjunction with other applicable public agencies.

Overlay District regulations until partial destruction or modification occurs, in which case the following provisions apply:

(1) Any change in the use of a structure deemed nonconforming will result in compliance with subsection ~~(H)~~ (J) of this section and the sign regulations as provided in the Sign Code, Chapter 156.07 (J).

(2) A nonconforming structure, site characteristic or appurtenance which is destroyed, modified or improved by more than 25% of its assessed value shall be required to comply with ~~subsection~~ ~~(H)~~ (J) of this section. Nonconforming signs are subject to further restrictions and provisions pursuant to subsection ~~(H)~~ (J) of this section and the sign regulations as provided in the Sign Code, Chapter 156.07 (J).

(3) A nonconforming site characteristic, such as parking or landscaping, which is destroyed, modified or improved by more than 20% of the total area shall be required to comply with ~~subsection (I)~~ (K) of this section.

(4) A nonconforming structure which is destroyed, improved or modified by more than 50% of its assessed value shall be required to conform to all of the regulations of the Atlantic Boulevard Overlay District.

SECTION 9. If any provision of this Ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect any provisions or applications of this Ordinance that 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 10. This Ordinance shall become effective upon passage.

PASSED FIRST READING this 8th day of March, 2011.

PASSED SECOND READING this 22nd day of March, 2011.

LAMAR FISHER, MAYOR

ATTEST:

MARY L. CHAMBERS, CITY CLERK

GBL/jrm
4/22/11
L:ord/ch155/2011-72

that people will not have to tear apart parts of their properties if they are exceeding the standards.

Mr. Evans asked about the "Minimal impact on the dune" and if there is a definition for "Minimal impact." Mrs. Friedman stated that those types of determinations are made by the Urban Forester and the Registered Landscape Architects on the Development Services Staff.

Mr. Evans asked why the text amendment for the clarification to the definition of lot coverage is included when it affects more than only the properties abutting the beach. Mrs. Friedman answered that lot coverage is related to the issue at hand. Mr. Evans asked if there should be a separate proposal or a notice requirement since it will affect the entire City. Mrs. Friedman responded that if the subject matter was misleading, Staff could bring the item back to the Board independently. Mr. Evans responded that this would be preferable.

Mr. Stacer asked if these text amendments would impact the two restaurants approved to be built north of the pier. Mrs. Friedman responded that she is not familiar enough with the projects to answer the question. Mrs. Gomez responded that these projects have already received a variance for their rear setback requirements and therefore would not be impacted by the code changes at hand.

MOTION made by Joan Kovac and seconded by Dwight Evans to recommend approval of the proposed text amendments, excluding the addition of the word "roofed" to Code Section 155.9401.E Lot Coverage. All voted in favor of the above motion; therefore, the motion passed.

8. Chapter 155 Zoning Code Text Amendments, Revisions to AOD Parking Modifications

Staff is recommending text amendments to the Zoning Code, requested by the CRA, regarding parking modifications in the AOD for Hotels and Residential Uses provided as part of a mixed-use development.

Mrs. Friedman introduced herself to the Board and stated that this will be the third time this Board has been asked to consider changes to the parking standards in the Atlantic Boulevard Overlay District. Previously, at the November 30th, 2015 Special Set hearing, the item was tabled. At the December 16th, 2015 Planning and Zoning Board Hearing, several text amendments were presented. Since then, the Pompano Beach CRA has requested additional uses be eligible for parking modifications. Mrs. Friedman explained that any of the text changes in the backup that are highlighted in yellow are new proposed changes.

Mrs. Friedman stated that the proposed reductions would reduce parking for Hotels as follows:

- No parking required for a change in use of an existing building (or portion of building)
- No parking required for a new principal or accessory building, if located on property that is one-acre or less

For Residential uses, parking would only be reduced if the residential use is part of a mixed-use development. Further the proposed revisions define mixed-use a vertical integration with retail uses, professional office uses, or certain food and/or beverage uses. The proposed reductions would reduce parking as follows:

- No parking required for a change in use of an existing building (or portion of building)
- No parking required for a new principal or accessory building, if located on property that is one-acre or less

Mr. Stacer asked if the Board had any questions of staff.

Dr. Mills asked why Medical Office is struck out. Mrs. Friedman answered that the Doctor's office does not support the overall vision of an active, pedestrian-oriented district.

Mrs. Kovac asked if there will be a parking garage close to hotel uses. Mrs. Friedman answered that it is a combination of adjacent parking, the CRA is looking in investing in parking, but ultimately it allows the developer to create a parking program that best fits their needs. Mrs. Friedman added that it can be a combination of on-site and off-site parking or reduced parking.

Cecilia Ward (18081 SE Country Club Drive Tequesta, FL) introduced herself to the Board as the Planning Consultant for the CRA and stated that she needed to be sworn in. Ms. MacNeil placed Mrs. Ward under oath. Mrs. Ward stated that they are requesting the additional provisions regarding parking in order to encourage certain types of development in the AOD and East CRA such as entertainment uses, retail, restaurants, and mixed-use development. This parking incentive attracts redevelopment to the area. Mrs. Ward stated that just because there are no parking requirements from the City, it does not mean that the developer will not provide parking.

Mr. Stacer asked if anyone knows if the property east of Briny that is supposed to have a Hyatt Place built is it over an acre. Mrs. Ward stated that she is not familiar. Mr. Stacer stated that it is at about the 200 block across from Pompano Beach Club and on the east side of Briny Avenue. Paola asked if the Chairman is referring to 200 Briny. Mrs. West stated that she will look into it. Mr. Stacer stated that this project concerns him.

Mr. Evans asked if the purpose of striking medical office is proposed because it would affect the attraction of business interest. Mrs. Friedman responded that the Board is looking at the CRA's proposed language where they propose parking modifications and the revision of the Code's definition of professional office. The proposed revision would reflect changes due to the Moratorium. The text amendments before the Board this

DRAFT

evening do not include this change. Mrs. Friedman stated that the document with the red and blue fonts is a request from the CRA to Development Services. Mrs. Evans asked Mrs. Ward to provide an explanation of the purpose of the restriction. Mrs. Ward answered that there may be a conflict with the definition (Professional Office) as a result of the text amendments heard at the Special Set meeting in November. The CRA is not proposing to change the definition in a manner that is inconsistent with the Moratorium issues that were presented to this Board in November. Mrs. Ward stated that Development Services needs to go back and amend the definition of Professional Office. However, they are not doing so this evening.

Dr. Mills stated that he would like to ask a question about Professional Offices. Mrs. Friedman stated that staff is not recommending changes to the definition of Professional Office at this time. This information is just part of the backup that came from the CRA.

Mr. Stacer stated that the Chair will entertain a motion.

MOTION was made by Joan Kovac to and seconded by Elizabeth Anderson to recommend approval of the proposed text amendments. All voted in favor of the above motion; therefore, the motion passed.

9. Chapter 155 Zoning Code Text Amendments, New Freestanding Tower or Telecommunication Facility

Staff is recommending text amendments addressing new freestanding tower or telecommunication facilities. In particular, the text amendments address separation requirements and the allowance of chain link fences.

Mrs. Friedman introduced herself to the Board and stated that this text amendment proposal is a matter of housekeeping by Development Services. The Code requires towers within the public utility district to be separated from each other. Mrs. Friedman stated that this is an inverse intent of what the City adopted in 1997, which was to allow towers to congregate in the public utility district while towers outside of this district were required to be separated from each other. Staff is requesting that this language be corrected.

Mrs. Friedman stated that the second item relates to chain link fences and how they are permitted to be used in relation to telecommunication facilities. The proposed text amendments help clarify that chain link fences should not be visible from a right-of-way.

There were no questions for staff.

MOTION made by Joan Kovac and seconded by Jeff Torrey to recommend approval of the proposed text amendments. All voted in favor of the proposed text amendments; therefore, the motion passed.

10. Sunshine Law Presentation

DRAFT

PLANNING AND ZONING BOARD/ LOCAL PLANNING AGENCY
MEMORANDUM #16-010

DATE: February 12, 2016

TO: City Commission

FROM: Planning and Zoning Board/ Local Planning Agency

SUBJECT: Proposed Text Amendments to the Zoning Code,
AOD Parking Modifications

At the meeting of the Planning and Zoning Board/ Local Planning Agency held on January 27, 2016, the Board considered proposed text amendments to the Atlantic Boulevard Overlay District standards of the Zoning Code, as set forth in the Department of Development Services Administrative Report 16-030.

Staff recommends reducing the parking requirements for hotels and residential uses part of a mixed-use development by not requiring parking for: a change in use of an existing building or portion of a building or a new principal or accessory building if located on a property one acre or less.

Staff also recommends defining mixed-use as a vertical integration with retail uses, professional office uses, or certain food and/or beverage uses.

With a unanimous vote for the approval of the amendment, it is the recommendation of the Board that the text amendments be approved.

Fred Stacer
Chairman
Planning and Zoning Board/ Local Planning Agency

kem
G:\Zoning 2009\Code Rewrite\Code Amendments\Moratorium - June 2015\P&Z January 2016 - AOD Parking\P&Z Approval Memo 16-010.doc

pompano beach
Florida's Warmest Welcome

MEMORANDUM

Development Services

ADMINISTRATIVE MEMORANDUM NO. 16-030

DATE: January 14, 2016

TO: Planning and Zoning Board

VIA: Robin M. Bird, Director of Development Services RB

FROM: Karen Friedman, AICP, Principal Planner KBF

RE: Proposed Revisions to AOD Parking Modifications §155.3703.E.2.a

---

At the December 16, 2015 Planning and Zoning Board hearing, Staff recommended text amendments to §155.3703.E.2.a addressing parking modifications for the AOD that are set to expire on January 4, 2016, and reflecting the proposed zoning code revisions resulting from the Temporary Moratorium.

As mentioned in Administrative Memorandum #15-661, the intent of the proposed parking modifications is to encourage the redevelopment of the AOD by incentivizing those uses that further the purpose of the district and incentivizing the redevelopment of properties that are the most challenging in terms of providing parking (i.e. existing development and/or small lots). The revisions presented at the December 16, 2015 hearing were limited to Eating and Drinking Establishments, Retail Sales and Service Uses, and Professional Offices. Per the attached memo from the City's CRA (dated January 11, 2016), the CRA is requesting parking modifications for Hotels and for Residential Uses provided as part of a mixed-use development.

As with the revisions recommended by the P&Z Board at the December 16, 2015, the proposed parking reductions are tailored for certain development scenarios and include a five year extension to the parking reductions.

The proposed reductions would reduce parking for Hotels are as follows:

- No parking required for a change in use of an existing building (or portion of building)
- No parking required for a new principal or accessory building, if located on property that is one-acre or less

For Residential uses, parking would only be reduced if the residential use is part of a mixed-use development. Further the proposed revisions define mixed-use a vertical integration with retail uses, professional office uses, or certain food and/or beverage uses. The proposed reductions would reduce parking as follows:

- No parking required for a change in use of an existing building (or portion of building)
- No parking required for a new principal or accessory building, if located on property that is one-acre or less

Staff's Request

Staff is requesting the Board approve the recommended changes to the Zoning Code to the City Commission for adoption.

pompanobeachfl.gov 100 West Atlantic Boulevard | Pompano Beach, FL 33060 | Phone: 954-786-4600

Article 3: Zoning Districts

***

Part 7: Overlay Zoning Districts

***

155.3703. ATLANTIC BOULEVARD OVERLAY DISTRICT (AOD)

***

E. Modified Development Standards

***

2. Off-Street Parking

a. Minimum Number of Spaces Required

~~ii. Nonresidential and Mixed-Use Development~~
~~No off-street parking spaces are required for any nonresidential or mixed-use development constructed by or have a valid building permit as of January 4, 2016. Nonresidential or mixed-use development permitted thereafter shall be subject to the following standards for minimum number of off-street parking spaces:~~

~~(A) Nonresidential development with a gross floor area totaling less than 25,000 square feet: No parking spaces required.~~

~~(B) Nonresidential development with a gross floor area totaling 25,000 square feet or more: one space per 1,000 square feet of gross floor area, or major fraction thereof.~~

~~(C) Mixed-use development: one space per 500 square feet of gross floor area devoted to nonresidential uses, or major fraction thereof, and one space per 1,000 square feet of gross floor area devoted to residential uses, or major fraction thereof.~~

The strikethrough of 155.3703.E.2.a.ii was recommended at the December 2015 P&Z Hearing

ii. Selected off-street parking reductions for Retail Sales and Service Uses, Eating and Drinking Establishments, Professional Office, or Hotel uses constructed by or having a valid building permit as of January 4, 2021.

(A) **Retail Sales and Service Use:** Off-Street parking is reduced only for the following.

(1) No off-street parking spaces are required for a change in use of an existing building.

(2) No off-street parking spaces are required for a new principal structure or accessory structure located on property of one-acre or less

(3) The above reductions in (1) and (2) are not applicable to Funeral Home or Mortuary, Laundromat, or Consignment Boutique.

(B) **Eating and Drinking Establishments:** Off-Street parking is reduced as follows:

(1) No off-street parking spaces are required for a change in use of an existing building.

At the December 2015 P&Z Hearing, the creation of a revised 155.3703.E.2.a.ii was recommended. Language highlighted in yellow is new for this request.

(2) No off-street parking spaces are required for a new principal structure or accessory structure located on property of one-acre or less

(3) One parking space per 8 persons of maximum occupancy capacity of customer service area is required for a new principal or accessory structure located on property greater than one-acre.

(4) The above reductions in (1), (2), and (3) are not applicable to Nightclub or Hall For Hire.

(C) **Professional Office Use:** No off-street parking spaces are required for a change in use of an existing building on the 2nd floor or above.

(D) **Hotel Use:** Off-Street parking is reduced as follows:

(1) No off-street parking spaces are required for a change in use of an existing building.

(2) No off-street parking spaces are required for a new principal structure or accessory structure located on property of one-acre or less

Language highlighted in yellow is new for this request.

iii. Selected off-street parking reductions for Residential Uses vertically integrated within a Mixed Use Development constructed by or having a valid building permit as of January 4, 2021.

(A) For purposes of this subsection, Mixed Use Development shall mean developments that vertically integrate residential uses with Retail Sales and Service Uses, Professional Office Uses, Bar or Lounges, Brewpubs, Restaurants, or Specialty eating or drinking establishments.

(B) The off-street parking requirement for the residential use is reduced as follows:

(1) No off-street parking spaces are required for a change in use of an existing building.

(2) No off-street parking spaces are required for a new principal structure or accessory structure located on property of one-acre or less

CRA
POMPANO BEACH

MEMORANDUM

DATE: January 11, 2016

TO: Robin Bird, Director of Community Services

FROM: Lorri Hall, Principal Planner

THRU: Kim Briesemeister, CRA Executive Director,
Chris Brown, CRA Executive Director

RE: Proposed Revisions to the AOD Parking Standards

On July 14, 2015, the City Commission of Pompano Beach imposed a moratorium. The purpose of the moratorium was to determine the potential impact that these uses may have on the economic redevelopment efforts as expressed in the CRA redevelopment plan and the City's Comprehensive Plan. The projects and programs in the East CRA are designed to solve underlying problems that have a blighting influence on the redevelopment areas as further expressed in East CRA Redevelopment Plan.

As part of the moratorium, City staff is currently requesting a parking modification for the Atlantic Boulevard Overlay District (AOD) which extends the parking reductions to January 4, 2021 and provide parking reductions for certain uses and development scenarios. The CRA noticed that the mixed use development scenarios were invariantly not included in the parking modifications. CRA staff is requesting city staff propose revisions to the AOD Zoning Code to include the proposed draft language.

Additionally, the revisions to the definitions within the Zoning Code as part of the moratorium are proposed for City Commission action this month are in direct conflict with the existing professional office that exists in the code today. Please revise the definition of Profession Office as depicted in the attached draft language.

Article 3: Zoning Districts

***

Part 7:Overlay Zoning Districts

***

155.3703. ATLANTIC BOULEVARD OVERLAY DISTRICT (AOD)

***

E. Modified Development Standards

***

2. Off-Street Parking

a. Minimum Number of Spaces Required

***

iii. Selected parking reductions for Retail Sales and Service Uses, Eating and Drinking Establishments, ~~or~~ Professional Office, Hotel, or Mixed-use development that contains residential use in conjunction only with retail,~~and/or~~ professional office uses, restaurant uses, brewpub, café or bars,~~uses~~that are~~constructed by or having~~ have a valid building permit as of January 4, 2021.

(A)Retail Sales and Service Use: Parking is reduced only for the following. All other development requires parking to be provided in accordance with Table 155.5102.D.1: Minimum Number of Off-Street Parking Spaces

(1) No off-street parking spaces are required for a change in use of an existing building.

(2) No off-street parking spaces are required for a new principal structure or accessory structure located on property of one-acre or less

(3) The above reductions in (1) and (2) are not applicable to Funeral Home or Mortuary, Laundromat, or Consignment Boutique.

(B) Eating and Drinking Establishments: Parking is reduced as follows:

(1) No off-street parking spaces are required for a change in use of an existing building.

(2) No off-street parking spaces are required for a new principal structure or accessory structure located on property of one-acre or less

(3) One parking space per 8 persons of maximum occupancy capacity of customer service area is required for a new principal or accessory structure located on property greater than one-acre.

(4) The above reductions in (1), (2), and (3) are not applicable to Nightclub or Hall For Hire.

(C) Professional Office Use: No off-street parking spaces are required for a change in use of an existing building on the 2nd floor or above. All other development requires parking to be provided in accordance with Table 155.5102.D.1: Minimum Number of Off-Street Parking Spaces.

(D) Residential use contained within a Mixed-use development; Parking is reduced as follows:

(1) No off-street parking spaces are required for a change in use of an existing building.

(2) No off-street parking spaces are required for a new principal structure or accessory structure located on property of one-acre or less.

(E) Hotel use: Parking is reduced as follows:

(1) No off-street parking spaces are required for a change in use of an existing building.

(2) No off-street parking spaces are required for a new principal structure or accessory structure located on property of one-acre or less.

MOTION made by Walter Syrek and seconded by Richard Klosiewicz to recommend approval of the proposed text amendments to section 155.2406. All voted in favor of the above motion; therefore, the motion passed.

8. Chapter 155 Text Amendments, AOD Parking Modifications
HEARD FIRST

In conjunction with the proposed text amendments resulting from the Temporary Moratorium, Staff has prepared revisions to the parking modifications for the AOD that are set to expire on January 4, 2016. The intent of the proposed parking modifications is to encourage the redevelopment of the AOD by incentivizing those uses that further the purpose of the district and incentivizing the redevelopment of properties that are the most challenging in terms of providing parking (i.e. existing development and/or small lots). The proposed amendments include a five year extension to the parking reductions.

Mrs. Friedman introduced herself to the Board and stated that this text amendment is in conjunction with the moratorium text amendments which were reviewed by the Board at the November 30th special set hearing. The proposed text amendments address revisions to the modified parking standards for the Atlantic Boulevard Overlay District (AOD) to reflect the recommendations as a result of the moratorium. The proposed amendments include a five year extension to the parking reductions. The exemptions have been tailored down to target the uses that are highly desirable in the AOD. In summary, Eating and Drinking Establishments (excluding halls for hire and nightclubs), Retail Sales and Service Uses (with a few exceptions), and Professional Offices would be targeted use categories and would be eligible to be exempt from parking requirements or would have reduced parking requirements. Mrs. Friedman asked the Board if they had any questions.

The Chairman asked if the Board had any questions. No one responded. Mr. Stacer asked if residential uses will no longer be eligible for parking modifications and Mrs. Friedman agreed.

Mr. Stacer asked if anyone from the audience wished to speak and received no response from the audience.

MOTION made by Richard Klosiewicz and seconded by Jeff Torrey to recommend approval of the proposed text amendments. All voted in favor of the above motion; therefore, the motion passed.

9. Chapter 153 "Rental Housing Code" Text Amendments, Short Term Rental Permit

As a courtesy, staff is presenting its recommended revisions to the Code of Ordinances Chapter 153 "Rental Housing Code" regarding the creation of a Short Term Rental Permit program. Staff recommends adopting regulations related to off-street parking, trash and recycling bins,

PLANNING AND ZONING BOARD/ LOCAL PLANNING AGENCY
MEMORANDUM #16-005

DATE: January 12, 2016

TO: City Commission

FROM: Planning and Zoning Board/ Local Planning Agency

SUBJECT: Proposed Text Amendments to Zoning Code, 155.3703.E.2.a, AOD Parking Modifications

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At the meeting of the Planning and Zoning Board/ Local Planning Agency held on December 16, 2015, the Board considered proposed text amendments to Article 3 (Zoning Districts) of the Zoning Code, as set forth in the Department of Development Services Administrative Report 15-661.

Within Article 3 (Zoning Districts) Staff recommends revisions to the parking modifications for the Atlantic Boulevard Overlay District that are specific to certain uses and include an extension of the parking reductions in the Atlantic Boulevard Overlay District by five years.

With a unanimous vote for the approval of the amendments, it is the recommendation of the Board that the text amendments be approved.

Fred Stacer
Chairman
Planning and Zoning Board/ Local Planning Agency

kem
G:\Zoning 2009\Code Rewrite\Code Amendments\Moratorium - June 2015\P&Z December 16 2015 - AOD Parking\PZ Approval Memo_AOD Parking.doc

pompano beach
Florida's Warmest Welcome

MEMORANDUM

Development Services

ADMINISTRATIVE MEMORANDUM NO. 15-661

DATE: December 11, 2015

TO: Planning and Zoning Board

VIA: Robin M. Bird, Director of Development Services

FROM: Karen Friedman, AICP, Principal Planner

RE: Proposed Revisions to AOD Parking Modifications §155.3703.E.2.a

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In conjunction with the proposed text amendments resulting from the Temporary Moratorium, Staff has prepared revisions to the parking modifications for the AOD that are set to expire on January 4, 2016.

The intent of the proposed parking modifications is to encourage the redevelopment of the AOD by incentivizing those uses that further the purpose of the district and incentivizing the redevelopment of properties that are the most challenging in terms of providing parking (i.e. existing development and/or small lots).

The proposed amendments include a five year extension to the parking reductions.

Unlike the existing modifications, the proposed parking reductions are specific to certain uses. **Below is the list of the use types that would be eligible for the parking reductions:**

Eating and Drinking Establishments

- Bar or lounge
- Brewpub
- Restaurant
- Specialty eating or drinking establishment

➢ *Hall for Hire and Nightclub are specifically excluded*

Retail Sales and Service Uses

- Art, music, or dance studio
- Bank or financial institution
- Dry cleaning or laundry drop-off establishment
- Personal and household goods repair establishment
- Personal services establishment
- Antique store
- Art gallery
- Auction house
- Book or media shop
- Grocery or Convenience store
- Drug store or pharmacy
- Home and building supply center
- Other retail sales establishment
- Local Liquor or package store (requires Special Exception approval)
- Regional Liquor or package store
- Beer or Wine Store (requires Special Exception approval)

➢ *Funeral home or mortuary, Laundromat, and Consignment boutique are specifically excluded*

Professional Offices

This includes offices for lawyers, engineers, and consultants etc…

pompanobeachfl.gov 100 West Atlantic Boulevard | Pompano Beach, FL 33060 | Phone: 954-786-4600

The parking reductions are also tailored for certain development scenarios. **Below are the proposed parking reductions:**

Eating and Drinking Establishments

- No parking required for a change in use of an existing building (or portion of building)
- No parking required for a new principal or accessory building, if located on property that is one-acre or less
- 50% reduction on required parking (1 per 8 persons at maximum occupancy vs. 1 per 4 persons at maximum occupancy) for a new principal or accessory building, if located on property that is larger than one-acre

Retail Sales and Service Uses

- No parking required for a change in use of an existing building (or portion of building)
- No parking required for a new principal or accessory building, if located on property that is one-acre or less
- All other development is required to provide parking per Code.

Professional Offices

- No parking required for a change in use of an existing building for the 2nd story or above
- All other development is required to provide parking per Code.

Staff's Request

Staff is requesting the Board approve the recommended changes to the Zoning Code to the City Commission for adoption.

Article 3: Zoning Districts

***

Part 7: Overlay Zoning Districts

***

155.3703. ATLANTIC BOULEVARD OVERLAY DISTRICT (AOD)

***

E. Modified Development Standards

***

2. Off-Street Parking

a. Minimum Number of Spaces Required

~~**ii. Nonresidential and Mixed-Use Development**~~
~~No off-street parking spaces are required for any nonresidential or mixed-use development constructed by or have a valid building permit as of January 4, 2016. Nonresidential or mixed-use development permitted thereafter shall be subject to the following standards for minimum number of off-street parking spaces:~~

~~(A) Nonresidential development with a gross floor area totaling less than 25,000 square feet: No parking spaces required.~~

~~(B) Nonresidential development with a gross floor area totaling 25,000 square feet or more: one space per 1,000 square feet of gross floor area, or major fraction thereof.~~

~~(C) Mixed-use development: one space per 500 square feet of gross floor area devoted to nonresidential uses, or major fraction thereof, and one space per 1,000 square feet of gross floor area devoted to residential uses, or major fraction thereof.~~

iii. Selected parking reductions for Retail Sales and Service Uses, Eating and Drinking Establishments, or Professional Office uses constructed by or having a valid building permit as of January 4, 2021.

(A) Retail Sales and Service Use: Parking is reduced only for the following. All other development requires parking to be provided in accordance with Table 155.5102.D.1: Minimum Number of Off-Street Parking Spaces

(1) No off-street parking spaces are required for a change in use of an existing building.

(2) No off-street parking spaces are required for a new principal structure or accessory structure located on property of one-acre or less

(3) The above reductions in (1)and (2) are not applicable to Funeral Home or Mortuary, Laundromat, or Consignment Boutique.

(B) Eating and Drinking Establishments: Parking is reduced as follows:

(1) No off-street parking spaces are required for a change in use of an existing building.

(2) No off-street parking spaces are required for a new principal structure or accessory structure located on property of one-acre or less

(3) One parking space per 8 persons of maximum occupancy capacity of customer service area is required for a new principal or accessory structure located on property greater than one-acre.

(4) The above reductions in (1), (2), and (3) are not applicable to Nightclub or Hall For Hire.

(C) Professional Office Use: No off-street parking spaces are required for a change in use of an existing building on the 2nd floor or above. All other development requires parking to be provided in accordance with Table 155.5102.D.1: Minimum Number of Off-Street Parking Spaces

Meeting Date: March 8, 2016 Agenda Item 24

REQUESTED COMMISSION ACTION:

___ Consent ___ Ordinance x Resolution ___ Consideration ___ Workshop

SHORT TITLE OR MOTION: A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A CONSTRUCTION MANAGER-AT-RISK CONTRACT NOT TO EXCEED THE AMOUNT OF $4,998,932.47 BETWEEN THE CITY OF POMPANO BEACH AND BURKHARDT CONSTRUCTION, INC., FOR THE BRINY AVENUE UNDERGROUNDING AND STREETSCAPE IMPROVEMENTS; PROVIDING AN EFFECTIVE DATE.

Summary of Purpose and Why:

Please find attached Construction Manager-At-Risk Contract with Burkhardt Construction, Inc., in the amount of $4,998,932.47, consistent with Request for Qualifications (T-12-15) for Streetscape Projects (ranking order approved by Commission on February 24, 2015) in which Burkhardt Construction was the highest ranked firm. Burkhardt previously completed the preconstruction services for Briny Avenue. The attached proposed Contract is for construction services which will include but not be limited to undergrounding of overhead utilities (electric, phone cable) and streetscape improvements (landscape, irrigation, lighting, drainage, brick paver roadway, pavement resurfacing, new beach accesses and amenities, etc.) for Briny Avenue and SE 2nd St, SE 4th St, SE 6th St, and SE 8th St between A1A and Briny Avenue. The attached Contract includes Exhibit A (General Conditions), Exhibit B (Construction Budget/Schedule of Values as a Guaranteed Maximum Price), Exhibit C (11-Month Construction Schedule with Project Location Map), and Exhibit D (Certificate of Insurance). The Contract does not include material which is required to be provided by FPL or required Comcast/AT&T cable installations/final connections which will require Commission approval of these binding cost estimates following receipt from FPL, AT&T and Comcast which are forthcoming.

STRATEGIC PLAN Accomplishing this item supports achieving Initiative 2.3, Objective 2.3.4 "Undergrounding Utility Lines on Briny" identified in the City's Great Places Strategy.

QUESTIONS TO BE ANSWERED BY ORIGINATING DEPARTMENT:

(1) Origin of request for this action: Engineering

(2) Primary staff contact: Horacio Danovich / John Sfiropoulos, P.E. Ext 7834 / 7009

(3) Expiration of contract, if applicable: N/A

(4) Fiscal impact and source of funding: $4,998,932.47 from CIP 12-208, Acct No. 302-7486-530-6512 with attached Budget Adjustment.

DEPARTMENTAL COORDINATION	DATE	DEPARTMENTAL RECOMMENDATION	DEPARTMENTAL HEAD SIGNATURE OR ATTACHED MEMO NUMBER
Engineering	2/29/16	APPROVE	John Sfiropoulos
City Attorney	3/1/16	APPROVE	
Finance	3/2/16	APPROVE	S. Lebble
Budget		APPROVE	

___ Advisory Board

___ Development Services Director

X City Manager

ACTION TAKEN BY COMMISSION:

Ordinance	Resolution	Consideration	Workshop
1st Reading	1st Reading	Results:	Results:
2nd Reading			

City Attorney's Communication #2016-571
February 29, 2016

TO: John Sfiropoulos, P.E., City Engineer

FROM: Mark E. Berman, City Attorney

RE: Resolution – Construction Manager-at-Risk Contract / Briny Avenue Undergrounding and Streetscape Improvements

Pursuant to your e-mail dated February 29, 2016, I have revised and attached the following form of Resolution:

> **A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A CONSTRUCTION MANAGER-AT-RISK CONTRACT NOT TO EXCEED THE AMOUNT OF $4,998,932.47 BETWEEN THE CITY OF POMPANO BEACH AND BURKHARDT CONSTRUCTION, INC., FOR THE BRINY AVENUE UNDERGROUNDING AND STREETSCAPE IMPROVEMENTS; PROVIDING AN EFFECTIVE DATE.**

Please ensure that the language we discussed is inserted into Article 7 of the contract prior to submitting the resolution to the City Commission.

MARK E. BERMAN

/jrm
l:cor/engr/2016-571

Attachment

RESOLUTION NO. 2016-_____

CITY OF POMPANO BEACH
Broward County, Florida

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A CONSTRUCTION MANAGER-AT-RISK CONTRACT NOT TO EXCEED THE AMOUNT OF $4,998,932.47 BETWEEN THE CITY OF POMPANO BEACH AND BURKHARDT CONSTRUCTION, INC., FOR THE BRINY AVENUE UNDERGROUNDING AND STREETSCAPE IMPROVEMENTS; PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA:

SECTION 1. That a Contract between the City of Pompano Beach and Burkhardt Construction, Inc. for the Briny Avenue Undergrounding and Streetscape Improvements, a copy of which Contract is attached hereto and incorporated by reference as if set forth in full, is hereby approved.

SECTION 2. That the proper officials are hereby authorized to execute said Contract between the City of Pompano Beach and Burkhardt Construction, Inc.

SECTION 3. This Resolution shall become effective upon passage.

PASSED AND ADOPTED this _____ day of _____, 2016.

_____
LAMAR FISHER, MAYOR

ATTEST:

_____
ASCELETA HAMMOND, CITY CLERK

MEB/jrm
2/29/16
l:reso/2016-140

CONSTRUCTION MANAGER-AT-RISK CONTRACT

This Contract made and entered into this _____day of _____ between The City of Pompano Beach, a political subdivision of the State of Florida ("Owner"), and Burkhardt Construction, Inc.("Construction Manager"), a Florida Corporation, having its principal office located at 1400 Alabama Avenue, West Palm Beach, Florida 33401.

WITNESSETH:

That the said Construction Manager, having been awarded the Contract for the: Briny Avenue Undergrounding and Streetscape Improvements **("Project")** in accordance with the Request for Qualifications T-12-15 ("RFQ") therefore, and for and in consideration of the promises and of the covenants and agreements, and of the payments herein specified, to be made and performed by the Construction Manager and the Owner, the Construction Manager hereby covenants and agrees to and with the Owner to undertake and execute all of the said named work, in a good, substantial and workmanlike manner, and to furnish and pay for all materials, labor, supervision, equipment, supplies, fees, expertise, incidentals and services necessary to fully complete all Work, as defined in Article 1.4.8 below, in accordance with all requirements of the Contract Documents, and in accordance with all applicable codes and governing regulations. The Contract Documents ("Contract Documents") consist of this Contract, the General Conditions, and the following Exhibits, all hereto attached and made a part hereof:

CONSTRUCTION PHASE (Exhibits to be attached conditioned upon Article 2.1.13.1):

A	General Conditions
B	Project Construction Budget/Schedule of Values (GMP)
C	Project Schedule
D	Certificate of Insurance
E	Performance Bond (to be provided prior to contract execution)
F	Payment Bond (to be provided prior to contract execution)
G	Request for Qualifications, T-12-15 (incorporated herein by reference)
H	List of Drawings, Specifications, and Addenda issued at time of execution of GMP Amendment (incorporated herein by reference)

ARTICLE 1

The Construction Team and Extent of Contract

1.1 The Construction Manager accepts the fiduciary relationship of trust and confidence established with the Owner by this Contract, and covenants with the Owner to furnish the Construction Manager's best skill and judgment in furthering the interests of the Owner, and to cooperate with the Owner and Architect in furthering the interests of the Owner. The Construction Manager agrees to furnish efficient business administration and supervision; to

Manager's best efforts to perform and complete the Project in an expeditious and economical manner consistent with the interests of the Owner.

1.1.1 Construction Manager understands and agrees that a material inducement for the Owner entering into this Contract, following a competitive award process authorized under Florida law, was Construction Manager's representations about its expertise in the scheduling, sequencing and construction of a Briny Avenue Undergrounding and Streetscape Improvements and related infrastructure projects, as well as its superior familiarity with the unique local conditions and geography of the City of Pompano Beach, Florida, and the jobsite area. Construction Manager understands that time is of the essence in connection with the performance of the Work set forth in this Contract, and that even a minor breach of its terms may have a substantial, adverse impact upon the Owner, adjacent merchants, and the seasonal nature of City of Pompano Beach's economy, including the lifestyles of its residents and visitors. Accordingly, Construction Manager hereby affirms that the foregoing is true and correct, and that all anticipated costs to achieve the schedule and design intent have been included in the Guaranteed Maximum Price ("GMP") for the Project.

1.2 The Construction Team. The Construction Manager, the Owner, and the Architect (the "Construction Team") will cooperate together through the completion of construction. The Construction Manager shall provide leadership to the Construction Team on all matters relating to construction. The Architect will provide leadership to the Construction Team on all matters relating to design. Nothing herein is intended to make the Owner liable for the acts or deeds of the Construction Manager, it being understood that Construction Manager at all times is an independent contractor

1.3 Extent of Contract. This Contract is complementary to the Drawings, Specifications and the General Conditions of the Contract, and together represent the entire integrated agreement between the Owner and the Construction Manager, superseding all prior negotiations, representations or agreements, either written or oral. Where this Contract is expressly in conflict with the General Conditions of the Contract, this Contract will prevail. Where this Contract is silent, the General Conditions of the Contract, and the requirements of the Drawings and Specifications will prevail, in that order. This Contract may be amended only by written instrument signed by the Owner and the Construction Manager.

1.4 Terms used in the Contract shall have the following meanings:

1.4.1 "Owner" means The City of Pompano Beach, Florida, or "City," and the terms may be used interchangeably;

1.4.2 "Project" means the Briny Avenue Undergrounding and Streetscape Improvements located as noted above;

1.4.3 "Design Professional" shall mean Architect, Engineer and other licensed Design Professionals engaged by the City;

1.4.4 "Contractor" means Construction Manager, and the terms may be used interchangeably;

1.4.5 "Subcontractor" means Trade Contractor, and the terms may be used interchangeably;

1.4.6 "Contract Sum" means Guaranteed Maximum Price ("GMP"), and the terms may be used interchangeably;

1.4.7 "Construction Team" means Owner, Architect and Construction Manager; and

1.4.8 "Work" means the totality of the obligations, including construction and other services, imposed on the Construction Manager by the Contract Documents, whether completed or partially completed, and including all labor, materials, equipment, services, fees, expertise and incidentals provided or to be provided by the Construction Manager to fulfill the Construction Manager's obligations.

ARTICLE 2

Construction Manager's Basic Services

2.0 The Construction Manager's Basic Services under this Contract include Construction Phase services only.

2.1 The Preconstruction Phase. **(Articles 2.1 through and including 2.1.14 are hereby deleted from this Contract, as such pre-construction services were performed by Construction Manager under a prior Contract with the Owner)**

2.1 The Preconstruction Phase. It is the intent of the Construction Manager at Risk project delivery system to engage the Construction Manager as an active participant in the design process working with the Owner and Architect/Engineer in maintaining the project budget and project scope. The Construction Manager shall:

2.1.1 Provide preconstruction deliverables consisting of value engineering, constructability analysis, securing of easements, community outreach, and as otherwise set forth elsewhere herein and in Exhibit C, together with a Guaranteed Maximum Price proposal. The reports shall include a complete discussion and summary of the services provided in accordance with Subparagraphs 2.1.2 through 2.1.8 herein below, including the schedule and a detailed cost estimate.

2.1.2 Review designs during their development. Proactively advise the Architect with regard to the most effective approach for designing the project regarding issues of onsite use and improvements, selection of materials, building systems and equipment. Provide recommendations on relative feasibility of construction methods, compliance with applicable laws, codes, design standards, and ordinance, availability of materials and labor, time requirements for procurement, installation and construction and factors related to cost including, but not limited to, costs of alternative designs or materials, preliminary budgets and possible economies, while maintaining the Owner's design objectives.

2.1.3 Provide, for the Architect/Engineer's and the Owner's review and acceptance, a Project Schedule

that coordinates and integrates the Construction Manager's services, the Architect/Engineer's services and the Owner's responsibilities with anticipated construction schedules. The Construction Manager shall update this schedule periodically, as required.

2.1.4 Prepare for the Owner's approval a detailed estimate of Construction Cost, as defined in Article 8 herein, developed by using estimating techniques which anticipate the various elements of the Project, and based on design documents prepared by the Architect/Engineer. Update and refine the estimate with 30%, 60% and 90% Construction Documents. Advise the Owner and the Architect/Engineer if it appears that the Construction Cost may exceed the Project budget. Make recommendations for corrective action.

2.1.5 Coordinate Contract Documents by consulting with the Owner and the Architect/Engineer regarding Drawings and Specifications as they are being prepared, and recommending alternative solutions whenever design details affect construction feasibility, cost or schedules.

2.1.6 The Construction Manager agrees that time is of the essence in maintaining the project schedule. In an effort to achieve the project schedule, the Architect/Engineer will rely upon the input and recommendations of the Construction Manager in preparing the project documents, recognizing that cost is one of a number of issues which will influence the selection of building components and systems.

2.1.7 It is incumbent upon the Construction Manager to advise the Architect/Engineer of recommended building components and systems before the design professionals have comprehensively documented the materials, systems and equipment within the project.

2.1.8 NOT USED

2.1.9 Develop a Project Construction Schedule providing for all major elements such as phasing of construction and times of commencement and completion required of each Trade Contractor. Provide the Project Construction Schedule for each set of bidding documents. Develop a plan for the phasing of construction, if phasing is required.

2.1.9.1 Establish a schedule for the purchase of materials and equipment requiring long lead time procurement, and coordinate the schedule with the early preparation of portions of the Contract Documents by the Architect/Engineer. Expedite and coordinate delivery of these purchases.

2.1.10 Provide an analysis of the types and quantities of labor required for the Project and review the availability of appropriate categories of labor required for critical phases. Develop bidding packages designed to minimize adverse effects of labor shortages.

2.1.11 Make recommendations for pre-qualification criteria for bidders and develop bidders' interest in the Project. Establish bidding schedules.

2.1.12 Schedule and conduct monthly meetings of the Construction Team, and prepare and distribute minutes.

2.1.13 Based upon Drawings and Specifications produced by the Architect/Engineer, develop Guaranteed Maximum Price (GMP) proposal(s) at 90% Construction Documents, including, a Project Construction Schedule, itemized by Trade Contract, for phases of Work as required by the Owner. If the documents as

prepared by the Architect/Engineer are not adequate for the development of a Guaranteed Maximum Price, the Construction Manager shall notify the Owner immediately, prior to developing the GMP. All assumptions made by the Construction Manager in the development of the GMP shall be specifically listed in the GMP proposals, and the GMP will not be adjusted due to assumptions made by the Construction Manager, but not included in the GMP proposal.

2.1.13.1 **If the GMP proposal is accepted, in writing, by the Owner, it will become an Amendment to this Contract which will establish the GMP and Contract Time for the Work. A Public Construction Bond acceptable to Owner must be executed simultaneously with the GMP amendment.**

2.1.13.2 If the GMP proposal is not accepted by the Owner, the Owner shall so notify the Construction Manager in writing. The Construction Manager shall then recommend adjustments to the Work through value engineering. The Construction Team and Owner will discuss and negotiate these recommendations for no more than thirty (30) calendar days, unless an extension is granted in writing by the Owner. If an acceptable GMP is not developed, negotiations may be terminated, and the Owner may initiate negotiations with another Construction Manager.

2.1.14 The Construction Manager's personnel to be assigned during this phase and their duties are identified, as follows: To be determined, and at all times subject to Owner's approval.

2.2 Construction Phase. Unless otherwise authorized by the Owner, in writing, all Work shall be performed under Trade Contracts with the Construction Manager. The Construction Manager shall not bid on any of the Trade Contractor Work, or perform such Work with its own forces, without prior written notification and consent of the Owner. THE CONSTRUCTION MANAGER SHALL, WITHOUT LIMITATION:

2.2.1 Administer the Construction Phase as provided herein and in the General Conditions of the Contract.

2.2.2 Commence the Work within ten (10) days after receipt of a written Notice to proceed from the Owner.

2.2.3 With respect to work to be subcontracted by Construction Manager: a) Develop procedures that are reasonably acceptable to the Owner for the prequalification of Trade Contractors; b) Develop Trade Contractor interest in the Project, and conduct pre-bid conferences with interested bidders to review the documents; c) Take competitive bids on the Work of the various Trade Contractors or, if specifically authorized by the Owner, in writing, negotiate for the performance of that Work; d) Construction Manager may require bidders to submit bid bonds or other bid security acceptable to the Construction Manager as a prerequisite to bidding on the Work; e) Analyze and evaluate the results of the various bids and their relationship to budgeted and estimated amounts, and prepare for review with the Owner and Architect bid tabulation analysis and such other support data as necessary to properly compare the various bids and their responsiveness to the desired scope of Work; f) Review the scope of Work in detail with apparent low responsive bidders to determine that their bids are complete but

do not include duplicate scope items; g) Maintain records of all pre-award interviews with apparent low bidders; h) Promptly award and execute Trade Contracts with approved Trade Contractors; i) Provide copies of fully executed Trade Contracts, insurance certificates, and, if required, bonds, to the Owner.

2.2.4 With respect to the scheduling, sequencing, and coordination of the Work: a) Manage, schedule and coordinate the Work, including the Work of the Trade Contractors, and coordinate the Work with the activities and responsibilities of the Owner, Architect and Construction Manager in order to complete the Project in accordance with the Owner's objectives of cost, time, and quality as set forth in the Contract Documents; b) Develop and maintain a program, acceptable to the Owner and Architect, to assure quality control of the Work; c) Supervise the Work of all Trade Contractors so that the work conforms to the requirements of the plans and specifications; d) Provide instructions to each Trade Contractor when its Work does not conform to the requirements of the plans and specifications so that the work conforms to the requirements of the plans and specifications, and continue to manage each Subcontractor to ensure that corrections are made in a timely manner so as to not affect the progress of the Work; e) Should disagreement occur between the Construction Manager and the Architect over acceptability of Work and conformance with the requirements of the specifications and plans, the Owner shall be the final judge of performance and acceptability, and the Owner's decision thereon shall be final and binding.

2.2.5 Maintain at all times exclusively for this Project adequate, competent staffing to coordinate and direct the Work and progress of the Trade Contractors on the Project. The Construction Manager shall maintain sufficient off-site support staff, and competent full time staff at the Project site authorized to act on behalf of the Construction Manager to coordinate, inspect and provide general direction of the work and progress of the Subcontractors and shall provide no less than those personnel during the respective phases of construction that are set forth in Exhibit "B" to this Contract. Construction Manager shall not change any of those persons named in Exhibit "B" unless mutually agreed to by the Owner and Construction Manager, in writing. In such case, the Owner shall have the right of approval of the qualifications of replacement personnel. All of the Construction Manager's on-site management and supervisory personnel shall be consistent with the RFP presentation that preceded the execution of this Contract, and shall not be removed or replaced without the Owner's written consent. The Owner shall have the right to direct the Construction Manager to remove or replace any on-site personnel whose performance becomes unsatisfactory to the Owner. In such event, the Construction Manager shall promptly replace such personnel, without entitlement to additional compensation or additional time for the replacement.

2.2.5.1 Establish and maintain a) on-site organization and lines of authority in order to carry out the overall plans of the Construction Team; b) Identify an on-site staff member to represent the Construction Manager, on a daily basis, with authority to negotiate Change Orders and contract modifications on behalf of the Construction Manager; c) Make available such executive

personnel as necessary to execute Change Orders or other contract modifications on behalf of the Construction Manager so as not to delay the progress of the Work.

2.2.6 Establish and maintain a) procedures for coordination among the Owner, Architect, Trade Contractors and Construction Manager with respect to all aspects of the Work; b) Implement such procedures, incorporate them into a Project resource manual, and distribute manuals to the Construction Team.

2.2.6.1 Require of the various Trade Contractors such Coordination Drawings as may be necessary to properly coordinate the Work among the Trade Contractors.

2.2.6.2 In collaboration with the Architect, establish and implement procedures for tracking and expediting the processing of shop drawings, samples, Requests for Information ("RFI"), and other submittals as required by the General Conditions of the Contract.

2.2.7 Schedule and conduct weekly or more frequent progress meetings with Trade Contractors to review such matters as job procedures, job safety, construction progress, schedule, shop drawing status and other information as necessary. Construction Manager shall provide prior notice to Owner and Architect of all such meetings, and prepare and distribute minutes. Additionally, Construction Manager shall schedule and attend Team meetings with the Architect and Owner.

2.2.8 Review the Project schedule with the various Trade Contractors and review, or expand the level of detail to incorporate specific Trade Contractor input consistent with the overall completion requirements. Construction Manager shall regularly monitor and update the Project Schedule and various sub-networks as construction progresses, identify potential variances between scheduled and probable completion dates, review schedule for Work not started, or incomplete, and make adjustments in the schedule to meet the scheduled completion date. Construction Manager shall provide summary reports of each monitoring and document all changes in schedule, and prepare regular schedule updates and reporting which shall be included as part of the monthly Project report outlined in Subparagraph 2.2.16 herein.

2.2.9 Determine the adequacy of the Trade Contractors' personnel and equipment, and the availability of materials and supplies to meet the schedule. In consultation with the Owner and the Architect, take necessary corrective actions when requirements of a Trade Contract or a Trade Contract Schedule are not being met.

2.2.10 If applicable, whenever Owner-Furnished Contractor-Installed ("OFCI") materials or equipment are shipped to the Project site, the Construction Manager shall notify the Owner and shall be responsible for their inspection, proper storage, and incorporation into the Work, provided the scope of the OFCI work is included within the Guaranteed Maximum Price.

2.2.11 Develop and maintain an effective system of Project cost control which is satisfactory to the Owner. Revise and refine the initially approved Project Construction budget, incorporate approved changes as they occur, and develop cash flow reports and forecasts as needed. Identify variances between actual and budgeted or estimated costs and advise Owner and Architect whenever projected costs exceed budgets or estimates. Cost Control reports shall be included as part of the monthly Project report outlined in Subparagraph 2.3.16 herein.

2.2.12 Maintain a system of accounting satisfactory to Owner and consistent with generally accepted construction accounting principles. The Construction Manager shall preserve all accounting records for a period of four (4) years after final acceptance of the Work or as otherwise requested in writing by the Owner. The Owner, or the Owner's auditors shall have access to all such accounting records, supporting documentation, correspondence, subcontracts, purchase orders, and other things relating to this Contract, at any time during regular business hours, both throughout the performance of the Work, and for a period of four (4) years after final payment of the Work.

2.2.13 Develop and implement a system for the preparation, review and processing of Change Orders. Without assuming any of the Architect's responsibilities for, among other things, design, recommend necessary or desirable changes to the Owner and the Architect, review requests for changes and submit recommendations to the Owner and Architect.

2.2.13.1 When requested by the Owner or Architect, promptly prepare and submit informal estimates of probable cost for changes proposed in the Work including similar estimates from the Trade Contractors. If directed by the Owner, promptly secure formal written Change Order Proposals from such Trade Contractors.

2.2.14 Be responsible for initiating, maintaining and supervising effective safety programs and require similar programs of the Trade Contractors and Sub-subcontractors. The OSHA guidelines shall serve as the basis for the construction safety program. If the Owner implements an Owner Provided Insurance Program as provided for in Article 11, the Construction Manager shall cooperate with the safety representatives of the Owner's Insurance Administrator and/or the Owner's insurance carrier(s) in the course of construction site inspections and in all other matters related to job safety and accident prevention.

2.2.14.1 Promptly notify the Owner and, where applicable, the Owner's Insurance Administrator, in writing, upon receiving notice of filing of any charge of non-compliance from OSHA, or upon receiving notification that a federal or state inspector shall visit or is visiting the Project site.

2.2.14.2 At progress meetings with Trade Contractors, conduct a review of job safety and accident prevention, and prepare minutes of such meetings that will be available to the Owner's Representative on request. The minutes of job safety and accident prevention portion of such

progress meetings shall be made available to the Owner's Insurance Administrator, where applicable, upon request.

2.2.14.3 Designate a full-time staff member as the Project safety director who shall oversee job safety and accident prevention for the Construction Manager, Trade Contractors and Sub-subcontractors involved in the Work, in addition to any other responsibilities assigned to such staff member.

2.2.15 Make provisions for Project security acceptable to the Owner, to protect the Project site and materials stored off-site, or on-site, against theft, vandalism, fire and accidents, damage, or injury to person(s) or property, etc., as required by job and location conditions.

2.2.16 Record the progress of the Project. Submit written monthly progress reports to the Owner and the Engineer including information on the Trade Contractors' Work, the percentage of completion, current estimating, computerized updated monthly Critical Path Method scheduling and Project accounting reports, including Estimated Time to Completion and Estimated Cost to Complete. Keep a daily log available to the Owner and the Architect. Report and record such additional information related to construction as may be requested by the Owner. (For Horizontal Construction only: Construction Manager may substitute a Bar Chart, so long as the Bar Chart software provides the functional equivalent, to the extent possible, of the CPM provisions set forth in this Contract and its General Conditions. The Bar Chart format must be acceptable to the Owner. This parenthetical provision shall govern any provisions hereafter dealing with CPM Scheduling.)

2.2.17 The Construction Manager shall be responsible for the removal, encapsulation, transportation and disposal of any hazardous material, including, without limitation, lead-based paint, and any asbestos or asbestos-related products as may be required in connection with the Work. Hazardous material, described by federal guidelines brought by the Construction Manager or the Trade Contractors shall remain their responsibility for proper disposal. Any hazardous material not specifically shown on the documents, or which was not discovered or should have been discovered during performance of the Pre-Con Agreement, shall be considered a concealed condition and may become the responsibility of the Construction Manager in a Change Order increasing the Guaranteed Maximum Price for any additional costs incurred in connection therewith. Such Change Order shall be submitted in as timely a manner as is reasonably possible after discovery of the concealed condition, as more particularly set forth in the General Conditions.

2.2.18 The Construction Manager shall prepare a Project Manual, as more particularly set forth in RFQ Terms and Conditions, Article IV, pp. 21-22 thereof, incorporated herein by reference and made a part hereof.

ARTICLE 3

Additional Services

3.1 Upon the mutual agreement of the Owner and the Construction Manager, and upon written authorization from the Owner, the Construction Manager shall provide additional services that are beyond the scope of the Basic Services described in Article 2 herein. The Construction Manager shall be compensated for such additional services by Change Order to be negotiated by the Owner and the Construction Manager at the time of the additional service request, as set forth in the General Conditions.

ARTICLE 4

Owner's Responsibilities

4.1 The Owner will designate a representative to act in its behalf. This representative, or his/her designee will receive progress reports of the Work from the Construction Manager, serve as liaison with the Construction Manager and the Architect, receive and process communications and paperwork, and represent the Owner in the day-to-day conduct of the Project. The Construction Manager will be notified in writing of the representative and of his/her designee, or any changes thereto.

ARTICLE 5

Schedule

5.1 Preconstruction Phase (NOT APPLICABLE). The Construction Manager shall complete the documents and things provided for in Article 2.1, et. seq., above ,within three hundred sixty five (365) calendar days from the date of this Contract, and Guaranteed Maximum Price Proposal within sixty (60) calendar days after the Architect/Engineer documents (in 30% 60% and 90% completion) have been made available to the Construction Manager.

5.2 Construction Phase. The performance of the Work under the Construction Phase of this Contract shall be substantially completed by the Construction Manager on or before April 1, 2017, assuming a May 31, 2016 Notice to Proceed (NTP), time being of the essence in this Contract, as more particularly set forth in Exhibit "C" hereto attached and made a part hereof, and receipt of building permits, as may be later adjusted by Change Order(s), if any, and subject to adjustment for delays as otherwise provided for in this Contract. Payment by City is reliant upon this 11-month Project Schedule set forth in Exhibit "C".

5.3 The Construction Manager agrees to complete the Work in accordance with the agreed upon substantial completion date set forth in Exhibit "C", assuming a May 31, 2016 Notice to

Proceed (NTP). The Construction Manager acknowledges that time is of the essence throughout this Contract, and that failure to complete the Project within the time set forth in the approved schedule will result in substantial damages to the Owner that are impossible to precisely ascertain. Upon failure of the Construction Manager to substantially complete the Project within the specified period of time, plus approved time extensions, Construction Manager shall pay to the Owner, as liquidated damages and not as a penalty, the sum of $1,000 for each calendar day in excess of the established substantial contract completion date, plus approved time extensions. After achieving substantial completion, as more particularly addressed in GC 71 and its several subparts, should Construction Manager fail to complete the remaining Work within the time specified for final completion in Exhibit "C,", plus approved time extensions, if any, and after providing Construction Manager with seven (7) days advance written notice, Owner shall have the right to complete the work through other means, and the costs therefore shall be set-off against retainage remaining in the contract balances, which, if insufficient, the balance shall be paid to Owner by Construction Manager, or its performance bond Surety.

5.4 The Owner may direct the Construction Manager to expedite the Work by whatever means the Construction Manager may use, including, without limitation, increasing staffing or working overtime to bring the Work back within the agreed construction schedule. If expediting the Work is required due to reasons within the control or responsibility of the Construction Manager, then the additional costs incurred shall be chargeable to the Cost of the Work as part of, and subject to the GMP. If the expediting of the Work is required due to reasons outside the control or responsibility of the Construction Manager, then in such event, the additional costs incurred shall be the subject of an appropriate adjustment by Change Order, as elsewhere provided for in the General Conditions.

5.5 The Owner shall have the right to occupy, or use, any portion of the Work prior to completion of the Project. If use or occupancy ahead of schedule affects the cost of the Project or the schedule for the Work, the Construction Manager shall so notify the Owner, in writing, and the use or occupancy will be treated as a Change to the Work in accordance with Article 9, herein.

ARTICLE 6

Guaranteed Maximum Price

6.1 The "Guaranteed Maximum Price" (GMP), also referred to as the Contract Sum, includes Cost of the Work required by the Contract Documents as defined in Article 8 herein, the Construction Manager's Fixed Fee as defined in Paragraph 6.1.1 below, the Contingency Fund, and Construction Manager's Lump Sum General Conditions. The GMP will be established based on construction documents prepared by the Architect/Engineer. The GMP is guaranteed by the Construction Manager not to exceed the amount established herein, subject to additions and deductions by Change Order as provided for elsewhere in this Contract. Cost which would cause the GMP to be exceed shall be paid by the Construction Manager without recourse or reimbursement by the Owner.

6.1.1 The Construction Manager's Fixed Fee for performance of the Work as later set forth in GMP Amendment.

6.2 The GMP will only include those taxes in the Cost of the Work which are legally enacted at the time the GMP is established.

6.3 If and only in the event that this Project is substantially completed within the scheduled substantial completion date, as may be adjusted as provided for elsewhere herein, the following shared savings provisions shall apply: Upon final completion of the Work, if the total cost of the Work (excluding any unused portion of the Contingency Fund) is less than the Guaranteed Maximum Price, taking into account any adjustments made during the term of this Contract, as provided for elsewhere herein, the Owner and Construction Manager will be entitled to share this savings, as follows: Construction Manager will receive an amount equal to 50% of the difference between the actual cost of the Work and the final GMP amount (excluding any unused portion of the Contingency Fund), not to exceed, in any event, 3% of the adjusted GMP amount (excluding any unused portion of the Contingency Fund). Construction Manager's portion of these shared savings will be added to Contractor's Fee, and included in Construction Manager's Final Payment. Liquidated damages, if any, are different from, and are not a part of, this calculation.

6.4 The GMP shall include an agreed upon sum as a construction contingency fund which is exclusively reserved to cover Construction Manager's unanticipated and unforeseen Project conditions not otherwise covered by insurance, inadvertent, non-negligent scope and pricing omissions and errors, and other damages that are sustained by Construction Manager during the estimating, buy-out, and construction process, unless specifically enumerated as non-reimbursable costs of the Work as provided for elsewhere in this Contract. This Contingency Fund is not to be used for changes in the scope of the Work, which are otherwise provided for in the contract documents addressing Change Orders. No draws against the Contingency Fund may be made unless specifically agreed to by the Owner, in writing. There shall be no entitlement to overhead, fee, and general conditions in connection with any approved payments from the Contingency Fund. The Construction Manager will be required to furnish documentation required by the Owner evidencing expenditures charged to this contingency prior to the release of funds by the Owner. The Architect-Engineer shall verify the actual costs, which are subject to audit.

6.5 By execution of this Contract, the Construction Manager certifies that all factual unit costs supporting the fees specified in this Contract are accurate, complete and current at the time of negotiations; and that any other factual unit costs that may be furnished the Owner in the future to support any additional fees that may be authorized will also be accurate and complete. The fees specified in this Contract and any additional fees that may be authorized in the future shall be adjusted to exclude any significant sums by which the Owner determines the fee was increased due to inaccurate, incomplete, or non-current factual unit costs.

6.6 Adjustments to the GMP will be made as described in the Conditions of the Contract.

ARTICLE 7

Payments to Construction Manager

7.1 In consideration of the performance of the Contract, the Owner agrees to pay the Construction Manager, as compensation for its services as set forth below:

7.1.1 For construction services, the total sum of Four Million, Nine Hundred Ninety Eight Thousand, Nine Hundred Thirty Two Dollars and 47/100 ($4,998,932.47) to be paid upon the satisfactory completion of line items for each Task as specified in a Construction Schedule of Values that is agreed to by the parties, in writing, before commencement of the Construction services.

TOTAL: $4,998,932.47

7.1.1 (a) All references in this Contract to "GMP Amendment" are hereby deleted, inasmuch as Construction Manager and Owner have agreed to the above GMP Amount for this Project.

7.1.1.1 Upon receipt of the Notice to Proceed, the Construction Manager shall begin providing the indemnification described in the Conditions of the Contract, as part of the fee established for the first phase of construction services.

7.1.2 Upon acceptance of the GMP, the amount established in the GMP Amendment to this Contract, which includes the Construction Manager's fee and Lump Sum General Conditions as described in Paragraph 7.2 and the Cost of the Work as described in Article 8, to be paid monthly as described in the General Conditions of the Contract.

7.1.2.1 As required by Section 287.0585, F.S., within seven working days from receipt of payment from the Owner, the Construction Manager shall pay each Trade Contractor out of the amount paid to the Construction Manager on account of such Trade Contractor's Work, the amount to which said Trade Contractor is entitled reflecting the percentage actually retained, if any, from payments to the Construction Manager on account of said Trade Contractor's Work. The Construction Manager shall, by appropriate Contract with each Trade Contractor, require each Trade Contractor to make payments to its subcontractors in a similar manner.

7.1.3 Pay requests for preconstruction services and for construction shall be documented in accordance with the General Conditions.

7.2 Construction Manager's Lump Sum General Conditions during the Construction Phase includes, without limitation, the following:

7.2.1 The cost of its home or branch office employees or consultants not at the Project site, including the cost of all benefits, insurance, and taxes attributable to wages and salaries and other company overhead expenses for said home office employees.

7.2.2 The cost of its field employees identified in Subparagraph 2.2.5 herein, or their approved replacements, including the cost of all benefits, insurance, and taxes attributable to wages and salaries for

said field employees.

7.2.3 General operating expenses of the Construction Manager's principal and branch offices other than the field office.

7.2.4 Any part of the Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work.

7.2.5 Overhead and profit, or general expenses of any kind, except as may be expressly included in Article 8, herein, as Cost of the Work.

7.2.6 All travel and per diem costs of Construction Manager's employees and consultants.

7.2.7 Those services set forth in Article 2.2.

7.2.8 Expenses such as long distance telephone calls, telephone service at the site, postage, office supplies, expressage, and similar items in connection with the Work.

7.2.9 Cost of equipment such as laptops, cameras, radios, computers, cell phones, copiers, telephones, dictating units, trailers, vehicles and furniture purchased or rented by the Construction Manager.

7.2.10 Administration of direct tax savings purchase program.

7.2.11 All costs incurred during the guarantee period after construction.

7.3 Adjustments in the Lump Sum General Conditions associated with compensable Changes in the Work, or compensable delays, shall be made as described in the General Conditions of the Contract, and in strict accordance therewith.

ARTICLE 8

Cost of the Work

8.1 The term "Cost of the Work" shall mean direct construction costs, including Lump Sum General Conditions as more specifically addressed in 7.2 et.seq. above, and in 8.1.2 below, incurred specifically in and about the performance of the Work, and paid or incurred by the Construction Manager, less any reimbursement for scrap value and cash or trade discounts, subject to Article 10, herein. Excluding those individuals included in the Lump Sum General Conditions, 8.1.2 below, the term "wages" used herein shall include the straight time and overtime pay authorized in writing by the Owner, and the cost of associated employee benefits. Excluding those individuals included in the Lump Sum General Conditions, employee benefits include, but are not limited to, unemployment taxes, social security taxes, compensated absences, and other mandatory and customary contributions and fringe benefits insofar as such costs are based on wages, salaries, or other remuneration paid to employees of the Construction Manager,

excluding bonuses. Employee benefits do not include Workers' Compensation insurance when such insurance is provided by the Owner in accordance with Article 11.

8.1.1 Subject at all times to the amount of the GMP, the Owner agrees to pay the Construction Manager for the reimbursable Costs of the Work as defined in Article 8, herein, and its subparts, through completion of the Work, plus the Construction Manager's Fixed Fee,

8.1.2 For Construction Phase services, as more particularly set forth in Article 2.2 and its subparts, above, and further including those line items in Exhibit "A" designated as General Conditions, the Construction Manager shall be paid a lump sum amount (included in the GMP and as set forth in the GMP Amendment), in installments, as provided for elsewhere in these Contract Documents, which amount is subject to the Contract audit provisions for the limited purposes of verifying the Construction Manager's warrants and representations set forth in Article 6.8 above. This Lump Sum General Conditions amount preempts, disables and governs those reimbursable Costs of the Work set forth in Article 7.2, et.seq. and this Article 8, and its subparts. In the event that those specified reimbursables conflict with, or are subsumed by this Lump Sum General Conditions, it is the intention of the parties that the Lump Sum will not be adjusted for any reasons whatsoever during the Construction Phase, except and solely for compensable Change Orders and compensable delays, if any, that increase the GMP, and extend the contract completion date in excess of thirty (30) calendar days beyond the agreed Substantial Completion date of midnight, as later set forth in the GMP Amendment. In the event that the Lump Sum is exceeded by actual costs for such items incurred by the Construction Manager, there shall be no entitlement to reimbursement from the Owner by way of Change Order, Claims, requests for equitable adjustments, or from the Construction Contingency.

8.2 ***Cost of the Work includes, and is limited to, actual documented expenditure for the following cost items (all subparts below shall be preceded by the phrase "Except and to the extent governed by 8.1.2 above…":***

8.2.1 Subject to prior written approval by the Owner, wages paid for labor in the direct employ of the Construction Manager at the construction site other than those provided under Paragraph 7.2, herein, as a part of the Construction Manager's Fixed Fee in the performance of the Work under applicable collective bargaining agreements, or under a salary or wage schedule agreed upon by the Owner and Construction Manager, and including benefits, if any, as may be payable with respect thereto.

8.2.2 The cost of all materials, supplies and equipment incorporated into the Work or stored on site, including cost of transportation and storage thereof. At the Owner's sole discretion, the Owner may make payment for materials, supplies and/or equipment stored off-site and bonded.

8.2.3 Payments made by the Construction Manager to Trade Contractors for their Work performed pursuant to Trade Contracts with the Construction Manager.

8.2.4 Cost of the premiums for all insurance or bonds including Trade Contractor bonds which the Construction Manager is required to procure by this Contract, or other insurance or bonds subsequently deemed necessary by the Construction Manager, and agreed upon by the Owner, in writing. The cost of insurance for the Construction Manager, Trade Contractors, and Sub-subcontractors at any tier in the Work shall be excluded for any insurance to be provided by the Owner in accordance with Article 11 herein.

8.2.5 Sales, use, gross receipt, or similar taxes related to the Work imposed by any governmental authority and for which the Construction Manager is liable.

8.2.6 Building and operating permit fees, inspection and filing fees, sewer and water fees, and deposits lost for causes other than the Construction Manager's own negligence.

8.2.7 Cost of removal and disposal of all debris including clean-up and trash removal.

8.2.8 Cost incurred due to an emergency affecting the safety of persons and/or property.

8.2.9 Subject to prior written approval by Owner, legal costs reasonably, and properly, resulting from prosecution of the Work for the Owner provided, however, that they are not the result of the Construction Manager's own negligence or malfeasance. Legal costs incurred in connection with disputes solely between the Construction Manager and the Owner or incurred in connection with disputes solely between the Construction Manager and Trade Contractors are the responsibility of the Construction Manager and shall not be included in the Cost of the Work.

8.2.10 Cost to the Construction Manager of temporary electric power, lighting, water, sanitary facilities, and heat required for the performance of the Work, or required to protect the Work from weather damage.

8.2.11 Cost to the Construction Manager of temporary safety-related protection including barricades and safety equipment, temporary roads and parking, dust control, pest control, installation and operation of temporary hoists, scaffolds, ladders and runways, and temporary Project signs and costs of permits and fees pursuant to the General Conditions of the Contract.

8.2.12 Cost of watchmen or similar security services, if approved in writing by Owner.

8.2.13 Cost of surveys, measurements and layout work reasonably required for the execution of the Work or the requirements of the Contract.

8.2.14 Cost of preparation of shop drawings, coordination plans, photographs, or as-built documents not included in Trade Contracts.

8.2.15 All costs for reproduction of documents to directly benefit the Work.

8.2.16 Costs directly, properly, and reasonably incurred in the performance of the Work and not included in the Construction Manager's Fee as set forth in Paragraph 7.2, herein.

8.2.17 Testing laboratory costs, except relating to defective or non-conforming work for which reimbursement is otherwise excluded by the Contract Documents.

8.2.18 Deposits lost for causes other than Construction Manager's or any Trade Contractor's negligence or failure to fulfill a specific responsibility to the Owner under the Contract Documents.

8.2.19 Cost, including transportation and maintenance, of all materials, supplies, equipment, temporary facilities and hand tools not owned by the workmen that are employed or consumed in the performance of the Work.

8.2.20 Rental charges of all necessary machinery and equipment, including hand tools used in the performance of the Work, whether rented from the Construction Manager (upon prior written approval of the Owner, at the standard rate paid at the place of the Project) or others, including installation, repairs and replacements, dismantling, removal, costs of lubrication, transportation and delivery costs thereof.

8.2.21 Costs associated with setting up and demobilizing tool sheds, Project field offices, temporary fences, temporary roads, and temporary fire protection.

8.3 **Costs not to be reimbursed include**:

8.3.1 Those costs enumerated in Article 7.2.1 through 7.2.10 above, and as set forth in the Contract Documents as to be borne at the expense of the Construction Manager.

8.3.2 Salaries and other compensation of the Construction Manager's personnel stationed at Construction Manager's principal office or offices other than the site office;

8.3.3 Expenses of the Construction Manager's principal office and offices other than the site office;

8.3.4 Overhead and general expenses, except as may be expressly included in Article

8.3.5 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;

8.3.6 Costs due to the negligence or failure of the Construction Manager, subcontractors and suppliers or anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;

8.3.7 Any cost not specifically and expressly described in Section 8.3 and subparts;

8.3.8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded;

8.3.9 Costs resulting from failure of the Construction Manager or any subcontractor to procure and maintain insurance by the Contract Documents;

8.3.10 Amounts due by Construction Manager for federal and state income and franchise taxes, and the costs of licenses, fees, taxes, and other charges of a similar nature, required to be obtained or maintained by Construction Manager for the general conduct of its business;

8.3.11 Costs to replace or pay for lost or stolen machinery or equipment or materials, but only if not covered by Builder's Risk Insurance. Construction Manager may seek to recover replacement cost from insurance, sureties, Subcontractors, suppliers, or other such third parties;

8.3.12 The cost for any legal, accounting or other professional services except to the extent provided for in the reimbursable costs of the Work;

8.3.13 Penalties, fines, or costs imposed by governmental authorities in connection with, or resulting from any violations for noncompliance with laws, regulations, codes, ordinances, or directives by the Construction Manager or any subcontractor, except if the result of specific and written directive by the Owner;

8.3.14 Costs of any insurance deductibles for coverage furnished and paid by Construction Manager or any Subcontractor and losses or expenses for which the Construction Manager or any Subcontractor is compensated by insurance.

8.3.15 Costs associated with the Construction Manager's failure to obtain any and all permits in a timely manner, including, without limitation, the costs of any delays resulting therefrom, unless attributable to Owner's Design Professionals.

8.3.16 Costs of accelerating the Work to the extent caused by the negligence or default of the Construction Manager or any subcontractor of any tier, unless otherwise expressly provided for elsewhere in this Contract and in strict accordance therewith;

8.3.17 Overtime costs required to the extent caused by the Construction Manager or any subcontractor of any tier, unless otherwise expressly provided for elsewhere in this Contract and in strict accordance with the requirements therein;

8.3.18 Project incentive bonuses, except as approved by the Owner in writing;

8.3.19 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor shall not be deemed a Cost of the Work without Owner's prior written approval;

8.3.20 Any and all costs and or cost overruns, including schedule related costs, resulting from the default and/or termination of a bonded subcontractor and/or material supplier by Construction Manager.

8.3.21 Except as provided in Article 8.2.9 above, costs due to the negligence or failure of the Construction Manager, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them many be liable to fulfill a specific responsibility of the Contract.

8.3.22 Any cost not specifically and expressly described in Article 8.2 and its subparts, above.

8.3.23 Costs, other than costs included in Change Orders approved by the Owner, in writing, that would cause the GMP to be exceeded.

8.3.24 Costs exceeding the Lump Sum General Conditions, as set forth in Article 8.1.2 above.

ARTICLE 9

Changes in the Work

9.1 The Owner, without invalidating this Contract, may order Changes in the Work within the general scope of this Contract consisting of additions, deletions, or other revisions. All changes in the Work shall be authorized as described in the General Conditions of the Contract. Except in cases of emergency endangering life or property, the Construction Manager shall allow no Changes in the Work without the prior written approval of the Owner.

ARTICLE 10

Discounts

10.1 All quantity discounts shall accrue to the Owner if (i) before making the payment, the Contractor included them in an Application for Payment and received payment therefor from the Owner, or (ii) the Owner has deposited funds with the Contractor with which to make payments; otherwise, cash discounts shall accrue to the Contractor. All trade discounts, rebates and refunds, and all returns from the sale of surplus materials and equipment shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 11

Insurance

11.1 The Construction Manager shall provide insurance as required and addressed in RFQ T-12-15, and as specified in GC 31.

"CORPORATION":

Witnesses:

Burkhardt Construction, Inc.
Corporation Name

Signature

Vice President of Operations
Title

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 1st day of March, 2016 by Marc Kleisley, as Vice President of Operations of Burkhardt Construction Inc., on behalf of the corporation. He/she is personally known to me or has produced _____ (type of identification) as identification.

NOTARY'S SEAL:NOTARY PUBLIC, STATE OF FLORIDA

ADAM J ROSSMELL
MY COMMISSION #FF001286
EXPIRES March 20, 2017
(407) 398-0153 FloridaNotaryService.com

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number

"CITY":

Witnesses:

CITY OF POMPANO BEACH

_____

By:_____
LAMAR FISHER, MAYOR

_____

By:_____
DENNIS W. BEACH, CITY MANAGER

Attest:

_____
ASCELETA HAMMOND, CITY CLERK

(SEAL)

Approved As To Form:

_____
MARK E. BERMAN, CITY ATTORNEY

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this _____ day of _____, 2016 by **LAMAR FISHER**, as Mayor, **DENNIS W. BEACH** as City Manager and **ASCELETA HAMMOND**, as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who are personally known to me.

NOTARY'S SEAL:

_____
NOTARY PUBLIC, STATE OF FLORIDA

_____
(Name of Acknowledger Typed, Printed or Stamped)

_____
Commission Number

EXHIBIT A

THE CITY OF POMPANO BEACH, FLORIDA

PROJECT: Briny Avenue Undergrounding and Streetscape Improvements

CONSTRUCTION MANAGER AT RISK CONTRACT

GENERAL CONDITIONS

PROJECT NO. 11-142

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GENERAL CONDITIONS
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GENERAL CONDITIONS

GC 1 ENTIRE AGREEMENT

1.1 This Construction Manager at Risk Contract embodies the entire agreement between Owner and Construction Manager and supersedes all other writings, oral agreements, or representations. The parties shall not be bound by or be liable for any statement, representation, promise, inducement or understanding of any kind or nature not set forth herein. No changes, amendments or modifications of any of the terms or conditions of the Contract shall be valid unless reduced to writing and signed by both parties.

GC 2 INDEPENDENT CONSTRUCTION MANAGER

2.1 Construction Manager represents that it is extensively experienced in the performance of streetscape and infrastructure construction Work as provided for herein, and that it is properly licensed as a General Contractor in the State of Florida, equipped, organized and financed to perform such Work. Construction Manager shall act as an independent contractor, and not as the agent of Owner, in performing the Contract, maintaining complete control over its employees, and all of its suppliers and subcontractors. Nothing contained in this Contract, or any subcontract awarded by Construction Manager, shall create any contractual relationship between any such supplier or subcontractor and the Owner. Construction Manager shall perform all work in accordance with its own means, methods, sequences and procedures, subject to compliance with the Contract. Construction Manager represents that all subcontractor agreements entered into shall incorporate by reference the terms and conditions of this Contract.

GC 3 AUTHORIZED REPRESENTATIVES

3.1 Before starting work, Construction Manager shall designate a competent, authorized representative acceptable to Owner to represent and act for Construction Manager and shall inform Owner in writing, of the name and address of such representative, together with a clear definition of the scope of his/her authority to represent and act for Construction Manager, and shall specify any and all limitations of such authority. Such representative shall be present or duly represented at the site of work at all times when work is actually in progress. During periods when work is suspended, arrangements for an authorized representative acceptable to Owner shall be made for any emergency work that may be required. All notices, determinations, instructions and other communications given to the authorized representatives of the Construction Manager shall be binding upon Construction Manager. Nothing contained herein shall be construed as modifying the Construction Manager's duty of supervision and fiscal management as provided for by Florida law. The Owner shall designate an authorized representative who will have limited authority to act for the Owner. The Owner will notify the Construction Manager in writing of the name of such representative(s). The Owner's representative will be the Public Works Director, or his designee. Any work performed by the Construction Manager without proper authorization, is performed at the Construction Manager's risk,

and the City of Pompano Beach shall have no obligation to compensate the Construction Manager for such work. The Owner has the right to assign various responsibilities of the Owner to the Design Professional of Record, and can do so at any time during the duration of this Contract with written notice to the Construction Manager.

3.2 The Construction Manager's Authorized Representative, Qualifying Agents, Project Managers, Superintendents and Supervisors are all subject to prior and continuous approval of the Owner. If, at any time during the term of the Contract, any individual nominally performing any of the positions named above is, for any reason, unacceptable to the Owner, Construction Manager shall replace the unacceptable personnel with personnel acceptable to the Owner.

GC 4 NOTICES

4.1 Any notices provided for hereunder shall be in writing and may be served either personally on the authorized representative of the receiving party at the job site, by certified mail, return receipt requested, or national overnight courier to that party at the addresses shown below:

OWNER: The City of Pompano Beach, Florida
100 West Atlantic Blvd.
Pompano Beach, FL 33060
Attn.: City Manager: Dennis Beach

CONSTRUCTION MANAGER: _____TBD_____
_____
_____

4.2 These addresses may be changed by either of the parties by written notice to the other.

GC 5 LAWS AND REGULATIONS

5.1 Construction Manager and its employees and representatives shall at all times comply with all applicable laws, codes, ordinances, statutes, rules and regulations in effect at the time Work is performed under this Contract.

5.2 If, during the term of this Contract, there are any changed or new laws, ordinances or regulations not known at the time of signing this Contract which become effective and which are known, or in the exercise of its due diligence, should have been known to Construction Manager as a licensed general contractor regarding the performance and conduct of the Work, and which affect the cost or time of performance of the Contract, Construction Manager shall immediately notify Owner, in writing, and submit detailed documentation of such affect in terms of both time and cost of performing the Contract. Upon concurrence by Owner as to the effect of such changes, an adjustment in the

compensation and/or time of performance may be made, subject to the provisions elsewhere set forth in these Contract Documents.

5.3 It is recognized that the Construction Manager's review of the drawings and specifications is made in the Construction Manager's capacity as a contractor and not as a licensed design professional. If any discrepancy or inconsistency should be discovered by Construction Manager between the drawings and specifications and any law, ordinance, regulation, order or decree, Construction Manager shall immediately report the same in writing to Owner and Design Professional, who will issue such instructions as may be necessary.

5.4 Construction Manager shall use its best efforts to investigate the rules, codes, regulations, statutes, and all ordinances of all applicable governmental agencies having jurisdiction over the Project or the Work, and advise Design Professional and Owner of same in writing, but Construction Manager assumes no responsibility or liability for any failure of the design of the Project to comply with same. However, at no time shall the Construction Manager's efforts fall below the commonly accepted knowledge base of an experienced Florida licensed general contractor.

5.5 Owner shall not be liable for any costs, delays or damages which Construction Manager incurs as a result of the actions or orders of any other governmental entity or agency that are caused by Construction Manager's failure to comply with the terms of this Contract.

GC 6 STANDARDS AND CODES

6.1 Wherever references are made in the Contract to standards or codes in accordance with which Work is to be performed or tested, the edition or revision of the standards or codes current on the effective date of this Contract shall apply, unless otherwise expressly set forth. Unless otherwise specified, reference to such standards or codes is solely for implementation of the technical portions of such standards and codes. In case of conflict among any referenced standards and codes, or between any referenced standards and codes which are later revised during the course of construction, the Owner will determine which shall govern. Construction Manager acknowledges that compliance with code requirements represents minimum standards for construction, and is not evidence that the Work has been completed in accordance with the Contract Documents.

GC 7 CODE RELATED INSPECTIONS

7.1 The Construction Manager recognizes that The City of Pompano Beach, FL Department of Planning, Zoning and Building ("PZ&B"), is a separate department within the City that is charged with the inspection of improvements to real property for code compliance. The Construction Manager agrees that it will not assert, as an Owner caused delay, or as a defense of any delay on the part of the Construction Manager, any good-faith action or series of actions on the part of PZ&B, including, but not limited to, PZ&B's refusal to accept any portion of the Construction Manager's Work. If it is ultimately determined by the Design Professional and Owner that such delay was not the result of Construction Manager's failure to comply with the Contract Documents, the Construction Manager may be entitled to make a claim for extension of Contract Time only as its exclusive remedy, not damages, in accordance with the terms of the Contract.

GC 8 GOVERNING LAW

8.1 The Contract shall be governed by the laws of the State of Florida, and venue for any action shall be in Broward County, Florida.

GC 9 RIGHTS AND REMEDIES

9.1 The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

GC 10 COMMERCIAL ACTIVITIES

10.1 Construction Manager shall not establish any commercial activity or issue concessions or permits of any kind to third parties for establishing commercial activities on lands owned or controlled by Owner. Construction Manager shall not allow its employees to engage in any commercial activities on the site.

GC 11 COOPERATION WITH OTHERS

11.1 Owner and other contractors may be working at the site during the performance of this Contract. Construction Manager shall fully cooperate with the Owner, Owner's designated Representative, and other separate contractors to avoid any delay or hindrance of their work. Owner may require that certain facilities be used concurrently by Construction Manager and other parties, and Construction Manager shall comply with such requirements. The Owner shall provide for coordination of the activities of the Owner's own forces, and of each separate contractor, with the Work of the Construction Manager, who shall cooperate and participate with other separate contractors and the Owner in reviewing their construction schedules.

11.2 If any part of the Construction Manager's work depends on proper execution or results from any work performed by the Owner or any separate contractor, the Construction Manager shall, prior to proceeding with the Work, promptly report to the Owner any apparent discrepancies or defects in such other work that render it unsuitable for such proper execution and results. Failure of the Construction Manager to report such discrepancies or defects shall constitute an acceptance of the Owner's separate contractor's work as fit and proper to receive Construction Manager's Work, except as to defects which are not then reasonably discoverable or which may subsequently become apparent in such work performed by others. Any costs caused by defective or ill-timed work of others shall be borne by the Construction Manager, unless Construction Manager gives written notice to Owner, if reasonably possible, prior to proceeding with the Work and in any event within three (3) days of commencement of Work. In no event shall Owner be liable to the Construction Manager for delay damages, however, as provided for in the Contract Documents. If Owner awards separate contracts, or if the Owner's forces are to perform construction or operations related to the Project, but for which Construction Manager's Work is not dependent, Owner and Construction manager shall coordinate that Work with the work of the Construction Manager. Any delays caused thereby to Construction Manager that demonstrably affect the critical path shall entitle Construction Manager to an extension of time and additional compensation in accordance with provisions set forth elsewhere in the Contract Documents.

GC 12 FORMS AND DOCUMENTS

12.1 The below listed documents are to be used by the Construction Manager and Owner during the administration of this Contract. Additional administrative forms may supplement this list upon written notice by the Owner (or Owner's Project representative). Owner reserves the right to modify these forms as it deems necessary. Construction Manager shall maintain logs for Items A-K and provide to Owner monthly.

A. Request for Information
B. Field Instruction
C. Field Bulletin
D. Construction Change Proposal
E. Change Order
F. Construction Change Directive
G. Submittal Transmittal
H. Deficiency Report
I. Non-Conformance Report
J. Construction Manager's Daily Report
K. Substitution Report

12.2 Examples of the above listed forms are attached as Appendix "A."

GC 13 PUBLIC RECORDS

13.1 Pursuant to the provisions of §119.0701, F.S., all records maintained by Construction Manager with respect to this Project are considered public records subject to inspection as provided for in Chapter 119, F.S.

GC 14 TAXES

14.1 Construction Manager shall pay all taxes, levies, duties and assessments of every nature which may be applicable to any Work under this Contract. The Contract Sum and any agreed variations thereof shall include all taxes imposed by law. Construction Manager shall make any and all payroll deductions required by law. Construction Manager herein indemnifies and holds the Owner harmless from any liability on account of any and all such taxes, levies, duties, assessments and deductions.

GC 15 FEES

15.1 Owner will be responsible for the following fees associated with this Project: utility connection fees, utility installation fees (including FPL, FPU, AT&T, and Comcast), and water meter charges except for fees/permits associated with Construction Manager mobilization which have not been waived by Owner. Construction Manager shall advise Owner ten (10) days in advance of permit application with any fee amount required. Water and/or sanitary sewer service capacity charges will also be paid directly by the Owner. There are no impact fees pursuant to Palm Beach County's Impact Fee Ordinance associated with this Project.

GC 16 UTILITIES

16.1 Construction Manager shall provide and maintain all utilities in work areas to meet the requirements of the Contract. Such utilities shall be furnished by the Construction Manager and shall include, but not be limited to, the following:

A. Public telephone service for the Construction Manager's use.
B. Construction power as required at each point of construction.
C. Water as required throughout the construction.

16.2 Prior to final acceptance of the Work, the Construction Manager shall, at its expense, satisfactorily remove and dispose of all temporary utilities developed to meet the requirements of the Contract. The Owner will assume the utility costs directly related to its usage of areas in which the Work has been certified as Substantially Complete.

GC 17 SUCCESSORS, ASSIGNS AND ASSIGNMENT

17.1 The Owner and the Construction Manager each binds itself, its officers, directors, qualifying agents, partners, successors, assigns and legal representatives to the other party hereto and to the partners, successors, assigns and legal representatives of such other

party in respect to all covenants, agreements and obligations contained in the Contract. Construction Manager shall not assign, transfer, convey or otherwise hypothecate the Contract or its right, title or interest in or to the same or any part thereof, or allow legal action to be brought in its name for the benefit of others, without previous written consent of the Owner, and concurred with by the Construction Manager's Surety. Construction Manager acknowledges that the City has entered into this Contract with Construction Manager after a comprehensive competitive award process, and evaluation of Construction Manager's particular qualifications and skills to perform the Work. Therefore, Construction Manager agrees that the City may withhold the consent to assignment referred to herein for any reason the City deems appropriate, in its sole and exclusive discretion.

GC 18 EXAMINATION OF CONSTRUCTION MANAGER'S BOOKS AND RECORDS

18.1 The Owner, or the Owner's auditors, shall have access to, and the right to examine, audit, download and copy electronic media, photocopy, transcribe, and photograph, any and all of Construction Manager's accounting records, supporting documentation, correspondence, subcontracts, purchase orders, and other documentation relating to this Contract, at any time during regular business hours, both throughout the performance of the Work, and for a period of four (4) years after final payment for the Work.

GC 19 COORDINATION AND CORRELATION OF DRAWINGS AND SPECIFICATIONS

19.1 The Construction Manager represents that the Construction Manager, its Subcontractors, material and equipment suppliers have carefully and diligently compared Phasing, Demolition, Landscaping, Design Professional ural, Structural, Electrical, Underground, Civil and Site Drawings and Specifications, and have compared and reviewed all general and specific details on the Drawings. Based thereon, Construction Manager represents that all conflicts, discrepancies, errors, omissions, and constructability issues that are within the commonly accepted knowledge base of a licensed general contractor with expertise in streetscape and related infrastructure improvements, have been clarified during the performance of the Pre-Con Agreement, and are included in the GMP. Notwithstanding anything contained in this Contract to the contrary, Construction Manager shall not be liable to the Owner for damages or costs resulting from errors, omissions, or inconsistencies in the Contract Documents, or for differences between field conditions and the Contract Documents, unless the Construction Manager recognized, or in the exercise of its due diligence, should have recognized the issue and knowingly failed to report it to the Owner. Construction Manager shall have the right to rely on the completeness and accuracy of written information, Drawings, and specifications provided by the Owner, Design Professional, or any other consultant of either, except if Owner requires full field verification by Construction Manager.

19.2 Construction Manager represents that the GMP embodies the total cost for a complete and functioning Project. The Construction Manager's review and comparison of all documents and things set forth in GC 19.1 above has taken into consideration the total

and complete functioning of all systems as provided, and as are reasonably inferable from the Drawings and Specifications.

GC 20 PERMIT DRAWINGS AND SPECIFICATIONS

20.1 The Construction Manager shall provide the Owner with two (2) complete sets of the permitted drawings within five (5) days of issuance. If the permitted set of Drawings change the scope of the Work to be performed, the Construction Manager shall notify the Owner and Design Professional, in writing, within ten (10) days after Construction Manager's receipt of the permitted Drawings, and such notification shall contain a written description of the change(s), and the estimated cost and time associated therewith, if any.

20.2 The Construction Manager shall perform work only in accordance with the permitted drawings, and any subsequent revisions thereto.

GC 21 CONTRACT INTERPRETATION

21.1 All claims of Construction Manager, and all questions the Construction Manager may have concerning interpretation or clarification of this Contract or its acceptable fulfillment shall be submitted immediately, in writing, to Owner for resolution. Owner, or its representatives, will render its determination concerning such resolution within an appropriate period, not to exceed five (5) days, unless additional time is needed due to the novelty or complexity of the interpretation or clarification requested, which determination shall be considered final and conclusive unless Construction Manager files a timely written protest pursuant to GC 22 "Disputes." The Construction Manager's written protest shall state clearly and in detail the basis thereof, and the relief it seeks, if any. Owner will consider Construction Manager's protest, and render its decision thereon within five (5) calendar days If Construction Manager does not agree with the Owner's decision, the Construction Manager shall immediately deliver written notice to that effect to the Owner. If questions of interpretation are not responded to by the Design Professional or Owner within the time frame above, and in a manner so as not to impede the natural progress of the Work as scheduled, and such delay impacts the critical path of the Work, Construction Manager shall be entitled to adjustment in the performance time as its exclusive remedy.

21.2 Construction Manager is solely responsible for requesting instructions or interpretations, and is solely liable for any cost and/or expenses arising from its failure to do so. Construction Manager's failure to protest Owner's determinations, instructions, clarifications or decisions within five (5) calendar days after receipt thereof shall constitute a waiver by Construction Manager of all its rights to further protest, judicially or otherwise.

GC 22 DISPUTES-WAIVER OF JURY TRIAL

22.1 Any and all disputes arising out of or in connection with this Contract shall be resolved through good faith efforts upon the part of Construction Manager and Owner, or its representatives. At all times, Construction Manager shall carry on the Work and maintain its progress schedule in accordance with the requirements of the Contract and the determination of the Owner or its representatives, pending resolution of any dispute. Any dispute that is not disposed of by mutual agreement shall be decided by the Owner or its representatives, who shall reduce such decision to writing. The decision of the Owner or its representatives shall be final and conclusive. Construction Manager's failure to protest Owner's determinations, instructions, clarifications or decisions within thirty (30) calendar days after receipt thereof shall constitute a waiver by Construction Manager of all its rights to further protest, judicially or otherwise.

22.2 The Owner and Construction Manager hereby expressly, knowingly and intentionally waive any right they may have to a jury trial in connection with, or in respect to, any litigation or claim based on or related to this Contract, or with regard to performance of the Work, including, but without limitation, any to which the Design Professional may also be a party.

GC 23 SUSPENSION

23.1 Owner may, at its sole option, suspend, at any time, the performance of all or any portion of Work to be performed under the Contract. Owner will notify Construction Manager of such decision, in writing. Such notice of suspension of work may designate the amount and type of plant, labor and equipment to be committed to the Work site. During the period of suspension, Construction Manager shall use its best efforts to utilize its plant, labor and equipment in such a manner as to minimize costs associated with suspension.

23.1.1 Upon receipt of any such written notice, Construction Manager shall, unless the notice requires otherwise:

1. immediately discontinue work on the date and to the extent specified in the notice;
2. place no further orders or subcontracts for material, services, or facilities with respect to suspended work other than to the extent required in the notice;
3. promptly make every reasonable effort to obtain suspension, upon terms satisfactory to Owner, of all orders, subcontracts and rental agreements to the extent they relate to performance of work suspended;
4. continue to protect and maintain the Work including those portions on which work has been suspended, and
5. take any other reasonable steps to minimize costs associated with such suspension.

23.1.2 In addition to all amounts that would otherwise be due for Work performed prior to the suspension, as compensation for such suspension, Construction Manager will be reimbursed for the following verifiable costs (without profit) and without duplication of any item, to the extent that such costs directly result from such suspension of work:

1. A standby charge to be paid to Construction Manager during the period of suspension of work which standby charge shall be sufficient to compensate Construction Manager for keeping, to the extent required in the notice, its organization and equipment committed to the Work in a standby status;
2. All reasonable costs associated with mobilization and demobilization of Construction Manager's plant, forces and equipment;
3. An equitable amount to reimburse Construction Manager for the cost of maintaining and protecting that portion of the Work upon which work has been suspended; and
4. If as a result of any such suspension of Work the cost to Construction Manager of subsequently performing Work is increased or decreased, an equitable adjustment will be made in the GMP.

23.2 In no event shall the Construction Manager be entitled to assert a claim for home office overhead in accordance with the Eichleay Formula, or otherwise, in the event of an Owner suspension. Upon receipt of notice to resume suspended work, Construction Manager shall immediately resume performance of the suspended work to the extent required in the notice. Any claim on the part of Construction Manager for time and/or compensation arising from suspension shall be made within twenty-one (21) calendar days after receipt of notice to resume work and Construction Manager shall submit for review a revised construction schedule. No adjustment shall be made for any suspension to the extent that performance would have been suspended, delayed, or interrupted by any Construction Manager's non-compliance with the requirements of this Contract.

GC 24 DECLARATION OF DEFAULT

24.1 The failure of the Construction Manager a) to supply enough properly skilled workers or materials, or b) its failure to make prompt payments to subcontractors, or for materials or labor, or c) to obey laws, ordinances, rules, regulations or orders of public agencies having jurisdiction, or d) to comply in any way with the Contract Documents, shall be sufficient grounds for the Owner to find the Construction Manager in material default, and that sufficient cause exists to terminate the Contract for cause, and to withhold payment or any part thereof until the cause or causes giving rise to the default has/have been eliminated by the Construction Manager and approved by the Owner. If a finding of default is made by the Owner, the Construction Manager and its Surety shall remain responsible for performance of the requirements of the Contract Documents unless and until the Owner terminates the Contract. Upon a finding of default, the Owner shall set a reasonable time, but in no event in excess of seven (7) calendar days after written notice from Owner detailing the default, within which the Construction Manager and its Surety

shall eliminate the cause or causes of default. When the basis for finding of default no longer exists, the Owner shall notify the Construction Manager and its Surety, in writing, that the default has been corrected, and that the Construction Manager is no longer in default. If the Construction Manager fails to correct the default within the time allowed, the Owner, without further notice to Construction Manager or its Surety, may immediately terminate the Contract and the employment of the Construction Manager, without otherwise waiving its rights against the Construction Manager or its Surety. To the extent that the time limits herein and in GC 25 conflict with those set forth in the Performance Bond, the time limits in GC 24 and GC 25 shall take precedence.

GC 25 TERMINATION FOR DEFAULT

25.1 Notwithstanding any other provisions of this Contract, Construction Manager shall be considered in default of its contractual obligation under this Contract if the:

a. Construction Manager fails or refuses to prosecute the Work or any severable part, with the diligence that will insure its completion within the time specified in this Contract;

b. Construction Manager fails or refuses to prosecute the Work on any severable part, with the diligence that will insure its completion within the time specified in construction schedules and related milestones issued in conjunction with this Contract;

c. Construction Manager fails to complete the Work within the time specified in this Contract;

d. Abandons or refuses to proceed with any or all Work, including modifications directed by Owner pursuant to change directives issued under the Contract;

e. Construction Manager fails to provide the materials or perform the services required of the Construction Manager under this Contract within the time specified in this Contract;

f. Construction Manager fails or refuses to provide sufficient, properly skilled, workmen or tradesmen;

g. Construction Manager refuses or fails to supply materials, equipment or services meeting the requirements of this Contract;

h. Construction Manager fails to make payments for materials, labor or services to subcontractors, sub-subcontractors, suppliers or materialmen of any tier in accordance with such agreements that may exist among them;

i. Construction Manager violates laws, ordinances, rules, regulations of any governmental authority having jurisdiction;

j. Construction Manager materially breaches any of the provisions of this Contract.

25.2 If Construction Manager or its Surety(ies) do(es) not cure such failure within seven (7) calendar days from receipt of notification, or sooner if consideration of safety to persons is involved, or if Construction Manager or its Surety(ies) fails to provide satisfactory evidence that such default will be corrected, Owner may, without further notice to Construction Manager, terminate in whole or in part Construction Manager's right to proceed with work by written notice and prosecute the Work to completion by contract or by any other method deemed expedient. Owner may take possession of and utilize any materials, plant, tools, equipment, and property of any kind furnished by Construction Manager and necessary to complete the Work.

25.3 Construction Manager, and its sureties, shall be liable, jointly and severally, to Owner for all costs in excess of the Contract price for such terminated work reasonably and necessarily incurred in the completion of the Work, as adjusted by Change Orders, if any, including costs of administration of any contract awarded to others for completion, design professional fees, plus Liquidated Damages.

25.4 Upon termination for default, Construction Manager shall:

A. immediately discontinue work on the date and to the extent specified in the notice and place no further purchase orders or subcontracts to the extent that they relate to the performance of work terminated;

B. inventory, maintain and turn over to Owner all materials, plant, tools, equipment, and property furnished by Construction Manager or provided by Owner for performance of work;

C. promptly obtain cancellation upon terms satisfactory to Owner of all purchase orders, subcontracts, rentals, or any other agreements existing for performance of the terminated work or assign those agreements to Owner as directed;

D. cooperate with Owner in the transfer of information and disposition of work in progress so as to mitigate damages;

E. comply with other reasonable requests from Owner regarding the terminated work; and

F. continue to perform in accordance with all of the terms and conditions of the Contract such portion of work that is not terminated.

25.6 If, upon termination pursuant to this GC 25, it is determined for any reason that Construction Manager was not in default, the rights and obligations of the parties shall be the same as if the default termination had been made pursuant to GC 26, "TERMINATION FOR CONVENIENCE."

GC 26 TERMINATION FOR CONVENIENCE

26.1 Owner may, at its option and convenience, terminate the Contract, in whole or in part, at any time by written notice thereof to Construction Manager, whether or not Construction Manager is in default. Upon any such termination, Construction Manager hereby waives any claims for damages from the termination, including, without limiting the generality thereof, loss of anticipated profits on Work not performed on account thereof, home office overhead, lost bonding capacity, and consequential damages. As the sole right and remedy of Construction Manager, Owner shall pay Construction Manager in accordance with Subparagraphs below; provided, however, that those provisions of the Contract, which by their very nature survive final acceptance under the Contract, shall remain in full force and effect after such termination .

A. Upon receipt of any such notice, Construction Manager and its Surety shall, unless the notice requires otherwise:

1. Immediately discontinue work on the date and to the extent specified in the notice;
2. Place no further orders or subcontracts for materials, services, or facilities, other than as may be necessary or required for completion of such portion of work under the Contract that is not terminated;
3. Promptly make every reasonable effort to obtain cancellation upon terms satisfactory to Owner of all orders and subcontracts to the extent they relate to the performance of work terminated;
4. If requested by the Owner in writing, assign to the Owner, all right, title and interest of the Construction Manager under the subcontracts terminated. Such Assignment shall not include assumption of Construction Manager's obligations or liabilities under any subcontract. The Owner shall have the right (but not the obligation) to assume the Construction Manager's obligations under any subcontracts assigned. Neither this paragraph or any assignment of subcontracts, shall constitute the Owner's assumption of Construction Manager's or other obligations under any such subcontract absent a written document executed by the Owner and the subcontractor in which the Owner expressly acknowledges an assumption of Construction Manager's obligations, and then only to the extent specified. In no event will the Owner assume any obligation of the Construction Manager under the subcontracts that arise out of or relate to Construction Manager's default prior to such assignment;

5. The Construction Manager shall include in all subcontracts, equipment leases and purchase orders, a provision requiring the subcontractor, equipment lessor, or supplier, to consent to the assignment of their subcontract or purchase order to the Owner;
6. Assist Owner, as specifically requested in writing, in the maintenance, protection and disposition of property acquired by Owner under the Contract; and,
7. Complete performance of any work that is not terminated.

B. Upon any such termination, Owner will pay to Construction Manager an amount determined in accordance with the following (without duplication of any item):

1. All amounts due and not previously paid to Construction Manager for work completed in accordance with the Contract prior to such notice, and for work thereafter completed as specified in such notice.
2. The reasonable cost of settling and paying claims arising out of the termination of work under subcontracts or orders as provided in Subparagraph A.3. above.
3. The verifiable costs incurred pursuant to Subparagraph A.4 above.
4. Any other reasonable costs which can be verified to be incidental to such termination of Work, including demobilization costs.

26.2 In the case of such termination for Owner's convenience, Construction Manager shall be entitled to receive payment for Work actually executed in accordance with GC 25.B.1 above, and verifiable costs incurred by reason of such termination, along with an amount not to exceed ten (10) percent for profit and overhead on such verifiable costs incurred.

26.3 The Owner's Termination for Convenience shall be without waiver or prejudice to, all of the Owner's claims, rights and remedies arising out of or related to any default, breach of contract, damages or other claims the Owner may have against Construction Manager, or Construction Manager's subcontractors, material suppliers of any tier, or any other person or entity at the time of termination, or arising thereafter.

26.3.1 Construction Manager hereby acknowledges acceptance of the risk and cost of the foregoing, and acknowledges and agrees to the foregoing limitation on Construction Manager's claims or damages arising out of, or relating to, a termination for convenience by the Owner.

26.4 Construction Manager shall submit within 30 days after receipt of notice of Termination, for Convenience, a written proposal for payment, including all incurred costs and other entitlements described herein. Owner shall review, analyze, and verify such proposal, and negotiate an equitable adjustment, and the Contract shall be amended in writing accordingly.

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GC 27 EXTENSION OF TIME/NO DAMAGES FOR DELAY

27.1 If the Construction Manager is delayed at any time in the progress of the Work by a written directive issued by the Owner or Design Professional, or any act, omission or neglect of the Owner or the Design Professional, or by a separate contractor employed by the Owner, or by any changes ordered in the Work, , labor disputes, unusual delay in deliveries, or other causes beyond Construction Manager's control, including discovery of unforeseen site conditions, and such delay extends the completion date, the date of Substantial Completion shall be extended by Change Order for such reasonable time as the Owner may determine.

27.2 The Construction Manager shall not be entitled to, and hereby expressly waives, any and all damages which it may suffer by reason of those instances set forth in Article 27.1 above (collectively "Noncompensable Events"), and further, hereby waives all damages which it may suffer by reason of these Noncompensable Events, including, but not limited to lost profits, overhead (whether determined by the Eichleay Formula or otherwise), home office expense, increased insurance costs, loss of bonding capacity or lost profits on alternate or unperformed contracts, supervision, material and labor escalation costs, and any other direct or consequential damages. Construction Manager hereby affirms that the extension of time granted herein is the Construction Manager's sole and exclusive remedy.

27.3 The Construction Manager must request the extension of time, in writing, and must provide the following information within the time periods stated hereafter. Failure to submit such information and in compliance with the time requirements hereinafter stated, shall constitute a waiver by the Construction Manager and a denial of the claim for extension of time:

a. Nature of the delay or change in the Work;
b. Dates of commencement/cessation of the delay or change in the Work;
c. Activities on the progress schedule current as of the time of the delay or change in the work affected by the delay or change in the Work;
d. Identification and demonstration that the delay or change in work impacts on the CRITICAL PATH (submittal of an updated CPM schedule) [For Horizontal Construction only: Construction Manager may substitute a Bar Chart, so long as the Bar Chart software provides the functional equivalent, to the extent possible, of the CPM provisions set forth in this Contract and its General Conditions. The Bar Chart format must be acceptable to the Owner. This provision shall govern any provisions hereafter dealing with CPM Scheduling.];
e. Identification of the source of delay or change in the Work;
f. Anticipated impact extent of the delay or change in the Work; and
g. Recommended action to minimize the delay.

27.4 The Construction Manager acknowledges and agrees that the evaluation of time extensions will be based upon the following criteria:

1. All schedule updates, submittals and other requirements of this General Condition have been met;
2. The delay must be due to the Owners or Design Professional's change in the Work,, an Act of God, or for other causes set forth in GC 27.1;
3. The delay which is the subject of the time extension must result in a demonstrable impact to the Critical Path;
4. The schedule must clearly display that the Construction Manager has used, in full, all the float time, except for Owner initiated changes. Float time is not for the exclusive use of either the Construction Manager or the Owner; and
5. If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be submitted within thirty (30) days of occurrence and shall be documented by data substantiating that weather conditions were abnormal for the period of time required for completion of the Work, could not have been reasonably anticipated, and that weather conditions had an adverse effect on the scheduled construction.

27.5 The Owner's determination as to the total number of days of Contract extension will be based upon the computer generated CPM construction schedule current at the time of the delay event, as revised in connection with the foregoing criteria.

27.6 The Construction Manager shall not be entitled to any extension of time for delays resulting from any cause unless it shall have notified the Owner in writing within twenty-four (24) hours after the commencement of such delay, or ninety-six (96) hours of knowledge of a potential delay, whichever is earlier. In any event, within seven (7) days of commencement of the delay, the Construction Manager shall provide in writing the information stated above.

27.5 The term "Force Majeure Event" means any action or event which occurs (i) outside Owner's and Construction Manager's reasonable control; and (ii) without the fault or negligence of either party, specifically, Acts of God, terrorism, war, riots, hurricanes, unusually severe weather (as substantiated by NOAA reports nearest to the jobsite location), floods, fires, civil disturbances, governmental restrictions, epidemics, explosions, acts of the public enemy, the enactment, imposition or modification of any applicable law which occurs after the date of this Agreement and which prohibits or materially interferes with the development or construction of the Project Improvements. Notwithstanding anything to the contrary, a "Force Majeure Event" shall not include acts, events, or other matters arising out of violations of any environmental laws with respect to or the presence or discharge of any hazardous substances on the lands comprising the Project. In the event of a Force

Majeure Event which impacts the critical path, Construction Manager shall only be entitled to an extension of time and shall not be entitled to any compensation or any increase in the GMP, except to the extent that a Force Majeure Event causes damage to Work in place or causes the Work to be shut down for more than thirty (30) days. Such costs for damage to Work in place may be recoverable by insurance that is applicable to the Project. Notwithstanding, however, if such costs to correct the Work damaged by a Force Majeure Event or for shut down for more than thirty (30) days are not covered by insurance, then Construction Manager shall be entitled to recover only its actual direct plus reasonable General Conditions costs associated to correct the Work or to its unavoidable costs for shut down for more than thirty (30) days but no other compensation, and without fee markup. No recovery on any basis shall take place unless the Construction Manager has satisfied all of the following conditions:

(i) Construction Manager has properly documented all such direct costs for the Owner and any insurance carrier; and
(ii) Construction Manager shall have used reasonable and diligent efforts to avoid and minimize delays, regardless of cause; and
(iii) Construction Manager shall cooperate with Owner to mitigate the impact of any delays encountered by Construction Manager that would entitle it to such extension of time, even if its performance is unreasonably delayed by the Owner.

27.6 For all Changes in the Work in which the Construction Manager claims entitlement to a time extension, the Construction Manager shall provide to the Owner the same information as required above within seven (7) days of the issuance of the request for Change Order or direction to change the scope of the Work. Construction Manager's failure to provide such information shall constitute a waiver by the Construction Manager, and a denial of any time extension for that change in the Work. Further, upon execution by the Owner and Construction Manager of any Change Order where no time extension has been requested or granted, that Change Order shall constitute a complete waiver of all claims for damages or for any extension of time related to that work, or any work impacted by the change.

GC 28 WARRANTY

28.1 Unless otherwise provided elsewhere in the Contract, all materials and equipment incorporated into any Work covered by the Contract shall be new and, where not specified, of the highest grade and quality for their intended use, and all workmanship shall be in accordance with construction practices acceptable to Owner. Unless otherwise provided in the Contract, Construction Manager warrants all equipment, materials, and labor furnished or performed under this Contract, against defects in design, materials and workmanship, for a period of twelve (12) months (unless longer guarantees or warranties are provided for elsewhere in the Contract in which case the longer periods of time shall prevail) from and after Substantial Completion of the Work under the Contract, regardless of whether the same were furnished or performed by Construction Manager or by any of its subcontractors of any tier. Even in the event that the Owner assumes partial

utilization of portions of the Work prior to completion of all Work, the Warranties for that portion shall also extend for twelve (12) months from Substantial Completion of the entire Work, so that all warranties are running concurrently upon Substantial Completion of the total Project.

28.2 Upon receipt of written notice from Owner of any defect in any such equipment, materials, or labor during the applicable warranty period due to defective design, materials or workmanship, the affected item or parts thereof shall be redesigned, repaired or replaced by Construction Manager at a time and in a manner acceptable to Owner in compliance with the Contract Documents, at its expense.

28.3 Construction Manager warrants such redesigned, repaired or replaced Work against defective design, materials and workmanship for a period of twelve (12) months from and after the date of acceptance thereof. Should Construction Manager fail to promptly make the necessary redesign, repair, replacement and tests, after written notice from Owner specifying the defects, Owner may perform or cause to be performed the same, at Construction Manager's sole cost and expense.

28.4 Construction Manager shall perform such tests as Owner may require to verify that such redesign, repairs and replacements comply with the requirements of this Contract. All costs incidental to such redesign, repair, replacement, and testing, including the removal, replacement, and reinstallation of equipment and materials necessary to gain access, shall be borne exclusively by Construction Manager. However, if such testing determines that the Work is not defective, than Owner shall compensate Construction Manager for such costs of testing and any affects on previously completed work.

28.5 Construction Manager and its Surety shall be liable for the satisfaction and full performance of the warranties as set forth herein, and any damage to other parts of the Work caused by the Construction Manager's failure to perform pursuant to this GC 28.

28.6 The Construction Manager shall commence Work to remedy or replace the defective, deficient Work within five (5) calendar days after receiving written (including transmittals by FAX) notice from the Owner, subject to allowance for long-lead items. If the Construction Manager fails to remedy or remove or replace that Work or material which has been found to be defective, or reasonably commence corrective action, then the Owner may remedy or replace the defective or deficient Work at the Construction Manager's expense; provided, however, all repairs to natural gas, telephone, radio, computer security, water, electric, air conditioning services and all emergency services shall be commenced within twelve (12) hours of notification, or by 7:00 a.m. whichever is earlier, and Construction Manager shall complete the repairs in an expeditious manner befitting the nature of the deficiency. The Construction Manager shall immediately pay the expenses incurred by the Owner for remedying the defects. If the Owner is not paid within ten (10) calendar days, the Owner may pursue any and all legal remedies it may have against the Construction Manager and its Surety.

28.7 The Construction Manager is required to provide a designated telephone number for warranty related emergencies which occur outside the normal workday. The Construction Manager is solely responsible for ensuring that all warranty Work is completed in the manner described above. If the Owner agrees, in writing, a subcontractor may be the point of contact for notices regarding warranty items, but such agreement shall not absolve the Construction Manager of its responsibility.

GC 29 PATENT INDEMNITY

29.1 Construction Manager hereby indemnifies and shall defend and hold Owner, Design Professional , and its representatives harmless from and against all claims, losses, costs, damages, and expenses, including reasonable attorneys' fees, incurred by Owner, Design Professional and its representatives, respectively, as a result of or in connection with any claims or actions based upon infringement or alleged infringement of any patent and arising out of the use of the equipment or materials furnished under the Contract by Construction Manager, or out of the processes or actions employed by, or on behalf of Construction Manager in connection with the performance of the Contract, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Design Professional. However, if the Construction Manager has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Construction Manager shall be responsible for such loss unless such information is promptly furnished to the Design Professional.

29.2 Construction Manager shall, at its sole expense, promptly defend against any such claim or action for which it is responsible under the prior paragraph unless directed otherwise by Owner or its representatives; provided that Owner or its representatives shall have notified Construction Manager upon becoming aware of such claims or actions, and provided further that Construction Manager's aforementioned obligations shall not apply to equipment, materials, or processes furnished or specified by Owner or representatives. Construction Manager shall have the right, in order to avoid such claims or actions, to substitute at its expense non-infringing equipment, materials, or processes, or to modify such infringing equipment, materials and processes so they become non-infringing, or obtain the necessary licenses to use the infringing equipment, material or processes, provided that such substituted and modified equipment, materials and processes shall meet all the requirements and be subject to all the provisions of this Contract.

GC 30 INDEMNITY

30.1 To the fullest extent provided for by law, Construction Manager agrees to protect, defend, reimburse, indemnify and hold the Owner, its agents, employees, elected officers and representatives and each of them, (hereinafter collectively and for the purposes of this paragraph, referred to as "Owner"), free and harmless at all times from and against any and all claims, liability, expenses, losses, costs, fines and damages, including reasonable

attorneys' fees, and causes of action of every kind and character against Owner by reason of any damage to property or the environment, economic losses, or bodily injury (including death) incurred or sustained by any party hereto, or of any party acquiring any interest hereunder, any agent or employee of any party hereto or of any party acquiring an interest hereunder, and any third or other party whomsoever, or any governmental agency, arising out of or in incident to or in connection with Construction Manager's performance under this Contract, the condition of the premises, Construction Manager's acts, or omissions or operations hereunder, or the performance, non-performance or purported performance of the Construction Manager of any breach of the terms of this Contract; provided however, and without waiving the provisions of §768.28, F.S., that Construction Manager shall not be responsible to Owner for damages resulting out of bodily injury or damages to property which Construction Manager can establish as being attributable to the negligence of Owner, its respective agents, servants, employees, officers, or others for whom Owner is responsible, including separate contractors. The indemnification shall not include the indemnity/defense of claims or damages resulting from gross negligence or willful, wanton, or intentional misconduct of Owner or its respective officers, directors, agents, or employees, or for statutory violation or punitive damages, except and to the extent the statutory violation or punitive damages are caused by or result from the acts or omissions of the Construction Manager, its agents, employees, or any of the Subcontractors, their agents, or of any tier or their respective employees. The parties acknowledge the requirements of Florida Statute § 725.06 have been fulfilled and apply to this GC 30.1.

30.2 Construction Manager further agrees to hold harmless and indemnify Owner for any fines, citations, court judgments, insurance claims, restoration costs or other liability resulting from Construction Manager's activities on the Project, whether or not Construction Manager was negligent or even knowledgeable of any events precipitating a claim or arising as a result of any situation involving Construction Manager's activities.

30.3 Said indemnification by Construction Manager shall be extended to include all deliverers, suppliers, furnishers of material or anyone acting for, on behalf of, or at the request of Construction Manager. Construction Manager recognizes the broad nature of this indemnification and hold harmless clause and voluntarily makes this covenant and expressly acknowledges consideration of one-hundred dollars ($100.00) therefore, which amount is incorporated into the GMP, as well as such other good and valuable consideration provided by Owner in support of this indemnification in accordance with the laws of the State of Florida. This clause shall survive termination of this Contract.

GC 31 INSURANCE

31.1 Unless otherwise specified in this Contract, Construction Manager shall, at its sole expense, maintain in effect at all times during the performance of Work hereunder insurance coverage with limits not less than those set forth in Exhibit "D" and with insurers and under forms of policies acceptable to Owner, copies of which shall be furnished to Owner upon its request. Construction Manager shall deliver to Owner

Certificates of Insurance, evidencing that such policies are in full force and effect, no later than ten (10) days after execution of the Contract by Owner and prior to commencing Work on the Project site. Such Certificates shall adhere to the conditions set forth in the table below.

31.2 Construction Manager shall purchase and maintain during the life of this Contract Workers Compensation insurance, including Employers Liability, to comply with all applicable State and Federal laws covering all of its employees on the Work site, and in accordance with all of the limits, terms and conditions set forth in Exhibit "D." If any Work is sublet, Construction Manager shall require all subcontractors to similarly comply with this requirement, unless such subcontractors' employees are covered by Construction Manager's Workers Compensation insurance policy.

31.3 Construction Manager shall purchase and maintain during the life of this Contract Comprehensive or Commercial General Liability insurance in accordance with all of the limits, terms and conditions set forth in the table below.

31.4 Should any of the Work hereunder involve watercraft owned or operated by Construction Manager or any subcontractor, such shall be insured under the Comprehensive or Commercial General Liability policy, or by other such liability insurance such as Protection and Indemnity.

31.5 Construction Manager shall purchase and maintain during the life of this Contract Comprehensive Automobile Liability insurance covering on all owned, non-owned and hired automobiles with all of the limits, terms and conditions set forth in Exhibit "D"

31.6 To the extent available for some or all of the component parts of this Project, Construction Manager shall procure and maintain "all risk" Builder's Risk insurance, including, but not necessary limited to fire, flood, wind and other water damage, in accordance with all of the limits, terms and conditions set forth in Exhibit "D" unless directed by Owner, in writing.

31.7 Should any of the Work hereunder involve the hauling and/or rigging of property in excess of $500,000.00 or $250,000.00 in transit, Construction Manager shall procure and maintain "all risk" Transit or Motor Truck Cargo insurance, or similar form of coverage, insuring against physical damage or loss to the property being transported, stored, moved or handled by Construction Manager or any subcontractor pursuant to the terms of this Contract, subject to the limits, terms and conditions set forth in Exhibit "D."

31.8 Should any of the Work hereunder involve aircraft (fixed wing or helicopter) owned or operated by Construction Manager or any subcontractor, Construction Manager shall procure and maintain Aircraft Liability insurance in accordance with the terms and conditions of the table set in Exhibit "D."

31.9 The requirements contained herein as to types and limits, as well as Owner's approval of insurance coverage to be maintained by Construction Manager are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by Construction Manager under the Contract.

31.10 The Certificates of Insurance must provide clear evidence that Construction Manager's Insurance Policies contain the minimum limits of coverage and special provisions prescribed in this GC-31, in accordance with all of the limits, terms and conditions set forth in the table below. All policies must be endorsed so that thirty (30) days notification of cancellation and any material change(s) in coverage shall be provided to the City.. Insurance shall remain in force until all Work required to be performed under the terms of this Contract are satisfactorily completed as evidenced by the formal acceptance by the City.. In the event that the insurance certificates provided hereunder indicates that the insurance shall terminate and lapse during the period of this Contract then, in that event, the Construction Manager shall furnish, at least thirty (30) days prior to the expiration of such insurance, a renewed certificate of insurance as proof that equal and like coverage for the balance of the period of the Contract and any extension thereunder is in effect. Construction Manager shall not continue to work pursuant to this Contract unless all required insurance remains in effect. Owner may withhold payment to the Construction Manager until coverage is reinstated.

31.11 The Construction Manager shall deliver the original of the initial Certificates of Insurance and five (5) copies to:

The City of Pompano Beach, Florida

Pompano Beach, FL
Attn.: John Sfiropoulos, PE, City Engineer

31.12 Notices, in original and five (5) copies, of cancellation, terminations and alterations of such policies shall be delivered to:

The City of Pompano Beach, Florida
100 West Atlantic Blvd.
Pompano Beach, FL 33060
Attn.: Dennis Beach, City Manager

GC 32 SITE CONDITIONS

32.1 Construction Manager has the sole responsibility of satisfying itself concerning the nature and location of the Work and the general and local conditions, and particularly, but without limitation, with respect to the following: those affecting transportation, access, staging, parking, disposal, handling and storage of materials; availability, quantity and quality of labor, water and electric power; availability and condition of roads; climatic conditions, location of underground utilities as depicted on Contract documents, and

through verification with local utility companies and the Owner, physical conditions of existing construction, topography and ground surface conditions; subsurface geology, and nature and quantity of surface and subsurface materials to be encountered; the nature of the ground water conditions; equipment and facilities needed preliminary to and during performance of the Contract; and all other matters which would be reasonably known to a licensed general contractor with expertise in overhead utility undergrounding and related infrastructure construction as in any way affecting performance of the Contract, or the cost associated with such performance. The failure of Construction Manager to acquaint itself with any applicable condition will not relieve it from the responsibility for properly estimating either the difficulties or the costs of successfully and timely performing the Contract.

32.2 The Owner shall not be responsible for any conclusions or interpretations made by the Construction Manager based on the information made available by the Owner. The Town shall not be responsible for any understanding reached or representation made concerning conditions which can affect the Work by any of Construction Manager's officers, employees, agents, subcontractors, material men, or suppliers before execution of this Contract, unless that understanding or representation is expressly stated in this Contract.

32.3 The provisions of GC 32.1 shall be deemed a complete waiver by the Construction Manager of claims for equitable adjustment in Contract Time or Price, or both, unless due to (1) subsurface or concealed conditions which differ materially from those indicated on the Contract Documents, or (2) unknown physical conditions of an unusual nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction of the character provided in the Contract Documents; provided however, that claims under this GC 32.3 shall be denied in the event that the conditions were reasonably inferable from activities, testing and investigations performed in connection with the Pre-Con Agreement, and which would otherwise provide to Construction Manager an expectation that the conditions could be similar elsewhere in the Project.

GC 33 NOT USED

GC 34 ACCESS TO WORK AREAS

34.1 Owner, Design Professional, and their duly authorized representatives and employees, and all duly authorized representatives of governmental agencies having jurisdiction over Work areas or any part thereof shall, at all reasonable times, for the purpose of determining compliance with Contract requirements and permits, have access to such areas and the premises used by Construction Manager. Construction Manager shall also arrange for Owner, Design Professional, and their said representatives and employees, to have access at all reasonable times to all places where equipment or materials are being manufactured, produced, or fabricated for use under the Contract.

34.2 Construction Manager's access to the site and storage areas shall be as shown on the plans and as designated by the Owner. Access routes may also be used by Owner's employees, the public, and other separate Owner contractors. No other access points shall be allowed unless approved by the Owner, in writing. All Construction Manager traffic authorized to enter the site shall be experienced with the route or guided by Construction Manager personnel. The Construction Manager is responsible for immediate cleanup of any debris deposited along the access route as a result of its construction traffic.

GC 35 INGRESS AND EGRESS

35.1 Construction Manager's access to the Work area will be permitted only through approaches that will be designated by Owner, and then only in such manner that Construction Manager's traffic will not interfere with Owner's operations and Merchants/Tenants adjacent to the activity area(s). Construction Manager shall, at all times, maintain reasonably free unimpeded ingress and egress at the site. Construction Manager personnel are not to enter into any areas of the jobsite other than Work areas and areas of designated access. Construction Manager shall safely maintain, at all times during the performance of the Work, both vehicular and pedestrian traffic in, around, and adjacent to the Project.

GC 36 PRECONSTRUCTION CONFERENCE

36.1 As soon as practicable after execution of this Contract, and prior to commencing any Work, a pre-construction conference will be coordinated by the Construction Manager and the Owner. In attendance at said conference will be Owner, Design Professional, and any of their representatives as may be deemed advisable. The purpose of said conference is to determine procedures related to the smooth progress of the Project, review of any items requiring clarification, maintenance of traffic, merchant and pedestrian accessibility, related safety issues, and procedures for the processing and distribution of all documents and correspondence related to the Contract, among other things.

GC 37 MEETINGS

37.1 The Construction Manager shall, at its expense, as requested by Owner, attend any and all meetings called by Owner to discuss the Work under the Contract. Such meetings shall be conducted and recorded by the Owner with typed minutes of each meeting distributed to all attendees.

GC 38 NOT USED

GC 39 DELIVERY, UNLOADING AND STORAGE

39.1 Construction Manager shall, at its expense, receive, unload, store in a secure place, and deliver from storage to the construction site all materials, plant and equipment required for the performance of the Contract. The storage facilities, methods of storing and security provisions shall meet Owner's approval and manufacturer's recommendations. Materials and equipment subject to degradation by outside exposure shall be stored in a weather tight enclosure.

GC 40 WORK AREA

40.1 All Construction Manager's Work areas on the jobsite will be assigned by Owner. Construction Manager shall confine its office, shops, storage, assembly and equipment and vehicle parking to the areas so assigned. Before commencing Work, the Construction Manager shall provide a temporary office in the vicinity of the Work, or as otherwise agreed to by the Owner, in writing, which shall have a telephone where a representative of the Construction Manager may be reached at all times during normal working hours. Should Construction Manager find it necessary or advantageous to use any additional land outside the Project site for any purpose whatever, Construction Manager shall, provide and make its own arrangements for the use of such additional land.

GC 41 PLANT, EQUIPMENT AND FACILITIES

41.1 Construction Manager shall provide and use on any Work only such construction plant and equipment as are capable of producing the quality and quantity of work and materials required by the Contract and within the time or times specified in the Contract. Before proceeding with any Contract Work or with erection of any facilities, including, but not limited to, temporary structures, machinery, equipment, offices and warehouses, Construction Manager shall furnish Owner such information and drawings relative to such equipment, plant facilities as Owner may request.

41.2 Upon written order of Owner, Construction Manager shall discontinue operation of unsatisfactory plant and equipment or facilities and shall either modify or remove the unsatisfactory items from the site.

41.3 Construction Manager shall not remove construction plant or equipment from the site before the Work is finally accepted without Owner's written approval. Such approval shall not be unreasonably withheld.

GC 42 CONSTRUCTION MANAGER-FURNISHED MATERIALS, EQUIPMENT AND WORKMANSHIP

42.1 Only new, unused items of recent manufacture, of designated quality, but in no event less than the standard quality for the improvements, free from defects, will be accepted. Rejected items shall be removed immediately from the Work and replaced with items of specified quality. Failure by Owner to order removal of rejected materials and equipment shall not relieve Construction Manager from responsibility for quality of the materials supplied nor from any other obligation under the Contract Documents.

42.2 Construction Manager shall continuously check Design Professional ural and structural clearances for accessibility of equipment and mechanical and electrical systems. No allowance of any kind will be made for Construction Manager's negligence to foresee means of installing equipment into position inside structures.

42.3 No Work defective in construction or quality, or deficient in meeting any requirement of the Contract Drawings and Specifications, will be acceptable regardless of Owner's failure to discover or to point out defects or deficiencies during construction; nor will the presence of field representatives at the Work or the satisfaction of the Work meeting applicable code requirements relieve Construction Manager from responsibility for the quality and securing progress of Work as required by the Contract Documents. The Owner shall notify the Construction Manager of defective or unacceptable Work if the Owner discovers such. Defective Work revealed within the time required by warranties (whether expressed or implied) shall be remedied in accordance with the GENERAL CONDITIONS Section entitled, WARRANTY. No payment, whether partial or final, shall be construed as an acceptance of defective Work or improper materials.

42.4 Construction Manager shall waive "common practice" and "common usage" as construction criteria wherever details and specifications or governing codes and ordinances require greater quantity or better quality than common practices and common usage would require. Construction Manager shall order and schedule delivery of materials in reasonable time to avoid delays in construction. Delays in delivery of equipment or material purchased by the Construction Manager or its Trade Contractors shall not be considered as a cause for an adjustment of the Contract Time or a basis for damages or compensation. The Construction Manager shall be fully responsible for the timely ordering, scheduling, expediting, delivery, and installation of all equipment and materials. If an item is found to be unavailable, Construction Manager shall notify Owner immediately of recommended substitute(s) to permit Owner's selection of a suitable substitute.

42.5 Owner will exercise sole authority for determining conformance of workmanship, materials, equipment and systems with the requirements of the Contract. Review and approval of all items proposed by Construction Manager for incorporation into the Work will be by Owner. This function by Owner will apply both to approvals for the Contract

as initially signed, and to approvals for changes to Contract by modifications during progress of the Work. Reference to manufacturers' names, brands and models is to establish the type and quality desired. Substitutions may be permitted unless specifically noted otherwise and in accordance with GC 43 below.

42.6 When materials, equipment, or systems are specified by performance only, without reference to specific manufacturer's brands or models, Construction Manager shall submit its own choice for Owner's review and approval, supported by sufficient evidence of conformity with the Contract Documents.

GC 43 SUBSTITUTIONS

43.1 Prior to proposing any substitute item, Construction Manager shall satisfy itself that the item proposed is, in fact, equal or better to that specified, that such item will fit into the space allocated, that such item affords comparable ease of operation, maintenance and service, that the appearance, longevity and suitability for the climate are comparable, and that by reason of cost savings, reduced construction time, or similar demonstrable benefit, the substitution of such item will be in Owner's interest, and will in no way impact detrimentally upon the Project completion date and schedule.

43.2 The burden of proof of equality of a proposed substitution for a specified item shall be upon Construction Manager prior to Owner's decision on such substitution. Construction Manager shall support its request with sufficient test data and other means to permit Owner to make a fair and equitable decision on the merits of the proposal. Construction Manager shall submit drawings, samples, data, certificates, and additional information as may be required by the Owner for proposed substitute items as required by GC 46 CONSTRUCTION MANAGER FURNISHED DRAWINGS, DATA & SAMPLES.

43.3 Any item by a manufacturer other than those specified or of brand name or model number or of generic species other than those specified will be considered a substitution. Owner will be the sole judge of whether or not the substitution is equal in quality, utility and economy to that specified. Construction Manager shall allow an additional 7 days for Owner's review of substitution. All requests for substitutions with submittal data must be made at least fourteen (14) days prior to the time Construction Manager must order, purchase, or release for manufacture or fabrication. Materials and methods proposed as substitutions for specified items shall be supported by certification of their approval for use by all governmental agencies having jurisdiction over use of specific material or method. Substitutions may not be permitted in those instances where the products are designed to match artistic design, specific function or economy of maintenance. Approval of a substitution shall not relieve Construction Manager from responsibility for compliance with all requirements of the Contract. Construction Manager shall coordinate the change with all trades and bear the expense for any changes in other parts of the Work caused by any substitutions.

43.4 If Owner rejects Construction Manager's substitute item on the first submittal, Construction Manager may make only one additional request for substitution in the same category. On the second request, and all future requests, the Construction Manager shall be invoiced the expenses (including Owner's and Design Professionals' cost and overhead) involved in reviewing submittal data.

GC 44 EXPEDITING

44.1 The equipment and material furnished under this Contract may be subject to expediting by Owner, at Owner's expense. Owner shall be allowed reasonable access to the shops, factories, and other places of business of the Construction Manager and its subcontractors and suppliers, for expediting purposes. As required by Owner, Construction Manager shall supply schedules and progress reports for Owner's use in expediting and Construction Manager shall cooperate with Owner and require its subcontractors and suppliers to cooperate with Owner in such expediting. Any expediting performed by Owner shall not relieve Construction Manager of its sole and primary responsibility for timeliness of delivery of the equipment and material to be furnished under this Contract.

GC 45 FIELD LAYOUT OF WORK

45.1 All Work under this Contract shall be constructed in accordance with the lines and grades shown on the Contract Drawings or as approved by the Owner in writing. Elevation of existing ground, structures and appurtenances are believed to be reasonably correct but are not guaranteed to be absolute and therefore are presented only as an approximation.

45.2 All survey work for construction control purposes shall be made by a land surveyor registered in the State of Florida, with demonstrated experience in the Project area, and who shall be employed by the Construction Manager at Construction Manager's expense. The Construction Manager shall establish all base lines for the location of the principal component parts of the Work together with permanent benchmarks and temporary bench marks adjacent to the Work. Based upon the information provided by the Contract Drawings, the Construction Manager's surveyor shall develop and make all detail surveys necessary for construction including establishment or construction of grid coordinates as shown on the Contract Drawings, location of property boundaries, stakes for all working points, lines and elevations. Owner shall provide surveys necessary for utility easements.

45.3 The Construction Manager shall have the responsibility to carefully preserve all bench marks, reference points and stakes. In case of destruction thereof by the Construction Manager resulting from his negligence, or for any other reason, it shall be held liable for any expense and damage resulting therefrom and shall be responsible for any mistakes that may be caused by the unnecessary loss or disturbance of such bench marks, reference points and stakes. Existing or new control points, property markers, and monuments that will be established or are destroyed during the normal course of construction shall be re-established by the Construction Manager, and all reference ties recorded therefor shall be

furnished to the Owner. All computations necessary to establish the exact position of the Work shall be made and preserved by the Construction Manager.

GC 46 CONSTRUCTION MANAGER FURNISHED DRAWINGS, DATA AND SAMPLES

46.1 Review and permission to proceed by Owner as stated in this Contract does not constitute acceptance or approval of design details, calculations, analyses, test methods, certificates or materials developed or selected by the Construction Manager and does not relieve Construction Manager from full compliance with contractual obligations. Drawings, samples, catalogues, data and certificates required shall be submitted to the Owner for review.

46.2 All correspondence from the Construction Manager to the Owner shall be numbered sequentially and the submittal number shall be referenced. Submittal drawings (shop, erection or setting diagrams) and schedules, required for work of various trades, shall be checked before submission by technically qualified employees of Construction Manager for accuracy, completeness and compliance with Contract requirements. These drawings and schedules shall be stamped and signed by Construction Manager certifying to such check. The certification stamp shall read as follows:

"I certify that I have checked this submittal for accuracy, completeness and compliance with Contract requirements, and it has been coordinated with all other submittals and Contract Documents."

_____ _____

SIGN DATE

_____

46.3 Drawings

46.3.1 Where drawings are required for (a) fabrication of Construction Manager furnished equipment; (b) installing Construction Manager furnished material or equipment; or (c) planning and performance of the Work under Contract; such drawings shall be originally generated and submitted by and at the expense of the Construction Manager before fabrication, installation or performance is commenced. Each submittal shall be made not less than fourteen (14) calendar days prior to the time that the drawings are required in accordance with the schedule. Allow at least seven (7) calendar days for review by the Engineer. Such drawings shall include, but not be limited to, matchmarks, erection diagrams and other details, such as field connections for proper installation, erection of the equipment, and performance of the Work.

46.3.2 For drawings greater in size than 11" x 17", one reproducible and four copies shall be submitted to the Owner by and at the expense of the Construction Manager. The Owner will be the sole judge of the adequacy of the quality of the reproducible and prints and may reject reproducibles and/or prints on the basis of quality alone. Such drawings will

not be folded, but will be transmitted in mailer rolls manufactured expressly for that purpose. The reproducible with the Owner's review comments will be returned to the Construction Manager. A reproducible copy of drawings equal to or less than 11" x 17" is not necessary, but five copies of the unfolded drawings must be transmitted to the Design Professional and Owner.

46.3.3 If drawings show variations from the Contract requirements, the Construction Manager shall describe such variations in writing, separate from the drawings, at the time of submission. If the Owner approves any such variation(s), it will issue an appropriate Contract modification, except that, if the variation is minor and does not involve a change in price or in time of performance, a modification need not be issued.

46.3.4 Drawings of a specific piece of equipment shall identify components with the manufacturer's part number or reference drawing clearly indicated. If reference drawing numbers are used, the review date of such drawings shall be included. Drawings shall indicate design dimensions, maximum and minimum allowable operating tolerances on all major wear fits, i.e. - rotating, reciprocating or intermittent sliding fits between shafts or stems and seals, guides and pivot pins. The sequence of submission of all drawings shall be such that all information is available for reviewing each drawing when it is received.

46.3.5 All drawings submitted by the Construction Manager shall be certified and dated by the Construction Manager on the face of each drawing to be correct, accurate and shall be furnished in accordance with requirements of the Specifications. The Design Professional and Owner will conduct a review of Construction Manager's drawings and a drawing marked with one of the following review comments will be returned to the Construction Manager:

1. No exceptions taken.
2. Make corrections noted. No resubmittal.
3. Not required for review.

46.3.6 The Construction Manager must incorporate the changes indicated, resubmit and obtain a Code 1 or 2 notation before release for shipment can be granted.

46.4 Samples.

46.4.1 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged. Samples of all items of related systems (i.e., adjacent surfaces requiring similar colors but manufactured of different materials) must be submitted in the same time frame before the approval process can begin.

46.4.2 Where samples are required, they shall be submitted by and at the expense of the Construction Manager. Such submittal shall be made not less than thirty five (35)

calendar days prior to the time that the materials represented by such samples need to be ordered for incorporation into any Work in accordance with the schedule. Allow at least five (5) calendar days for Owner's review. Materials represented by such samples shall not be manufactured, delivered to the site or incorporated into any Work without such review. Each sample shall bear a label showing the Construction Manager's name, date submitted, Project name, name of the item, manufacturer's name, brand name, model number, supplier's name, and reference to the appropriate drawing, Technical Specification section and paragraph number, all as applicable.

46.4.3 Samples that have been reviewed may, at Design Professional 's and Owner's option, be returned to the Construction Manager for incorporation into the Work.

46.5 Catalogues, Data and Certificates.

46.5.1 Where catalogues, data or certificates are required, five (5) copies of each shall be submitted by and at the expense of the Construction Manager. Such submittal shall be made not less than fourteen (14) calendar days prior to the time that the materials represented by such catalogues, data or certificates must be ordered for incorporation into any Work in accordance with the approved Bar Chart schedule. Allow at least 7 calendar days for Design Professional and Owner's review. Material represented by such shall not be fabricated, delivered to the site or incorporated into any Work without such review.

46.5.2 Certificates shall clearly identify the material being certified and shall include but not be limited to providing the following information: Construction Manager's name, Project name, name of the item, manufacturer's name, and reference to the appropriate drawing, Technical Specification section and paragraph number all as applicable. All catalogues, data and certificates submitted by the Construction Manager shall be certified and dated by the Construction Manager on the face of each catalogue, data and certificate to be correct and shall be furnished in accordance with these requirements and the requirements of the Technical Specifications. Design Professional and Owner will conduct a review of Construction Manager's catalogues, data, and certificates and one copy marked with the review comments listed in paragraph 46.3.5, above, will be returned to the Construction Manager.

GC 47 CONSTRUCTION SCHEDULE

47.1 Within ten (10) days after the date of the Owner's issuance of a Notice to Proceed, the Construction Manager shall prepare and submit to the Owner a CPM construction schedule in graphically depicting the activities contemplated to occur as a necessary incident to performance of the Work required to complete the Project, showing the sequence in which the Construction Manager proposes for each such activity to occur and duration (dates of commencement and completion, respectively) of each such activity. The Owner's initial approval for the purposes of this GC 47.1, and any other provisions in the Contract Documents related to the Construction Manager's responsibility to

prepare and submit schedules shall be limited to a determination that the activities, durations and logic are reasonable.

47.1.1 The construction schedule shall be complete in all respects, covering, in addition to activities and interfaces with other Construction Managers at the site of the Work, offsite activities such as design, fabrication, an allowance for weather delays, submittals, procurement and jobsite delivery of Construction Manager furnished material and equipment. The schedule shall be a Bar Chart drawn to a time scale using arrow or precedence type diagramming. The construction schedule activities shall mirror the payment application breakdown.

47.1.2 The construction schedule shall include the following:

a. Brief description of each activity.
b. All submittals, samples, approvals, fabrication, and deliveries for equipment and materials. Allow no more than 60 days float between submittal approval and beginning of fabrication.
c. Activities showing scheduled start and finish, late start and finish, and float.
d. Relations between activities.
e. Duration of activities. No activity should be scheduled for more than 20 workdays.
f. Contractual and other major milestones including phasing.
g. Schedule activities to include labor and material.
h. An allowance for delays due to weather. Contract Time extensions for weather delays will be granted only when all of the conditions and criteria for evaluation of time extensions have been met pursuant to the General Conditions.

47.1.3 Upon acceptance of the original Bar Chart Schedule, the Early Start and Early Finish dates for all activities shall be fixed as Planned Start and Planned Finish dates. Any further revisions to the schedule must be submitted in writing and approved by the Owner.

47.1.4 The detailed Bar Chart schedule submittal shall include five (5) color copies of the following:

a) Time Scaled Diagram.
b) Bar Chart in the following formats:
c) Sorted by activity.
d) NOT USED.
e) Sorted by early start.
f) Precedence and Successor report.
g) Narrative report.
h) Computer diskette. (One copy)
i) Submittals shall be organized under Standard CSI format.

47.1.5 The detailed Bar Chart Schedule shall be updated monthly and submitted along with an updated CD accompanied by an Application for Payment. Construction Manager shall meet with the Owner and Design Professional of Record to review and verify:

a) Actual start and finish dates for completed activities.
b) Remaining duration required to complete each activity started, scheduled to start, but not completed.
c) Logic and time, for change orders that are to be incorporated into the schedules.
d) Percentage for completed and partially completed activities.

47.2 Following development and submittal of the construction schedule as aforesaid, the Construction Manager shall, at the end of each calendar month occurring thereafter during the period of time required to finally complete the Project, or at such earlier intervals as circumstances may require, update and/or revise the construction schedule to show the actual progress of the Work performed and the occurrence of all events which have affected the progress of performance of the Work already performed or will affect the progress of the performance of the Work yet to be performed in contrast with the planned progress of performance of such Work, as depicted on the original construction schedule and all updates and/or revisions thereto as reflected in the updated and/or revised construction schedule last submitted prior to submittal of each such monthly update and revision.

47.3 The Construction Manager shall prepare and incorporate into the schedule data base, at the required intervals, the following schedules:

a. Subcontractor Construction (Subnetworks) - Upon the award of each subcontract, the Construction Manager shall jointly with the subcontractor, develop a schedule which is more detailed than the pre-bid schedule included in the Specifications, taking into account the Work schedule of the other subcontractors. The construction schedule shall include as many activities as necessary to make the schedule an effective tool for construction planning and for monitoring the performance of the subcontractor. The construction schedule shall also show pertinent activities for material purchase orders, manpower supply, shop drawing schedules and material delivery schedules.

b. Occupancy Schedule - The Construction Manager shall jointly develop with the Engineer and Owner a detailed plan, inclusive of punch lists, final inspections, maintenance training and turn-over procedures, to be used for ensuring accomplishment of a smooth and phased transition from construction to Owner occupancy. The Occupancy Schedule shall be produced and updated monthly from its inception through final Owner occupancy.

47.4 The Construction Manager shall submit a written narrative report as a part of his monthly review and update in a form agreed upon by the Construction Manager and the Owner. The narrative report shall include a description of problem areas; current and anticipated

delaying factors and their estimated impact on performance of other activities and completion dates; and an explanation of corrective action taken or proposed.

47.5 The Construction Manager shall have in its employ for the length of this Project, at least one qualified scheduling specialist whose responsibility as to this Contract will be to prepare, plan and draft the construction schedules, monitor the construction progress, analyze scheduling problems for resolution, update the Construction Schedule as required in the Contract, and maintain updated information as required regarding the interface with other contracts. The costs associated herewith, and all scheduling activities, are included in the Lump Sum.

47.6 The Construction Manager agrees that whenever it becomes apparent from the current progress review meeting or the computer produced calendar dated schedule that the Contract completion date will not be met, the Construction Manager shall execute some or all of the following remedial actions at Construction Manager's sole cost and expense:

a) Increase construction manpower in such quantities and crafts as necessary to eliminate the backlog of Work.

b) Increase the number of working hours per shift, shifts per working day, working days per week, the amount of construction equipment, or any combination of the foregoing to eliminate the backlog of Work.

c) Reschedule the Work in conformance with the specification requirements.

47.7 Prior to proceeding with any of the above actions, the Construction Manager shall notify the Owner of the proposed schedule changes. Such actions shall be incorporated by the Construction Manager into the diagram before the next update, at no additional cost.

GC 48 RESPONSIBILITY FOR WORK SECURITY

48.1 Construction Manager shall, at its expense, at all times conduct all operations under the Contract in a manner to avoid the risk of loss, theft or damage by vandalism, sabotage or other means to any property. Construction Manager shall promptly take all reasonable precautions which are necessary and adequate against any conditions which involve a risk of loss, theft or damage to its property, at a minimum. Construction Manager shall continuously inspect all its Work, materials, equipment and facilities to discover and determine any such conditions and shall be solely responsible for discovery, determination and correction of any such condition.

48.2 Construction Manager shall prepare and maintain accurate reports of incidents of loss, theft or vandalism and shall furnish these reports to Owner within three days of each incident.

GC 49 PROTECTION OF WORK IN PROGRESS, MATERIALS AND EQUIPMENT

49.1 Construction Manager shall be responsible for and shall bear any and all risk of loss or damage to Work in progress, all materials delivered to the site, and all materials and equipment involved in the Work until completion and final acceptance of Work under this Contract. Excluded from Construction Manager's responsibility is any loss or damage which results from acts or omissions of the Owner or its representatives or other contractors.

49.2 Permanent openings or thoroughfares for the introduction of work and materials to the structure and construction site shall be protected so that upon completion, the entire Work will be delivered to the Owner in proper, whole and unblemished condition.

GC 50 PROTECTION OF EXISTING PROPERTY

50.1 Construction Manager shall so conduct its operations as not to damage, close, or obstruct any utility installation, highway, road or other property until permits therefore have been obtained. If facilities are closed, obstructed, damaged or rendered unsafe by Construction Manager's operations, Construction Manager shall, at its expense, make such repairs and provide temporary guards, lights and other signals as necessary or required for safety and the welfare of persons on the jobsite and the general public.

50.2 Construction Manager shall conduct its operation so as not to damage any existing buildings or structures. The Construction Manager shall verify that means and methods of construction used inside, adjacent to, under or over existing buildings will not cause damage. The Construction Manager shall provide protection methods which insure the safety of persons on the jobsite and the general public.

50.3 Unless otherwise specifically provided in the Contract, Construction Manager shall not do any Work that would disrupt or otherwise interfere with the operation of any pipeline, telephone, electric, radio, gas, transmission line, ditch or other structure, nor enter upon lands in their natural state until approved by Owner. Thereafter, and before it begins such Work, Construction Manager shall give due notice to Owner of its intention to start such Work. Construction Manager shall not be entitled to any extension of time or any extra compensation on account of any postponement, interference, or delay cause by any such line, ditch or structure on or adjacent to the site of the Work. If Construction Manager has exercised due diligence, such as, but not limited to, conducting soft digs, securing utility locates, as well as other activities both during its Pre-Con performance and thereafter, +Construction Manager shall not be held responsible for any damages caused to any lines, cables, pipes, or pipelines which are not depicted on the surveys, studies, reports, investigations and legal descriptions of the site supplied to the Construction Manager.

50.4 Construction Manager shall preserve and protect all cultivated and planted areas and vegetation such as trees, plants, shrubs and grass on or adjacent to the Project, which, as determined by Owner, do not reasonably interfere with the performance of this Contract.

50.5 Construction Manager shall be responsible for damage to any such areas and vegetation and for unauthorized cutting of trees and vegetation, including, without limitation, damage arising from the performance of its work through operation of equipment or stockpiling of materials. All cost in connection with any repairs or restoration necessary or required by reason of any such damage or unauthorized cutting shall be borne by Construction Manager.

GC 51 LABOR

51.1 Construction Manager shall employ only competent and skilled personnel to perform the Work. Construction Manager shall, if requested to do so by Owner, remove from the jobsite any personnel of Construction Manager whom Owner determines unfit or acting or working in violation of any provision of this Contract.

51.2 Work assignments and the settlement of jurisdictional disputes shall conform with either the Rules, Regulations and Procedures of the Plan for Settlement of Jurisdictional Disputes in the Construction Industry, and any successor agreement thereto, or any other mutually established method of determining work assignments and settling jurisdictional disputes.

51.3 Construction Manager shall comply with and shall cooperate with Owner in enforcing jobsite conditions and job work rules which directly affect the performance of the Work including, but not limited to, starting and quitting time, smoking regulations, check-in and check-out procedures, job site safety regulations and security regulations, emergency plans and procedures, and daily clean-up.

51.4 The Construction Manager and subcontractors shall be bound by and comply with all Federal, State and local laws with regard to minimum wages, overtime work, hiring, and discrimination. All work necessary to be performed after regular working hours, on Saturdays, legal and Town holidays, shall be performed without additional expense to the Owner. The Construction Manager shall comply with the Copeland Anti-Kick Back Act (19 U.S.C. 874) as supplemented in the Department of Labor Regulations (29 CFR Part 3). This act provides that each Construction Manager or subcontractor shall be prohibited from inducing by any means, any person employed in the construction, completion or repair of public work, to give up any part of the compensation to which he is otherwise entitled.

51.5 Construction Manager shall complete "Construction Manager's Daily Report" (Appendix "A") for each day work is accomplished. Reports shall be made available to Owner upon its request.

GC 52 EQUAL EMPLOYMENT OPPORTUNITY

52.1 During the performance of this Contract, the Construction Manager agrees as follows:

A. The Construction Manager will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, or national origin. The Construction Manager will take affirmative action to ensure that applicants and employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Construction Manager agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Owner setting forth provisions of this nondiscrimination clause.

B. The Construction Manager will, in all solicitations or advertisements for employees placed for, by, or on behalf of the Construction Manager, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, or national origin.

C. The Construction Manager will send to each labor union or representatives of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the Owner, advising the labor union or workers' representative of the Construction Manager's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

D. The Construction Manager will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

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

F. In the event of the Construction Manager's noncompliance with the nondiscrimination clauses of this Contract or with any of such rules, regulations, or orders, this Contract may be cancelled, terminated or suspended in whole or in part and the Construction Manager may be declared ineligible for further contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

G. The Construction Manager will include the provisions of paragraphs A through F in every subcontract or purchase unless exempted by rules, regulations, or orders of the

Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Construction Manager will take such action with respect to any subcontractor or purchase order as may be directed to the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the Construction Manager becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Construction Manager may request the United States to enter into such litigation to protect the interest of the United States.

H. All regulations, guidelines, and standards lawfully adopted under the governing statutes.

GC 53 SAFETY & PROTECTION OF PERSONS & PROPERTY

53.1 RESPONSIBILITY FOR SAFETY AND HEALTH

53.1.1 The Construction Manager shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work to be performed under the terms of the Contract ("Work"). The Construction Manager shall take all precautions and follow all procedures for the safety of, and shall provide all protection to prevent injury to, all persons involved in any way in the Work and all other persons, including, without limitation, the employees, agents, guests, visitors, invitees and licensees of the Owner and Users who may be affected thereby. The Construction Manager shall set forth in writing its safety precautions and programs in connection with the Work and submit the same to the Owner. The Owner may, but shall not be obligated to, make suggestions and recommendations to the Construction Manager with respect thereto.

53.1.2 All Work, whether performed by the Construction Manager, its Sub-Construction Managers or Sub-subcontractors, or anyone directly or indirectly employed by any of them, and all equipment, appliance, machinery, materials, tools and like items incorporated or used in the Work, shall be in compliance with, and conform to:

a. all applicable laws, ordinances, rules, regulations and orders of any public, quasi-public or other authority relating to the safety of persons and their protection against injury, specifically including, but in no event limited to, the Federal Occupational Safety and Health Act of 1970, as amended and all State, Local, City and County rules and regulations now or hereafter in effect; and

b. all codes, rules, regulations and requirements of the Owner and its insurance carriers relating thereto. In the event of conflicting requirements, the more stringent shall govern.

53.1.3 Should the Construction Manager fail to provide a safe area for the performance of the Work or any portion thereof, the Owner shall have the right, but not the obligation, to

suspend Work in the unsafe area. All costs of any nature resulting from the suspension, by whomsoever incurred, shall be borne by the Construction Manager.

53.1.4 The Construction Manager shall provide, or cause to be provided, to each worker on the Job Site the proper safety equipment for the duties being performed by that worker and will not permit any worker on the Job Site who fails or refuses to use the same. The Owner shall have the right, but not the obligation, to order the Construction Manager to send a worker home for the day or to discharge a worker for his or her failure to comply with safe practices, with which order the Construction Manager shall promptly comply.

53.1.5 The Construction Manager shall defend, indemnify and hold the Owner, the Owner's Representative and their respective officers, directors, agents, employees and assigns, harmless from and against any and all liability, public or private, penalties, contractual or otherwise, losses, damages, costs, reasonable attorneys' fees, expenses, causes of action, claims or judgments to the extent resulting from any failure of the Construction Manager, its subcontractors or sub-subcontractors or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, to comply with the provisions of this General Condition.

53.1.6 In any and all claims against those indemnified hereunder by any employee of the Construction Manager, any subcontractor or sub-subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Paragraph shall not be limited in any way to any limit(s) on the amount or type of damage, compensation or benefits payable by or for the Construction Manager or any subcontractor or sub-subcontractor under any workers' compensation acts, disability benefit acts or other employee benefit acts.

53.2 PROTECTION OF WORK AND PROPERTY; RESPONSIBILITY FOR LOSS

53.2.1 The Construction Manager shall, throughout the performance of the Contract, maintain adequate and continuous protection of all completed Work and temporary facilities against loss or damage from whatever cause, shall protect the property of the Owner and third parties from loss or damage from whatever cause arising out of the performance of the Contract and shall comply with the requirements of the Owner and its insurance carriers and with all applicable laws, codes, rules and regulations with respect to the prevention of loss or damage to the property. The Owner, their representatives or insurance carriers may, but shall not be required to, make periodic patrols of the Job Site as a part of its normal safety, loss control and security programs. In such event, however, the Construction Manager shall not be relieved of its aforesaid responsibilities and the Owner shall not assume, nor shall it be deemed to have assumed, any responsibility otherwise imposed upon the Construction Manager by this Contract.

53.2.2 Until final acceptance of the Work by the Owner pursuant to GC 72 of this Contract, the Construction Manager shall have full and complete charge and care of and, except as otherwise provided in this subparagraph or elsewhere in this Contract, shall bear all risk

of loss of, and injury or damage to, the Work or any portion thereof (specifically including Owner furnished supplies, equipment or other items to be utilized in connection with, or incorporated in, the Work) from any cause whatsoever, except to the extent caused by Owner, its representatives, or contractors.

53.2.3 The Construction Manager shall rebuild, repair, restore and make good all losses of, and injuries or damages to, the Work or any portion thereof (specifically including Owner furnished supplies, equipment or other items to be utilized in connection with, or incorporated in, the Work) before final acceptance of the Work. Such rebuilding, repair or restoration shall be at the Construction Manager's sole cost and expense unless the loss, injury or damage requiring such rebuilding, repair or restoration:

A. Is directly due to errors in the Contract Documents which were not discovered by the Construction Manager and which the Construction Manager could not have discovered through the exercise of due diligence;

B. Is caused by the agents or employees or contractors of the Owner (unless (1) the Construction Manager has waived its rights of subrogation against the Owner on account thereof as provided in the Contract Documents, or (2) such loss or damage would be covered by any policy or policies of insurance which the Construction Manager is required to maintain hereunder, whether the Construction Manager actually maintains such insurance or not, or (3) is otherwise covered by a policy or policies of insurance maintained by the Construction Manager, whether or not required hereunder).

53.3 SURFACE AND SUBSURFACE WATER

53.3.1 Surface or subsurface water or other fluid shall not be permitted to accumulate in excavations or under or in the structures. Should such conditions develop or be encountered, the water or other fluid shall be controlled and suitably disposed of by means of temporary pumps, piping, drainage lines and ditches, dams or other methods approved by the Owner in writing. The proposed location and coordination of temporary channels and conduits conducting accumulated water from the Job Site shall be permitted by the proper regulatory agency and submitted to the Owner for its prior written approval. All such Work shall be done at the sole expense of the Construction Manager.

53.4 EMERGENCIES

53.4.1 In any emergency affecting the safety of persons or property, or in the event of a claimed violation of any federal or state safety or health law or regulation, arising out of or in any way connected with the Work or its performance, the Construction Manager shall act immediately to prevent threatened damage, injury or loss to remedy said violation, whichever is applicable. Failure by Construction Manager to take necessary emergency action shall entitle the Owner to take whatever action it deems reasonably necessary, including, but not limited to, suspending the Work as provided in GC 23.

53.4.2 The Owner may offset any and all costs or expenses of whatever nature, including reasonable attorneys' fees, paid or incurred by the Owner in taking such emergency action against any sums then or thereafter due to the Construction Manager. The Construction Manager shall defend, indemnify and hold the Owner harmless against any and all costs or expenses pursuant to this GC 53.4.2, by whomsoever incurred. If the Construction Manager shall be entitled to any additional compensation or extension of time claimed on account of emergency work which is not due to the fault or neglect of the Construction Manager or its subcontractors or sub-subcontractors, it shall be handled as provided in GC 65.

53.5 OWNER'S STANDARDS

53.5.1 The Owner reserves the right, but assumes no duty, to establish and enforce standards, and to change the same from time to time, for the protection of persons and property, with which the Construction Manager shall comply, and to review the efficacy of all protective measures taken by the Construction Manager. The exercise of or failure to exercise any or all of these rights by the Owner shall not relieve the Construction Manager of its duties and responsibilities under this Contract, and the Owner shall not thereby assume, nor be deemed to have assumed, any such duties or responsibilities of the Construction Manager.

GC 54 PROJECT SITE PROTECTION

54.1 Construction Manager, at its expense, shall maintain such protection as provided in General Conditions Section (GC 53) titled SAFETY & PROTECTION OF PERSONS & PROPERTY in a satisfactory condition until removal is authorized by Owner. Construction Manager, at its expense, shall make all necessary repairs to property damaged by construction operations. Repairs shall be made in a manner satisfactory to Owner. The Construction Manager will provide parking for its employees within the designated work areas. Construction Manager employees will not be allowed to park in areas which are used by any facilities which remain in operation.

GC 55 FIRE PREVENTION

55.1 Construction Manager shall, at its expense, conform to all Federal, State, and local laws and regulations pertaining to burning, fire prevention and control within or adjacent to the Project. Necessary precautions to avoid and eliminate fire hazards shall be the responsibility of the Construction Manager. This includes keeping the Contract Work area clear of all trash at all times.

55.2 All tarpaulins used for any purpose during construction of any Work shall be made of material resistant to fire, water and weather and shall bear UL labels. Lighting of any fires on premises is strictly forbidden. Controlled burning shall be with the consent of the Owner. Construction Manager shall provide portable fire extinguishers properly labeled, located and compatible with the hazard of each work area and shall instruct its personnel

in their use. Wherever welding and burning are conducted, inflammable materials shall be protected and a fire watch shall be provided by Construction Manager to be present during the burning and welding operation to ensure that protective measures are taken and that no fires result from such operation. The fire watch shall have fire extinguisher equipment readily available and know-how for proper use.

GC 56 ILLUMINATION

56.1 When any work is performed at night or where daylight is shut off or obscured, Construction Manager shall, at its expense, provide artificial light sufficient to permit work to be carried on efficiently, satisfactorily and safely, and to permit thorough inspection. During such time periods the access to the place of work shall also be clearly illuminated. All wiring for electric light and power shall be installed and maintained in a first-class manner, securely fastened in place at all points, and shall be kept as far as possible from telephone wires, signal wires, and wires used for firing blasts.

GC 57 BEST MANAGEMENT PRACTICES

57.1 Construction Manager shall be responsible for evaluating the site before construction is initiated to determine if any site conditions may pose particular problems for the handling of any Regulated Substances. For example, handling Regulated Substances in the proximity of water bodies or wetlands may be improper.

57.2 Regulated Substances are substances that are known to cause significant harm to human health and the environment (including surface and groundwater). The Unified Land Development Code (ULDA) Section 9.3, Wellfield Protection, regulates the storage, handling, use and production of Regulated Substances within wellfield zones which may impair present and future drinking water suppliers. In addition, the ULDC, Section 9.6, Excavation, requires that Best Management Practices for the Construction industries be followed for Agricultural Area, TYPE II, TYPE IIIA and TYPE IIIB excavation activities.

57.3 If any Regulated Substances are stored on the construction site, they shall be stored in a location and manner which will minimize any possible risk of release to the environment. Any storage container of 55 gallons, or 440 pounds, or more containing Regulated Substances shall have constructed below it an impervious containment system constructed of materials of sufficient thickness, density and composition that will prevent the discharge to the land, ground waters, or surface waters, of any pollutant which may emanate from said storage container or containers. Each containment system shall be able to contain 150% of the contents of all storage containers above the containment system.

57.4 Construction Manager shall familiarize itself with the manufacturer's safety data sheet supplied with each material containing a Regulated Substance and shall be familiar with procedures required to contain and clean up any releases of the Regulated Substance.

Any tools or equipment necessary to accomplish same shall be available in case of a release.

57.5 Upon completion of construction, all unused and waste Regulated Substances and containment systems shall be removed from the construction site and shall be disposed of in a proper manner as prescribed by law.

GC 58 DUST CONTROL

58.1 The Construction Manager, for the duration of the Contract, shall, at its expense, maintain all excavations embankments, haul roads, access roads, plant sites, waste disposal areas, borrow areas, and all other work areas free from dust. Industry-accepted methods of dust control suitable for the area involved and approved by Owner will be permitted.

GC 59 WATER POLLUTION

59.1 Construction Manager shall, at its expense, provide suitable facilities to prevent the introduction of any substance or materials into any stream, river, lake or other body of water which may pollute the water or constitute substances or materials deleterious to fish and wildlife.

GC 60 AIR POLLUTION

60.1 The Construction Manager shall, at its expense, so perform its work as not to discharge into the atmosphere from any source whatever smoke, dust, or other air contaminants in violation of the laws, rules and regulations of all Federal, State and local air and water pollution requirements including, but not limited to: Registering with the Palm Beach County Health Department, Air Pollution Board, any equipment requiring operating permits by said Board; Adhering to all Palm Beach County Air Pollution Board Regulations.

GC 61 EXPLOSIVES & HAZARDOUS MATERIALS

61.1 Construction Manager shall obtain all required Federal, State and local permits and licenses and shall be responsible for the safe and proper handling, labeling, transporting, storage and use of any explosive or hazardous materials brought onto or encountered within the site, and at its expense, make good any damage caused by its handling, transporting, storage and use. The Construction Manager will notify the Owner immediately if explosive or hazardous materials are encountered on the site. Transporting explosive or hazardous materials onto the site will require prior written approval from the Owner. The Construction Manager shall maintain and post as necessary Material Hazard Data Sheets for all applicable Hazardous Materials used in the course of his work.

61.2 In the event that hazardous material is improperly handled or stored by the Construction Manager, its subcontractors, any sub-subcontractors, or any employee or agent of any of the aforementioned which results in contamination of the site, Construction Manager shall immediately notify the Owner and the appropriate governmental authority and shall take whatever action is necessary or desirable to remediate the contamination at the Construction Manager's sole cost and expense. Further, Construction Manager shall indemnify and hold harmless from any and all cost, expense, action, or liability whatsoever resulting from such contamination and/or remedial activities. If without negligence on the part of the Construction Manager or anyone for whom it is responsible, Construction Manager is held liable for the cost of remediation of a hazardous material or substance solely by reason of performing the Work as required by the Contract Documents, the Owner shall pay for the directs costs of remediation as approved beforehand by Owner, in writing, which shall be paid from the Contingency Fund.

GC 62 INSPECTION: REJECTION OF MATERIALS AND WORKMANSHIP

62.1 All materials and equipment furnished and work performed shall be properly inspected by Construction Manager, at its expense, and shall at all times be subject to quality surveillance, observations or quality audit by Owner. Construction Manager shall provide safe and adequate facilities and all samples, drawings, lists and documents necessary for such quality surveillance, observation or quality audit. For this purpose Owner shall be afforded full and free access to the shops, factories or places of business of Construction Manager and its subcontractors and suppliers for such quality surveillance, observation or quality audit and to determine the status of the Work. If Construction Manager covers all or any portion of the Work prior to any quality surveillance or test by Owner, the cost of any necessary uncovering and replacing shall be borne by Construction Manager. Neither the failure to make such quality surveillance, observance or quality audit, nor to discover defective workmanship, materials, or equipment, nor acceptance of or payment to Construction Manager for such work, materials or equipment shall prejudice the rights of Owner thereafter to correct or reject the same as hereinafter provided.

62.2 If any material, equipment or workmanship is determined by Owner, either during performance of the Work or on final quality surveillance, or during any applicable warranty period (expressed or implied), to be defective or not complying with the requirements of this Contract, Owner shall notify Construction Manager in writing that such material, equipment or work is rejected and the Owner reserves the right to withhold payment on any such item. Thereupon, Construction Manager shall, at its own expense, immediately remove and replace or correct such defective material, equipment or work by making the same comply strictly with all requirements of the Contract.

GC 63 TESTING

63.1 Unless otherwise provided in the Contract, Drawings and Specifications shop testing of materials or work shall be performed by the Construction Manager and in accordance

with the Technical Specifications. Field testing of materials or work shall be performed by Owner. Should tests in addition to those required by the Specifications be desired by Owner, Construction Manager will be advised in reasonable time to permit such testing. Such additional tests will be at Owner's expense unless such additional tests are required due to Construction Manager's work or materials having failed any initial test. In this event, such additional (re-test) tests shall be at Construction Manager's expense. Construction Manager shall furnish samples as requested and shall provide reasonable assistance and cooperation as necessary to permit tests to be performed on materials or work in place including reasonable stoppage of work during testing. Construction Manager shall provide reasonable and accurate notice of when construction activities which require Owner's testing services are required. Construction Manager shall be responsible for stand-by and other costs associated with the testing agency if that construction activity is delayed or canceled.

GC 64 PROGRESS

64.1 Construction Manager shall give Owner full information in advance as to its plans for performing each part of the Work. If at any time during the progress of work, Construction Manager's actual progress is inadequate to meet the requirements of the Contract, Owner may so notify Construction Manager who shall thereupon take such steps as may be necessary to improve its progress. If within a reasonable period as determined by Owner, Construction Manager does not improve performance to meet the currently approved Contract construction schedule, Owner may require an increase in Construction Manager's labor force, the number of shifts, overtime operations, additional days of work per week and an increase in the amount of construction plant; all without additional cost to Owner. Neither such notice by Owner nor Owner's failure to issue such notice shall relieve Construction Manager of its obligation to achieve the quality of work and rate of progress required by the Contract.

64.2 Failure of Construction Manager to comply with the reasonable instructions of Owner may be grounds for determination by Owner that Construction Manager is not prosecuting its work with such diligence as will assure completion within times specified. Upon such determination, Owner may terminate Construction Manager's right to proceed with the performance of the Contract, or any separable part thereof, in accordance with the applicable provisions of this Contract.

GC 65 CHANGES

65.1 Owner may, at any time, without invalidating the Contract and without notice to the Surety(ies), make changes in the Work by issuing Change Orders, as well as Contingency Fund Change Orders addressed elsewhere in the Contract Documents (and which are not subject to this GC 64 and its subparts).

65.2 Owner will issue written orders to Construction Manager for any changes, except that in the event of an emergency which Owner determines immediately endangers life or

property, Owner may issue oral orders to Construction Manager for any work required by reason of such emergency. Such orders will be confirmed in writing as soon as practicable. Such orders, whether written or oral, may be accompanied by drawings and data as are necessary to show the extent of such ordered work.

65.3 Construction Manager shall commence such changed work so that all dates set forth in Construction Manager's current construction schedule, as accepted by Owner, will be met. In the event of an emergency which Owner determines immediately endangers life or property, Construction Manager shall immediately commence such changes as required by Owner in order to mitigate or remove the emergency condition. Failure to commence any such change in timely fashion shall entitle Owner to invoke the provisions of section GC 25 entitled TERMINATION FOR DEFAULT.

65.4 Unless otherwise required, Construction Manager shall, within twenty-one (21) calendar days following receipt of a written Change request from Owner, submit in writing to Owner a Contract Change Proposal for accomplishing such change, which proposal shall reflect the increase or decrease, if any, in cost to Owner of performing the change under the Contract in comparison to what the cost would have been, had such change not been offered.

65.5. The proposal shall state the Construction Manager's added and/or deleted compensation in detail, including, but not limited to:

a. Material quantities and unit prices;
b. Labor man-hours and wages by craft;
c. Equipment type and size and rental rate;
d. Overhead, profit, and bond allowance of 5% for those portions subcontracted, and 15% of those portions that are self-performed by the Construction Manager;
e. Subcontract costs with back-up detail as specified (in items a), b), c), and a markup for Subcontractor overhead and profit not to exceed 10% in the aggregate;
f. Time extension, if any;
g. A detailed description of any impacts this change will have on any activities on the Critical Path which would effect any of the Milestone Dates;
h. Proof of payment of any tax liability resulting from a specific change (if requested by Owner);
i. General Condition costs: provided however, that said costs shall be compensable *only in the event that the Change Order results in an extension in excess of thirty (30) calendar days of the Substantial Completion Date, as extended by Change Orders, if any,* and at a daily rate that shall be extrapolated from the amount of the General Conditions items specifically applicable to the Change Order.

65.6 Under no circumstances shall Construction Manager apply for or be entitled to recover extended home office overhead costs associated with a change in the Work, whether or not calculated in accordance with the Eichleay Formula. The Parties may agree, if justified in accordance with GC 27, to an extension of time in connection with any changes to the Work. Any time extension request submitted after the twenty-one (21) calendar day time period noted above, will not be considered and deemed waived by the Construction Manager.

65.7 If Construction Manager does not propose the method of compensation for such change, or any part thereof, within the time required, or if any proposed method is not acceptable to Owner, or if a method of compensation for such change, or any part thereof cannot be agreed upon, Construction Manager shall proceed upon direction ("Construction Change Directive") with such change.

65.8 A Construction Change Directive (CCD) is a written order prepared by the Design Professional of Record and signed by the Owner, directing a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both. A CCD may be used in the absence of total agreement on the terms of Change Order or to complete work which, if not accomplished, could adversely affect a critical path activity. Upon receipt of the CCD, the Construction Manager shall promptly proceed with the change in the Work involved and advise the Design Professional of Record of the Construction Manager's agreement or disagreement with the method, if any, provided in the CCD for determining the proposed adjustment in the Contract Sum or Contract Time. When the Owner and Construction Manager agree with the determination made by the Design Professional of Record concerning the adjustments in the Contract Sum and/or Time, or otherwise reach agreement upon the adjustments, such agreement shall be recorded by the preparation of a Change Order. The Construction Manager shall not seek payment for work performed pursuant to a CCD until it has been converted to a Change Order.

65.8.1 If, at any time after Construction Manager commences such change, and a method of compensation other than verifiable cost of the changed Work plus the markups allowed in GC 65.5 is agreed upon, such compensation will be made in accordance with such agreement. In any event, Construction Manager shall keep accurate records of the actual cost to Construction Manager for such change. Costs for which Construction Manager shall be entitled to compensation on a cost of the changed Work plus markup basis as described above, are as follows:

a. Direct Labor Cost - Payment will be made for all manual classifications up to and including foremen, but shall not include superintendents, assistant superintendents, general foremen, office personnel, time-keepers and maintenance mechanics, and those personnel categorized in the Lump Sum. The time charged to changes will be subject to the daily approval of Owner, and no charges shall be accepted unless evidence of such approval is submitted by Construction Manager with its billing.

Labor rates used to calculate the direct labor costs shall be those rates in effect during the accomplishment of the change, excluding those employees catalogued above In addition to the direct payroll costs, the direct labor costs shall include payroll taxes and insurance, vacation allowance, subsistence, travel time and overtime premium and any other payroll additives required to be paid by Construction Manager by law or collective bargaining agreements, excluding those employees catalogued I (a) above. Copies of certified pertinent payrolls shall be submitted to Owner.

b. Equipment Costs - Payment for the rental and operation of the equipment furnished and used by Construction Manager shall be made for all construction and automotive equipment or tools with a new cost at point of origin of one thousand dollars or less each. Equipment time charged to changes will be subject to daily written approval of Owner and no charges will be accepted unless evidence of such approval is submitted with Construction Manager's billing.

The equipment rental and operation rates include costs for rental, fuel, oil, grease, repair parts, service and maintenance of any kind, and necessary attachments. Such charges do not include costs for operating labor and transportation to and from the location of the change. Equipment rental rates for Construction Manager-owned equipment used in this Contract shall be those contained in the RENTAL RATE BLUE BOOK as published by K-III Directory Corporation, 1735 Technology Drive, Suite 410, San Jose, California 95110-1313, (800-669-3282) and current at the time that work for any specific Change is performed, less 30%. When equipment is used for cost of the workchanges which do not reasonably resemble adjusted Blue Book rental rates, the rental rate shall be negotiated and agreed upon in writing.

If Construction Manager-owned equipment is not available and equipment is rented from outside sources, payment will be computed on the basis of actual invoice cost. Rental rates for non-owned equipment must be approved in advance by Owner.

When the operated use of equipment is infrequent and, as determined by Owner, such equipment need not remain at the site of the Work continuously, payment shall be limited to actual hours of use. Equipment not operating but retained at the location of changes at Owner's direction shall be paid for at a standby rate.

Unless otherwise provided in the Contract, all equipment rental rates shall be agreed upon in writing before commencing any change. When a specific piece of rental equipment, normally used to perform unchanged Contract Work is used for cost of the Work Changes, the applicable rental rate shall be the actual rate paid by the Construction Manager at the time the Work is performed.

Transportation costs for bringing equipment to the jobsite and for returning equipment to the point of origin, exclusively for use on time and material work,

will be reimbursed to Construction Manager based on invoices, provided that prior written approval has been given to Construction Manager.

Overtime shall be paid as per Method 2 described in said RENTAL RATE BLUE BOOK.

No compensation will be made to the Construction Manager for equipment repair, equipment maintenance or idle equipment time.

c. Material Costs - Payment for the cost of materials furnished by Construction Manager for use in performing the change will be made, provided such furnishing and use of materials was as specifically authorized and the actual use was verified by Owner. Payment will be the net cost to Construction Manager delivered at the job and vendor's invoice shall accompany the billing along with the verification by Owner of such use of such materials.

d. Contract and Outside Service Costs - Payment for work and services subcontracted by Construction Manager in the performance or completion of the change will be made only when both the subcontractor and the terms of payment to such subcontractor have been approved in writing by Owner before the subcontractor starts to work on the change.

e. Tools and Equipment - Payment will be made for tools and equipment with a new cost of One Thousand Dollars, or less, each, only upon approval by the Owner.

65.9 For any changes involving deductive items, the following shall apply to the amount of allowable overhead, profit and bond allowance:

a. For deductive changes only (those which contain no additive items), there will be no reduction in overhead and profit and, likewise, no addition by the Construction Manager for processing.

b. For changes containing both additions and deductions covering related work or substitutions, the overhead and profit shall be figured on the net increase if any, with respect to that change, plus nine (9) percent thereof covering overhead, profit, and bond allowance.

65.10 No change order or CCD shall be valid until approved and signed by the Owner. The Design Professional of Record is not authorized to bind the Owner to changes relative to changes in Contract cost and or time. The Design Professional may only recommend acceptance or rejection. If a proposed change is deemed beneficial to the Project and is within the limits set forth in the Contract, the Owner may cause to be issued an appropriate change order to the Contract with or without the Construction Manager's signature.

65.11 The Design Professional of Record will have the authority to order minor changes in the Work which do not involve adjustment to the GMP or Time and are not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Owner and Construction Manager. The Construction Manager shall carry out such written orders promptly, and the Construction Manager shall receive no additional compensation therefore, nor shall there be any change in the Contract Time. The Design Professional shall immediately provide notices of all minor changes in the Work to the Owner.

65.12 Execution of a change order acknowledges final settlement of, and releases, all claims for costs and time associated, directly or indirectly, with the stated modification(s), including all claims for cumulative delays or disruptions resulting from, caused by, or incident to such modification(s), and including any claim that the modification(s) constitutes, in whole or part, a cardinal change to the Contract.

GC 66 RECORD DRAWINGS AND SPECIFICATIONS

A. Drawings:

1. Conformed Documents - Prior to the first application for payment, Construction Manager shall show proof of conformed documents with all Bid addenda identified on the record drawings and on his field set of drawings. Supplemental information following the bid shall be included and updated monthly for review with the application for payment.

2. Progress Records - During construction, Construction Manager shall keep a marked-up and up-to-date set of drawings showing as-built conditions on the site as an accurate record of all deviations between work as shown and work as installed. These drawings shall be available to Owner for inspection at any time.

3. Final Records - The Construction Manager shall furnish to Owner a complete set of marked-up as-builts with RECORD clearly printed on each sheet. Owner, at its expense, will furnish Construction Manager with drawings for mark-up by Construction Manager. Construction Manager shall, by use of professional draftsman, accurately and neatly transfer all deviations from progress as-builts to final as-builts.

B. Specifications:

1. Progress Records - During construction, Construction Manager shall keep a marked-up and up-to-date set of Specifications showing as-is conditions on the site annotated to clearly indicate all substitutions that are incorporated into the Work. Where selection of more than one product is specified, annotation shall show which product was installed. These Specifications shall be available to Owner for inspection at any time.

2. Final Records - The Construction Manager shall furnish to Owner a complete set of marked-up as-built Specifications with RECORD clearly printed on cover. Owner, at its expense, will furnish Construction Manager a set of Specifications for mark-up by Construction Manager. Construction Manager shall accurately and neatly transfer all annotations from progress as-builts to final as-builts.

C. Manuals:

1. Manuals - As a condition precedent to Substantial Completion, the Construction Manager shall furnish to Owner three complete sets of manuals and applicable operating instructions as referenced in Technical Specifications.

2. Unless otherwise specified, manuals to be bound in 3-ring binder with contents clearly indicated on outside cover.

D. Endorsement:

1. Construction Manager shall sign each final record drawing and the cover of the record Specifications and shall note thereon that deviations and annotations are complete and accurate.

2. The Construction Manager shall provide a signed and notarized affidavit indicating that no asbestos containing materials were used or installed during the course of construction as a condition precedent to Final Acceptance.

E. Fixed Asset Equipment and Fixture Information:

1. Construction Manager shall provide the Owner with a list (in electronic format and hard copy) of each piece of equipment having an individual value greater than $500.00 prior to Final Acceptance. The list shall include, at a minimum; a) the name, make and model number, b) the quantity installed, and 3) the value of the equipment.

GC 67 MEASUREMENT OF AND PAYMENT FOR WORK

67.1 Estimates and all support data shall be prepared by Construction Manager and submitted in writing for Owner's approval on or about the end of each month covering the amount and value of work satisfactorily performed by Construction Manager up to the date of such estimate. Such estimates shall be based on the construction schedule completed activity cost, as approved, and may be confirmed by actual measurement of the Work in place. Estimates shall be based on cumulative total quantities of work performed. Estimates may include materials or equipment not incorporated into the Work provided the requirements set forth below are met. A format for such estimates shall be determined by the Owner according to type of Contract Work and shall be agreed upon prior to, or no later than, application for the first progress payment.

The quantity of work to be paid for under any item for which a unit price is fixed in the Contract shall be the amount or number, approved by Owner, of units of work satisfactorily completed with the Contract and computed in accordance with applicable measurement for payment provisions of the Contract.

67.2 Partial payments may be made to the extent of the delivered cost of materials to be incorporated in the Work, provided such materials meet the requirements of this Contract, plans, and Specifications and are delivered to acceptable locations at the Project Site or to other sites in Palm Beach County that are acceptable to the Owner (bonded warehouse). Such material must be stored in a secure manner, acceptable to the Owner, and in accordance with any manufacturer's recommendations.

67.3 Delivered cost of such stored or stockpiled materials may be included in any subsequent payment request once the Construction Manager meets the following conditions:

a. An applicable purchase order or supplier's invoice is provided listing the materials in detail, cost of materials and identifying this specific Contract, by name.
b. The material is insured against loss or damage (from whatever source) or disappearance prior to incorporation into the Work.
c. Once any stored material is paid for by Owner, it shall not be removed from the designated storage area except for incorporation into the Work.
d. Evidence that Construction Manager has verified quantity and quality of materials delivered (verified packing list).

67.4 It is further agreed between the parties that the transfer of title and the Owner's payment for any stored or stockpiled materials pursuant to this General Condition shall in no way relieve the Construction Manager of the responsibility of ensuring the correctness of those materials and for furnishing and placing such materials in accordance with the requirements of this Contract, plans and Specifications. Construction Manager shall make all surveys necessary for determining all quantities of work to be paid for under the Contract. Copies of field notes, computations, and other records made by Construction Manager for the purpose of determining quantities shall be furnished to Owner upon

request. Construction Manager shall notify Owner prior to the time such surveys are made. Owner, at its discretion, may arrange to have its representative witness and verify all surveys made by Construction Manager for determining quantities of work to be paid for under the Contract. Measurements and computations shall be made by such methods as Owner may consider appropriate for the class of work measured.

67.5 The dividing limits, lines or planes between adjacent items or classes of excavation, concrete, or other types of work where not definitely indicated on the drawings or in the Specifications, shall be determined by Owner.

67.6 No payments of invoices (or portions thereof) shall at anytime constitute approval or acceptance of the Work under this Contract, nor be a waiver by Owner of any of the terms contained herein.

GC 68 PROGRESS PAYMENT PROCEDURES

68.1 The Construction Manager shall prepare a schedule of values by phases of work to show a breakdown of the Contract Sum corresponding to the payment request breakdown and progress schedule line items. The schedule of values must also show dollar value for each unit of work scheduled. Change Orders shall be added as separate line items. The schedule of values shall be submitted to the Owner and Design Professional of Record for review and approval prior to "Commencement of Work."

68.2 The Construction Manager will prepare and submit three (3) original copies of monthly invoices for work completed during the one month period. Pay Applications shall be submitted in the format of the sample form given to the Construction Manager at the Pre-Construction meeting. All information must be completed for the pay application to be accepted. Owner's account number(s) for the Project will be given at the Pre-Construction meeting and will be placed at the top right hand corner of each application. These payment applications will be reviewed by all parties in attendance at the monthly pay application meetings. Prior to formal submission of the Application the Construction Manager shall submit a rough draft plus two extra copies for the Owner and Design Professional of Record to review. Submit final approved copies (3) to: the Design Professional of Record, whose approval is required prior to submission to the Owner.

68.3 If the pay estimate and support data are not approved, the Construction Manager is required to submit new, revised or missing information according to the Owner's instructions. Otherwise, the Construction Manager shall prepare and submit to Owner an invoice in accordance with the estimate as approved. Owner will pay Construction Manager, in accordance with Florida Prompt Payment Act (FS 218.70). Retainage, in the amount of 10%, will be withheld on the calculated value of any work, with the exception of stored materials which may be paid at the supplier's invoiced cost. After 50% completion of the Work has been achieved, the Owner may, at its sole discretion and with consent of Surety, implement a reduction in retainage. However, in no instance can the amount retained be less than the value of the Work the Owner determines remains to be put in place or required to be performed as remedial activities.

68.4 Each application for payment shall be accompanied by the following:

a. A notarized "Affidavit of Disbursement of Previous Periodic Payments to subcontractors" from the Construction Manager for the portion of work up to the date of that particular pay application.
b. An Owner approved construction schedule update.

68.5 If one or more "Notice of Non-Payment" is received by the Owner, no further payments will be approved until non-payment(s) have been satisfied and a "Release of Claim" for each "Notice" has been submitted to the Owner. Upon request, Construction Manager shall furnish acceptable evidence that all such claims or liens have been satisfied. On bonded projects only, the Owner may allow, with consent of Surety and indemnification of the County against any claims, payment for work which there is an outstanding Notice of Non-Payment.

68.6 Any amount otherwise payable under the Contract may be withheld, in whole or in part, if:

a. Any claims are filed against Construction Manager by Owner or third parties; or if reasonable evidence indicates the probability of filing any such claim; or'
b. Construction Manager is in default of any Contract condition; or
c. There is reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum
d. Damage to the Owner or a separate contractor;
e. Reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay
f. Defective work or material is not remedied; or
g. Construction Manager repeatedly fails to carry out the Work in accordance with the Contract Documents; or
h. Construction Manager fails to timely submit an owner-approved updated Schedule with each Application for Payment.

68.7 If claims or liens filed against Construction Manager or property of Owner connected with performance under this Contract are not promptly removed by Construction Manager after receipt of written notice from Owner to do so, Owner may remove such claims or liens and all costs in connection with such removal shall be deducted from withheld payments or other monies due, or which may become due, to Construction Manager. Construction Manager shall have no less than thirty (30) days to remove or bond off such lien after notice. If the amount of such withheld payments or other monies due Construction Manager under the Contract is insufficient to meet such cost, or if any claim or lien against Construction Manager is discharged by Owner after final payment is

made, Construction Manager and its surety or sureties shall promptly pay Owner all costs (including attorneys' fees) incurred thereby regardless of when such claim or lien arose.

68.8 Following issuance, by the Design Professional of Record, of a Certificate of Substantial Completion, Construction Manager may submit special payment request, provided the following have been completed:

a. Obtain permits, certificates of inspection and other approvals and releases by governing authorities, required for the Owner's occupancy and use of the Project.
b. Complete final cleaning of the Work.
c. Submit record documents (record drawings).
d. Submit listing of work to be completed before final acceptance.
e. Settle liens and other claims.
f. Obtain Consent of Surety for partial release of retainage.
g. Settle Liquidated Damages due to Owner, if any.

68.9 Upon receipt by Owner of Construction Manager's written Notice of Final Completion of its work under this Contract, in accordance with GC 72, Owner shall verify all work has been completed on the Project. When all work has been verified as complete, and the Construction Manager completes and submits the items listed below, the Construction Manager may submit a final invoice.

a. Complete work listed as incomplete at the time of Substantial Completion and obtain Design Professional certification of completed Work.
b. Submit proof of payment on fees, taxes or similar obligations.
c. Transfer operational, access, security and similar provisions to Owner; remove temporary facilities, tools and similar items.
d. Obtain Consent of Surety for final payment and/or partial release of retainage.
e. All information required by GC 66.
f. Obtain certification of as-built (record) drawings from Design Professional of Record.

GC 69 USE OF COMPLETED PORTIONS OF WORK

69.1 Whenever, as determined by Owner, any portion of work performed by Construction Manager is in a condition suitable for use, Owner may initiate certificate of Substantial Completion (Partial Utilization) for that portion and take possession of or use such portion. Such use by Owner shall in no case be construed as constituting final acceptance, and shall neither relieve Construction Manager of any of its responsibilities under the Contract, nor act as a Waiver by Owner of any of the conditions thereof, provided, that Construction Manager shall not be liable for the cost of repairs, rework, or renewals which may be required due to ordinary wear and tear resulting from such use. However, if such use increases the cost or delays the completion of remaining portions of work, Construction Manager shall be entitled to an equitable adjustment in its compensation and/or schedule under this Contract.

69.2 If, as a result of Construction Manager's failure to comply with the provisions of the Contract, such use proves to be unsatisfactory to Owner, Owner shall have the right to continue such use until such portion of work can, without injury to Owner, be taken out of service for correction of defects, errors, omissions, or replacement of unsatisfactory materials or equipment, as necessary for such work to comply with the Contract; provided that the period of such operation or use pending completion of appropriate remedial action shall not exceed twelve months unless otherwise mutually agreed upon in writing between the parties.

69.3 Construction Manager shall not use any permanently installed equipment unless such use is approved by Owner in writing. Where Construction Manager's written request is granted for the use of certain equipment, Construction Manager shall properly use and maintain, and upon completion of its use, and at its expense, recondition such equipment to the satisfaction of Owner. If Owner furnishes an operator for such equipment, such operator's services shall be performed under the complete direction and control of Construction Manager and shall be considered Construction Manager's employee for all purposes other than the payment of such operator's wages, workmen's compensation or other benefits paid directly or indirectly by Owner.

GC 70 ALLOWANCES AND UNIT PRICES

70.1 Construction Manager has included in the GMP all unit prices and allowances. Items covered by unit prices shall be supplied for such amounts as the Owner may direct.

70.2 Unit prices shall apply to revisions to the Work as applicable. Unit Prices are "all inclusive", including labor, material, supervision, tools, equipment, insurance taxes, fringe benefits, coordination, engineering, overhead, profit, performance and payment bonds, and all other things necessary.

GC 71 SUBSTANTIAL COMPLETION

71.1 The date of Substantial Completion is the date established by the Design Professional and approved by the Owner when the Project is sufficiently complete to permit the Owner to use it for its intended purpose and the items listed below in 71.4 are complete. Liquidated damages shall be assessed from the date of substantial completion of the entire Project.

71.2 The Construction Manager shall notify the Design Professional, in writing, when the Construction Manager considers the Project Substantially Complete and attach a comprehensive list of incomplete work and items needing correction with dates indicating when the items listed will be completed.

71.3 Once the Design Professional has received notice from the Construction Manager, the Design Professional will promptly inspect the Work. The Design Professional may

refuse to inspect the Work if the Work is obviously not substantially complete or when the Construction Manager's list is not complete.

71.4 The following items shall be completed prior to a request by the Construction Manager for inspection for Substantial Completion of a particular phase of the Project

a. Temporary Certificate(s) of Completion shall be obtained from the proper Building Official.

b. All general construction completed.

c. All electrical work complete, equipment and fixtures in place, connected, cleaned and ready for use.

d. All electrical circuits shall be scheduled in panels, and all panels and disconnect switches properly labeled.

e. Project site shall be cleared of the Construction Manager's excess equipment, storage shacks, trailers, and/or building supplies. All temporary construction shall be removed.

f. All electrical systems shall be complete, fully functional, and demonstrated to the Owner.

g. All operations and maintenance manuals for all equipment shall have been submitted.

h Manufacturers' certifications and warranties shall be delivered to Owner.

i. All operations and maintenance training related literature, software and back-up disks shall have been provided. A video tape of the training shall be provided.

j. All required spare parts as well as any special tools shall have been provided.

k. The Project record Drawings and Specifications shall be submitted in accordance with GC 66.

71.5 If Substantial Completion is not obtained at the inspection, called by the Construction Manager, for reasons which are the fault of the Construction Manager, the cost of any subsequent inspections requested by the Construction Manager for the purpose of determining Substantial Completion shall be the responsibility of the Construction Manager and shall be assessed against the final payment application.

71.6 Punch list items recorded as a result of inspections for Substantial Completion are to be corrected by the Construction Manager within fourteen (14) calendar days and in any event prior to any request for Final Inspection and Acceptance.

GC 72 FINAL INSPECTION AND ACCEPTANCE

72.1 When the Construction Manager considers that all work under the Contract is complete as previously referenced in GC 71, Construction Manager shall so inform Owner and Design Professional, in writing. In addition, when items on the punch list as recorded at the Substantial Completion inspection have been corrected and the Owner is satisfied that all work under the Contract is completed and is in accordance with the requirements of this Contract, Owner shall notify Construction Manager in writing of final acceptance of its work under this Contract.

72.2 The Owner will make final payment to the Construction Manager of the amount remaining after deducting all prior payments and all amounts to be kept or retained under the provisions of the Contact Documents, including the following items, for which a Change Order will be issued:

1. Liquidated Damages, as applicable.

2. At the discretion of the Owner, one hundred and fifty percent (150%) of the value of outstanding items, corrective Work, or "punch list" items indicated on the Certificate of Substantial Completion, "final punch list", or any other "punch list" as being yet uncompleted or uncorrected, as applicable. All such Work shall be completed or corrected to the satisfaction of the Owner within the time stated on the Certificate of Substantial Completion, or on the "final punch list", or any other "punch list", otherwise the Construction Manager does hereby waive any and all claims to all monies withheld by the Owner to cover the value of all such uncompleted or uncorrected items.

72.3 Neither final acceptance of the Work, nor payment therefor, nor any provision of the Contract Documents shall relieve the Construction Manager of responsibility for defective or deficient materials or work. If, within one (1) year or as provided for elsewhere in the General Conditions or Technical Specifications after Substantial Completion, any of the Work is found to be defective, deficient or not in accordance with the Contract Documents, the Construction Manager shall correct, remove and replace it promptly after receipt of a written notice from the Owner and correct and pay for any damage to other Work resulting in therefrom.

GC 73 DISPOSAL OF MATERIAL OUTSIDE PROJECT LIMITS

73.1 The Construction Manager shall make his own arrangements for disposal of materials outside the Project limits and shall pay all costs involved. The Owner reserves the right to retain any salvage material or equipment scheduled for removal. Should the Owner elect to retain salvaged materials or equipment, the Construction Manager will provide

appropriate on-site storage and protection. The Owner will be responsible for transporting from the site any materials or equipment it has elected to retain. Off-site disposal of any items not retained by the Owner shall be the responsibility of the Construction Manager.

73.2 When any material is to be disposed of outside the Project limits, the Construction Manager shall first obtain a written permit from the property owner on whose property the disposal is to be made and he shall file in writing with the Owner said permit or the certified copy thereof together with a written release from the property owner absolving the agency of any and all responsibility in connection with the disposal of material on said property.

73.3 When material is disposed of as above provided and the disposal location is visible from the Project, the Construction Manager shall dispose of the material in a neat and uniform manner to the satisfaction of the Owner.

GC 74 IDENTITY OF INTEREST WITH SUBCONTRACTORS/SUPPLIERS

74.1 The Construction Manager represents to the Owner that neither the Construction Manager, nor any officer, director, partner or shareholder who holds ten percent (10%) or more of the outstanding stock of the Construction Manager, has any financial interest in, or as an officer, director, partner or ten percent (10%) plus shareholder of any firm, person or entity which has been or may be contracted with to furnish labor, material, equipment or professional services in connection with the construction or the Project. Construction Manager agrees to give written notification and obtain the approval of the Owner before entering into any Contract on this Project with any subcontractor or material supplier where there exists any identity of interest.

GC 75 CLEANING UP

75.1 Construction Manager shall, at all times, at its expense, keep its work areas in a neat, clean and safe condition. Upon completion of any portion of the Work, Construction Manager shall, within 48 hours, remove all of its equipment, construction plant, temporary structures and surplus materials not to be used at or near the same location during later stages of work.

GC 76 PROJECT SIGNS

76.1 Construction Manager, shall construct a Project job sign as indicated and described on Site Sign Detail. Construction Manager shall coordinate location of sign with Owner's representative and install within 21 days after Owner's issuance of "Notice to Proceed". Any deletion/addition of lettering during the life of the Project will be at the Construction Manager's expense. Construction Manager will remove and properly dispose of sign at final acceptance of project. With the exception of the right reserved by the Owner to

erect a sign in connection with the Project and unless otherwise provided in the Contract Documents, Construction Manager shall not display or permit to be displayed on or about the Project, any sign, trademark, poster or other advertising or identifying device, without prior written approval of Owner.

GC 77 PERFORMANCE AND PAYMENT BONDS/CHAPTER 558 OPT OUT

77.1 Within ten (10) calendar days following the Owner's action to approve this Contract, Construction Manager shall furnish Performance and Payment Bonds in form as set forth in Exhibits "E" and "F," written by a surety company acceptable to Owner. It is the Construction Manager's obligation to record a copy of the statutory Payment Bond in the Public Records of Broward County, Florida, and to otherwise comply with all applicable Florida laws.

77.2 Both Owner and Construction Manager hereby expressly opt out of the provisions of Chapter 558, F.S., and elect not to be governed by its terms and provisions.

EXHIBIT B

City of Pompano Beach

Briny Avenue Streetscape

G.M.P. Based on 90% Permit & Bid Submittal Documents

From:	**Burkhardt Construction, Inc.** Attn: Marc Kleisley, Vice President of Operations 1400 Alabama Ave., #20 West Palm Beach, FL 33401 Ph: (561) 659-1400 Fax: (561) 659-1402
Owner:	**CITY OF POMPANO BEACH** ATTN: Mr. John Sfiropoulos, PE 1201 NE 5th Avenue Pompano Beach, FL 33060 TEL: (954) 545-7009 FAX: (954) 786-4028
Engineer:	**IBI GROUP (FLORIDA) INC.** ATTN: Patricia Ramudo, PE 2200 Park Central Blvd. N., Suite 100 Pompano Beach, FL 33064 TEL: (954) 974-2200 FAX: (954) 973-2686
Project:	**BRINY AVENUE STREETSCAPE** City of Pompano Beach, FL
Plans:	90% Permit and Bid Submittal Documents BCI Rec'd date 2.19.15 Complete Plan Log attached
Location:	Pompano Beach, FL
Date:	4/1/15; LATEST REVISION 2/29/16

Direct Construction Costs	**$**	**3,779,985.98**
General Conditions	**$**	**372,980.35**
Construction Phase Management Fee	**$**	**367,575.00**
Profit	**$**	**325,000.00**
Contingency	**$**	**190,000.00**
Direct Owner Purchase Material Tax Savings	$	(36,608.86)
Total Guaranteed Maximum Price (G.M.P.)	**$**	**4,998,932.47**

BURKHARDT
CONSTRUCTION, INC.

City of Pompano Beach

Briny Avenue Streetscape

G.M.P. Based on 90% Permit & Bid Submittal Documents

GENERAL CONDITIONS

From:	**Burkhardt Construction, Inc.** Attn: Marc Kleisley, Vice President of Operations 1400 Alabama Ave., #20 West Palm Beach, FL 33401 Ph: (561) 659-1400 Fax: (561) 659-1402
Owner:	**CITY OF POMPANO BEACH** ATTN: Mr. John Sfiropoulos, PE 1201 NE 5th Avenue Pompano Beach, FL 33060 TEL: (954) 545-7009 FAX: (954) 786-4028
Engineer:	**IBI GROUP (FLORIDA) INC.** ATTN: Patricia Ramudo, PE 2200 Park Central Blvd. N., Suite 100 Pompano Beach, FL 33064 TEL: (954) 974-2200 FAX: (954) 973-2686
Project:	**BRINY AVENUE STREETSCAPE** City of Pompano Beach, FL
Plans:	90% Permit and Bid Submittal Documents BCI Rec'd date 2.19.15 Complete Plan Log attached
Location:	Pompano Beach, FL
Proposal Date:	4/1/15; LATEST REVISION 2/29/16

Item Description					Amount
BASED ON A 9 MONTH DURATION					
MOBILIZATION (move-in, move-out)					$8,000.00
TRANSPORT	$65.00 /	Hr	x	80	$5,200.00
EQUIPMENT	$35.00 /	Hr.	x	80	$2,800.00
SUBCONTRACTOR MOBILIZATION(S)					

BURKHARDT CONSTRUCTION, INC.

PROJECT FIELD OFFICE					$61,165.00
OFFICE	$1,000.00 /	mo.	x	9	$9,000.00
YARD	$1,000.00 /	mo.	x	9	$9,000.00
EMPLOYEE PARKING FEES	$500.00 /	mo.	x	N/A	$0.00
WORK PLATFORM FOR YARD	$200.00 /	mo.	x	9	$1,800.00
TEMPORARY FENCING FOR YARD	$500.00 /	mo.	x	9	$4,500.00
CONSTRUCTION YARD LIGHTING	$0.00 /	mo.	x	N/A	$0.00
OFFICE FURNISHINGS	$500.00 /	mo.	x	N/A	$0.00
COMPUTERS	$300.00 /	mo.	x	9	$2,700.00
PROCORE MANAGEMENT SOFTWARE	$500.00 /	mo.	x	9	$4,500.00
SUBMITTAL SOFTWARE	$4,000.00 /	ls	x	1	$4,000.00
COPY MACHINE	$350.00 /	mo.	x	9	$0.00
FAX MACHINE	$100.00 /	mo.	x	N/A	$0.00
INTERNET SERVICE	$150.00 /	mo.	x	9	$0.00
CELLULAR TELEPHONE	$500.00 /	mo.	x	9	$4,500.00
TELEPHONE	$150.00 /	mo.	x	9	$0.00
FEDERAL EXPRESS MAILINGS	$100.00 /	mo.	x	9	$900.00
POSTAGE	$50.00 /	mo.	x	9	$450.00
PHOTOGRAPHS					
AERIAL PHOTOS	$110.00 /	mo.	x	9	$990.00
JOB PHOTOS	$50.00 /	wk	x	9	$450.00
PRE-CONSTRUCTION VIDEO	$3,000.00 /	ls	x	1	$3,000.00
PLAN REPRODUCTION COST/PRINTING	$200.00 /	set	x	15	$3,000.00
OFFICE SUPPLIES	$50.00 /	mo.	x	9	$450.00
FIRST AID SUPPLIES	$50.00 /	mo.	x	9	$450.00
WATER SERVICE	$35.00 /	mo.	x	N/A	$0.00
SANITARY SERVICE	$50.00 /	mo.	x	N/A	$0.00
ELECTRIC SERVICE	$200.00 /	mo.	x	N/A	$0.00
GARBAGE SERVICE	$25.00 /	mo.	x	N/A	$0.00
CONSTRUCTION WATER	$500.00 /	mo.	x	9	$4,500.00
JOHN DEERE GATOR (1)	$500.00 /	mo.	x	9	$4,500.00
ICE	$275.00 /	mo.	x	9	$2,475.00
BONDS					$62,486.25
GENERAL BOND	$4,998,900.00		x	1.25%	$62,486.25
SUBCONTRACTORS BONDS					
PARTNERING INITIATIVES					$2,500.00
NOTICES, LETTERS, INFORMATION MEETINGS					$2,500.00
INSURANCE					$94,979.10
GENERAL INSURANCE	$4,998,900.00		x	1.90%	$94,979.10
Commercial General Liability					
Comprehensive Automobile Liability					
Owner Idemnification					
Professional (Errors/Omissions) Liability					
Excess/Umbrella Liability					
ADD'L INSUREDS	$100.00 /	ea.	x	0	$0.00
ADDED INSURANCES					
Railroad protective Liability Ins.					N/A
Builders Risk Insurance					NOT INCLUDED
Installation Floater					N/A
Flood Insurance					NOT INCLUDED
SUBCONTRACTORS' INSURANCE					INCLUDED IN THEIR DIRECT COST
SANITARY SERVICES					$2,250.00
JOB TOILET (2ea.)	$250.00 /	mo.	x	9	$2,250.00

TESTING COSTS						$20,000.00
DENSITIES						
PRESSURE						
PROCTORS						
BACTERIOLOGICAL						
CONCRETE CYLINDERS						
ENGINEERING & REPORTING						
TV'ING OF INSTALLED LINES						
FEES						$78,100.00
COPB BUILDING DEPT. PERMIT/REVISION FEES		$3,780,000.00		x	2.00%	$75,600.00
PERMIT SUBMISSION AND EXPEDITING						$2,500.00
FDOT GENERAL USE PERMITS						NO FEE ANTICIPATED
SURVEYING						$38,500.00
LAYOUT & ASBUILTS	AVIROM & ASSOC. SURVEYING	$35,000.00 /	LS	x	1	$35,000.00
ALLOWANCE FOR RESTAKING & DRAFTING		$3,500.00 /	LS	x	1	$3,500.00
SMALL HAND TOOLS/EQUIPMENT RENTAL						$5,000.00
ALLOWANCE (GENERAL)						$5,000.00
HANDLING, STORAGE, UN-LOADING OF OWNER DIRECT PURCHASE MATERIALS						incl in subs pricing
GENERAL CONDITIONS TOTAL						$372,980.35

BURKHARDT CONSTRUCTION, INC.

City of Pompano Beach

Briny Avenue Streetscape

G.M.P. Based on 90% Permit & Bid Submittal Documents

CONSTRUCTION PHASE MANAGEMENT FEE

From: **Burkhardt Construction, Inc.**
Attn: Marc Kleisley, Vice President of Operations
1400 Alabama Ave., #20
West Palm Beach, FL 33401
Ph: (561) 659-1400
Fax: (561) 659-1402

Owner: **CITY OF POMPANO BEACH**
ATTN: Mr. John Sfiropoulos, PE
1201 NE 5th Avenue
Pompano Beach, FL 33060
TEL: (954) 545-7009
FAX: (954) 786-4028

Engineer: **IBI GROUP (FLORIDA) INC.**
ATTN: Patricia Ramudo, PE
2200 Park Central Blvd. N., Suite 100
Pompano Beach, FL 33064
TEL: (954) 974-2200
FAX: (954) 973-2686

Project: **BRINY AVENUE STREETSCAPE**
City of Pompano Beach, FL

Plans: 90% Permit and Bid Submittal Documents BCI Rec'd date 2.19.15
Complete Plan Log attached

Location: Pompano Beach, FL

Proposal Date: 4/1/15; LATEST REVISION 2/29/16

BURKHARDT CONSTRUCTION, INC.

Item Description	Quantity	(Hrs./Week)	Wks.	Rate/Hr.	Amount
Project Principal	2	Hrs./Wk.	39	$ 150.00	$ 11,700.00
Senior Project Manager	5	Hrs./Wk.	39	$ 110.00	$ 21,450.00
Project Manager	40	Hrs./Wk.	39	$ 95.00	$ 148,200.00
Assistant Project Manager	0	Hrs./Wk.	39	$ 80.00	$ -
Construction Field Manager	40	Hrs./Wk.	39	$ 60.00	$ 93,600.00
Merchant/Resident Liaison	20	Hrs./Wk.	39	$ 75.00	$ 58,500.00
Project Accountant	5	Hrs./Wk.	39	$ 75.00	$ 14,625.00
Administrative Assistant	10	Hrs./Wk.	39	$ 50.00	$ 19,500.00
Field Office Clerk	0	Hrs./Wk.	39	$ 35.00	$ -
	Total Construction Phase Management Fee				**$ 367,575.00**

BURKHARDT
CONSTRUCTION, INC.

City of Pompano Beach

Brlny Avenue Streetscape

DIRECT CONSTRUCTION COSTS 4/1/15; LATEST REVISION 2/29/16
90% Permit and Bid Submittal Documents BCI Rec'd date 2.19.15

Prepared by Burkhardt Construction, Inc.

Item Description	Quantity	U/M	Unit Price	Amount	Labor	Equipment	Material	Subcontractor	General/Rental	Subtotal
MAINTENANCE OF TRAFFIC				$274,264.14						
MOT PLAN	6	LS	$150.00	$ 900.00					900.00	900
WORK ZONE SIGNS	5475	E/D	$0.30	$ 1,642.50					1642.50	1642.5
BARRICADE TEMP. TYPE I, II, VP & DRUM	18250	E/D	$0.20	$ 3,650.00					3650.00	3650
BARRICADE TEMP. TYPE III, 6'	2190	E/D	$0.40	$ 876.00					876.00	876
ADVANCE WARNING ARROW PANEL	45	DAY	$12.00	$ 540.00					540.00	540
CONES	1125	E/D	$0.20	$ 225.00					225.00	225
STEADY BURN &/OR FLASHING LIGHTS	29565	E/D	$0.30	$ 8,869.50					8869.50	8869.5
HI INTENSITY FLASHING LIGHT, TEMP. TYPE "B"	10950	E/D	$0.35	$ 3,832.50					3832.50	3832.5
VARIABLE MESSAGE BOARD	1460	E/D	$20.00	$ 29,200.00					29200.00	29200
POST MOUNTING FOR ADVANCE WARNING SIGNS	15	EA	$45.00	$ 675.00					675.00	675
SALES TAX FOR MOT DEVICES	1	LS	$10,415.88	$ 10,415.88					10415.88	10415.88
ORANGE SAFETY FENCE AND POSTS	1	LS	$3,342.10	$ 3,342.10	449.63		2892.47			3342.1
MOT / SAFETY DEVICE SET-UP & MAINTENANCE	1	LS	$30,861.19	$ 30,861.19	26303.06	4558.13				30861.19
TEMPORARY PEDESTRIAN BOARDWALKS	1	LS	$1,507.42	$ 1,507.42	809.33	220.44	477.65			1507.42
CONTINOUS SITE CLEANING / DEBRIS REMOVAL	1	LS	$29,293.71	$ 29,293.71	14612.81	11950.9			2730.00	29293.71
DANGER RIBBON	24	ROL	$19.04	$ 456.90			456.9			456.9
ROADWAY FLAGMEN	1	EA	$5,395.50	$ 5,395.50	5395.5					5395.5
TEMPORARY ASPHALT MILLINGS	1	LS	$4,466.34	$ 4,466.34	1667.36	1306.88	1229.6		262.50	4466.34
ALLOWANCE FOR SPECIALTY SIGNAGE	1	LS	$5,500.00	$ 5,500.00		(ALLOWANCE)	5500			5500
BARRIER WALL	36500	E/D	$2.25	$ 82,125.00					82125.00	82125
TEMPORARY PEDESTRIAN BARRICADES WITH SCREEN	27375	E/D	$1.50	$ 41,062.50					41062.50	41062.5
ROADWAY STEEL PLATES	1	LS	$5,677.10	$ 5,677.10	479.6	397.5		4800		5677.1
TEMPORARY ROADWAY STRIPING	1	LS	$3,750.00	$ 3,750.00		(ALLOWANCE)	FINE LINE	3750		3750
LIGHT BANKS FOR NIGHT WORK	NOT APPLICABLE									
OFF DUTY POLICE OFFICERS	NOT APPLICABLE									
TEMPORARY STREET LIGHTING	NOT APPLICABLE									
DEMOLITION/CLEARING & GRUBBING				$200,472.74						
NPDES	1	LS	$16,103.14	$ 16,103.14				16103.14		16103.14
SOD / SHRUB REMOVAL	1	LS	$3,128.55	$ 3,128.55	1498.75	914.3		505.5	210.00	3128.55
COMPLETE TREE/PALM REMOVAL AND DISPOSAL	12	EA	$235.67	$ 2,828.03	749.38	457.15		1516.5	105.00	2828.03
REM/ STORE/ RESET EXIST'G. PARKING BLOCKS	150	EA	$62.03	$ 9,305.01	6393.1	2787.89	124.02			9305.01
SAW CUT EXISTING CONCRETE/ ASPHALT	6,300	LF	$0.96	$ 6,020.00				6020		6020
CONCRETE SIDEWALK/ CURB REMOVAL & DISPOSAL	6,000	SF	$1.60	$ 9,594.15	4496.25	2742.9		1725	630.00	9594.15
ASPHALT PAVEMENT REMOVAL & DISPOSAL (3" AVG. THK- ESTIMATED)	14,350	SY	$5.48	$ 78,678.42	37468.75	22857.5		13102.17	5250.00	78678.42
REMOVE EXISTING BRICK PAVERS & DISPOSAL	450	SF	$3.02	$ 1,358.78	749.38	457.15		47.25	105.00	1358.78
SIGNAGE REMOVAL & DISPOSAL	12	EA	$57.52	$ 690.19	359.7	219.43		60.66	50.40	690.19
REMOVE/STORE/ RESET MAIL BOXES	55	EA	$69.90	$ 3,844.42	2465.44	1094.63	284.35			3844.42
PARKING METER / POST REMOVAL & DISPOSAL	22	EA	$57.52	$ 1,265.35	659.45	402.29		111.21	92.40	1265.35
PRIVATE PROPERTY DEMO FOR UNDERGROUND SERVICES	5,660	SF	$6.09	$ 34,462.14	18850.95	11499.86		1470	2641.33	34462.14
PRIVATE PROPERTY RESTORATION	1	LS	$22,854.56	$ 22,854.56	9816.81	11987.75			1050.00	22854.56
ROLL OFF DUMPSTER	20	PUL	$517.00	$ 10,340.00					10340.00	10340
EARTHWORK AND GRADING				$200,078.97						
ROADWAY EXCAVATION/GRADE	13,177	SY	$3.48	$ 45,877.64	24047.14	18739.3			3091.20	45877.64
LANDSCAPE PLANTER EXCAVATION/GRADE	4,315	SY	$10.39	$ 44,817.97	23491.71	18306.46			3019.80	44817.97
CONSTRUCT 6" SWALE	200	SY	$15.58	$ 3,116.69	1633.64	1273.05			210.00	3116.69
EXCAVATE/GRADE FOR CURB	1,620	SY	$5.92	$ 9,588.94	4855.95	4052.59			680.40	9588.94
EXCAVATE/GRADE FOR SIDEWALKS	665	SY	$9.87	$ 6,560.34	3322.23	2772.61			465.50	6560.34
GRADE/PREP FOR FLOWABLE FILL	1	LS	$5,919.10	$ 5,919.10	2997.5	2501.6			420.00	5919.1
GRADE/COMPACT PRIVATE PROPERTY RESTORATION	310	SY	$14.80	$ 4,587.30	2323.06	1938.74			325.50	4587.3
LOAD/HAUL/DISPOSE OF SURPLUS FILL	5,080	CY	$10.54	$ 53,546.43			25300	28246.43		53546.43
FINAL DRESSING AND FINISH GRADING	1	LS	$14,797.75	$ 14,797.75	7493.75	6254			1050.00	14797.75
FINAL CONSTRUCTION CLEAN	1	LS	$11,266.81	$ 11,266.81	5620.31	4596.5			1050.00	11266.81

BURKHARDT CONSTRUCTION, INC.

Item Description	Quantity	U/M	Unit Price	Amount	Labor	Equipment	Material	Subcontractor	General/Rental	Subtotal
WATER / SEWER				$24,900.00						
DEMO/REMOVE ABANDONED 6" WATERMAIN	NIC		SEE EXCEPTIONS / CLARIFICATIONS				WSD	SEE EXCEPTIONS / CLARIFICATIONS		0
F&I 5/8" PE WATER SERVICE LINE TO SHOWERS	105	LF	$20.00	$ 2,100.00			WSD	2100		2100
ADJUST WATER VALVE BOXES TO GRADE (AS NEEDED)	52	EA	$100.00	$ 5,200.00			WSD	5200		5200
ADJUST EXISTING SANITARY MANHOLES TO GRADE (AS NEEDED)	22	EA	$475.00	$ 10,450.00			WSD	10450		10450
INSTALL EXISTING WATER METER BOXES TO GRADE (AS NEEDED)	24	EA	$100.00	$ 2,400.00			WSD	2400		2400
WATER SERVICE/TAP FOR SHOWERS	4	EA	$950.00	$ 3,800.00			WSD	3800		3800
2" WATER SERVICE/TAP FOR IRRIGATION	1	EA	$950.00	$ 950.00			WSD	950		950
FRANCHISE UTILITIES (CATV, PHONE, FPL)				$924,251.75						
DIRECTIONAL BORE COMPLETE PER PLANS AND SPECIFICATIONS	1	LS	$13,500.00	$ 13,500.00			CRDUNN	13500		13500
FPL										
INSTALL **FPL** FURNISHED 24" HANDHOLE	14	EA	$250.00	$ 3,500.00			CRDUNN	3500		3500
INSTALL **FPL** FURNISHED 30" HANDHOLE	9	EA	$350.00	$ 3,150.00			CRDUNN	3150		3150
INSTALL **FPL** FURNISHED 48" HANDHOLE	4	EA	$500.00	$ 2,000.00			CRDUNN	2000		2000
INSTALL **FPL** FURNISHED 5'X10' SPLICE BOX	5	EA	$3,500.00	$ 17,500.00			CRDUNN	17500		17500
INSTALL **FPL** FURNISHED TRANSFORMER PADS	15	EA	$850.00	$ 12,750.00			CRDUNN	12750		12750
INSTALL **FPL** FURNISHED CONDUITS (1 x 6" and 3 x 2")	863	LF	$31.00	$ 26,753.00			CRDUNN	26753		26753
INSTALL **FPL** FURNISHED CONDUITS (1 x 5")	900	LF	$12.98	$ 11,682.00			CRDUNN	11682		11682
INSTALL **FPL** FURNISHED CONDUITS (1 x 6")	340	LF	$16.61	$ 5,647.40			CRDUNN	5647.4		5647.4
INSTALL **FPL** FURNISHED CONDUITS (1 x 4")	820	LF	$11.02	$ 9,036.40			CRDUNN	9036.4		9036.4
INSTALL **FPL** FURNISHED CONDUITS (2 x 2" and 1 x 4")	10	LF	$18.47	$ 184.70			CRDUNN	184.7		184.7
INSTALL **FPL** FURNISHED CONDUITS (1 x 2")	222	LF	$6.10	$ 1,354.20			CRDUNN	1354.2		1354.2
INSTALL **FPL** FURNISHED CONDUITS (2 x 4")	36	LF	$11.97	$ 430.92			CRDUNN	430.92		430.92
INSTALL **FPL** FURNISHED CONDUITS (5 x 2")	156	LF	$24.17	$ 3,770.52			CRDUNN	3770.52		3770.52
INSTALL **FPL** FURNISHED CONDUITS (2 x 4" and 6 x 2")	46	LF	$48.41	$ 2,226.86			CRDUNN	2226.86		2226.86
INSTALL **FPL** FURNISHED CONDUITS (6 x 2")	40	LF	$29.13	$ 1,165.20			CRDUNN	1165.2		1165.2
INSTALL **FPL** FURNISHED CONDUITS (4 x 2" and 1 x 4")	80	LF	$31.05	$ 2,484.00			CRDUNN	2484		2484
INSTALL **FPL** FURNISHED CONDUITS (1 x 6", 4 x 4", and 3 x 2")	211	LF	$67.85	$ 14,316.35			CRDUNN	14316.35		14316.35
INSTALL **FPL** FURNISHED CONDUITS (1 x 6", 2 x 4", and 3 x 2")	70	LF	$49.19	$ 3,443.30			CRDUNN	3443.3		3443.3
INSTALL **FPL** FURNISHED CONDUITS (1 x 6", 1 x 4", and 3 x 2")	671	LF	$40.13	$ 26,927.23			CRDUNN	26927.23		26927.23
INSTALL **FPL** FURNISHED CONDUITS (1 x 6" and 1 x 2")	20	LF	$19.63	$ 392.60			CRDUNN	392.6		392.6
INSTALL **FPL** FURNISHED CONDUITS (1 x 6" and 2 x 2")	175	LF	$26.10	$ 4,567.50			CRDUNN	4567.5		4567.5
INSTALL **FPL** FURNISHED CONDUITS (1 x 6" and 1 x 4")	95	LF	$26.17	$ 2,486.15			CRDUNN	2486.15		2486.15
INSTALL **FPL** FURNISHED CONDUITS (1 x 6", 2 x 4", and 6 x 2")	50	LF	$64.59	$ 3,229.50			CRDUNN	3229.5		3229.5
INSTALL **FPL** FURNISHED MATERIALS WHICH INCLUDE FEEDER CABLE, PRIMARY CABLE, SECONDARY CABLE, SWITCH CABINETS, TRANSFORMERS, CAPACITOR BANK, GROUNDING RISERS, CABLE SPLICES AND CABLE TERMINATIONS	1	LS	$163,749.00	$ 163,749.00			CRDUNN	163749		163749
ATT										
FURNISH AND INSTALL **ATT** 4'X6.5'X6' MANHOLE	5	EA	$8,328.00	$ 41,640.00			CRDUNN	41640		41640
FURNISH AND INSTALL **ATT** CONDUITS (5 x 4")	475	LF	$65.43	$ 31,079.25			CRDUNN	31079.25		31079.25
FURNISH AND INSTALL **ATT** CONDUITS (2 x 4")	145	LF	$33.95	$ 4,922.75			CRDUNN	4922.75		4922.75
FURNISH AND INSTALL **ATT** CONDUITS (1 x 4")	830	LF	$15.79	$ 13,105.70			CRDUNN	13105.7		13105.7
FURNISH AND INSTALL **ATT** CONDUITS (6 x 4")	482	LF	$73.47	$ 35,412.54			CRDUNN	35412.54		35412.54
FURNISH AND INSTALL **ATT** CONDUITS (1 x 2")	130	LF	$8.89	$ 1,155.70			CRDUNN	1155.7		1155.7
FURNISH AND INSTALL **ATT** CONDUITS (7 x 4")	250	LF	$87.31	$ 21,827.50			CRDUNN	21827.5		21827.5
FURNISH AND INSTALL **ATT** CONDUITS (4 x 4")	440	LF	$51.69	$ 22,743.60			CRDUNN	22743.6		22743.6
FURNISH AND INSTALL **ATT** CONDUITS (3 x 4")	105	LF	$36.48	$ 3,830.40			CRDUNN	3830.4		3830.4
FURNISH AND INSTALL **ATT** CONDUITS (8 x 4")	500	LF	$98.13	$ 49,065.00			CRDUNN	49065		49065
FURNISH AND INSTALL **ATT** CONDUITS (9 x 4")	122	LF	$115.85	$ 14,133.70			CRDUNN	14133.7		14133.7
F&I ATT CONDUIT, PULL BOXES WITH PULL STRING	1	LS	$2,194.40	$ 2,194.40			CRDUNN	2194.4		2194.4
COMCAST										
FURNISH AND INSTALL **COMCAST** 24"X36"X18"VAULT	6	EA	$2,117.00	$ 12,702.00			CRDUNN	12702		12702
FURNISH AND INSTALL **COMCAST** 30"X48"X36"VAULT	19	EA	$3,265.00	$ 62,035.00			CRDUNN	62035		62035
FURNISH AND INSTALL **COMCAST** CONDUITS (2 x 2" and 2 x 4")	2340	LF	$40.25	$ 94,185.00			CRDUNN	94185		94185
FURNISH AND INSTALL **COMCAST** CONDUITS (2 x 2" and 1 x 4")	320	LF	$29.63	$ 9,481.60			CRDUNN	9481.6		9481.6
FURNISH AND INSTALL **COMCAST** CONDUITS (1 x 4")	430	LF	$15.79	$ 6,789.70			CRDUNN	6789.7		6789.7
FURNISH AND INSTALL **COMCAST** CONDUITS (1 x 2")	1690	LF	$8.89	$ 15,024.10			CRDUNN	15024.1		15024.1
FURNISH AND INSTALL **COMCAST** CONDUITS (2 x 4")	50	LF	$33.95	$ 1,697.50			CRDUNN	1697.5		1697.5
FURNISH AND INSTALL **COMCAST** CONDUITS (2 x 2")	670	LF	$16.40	$ 10,988.00			CRDUNN	10988		10988
F&I COMCAST CONDUIT, PULL BOXES WITH PULL STRING	1	LS	$2,215.68	$ 2,215.68			CRDUNN	2215.68		2215.68

BURKHARDT CONSTRUCTION, INC

Item Description	Quantity	U/M	Unit Price	Amount	Labor	Equipment	Material	Subcontractor	General/Rental	Subtotal
F&I PRIVATE SIDE SERVICES INCLUDING ANY NEC. SERVICE UPGRADES	1	LS	$122,275.80	$ 122,275.80			CRDUNN	122275.8		122275.8
GAS MAIN RELOCATIONS (ALLOWANCE)	1	LS	$7,500.00	$ 7,500.00			ALLOWANCE	7500		7500
DEWATERING, IF NECESSARY, PER NPDES REQUIREMENTS	INCL IN ABOVE UNITS									
POLE HOLDS (AS REQUIRED)	1	LS	$2,000.00	$ 2,000.00			CRDUNN	2000		2000
FPL ENGINEERING/BINDING COST ESTIMATE FEES INCL FPL MATERIAL AND REMOVAL OF EXISTING OVERHEAD/POLES.	BY OWNER									
AT&T ENGINEERING/INSTALLATION FEES INCL CABLE INSTALLATION AND FINAL CONNECTIONS	BY OWNER									
COMCAST ENGINEERING/INSTALLATION FEES INCL CABLE INSTALLATION AND FINAL CONNECTIONS	BY OWNER									
GAS CO. ENGINEERING/INSTALLATION FEES	BY OWNER									
STREET LIGHTING / ELECTRICAL				$537,783.98						
FURNISH LIGHT POLE/FIXTURE	38	EA	$7,573.63	$ 287,797.90	MUNICIPAL LIGHTING	141684.9	LIGHTING DYNAMICS	129822.55	[illegible]	287797.897
INSTALL OWNER DIRECT PURCHASE LIGHTPOLE/FIXTURE INCLUDING ALL FOUNDATIONS, WIRE, GROUND RODS,BULBS, GFI RECEPTACLES, ANCHOR BOLTS, HANDHOLES, AND WIRE FOR A COMPLETE WORKING SYSTEM	38	EA	$2,382.15	$ 90,521.70			CRDUNN	90521.7		90521.7
FURNISH ELEVATED LIGHT POLE/FIXTURE	9	EA	$10,186.84	$ 91,681.58	MUNICIPAL LIGHTING	55744.61	LIGHTING DYNAMICS	30747.45	[illegible]	91681.5836
INSTALL OWNER DIRECT PURCHASE ELEVATED LIGHTPOLE/FIXTURE INCLUDING ALL FOUNDATIONS, WIRE, GROUND RODS, BULBS, GFI RECEPTACLES, ANCHOR BOLTS, HANDHOLES, AND WIRE FOR A COMPLETE WORKING SYSTEM	9	EA	$1,870.45	$ 16,834.05			CRDUNN	16834.05		16834.05
SIGNED/SEALED WIND LOAD CALCULATIONS	1	LS	$1,013.23	$ 1,013.23			LIGHTING DYNAMICS	955.88	[illegible]	1013.2328
FURNISH LIGHTED BOLLARDS	16	EA	$1,441.91	$ 23,070.52			LIGHTING DYNAMICS	21764.64	[illegible]	23070.5184
INSTALL OWNER DIRECT PURCHASE LIGHTED BOLLARDS INCLUDING ALL FOUNDATIONS, WIRE, GROUND RODS, BULBS, GFI RECEPTACLES, ANCHOR BOLTS, HANDHOLES, AND WIRE FOR A COMPLETE WORKING SYSTEM	16	EA	$715.00	$ 11,440.00			CRDUNN	11440		11440
F&I SERVICE POINT COMPLETE	1	LS	$14,625.00	$ 14,625.00			CRDUNN	14625		14625
HOOK-UP TO IRRIGATION CONTROLLERS	1	LS	$800.00	$ 800.00			CRDUNN	800		800
STORM DRAINAGE				$123,510.00						
DEMO/REMOVE 4" STORM PIPE	27	LF	$10.00	$ 270.00			WSD	270		270
DEMO/REMOVE 15" STORM PIPE	194	LF	$10.00	$ 1,940.00			WSD	1940		1940
DEMO/REMOVE EXISTING CATCH BASINS (4' TO 6' DEEP)	8	EA	$500.00	$ 4,000.00			WSD	4000		4000
F&I CATCH BASINS WITH FRAME & GRATE (4' TO 6' DEEP)	14	EA	$2,800.00	$ 39,200.00			WSD	39200		39200
F&I 15" PHDPE EXFILTRATION TRENCH	434	LF	$95.00	$ 41,230.00			WSD	41230		41230
F&I 15" PHDPE EXFILTRATION TRENCH W/ MINI-CHANNEL TRAFFIC BEARING TRENCH DRAIN AND 2" PVC	180	LF	$100.00	$ 18,000.00			WSD	18000		18000
F&I 15" HDPE STORM PIPE	53	LF	$40.00	$ 2,120.00			WSD	2120		2120
ADJUST EXISTING CATCH BASINS	4	EA	$375.00	$ 1,500.00			WSD	1500		1500
CLEANOUT EXISTING CATCH BASINS	1	EA	$450.00	$ 450.00			WSD	450		450
ADJUST EXISTING STORM MANHOLES TO GRADE	6	EA	$425.00	$ 2,550.00			WSD	2550		2550
POTHOLING & EXPLORATORY DIGGING	1	LS	$3,500.00	$ 3,500.00			WSD	3500		3500
FPL POLE HOLDS (AS REQUIRED)	1	LS	$4,000.00	$ 4,000.00			WSD	4000		4000
DESILT EXISTING STORM SYSTEM WITHIN CONSTRUCTION LIMITS	1	LS	$4,750.00	$ 4,750.00			WSD	4750		4750
RAINWATER LEADER UNDER WALKS W/CURB GRATE (AS REQUIRED)		NIC								

BURKHARDT CONSTRUCTION, INC.

Item Description	Quantity	U/M	Unit Price	Amount	Labor	Equipment	Material	Subcontractor	General/Rental	Subtotal
SUBGRADE, BASE and ASPHALT CONSTRUCTION				$455,945.44						
12" COMPACTED SUBGRADE	13,177	SY	$1.12	$ 14,706.58	6883.95	7032.01			790.62	14706.58
12" LIMEROCK BASE ROADWAY/STREETENDS	6,294	SY	$18.87	$ 118,787.08	34525.26	35267.8	45028.8		3965.22	118787.08
8" LIMEROCK BASE PARKING AREAS	6,883	SY	$16.51	$ 113,653.17	37756.18	38568.2	32992.5		4336.29	113653.17
6" LIMEROCK BASE (CURB PADS)	1,620	SY	$15.43	$ 24,994.61	8886.39	9077.51	6010.11		1020.60	24994.61
1-1/2" ASPHALT, TYPE S-III, 2 LIFTS OF 3/4" EACH, WITH TACK BETWEEN LIFTS AND ROCK BASE PRIMED	4,660	SY	$13.25	$ 61,745.00			HARDRIVES	61745		61745
1" ASPHALT PATCH, TYPE S-III, ROCK BASE PRIMED FOR REMOVAL OF ABANDONED 6" WATERMAIN	NIC		SEE EXCEPTIONS / CLARIFICATIONS				HARDRIVES	SEE EXCEPTIONS / CLARIFICATIONS		0
FRANCHISE UTILITY TRENCH RESTORATION ALONG SIDESTREETS (EXC./GRADE/COMPACT SUBGRADE, MIN. 8" LIMEROCK BASE, PRIME, 1" TYPE S-I ASPHALT)	718	SY	$35.37	$ 25,393.26	7521.76	7013.63	3441.45	6462	954.42	25393.26
TEMPORARY TRENCH RESTORATION (4" COMPACTED ASPHALT MILLINGS)	2,190	SY	$6.00	$ 13,150.24	4004.36	4090.48	4595.5		459.90	13150.24
MILL AND RESURFACE 1" SIDESTREETS	3,946	SY	$10.30	$ 40,643.80			HARDRIVES	40643.8		40643.8
ASPHALT PROPERTY TIE-INS (OUTSIDE OF R/O/W); MATCH EXISTING THICKNESSES	1,895	SY	$22.62	$ 42,871.70	15722.4	12323.2	9561.41	2789.44	2475.25	42871.7
SIDEWALK/CONCRETE CURB CONSTRUCTION				$161,557.11						
12" X 12" THICK HEADER CURB	5,480	LF	$17.46	$ 95,663.93	58755.62	7208.31	29700			95663.93
TYPE D CURB	350	LF	$19.70	$ 6,894.43	4878.43	598.5	1417.5			6894.43
SIDEWALK--6" THICK WITH 1/4" EXPANSION JOINT AT 12'O.C. & TOOLED	5,440	SF	$4.48	$ 24,361.41	8472.04	1039.37	14850			24361.41
PROPOSED CONCRETE WALK OVER SWALE	1	EA	$1,313.23	$ 1,313.23	929.23	114	270			1313.23
MASTER PARKING METER FOUNDATIONS	3	EA	$1,133.23	$ 3,399.68	2787.68	342	270			3399.66
MISC. CONCRETE PROPERTY TIE-INS (OUTSIDE R/O/W)	3,690	SF	$4.96	$ 18,298.50	10286.52	1261.98	6750			18298.5
F&I FLOWABLE FILL (ALLOWANCE)	100	CY	$116.26	$ 11,625.93	1169.03		10456.9			11625.93
BRICK PAVERS				$339,996.56						
FURNISH 3-1/8" ROADWAY, ADA, AND STRIPING PAVERS	51,690	SF	$3.22	$ 166,565.86			OLD CASTLE	157137.6	[illegible]	166565.856
INSTALL 3-1/8" ROADWAY PAVERS	51,690	SF	$1.78	$ 92,008.20			HOLLYWOOD STONE	92008.2		92008.2
INSTALL TACTILE SURFACE ADA PAVERS	15	EA	$750.00	$ 11,250.00			ALLOWANCE	11250		11250
PRESSURE CLEAN & SEAL PAVERS	51,690	SF	$0.55	$ 28,429.50			HOLLYWOOD STONE	28429.5		28429.5
FURNISH & INSTALL POLYMERIC SAND	51,690	SF	$0.70	$ 36,183.00			HOLLYWOOD STONE	36183		36183
MISC. PAVER PROPERTY TIE-INS (OUTSIDE R/O/W)	2,780	SF	$2.00	$ 5,560.00			HOLLYWOOD STONE	5560		5560
FURNISH & INSTALL REFLECTIVE STRIPING PAVERS	NONE REQUIRED									
FURNISHINGS AND MISCELLANEOUS				$122,605.86						
FURNISH TREE GRATE/FRAME CONC. TREE WELL (IRONAGE 4'X4')	21	EA	$1,373.96	$ 28,853.20			IRON AGE	27220	[illegible]	28853.2
FURNISH 6' TRIO BENCH WITH CONC. MOUNTING PAD	8	EA	$2,459.04	$ 19,672.32	S/H	2000	F + S	16672	[illegible]	19672.32
FURNISH OLYMPIA BIKE RACK WITH CONC. MOUNTING PAD	16	EA	$456.66	$ 7,306.52	S/H	743	F + S	6192	[illegible]	7306.52
FURNISH TRASH RECEPTACLE WITH CONC. MOUNTING PAD	4	EA	$2,427.19	$ 9,708.76	S/H	1127	F + S	8096	[illegible]	9708.76
FURNISH MDF SHOWER WITH CONC. MOUNTING PAD & HOOK UP	4	EA	$3,739.15	$ 14,956.60			MDF	14110	[illegible]	14956.6
INSTALL TREE GRATE/FRAME CONC. TREE WELL (IRONAGE 4'X4')	21	EA	$791.61	$ 16,623.86	9756.86	1197	5670			16623.86
INSTALL 6' TRIO BENCH WITH CONC. MOUNTING PAD	8	EA	$471.42	$ 3,771.34	2113.24	354.7	1093.4		210.00	3771.34
INSTALL OLYMPIA BIKE RACK WITH CONC. MOUNTING PAD	16	EA	$235.71	$ 3,771.34	2113.24	354.7	1093.4		210.00	3771.34
INSTALL TRASH RECEPTACLE WITH CONC. MOUNTING PAD	4	EA	$420.79	$ 1,683.17	1056.62	177.35	344.2		105.00	1683.17
INSTALL MDF SHOWER WITH CONC. MOUNTING PAD & HOOK UP	4	EA	$1,605.54	$ 6,422.14	2113.24	354.7	344.2	3400	210.00	6422.14
F&I 4" CONC. FILLED STEEL BOLLARDS COMPLETE INCLD'G. PAINTING	16	EA	$247.96	$ 3,967.32	1438.8	367.4	1501.12	240	420.00	3967.32
PAINT VALVE BOXES, INLETS, & MANHOLES	1	LS	$5,869.29	$ 5,869.29	2810.16	2375.13	159		525.00	5869.29
PAVEMENT MARKINGS AND SIGNAGE				$29,523.43						
PARKING STALL MARKINGS	1	LS	$10,523.43	$ 10,523.43			FINE LINE	10523.43		10523.43
DECORATIVE POSTS/SIGNAGE (PER SHEET PM-2.0)	1	LS	$19,000.00	$ 19,000.00			FINE LINE	19000		19000

BURKHARDT CONSTRUCTION, INC.

Item Description	Quantity	U/M	Unit Price	Amount	Labor	Equipment	Material	Subcontractor	General/Rental	Subtotal
LANDSCAPING				$329,596.00						
QV-LIVE OAKS (14' MIN. HGT., 4" CAL., 6' C.T.)	15	EA	$850.00	$ 12,750.00			ARAZOZA	12750		12750
PP-JAMACAIN DOGWOOD	14	EA	$350.00	$ 4,900.00			ARAZOZA	4900		4900
PS-WILD DATE PALM	11	EA	$1,400.00	$ 15,400.00			ARAZOZA	15400		15400
CN-COCONUT PALM	57	EA	$900.00	$ 51,300.00			ARAZOZA	51300		51300
TR-FLORIDA THATCH PALM	17	EA	$960.00	$ 16,320.00			ARAZOZA	16320		16320
CS-FIDDLEWOOD	23	EA	$350.00	$ 8,050.00			ARAZOZA	8050		8050
CB-BRAZIL BEAUTY LEAF	25	EA	$450.00	$ 11,250.00			ARAZOZA	11250		11250
GG-GEIGER	7	EA	$450.00	$ 3,150.00			ARAZOZA	3150		3150
DC-CABADA PALM	6	EA	$500.00	$ 3,000.00			ARAZOZA	3000		3000
DC-BUCCANEER PALM	5	EA	$1,250.00	$ 6,250.00			ARAZOZA	6250		6250
CE-SILVER BUTTONWOOD	110	EA	$31.00	$ 3,410.00			ARAZOZA	3410		3410
CC-JAMAICAN CAPER	59	EA	$31.00	$ 1,829.00			ARAZOZA	1829		1829
CI-COCOPLUM	278	EA	$31.00	$ 8,618.00			ARAZOZA	8618		8618
AB-BROMELAID	66	EA	$84.00	$ 5,544.00			ARAZOZA	5544		5544
SB-SAND CORD GRASS	310	EA	$9.50	$ 2,945.00			ARAZOZA	2945		2945
HD-BEACH SUNFLOWER	1,054	EA	$6.00	$ 6,324.00			ARAZOZA	6324		6324
GP-GAILLARDIA	600	EA	$6.00	$ 3,600.00			ARAZOZA	3600		3600
SP-BEACHBERRY	392	EA	$17.00	$ 6,664.00			ARAZOZA	6664		6664
FM-GREEN ISLAND FICUS	128	EA	$6.50	$ 832.00			ARAZOZA	832		832
ZJ-EMERALD ZOYSIA SOD	16330	SF	$1.00	$ 16,330.00			ARAZOZA	16330		16330
PLATYPUS ANCHORING SYSTEM	97	EA	$365.00	$ 35,405.00			ARAZOZA	35405		35405
F&I ALL PLANTING SOILS, AS SPECIFIED (24" DEPTH)	2,877	CY	$25.00	$ 71,925.00			ARAZOZA	71925		71925
ROOT BARRIER	1200	LF	$25.67	$ 30,800.00			ARAZOZA	30800		30800
PRE-EMERGENT/POST EMERGENT/SOIL AMENDMENTS	1	LS	$3,000.00	$ 3,000.00			ARAZOZA	3000		3000
TREE/PALM RELOCATES	10	EA	$0.00	INCLUDED ABOVE			ARAZOZA	INCLUDED ABOVE		
1 YEAR LANDSCAPE MAINTENANCE	NIC		SEE EXCEPTIONS / CLARIFICATIONS				ARAZOZA			0
IRRIGATION				$55,500.00						
IRRIGATION SYSTEM COMPLETE (INCLUDING BUT NOT LIMITED TO)	1	LS	$55,500.00	$ 55,500.00			ARAZOZA	55500		55500
BACKFLOW PREVENTER WITH ENCLOSURE										
POINTS OF CONNECTIONS										
QUICK COUPLERS										
CONTROLLER WITH PEDESTAL AND ENCLOSURE										
FLOW SENSOR										
SCHEDULE 40 PVC SLEEVES										
SCHEDULE 40 PVC MAINLINE & LATERALS										
RAINBIRD VALVES, RAINBIRD VALVE BOXES, WIRE										
RAINBIRD SPRAY HEADS										
BUBBLERS										
					Labor	Equipment	Material	Subcontractor	General/Rental	Subtotal
Briny Avenue Streetscape; Total Direct Construction Costs				**$3,779,985.98**	432991.55	464707.03	211814.48	2400388.85	270084.07	3779985.978

2/29/2016

BURKHARDT CONSTRUCTION, INC.

Briny Avenue Streetscape

G.M.P. Based on 90% Construction Documents Progress Set

Exceptions & Clarifications - 4/1/15;LATEST REV. 2/29/16

GENERAL

1 Scope of work and quantities are based on Briny Avenue Streetscape plan sheets dated 2/19/15. Complete plan log attached.

2 Guaranteed Maximum Price (G.M.P.) was compiled using competitive bids received from pre-approved subcontractors and vendors.

3 G.M.P. includes an 5% contingency.

4 G.M.P. does not include any capital improvement fees, connection fees or impact fees.

5 It is understood that the Direct Construction Cost (Exhibit "A") is unit prices for the work shown in the plans and as modified by these exceptions and clarifications.

6 Project master schedule and schedule updates shall be a bar chart schedule acceptable to the Owner prepared by CMAR in house personnel.

7 Project Manual as described in the contract shall mean the closeout project manual which shall be updated periodically and presented to the Owner upon completion of the project. The information contained in this manual shall be as requested by the Owner.

8 G.M.P. cost estimate does not include additional insurance premiums for naming individual property owners as additional insureds.

9 G.M.P. includes a sales tax credit on direct owener purchased materials. City shall purchase directly the following materials: electrical poles and fixtures, lighted bollards, bicycle racks, trash receptacles, showers, tree grates, benches and brick pavers. City shall retain or pay the difference between the allocated funds and the actual cost of the materials. If City is to pay the difference, would be paid from the contingency line item in the contract.

10 All Construction easements shall be executed and recorded and all permits shall be issued prior to notice to proceed.

11 Direct Construction costs are based on a project date of March 1, 2016. Labor and equipment prices are firm for all work completed through December 31, 2016. Material price increases shall be passed through to the Owner with proper documentation, and paid for with Contingency.

12 COPB Building Permits; All permits shall be obtained prior to start of construction and receipt of notice to proceed.

13 Prices are based on Contractor using street ends for temporary staging and use as material stockpiling and storage.

BURKHARDT
CONSTRUCTION, INC.

14 If deemed necessary to meet the construction schedule, the CMAR shall have the right to have more than one street/street end under construction simultaneously. It is agreed that the adjacent street shall not be under construction at the same time. Adjacent street ends may be constructed simultaneously.

15 The project will require free and unlimited jobsite access for workmen and deliveries during all authorized work hours.

16 Burkhardt Construction, Inc. (BCI) is not liable for failure to perform such work or any damages that occur if such failure is as a result of Acts of God (including fire, flood, earthquake, storm, hurricane or other natural disaster). If BCI asserts Force Majeure as the reason for failure to perform such work or such damages occur as a result of any Act of God, then BCI must prove that they took reasonable steps to minimize delay or damages caused by unforseeable events, that BCI substantially fulfilled all obligations, and that the owner was timely notified of the likelihood or actual occurrence of the event described as an Act of God (Force Majeure). Any construction related damages that took place as a result, shall be repaired or removed and replaced at the same contract unit prices and shall be paid out of the contingency.

17 In the event that the terms and provisions of all attached Exhibits conflict with or are omitted from the terms and provisions of this Contract, the terms and provisions of the attached Exhibits shall govern with respect to the performance of the work.

DEMOLITION / CLEARING & GRUBBING

1 G.M.P. does not include costs for removal / remediation of asbestos cement pipe or any other hazardous materials.

EARTHWORK / GRADING / SIDEWALK / ROADWAY CONSTRUCTION

1 G.M.P. does not include removal or replacement of any unsuitable subsoils. Demucking is specifically excluded.

2 Prices are based on re-using excavated material for backfill. No unsuitable subsoil excavation, removal or replacement. Unsuitable soil, if encountered shall be removed, disposed of, replaced as directed by the Owner and billed to the Owner at the actual direct cost.

3 Initial Geotech reports were not included in the 90% Plan set, therefore no subsurface soil investigations were performed by the CMAR during pre-construction services.

4 G.M.P. is based on the assumption that portions of roadways will be closed to vehicular traffic during construction.

5 G.M.P. cost estimate includes decorative post, finial and base for street signage along Briny Ave. Any signage in the Broward County Right Of Way, will be installed per Broward County specifications.

WATER / SEWER / STORM DRAINAGE

1 De-silting of the existing storm drainage system within the project limits is included.

2 G.M.P. cost estimate assumes existing water valves can be shut off to perform required offset work. If the line cannot be shut down, line stops will be required and the costs associated shall be paid from contingency.

3 G.M.P. cost estimate does not include City of Pompano Beach meter installation and hook-up fees.

4 Cleaning of existing storm drainage lines outside of the project is not included in the GMP.

5 G.M.P. does not include any cost for disposal/treatment of contaminated ground water if dewatering operations is an option. It is assumed that clean groundwater generated by dewatering operations will be discharged into the existing storm drainage system.

6 G.M.P. cost estimate does not include demo/removal of abandoned 6" watermain and 1" asphalt patch, type S-III, rock base primed for removal of abandoned 6" watermain. The cost of this work is approximately $51,000.00.

FRANCHISE UTILITIES / ELECTRICAL

1 G.M.P. cost estimate does not include any design, engineering or installation fees which may be charged to the Owner by franchise utility companies. (electric, telephone, cable tv, gas)

2 The Construction Manager at Risk shall not assume liability or warranty any work performed by FPL, COMCAST, ATT, TECO and/or their subcontractors.

3 The schedule represents the work controlled by the Construction Manager at Risk. Should the project exceed the scheduled 11 month duration due to the involvement of entities beyond our control (including but not limited to FPL, ATT and Comcast), a "No Fee" time extension for that work shall be issued. "No Fee" specifically refers to the construction phase fee and profit. Should a "Fee" be requested and deemed appropriate, if and only if it is mutually agreed upon by the City of Pompano Beach and Burkhardt Construction prior to the granted time extension.

4 G.M.P. cost estimate does not include any traffic signal removal or replacement.

5 G.M.P. does not include FPL's binding cost estimate, Comcast or ATT. These invoices shall be paid directly by the owner. FPL's binding cost estimate must be fully executed prior to release of FPL materials. Release of FPL materials must be received prior to Notice to Proceed being issued.

LANDSCAPE / IRRIGATION

1 G.M.P. cost estimate does not include an annual landscape maintenance agreement. If The City decided to select BCI to maintain the landscape after the substantial completion date, the cost will be $30,000.00 a year and shall be paid from contingency.

City of Pompano Beach
Briny Avenue Streetscape
Plan Log

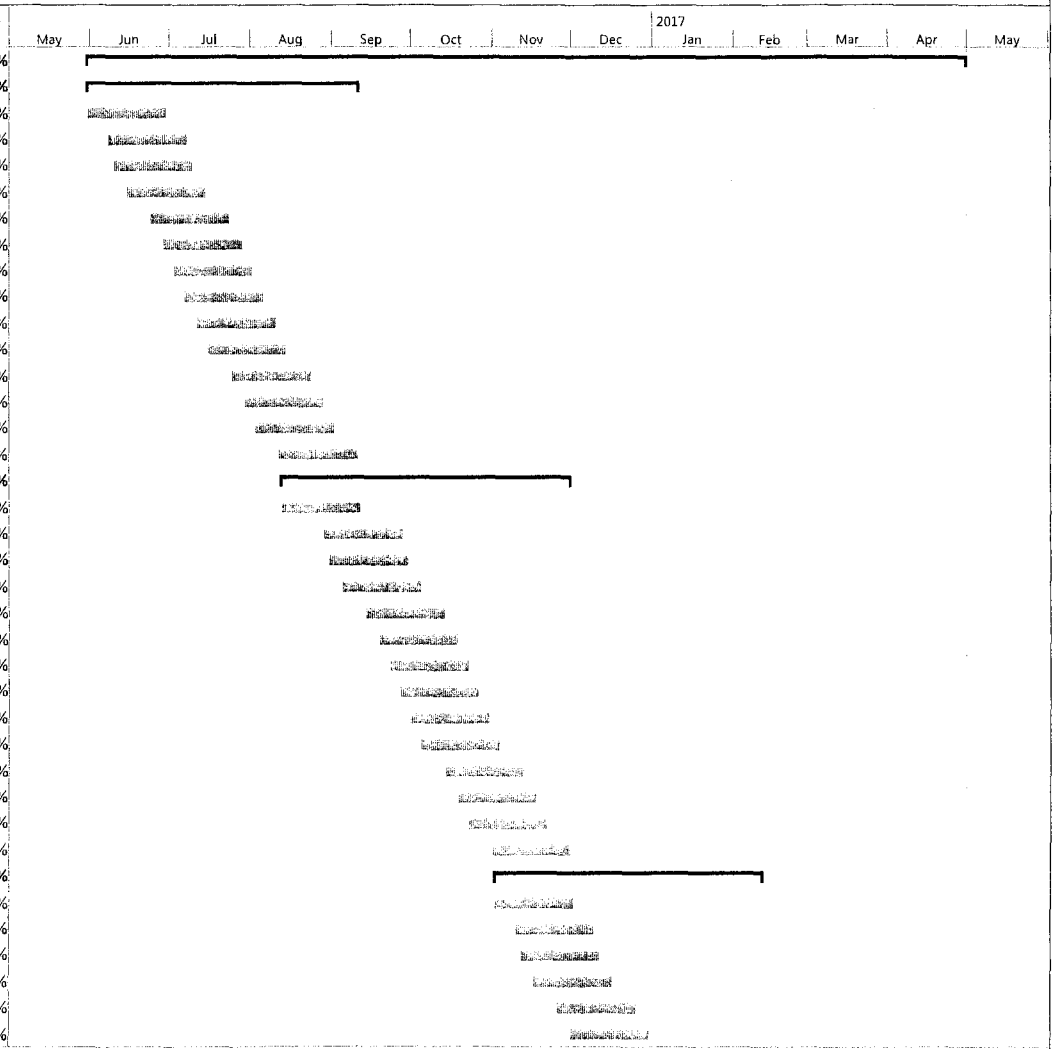
	TITLE	DESCRIPTION	DWG DATE	REVISION DATE	RCV'D DATE	REMARKS
1		COVER SHEET	7/29/14		02/19/15	
2	C-1.0	GENERAL NOTES	7/29/14		02/19/15	
3	C-2.0	PAVING, GRADING & DRAINAGE PLAN	7/29/14		02/19/15	
4	C-2.1	PAVING, GRADING & DRAINAGE PLAN	7/29/14		02/19/15	
5	C-2.2	PAVING, GRADING & DRAINAGE PLAN	7/29/14		02/19/15	
6	C-2.3	PAVING, GRADING & DRAINAGE PLAN	7/29/14		02/19/15	
7	C-2.4	PAVING, GRADING & DRAINAGE PLAN	7/29/14		02/19/15	
8	C-2.5	PAVING, GRADING & DRAINAGE PLAN	7/29/14		02/19/15	
9	C-2.6	PAVING, GRADING & DRAINAGE PLAN	7/29/14		02/19/15	
10	C-3.0	UTILITIES PLAN	7/29/14		02/19/15	
11	C-3.1	UTILITIES PLAN	7/29/14		02/19/15	
12	C-3.2	UTILITIES PLAN	7/29/14		02/19/15	
13	C-3.3	UTILITIES PLAN	7/29/14		02/19/15	
14	C-3.4	UTILITIES DETAILS	7/29/14		02/19/15	
15	DM-1.0	DEMOLITION PLAN	7/29/14		02/19/15	
16	DM-1.1	DEMOLITION PLAN	7/29/14		02/19/15	
17	DM-1.2	DEMOLITION PLAN	7/29/14		02/19/15	
18	DM-1.3	DEMOLITION PLAN	7/29/14		02/19/15	
19	PM-1.0	PAVEMENT MARKINGS & SIGNAGE PLAN	7/29/14		02/19/15	
20	PM-1.1	PAVEMENT MARKINGS & SIGNAGE PLAN	7/29/14		02/19/15	
21	PM-1.2	PAVEMENT MARKINGS & SIGNAGE PLAN	7/29/14		02/19/15	
22	PM-1.3	PAVEMENT MARKINGS & SIGNAGE PLAN	7/29/14		02/19/15	
23	PM-2.0	PAVEMENT MARKINGS & SIGNAGE DETAILS	7/29/14		02/19/15	
24	SPP-1.0	STORM WATER POLLUTION PREVENTION PLAN	7/29/14		02/19/15	
25	SPP-1.1	STORM WATER POLLUTION PREVENTION PLAN	7/29/14		02/19/15	
26	SPP-1.2	STORM WATER POLLUTION PREVENTION PLAN	7/29/14		02/19/15	
27	SPP-1.3	STORM WATER POLLUTION PREVENTION PLAN	7/29/14		02/19/15	
28	SPP-2.0	STORM WATER POLLUTION PREVENTION DETAILS	7/29/14		02/19/15	
29	H-1.0	HARDSCAPE PLAN	7/29/14		02/19/15	
30	H-1.1	HARDSCAPE PLAN	7/29/14		02/19/15	
31	H-1.2	HARDSCAPE PLAN	7/29/14		02/19/15	
32	H-1.3	HARDSCAPE PLAN	7/29/14		02/19/15	
33	H-2.0	HARDSCAPE DETAILS	7/29/14		02/19/15	
34	H-2.1	HARDSCAPE DETAILS	7/29/14		02/19/15	
35	L-1.0	LANDSCAPE PLAN	7/29/14		02/19/15	
36	L-1.1	LANDSCAPE PLAN	7/29/14		02/19/15	
37	L-1.2	LANDSCAPE PLAN	7/29/14		02/19/15	
38	L-1.3	LANDSCAPE PLAN	7/29/14		02/19/15	
39	L-2.0	LANDSCAPE DETAILS	7/29/14		02/19/15	
40	IR-1.0	IRRIGATION PLAN	7/29/14		02/19/15	
41	IR-1.1	IRRIGATION PLAN	7/29/14		02/19/15	
42	IR-1.2	IRRIGATION PLAN	7/29/14		02/19/15	
43	IR-1.3	IRRIGATION PLAN	7/29/14		02/19/15	
44	IR-2.0	IRRIGATION DETAILS	7/29/14		02/19/15	
45	IR-2.1	IRRIGATION DETAILS	7/29/14		02/19/15	
46	E-1	STREET LIGHTING PLAN	12/17/14		02/19/15	
47	E-2	STREET LIGHTING PLAN	12/17/14		02/19/15	
48	E-3	STREET LIGHTING PLAN	12/17/14		02/19/15	
49	E-4	ELECTRICAL RISER DIAGRAM	12/17/14		02/19/15	
50	E-5	ELECTRICAL DETAILS	12/17/14		02/19/15	
51	E-6	ELECTRICAL DETAILS	12/17/14		02/19/15	
53	1	FPL PLAN	8/19/13		02/19/15	
54	2	FPL PLAN	8/19/13		02/19/15	
55	3	FPL PLAN	8/19/13		02/19/15	
56	CP1	OVERHEAD TO UNDERGROUND CONDUIT PLAN	1/9/15		02/19/15	
57	CP2	OVERHEAD TO UNDERGROUND CONDUIT PLAN	1/9/15		02/19/15	
58	CP3	OVERHEAD TO UNDERGROUND CONDUIT PLAN	1/9/15		02/19/15	
59	ED1	EASEMENT DETAILS	1/9/15		02/19/15	
60	TP1	OVERHEAD TO UNDERGROUND TITLE PAGE	1/9/15		02/19/15	

BURKHARDT
CONSTRUCTION, INC.

EXHIBIT C

BRINY AVE. ANTICIPATED SCHEDULE

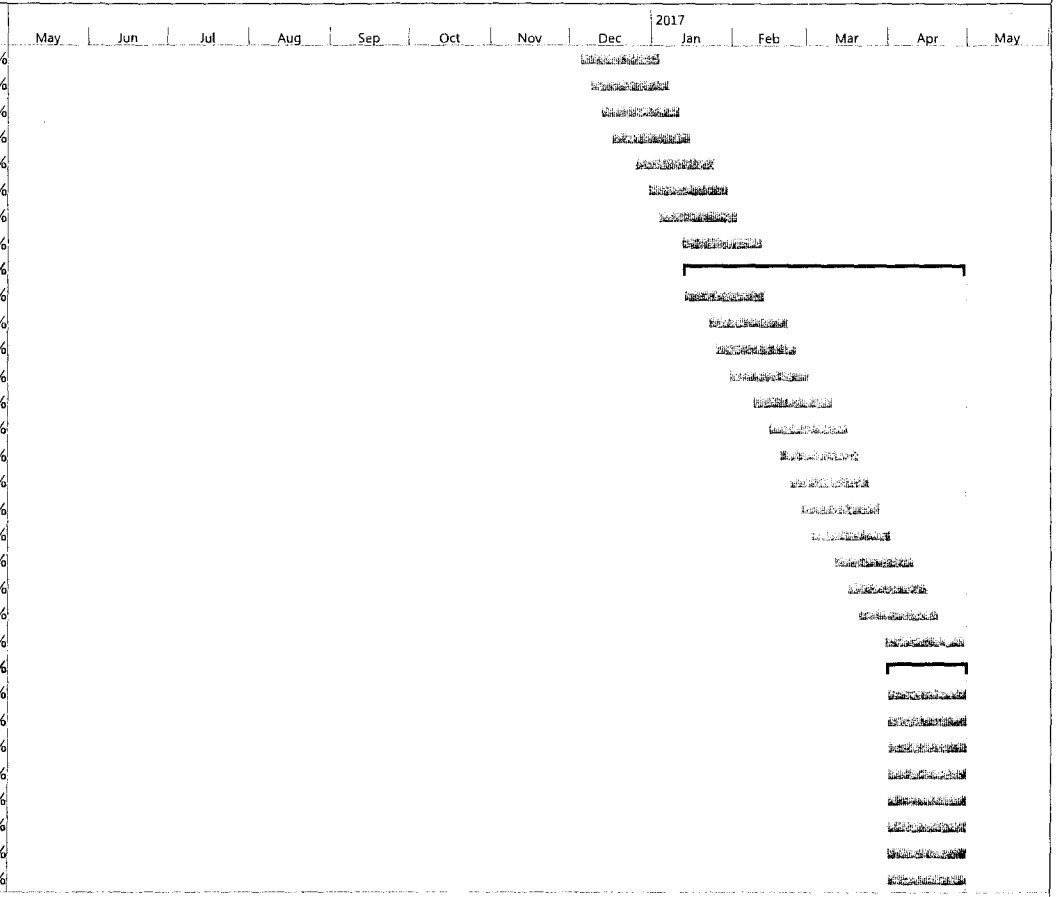
ID	Task Mode	Task Name	Start	Finish	% Comp.
1		**BRINY AVE. STREETSCAPE CONSTRUCTION SCHEDULE**	**Tue 5/31/16**	**Sun 4/30/17**	**0%**
2		**BRINY AVE/ATLANTIC BLVD TO 2ND ST.**	**Tue 5/31/16**	**Sat 9/10/16**	**0%**
3		MOT/DEMO/STRIP ROCK	Tue 5/31/16	Wed 6/29/16	0%
4		DRAINAGE	Wed 6/8/16	Thu 7/7/16	0%
5		CURB PAD SUBGRADE/ROCK	Fri 6/10/16	Sat 7/9/16	0%
6		ROADWAY SUBGRADE/ROCK	Wed 6/15/16	Thu 7/14/16	0%
7		POUR CURB	Fri 6/24/16	Sat 7/23/16	0%
8		ELECTRICAL ROUGH-IN	Wed 6/29/16	Thu 7/28/16	0%
9		FRANCHISE UTILITIES ROUGH-IN	Sun 7/3/16	Mon 8/1/16	0%
10		LIGHT POLES & BASES	Thu 7/7/16	Fri 8/5/16	0%
11		IRRIGATION ROUGH-IN	Tue 7/12/16	Wed 8/10/16	0%
12		GRADE/FORM/POUR SIDEWALKS	Sat 7/16/16	Sun 8/14/16	0%
13		LANDSCAPE [TREES]	Mon 7/25/16	Tue 8/23/16	0%
14		ASPHALT PAVING	Sat 7/30/16	Sun 8/28/16	0%
15		PAVER BRICKS	Wed 8/3/16	Thu 9/1/16	0%
16		TEMP. STRIPING/SIGNAGE	Fri 8/12/16	Sat 9/10/16	0%
17		**BRINY AVE/2ND ST TO 4TH ST**	**Sat 8/13/16**	**Wed 11/30/16**	**0%**
18		MOT/DEMO/STRIP ROCK	Sat 8/13/16	Sun 9/11/16	0%
19		DRAINAGE	Mon 8/29/16	Tue 9/27/16	0%
20		CURB PAD SUBGRADE/ROCK	Wed 8/31/16	Thu 9/29/16	0%
21		ROADWAY SUBGRADE/ROCK	Mon 9/5/16	Tue 10/4/16	0%
22		POUR CURB	Wed 9/14/16	Thu 10/13/16	0%
23		ELECTRICAL ROUGH-IN	Mon 9/19/16	Tue 10/18/16	0%
24		FRANCHISE UTILITIES ROUGH-IN	Fri 9/23/16	Sat 10/22/16	0%
25		LIGHT POLES & BASES	Tue 9/27/16	Wed 10/26/16	0%
26		IRRIGATION ROUGH-IN	Sat 10/1/16	Sun 10/30/16	0%
27		GRADE/FORM/POUR SIDEWALKS	Wed 10/5/16	Thu 11/3/16	0%
28		LANDSCAPE [TREES]	Fri 10/14/16	Sat 11/12/16	0%
29		ASPHALT PAVING	Wed 10/19/16	Thu 11/17/16	0%
30		PAVER BRICKS	Sun 10/23/16	Mon 11/21/16	0%
31		TEMP.STRIPING/SIGNAGE	Tue 11/1/16	Wed 11/30/16	0%
32		**BRINY AVE/4TH ST TO 6TH ST**	**Wed 11/2/16**	**Sat 2/11/17**	**0%**
33		MOT/DEMO/STRIP ROCK	Wed 11/2/16	Thu 12/1/16	0%
34		DRAINAGE	Thu 11/10/16	Fri 12/9/16	0%
35		CURB PAD SUBGRADE/ROCK	Sat 11/12/16	Sun 12/11/16	0%
36		ROADWAY SUBGRADE/ROCK	Thu 11/17/16	Fri 12/16/16	0%
37		POUR CURB	Sat 11/26/16	Sun 12/25/16	0%
38		ELECTRICAL ROUGH-IN	Thu 12/1/16	Fri 12/30/16	0%



BURKHARDT CONSTRUCTION, INC.

BRINY AVE. ANTICIPATED SCHEDULE

ID	Task Mode	Task Name	Start	Finish	% Comp.
39		FRANCHISE UTILITIES ROUGH-IN	Mon 12/5/16	Tue 1/3/17	0%
40		LIGHT POLES & BASES	Fri 12/9/16	Sat 1/7/17	0%
41		IRRIGATION ROUGH-IN	Tue 12/13/16	Wed 1/11/17	0%
42		GRADE/FORM/POUR SIDEWALKS	Sat 12/17/16	Sun 1/15/17	0%
43		LANDSCAPE [TREES]	Mon 12/26/16	Tue 1/24/17	0%
44		ASPHALT PAVING	Sat 12/31/16	Sun 1/29/17	0%
45		PAVER BRICKS	Wed 1/4/17	Thu 2/2/17	0%
46		TEMP. STRIPING/SIGNAGE	Fri 1/13/17	Sat 2/11/17	0%
47		**BRINY AVE/6TH ST TO 8TH ST**	**Sat 1/14/17**	**Sat 4/29/17**	**0%**
48		MOT/DEMO/STRIP ROCK	Sat 1/14/17	Sun 2/12/17	0%
49		DRAINAGE	Mon 1/23/17	Tue 2/21/17	0%
50		CURB PAD SUBGRADE/ROCK	Thu 1/26/17	Fri 2/24/17	0%
51		ROADWAY SUBGRADE/ROCK	Tue 1/31/17	Wed 3/1/17	0%
52		POUR CURB	Thu 2/9/17	Fri 3/10/17	0%
53		ELECTRICAL ROUGH-IN	Wed 2/15/17	Thu 3/16/17	0%
54		FRANCHISE UTILITIES ROUGH-INS	Sun 2/19/17	Mon 3/20/17	0%
55		LIGHT POLES & BASES	Thu 2/23/17	Fri 3/24/17	0%
56		IRRIGATION ROUGH-IN	Mon 2/27/17	Tue 3/28/17	0%
57		GRADE/FORM/POUR SIDEWALKS	Fri 3/3/17	Sat 4/1/17	0%
58		LANDSCAPE [TREES]	Sun 3/12/17	Mon 4/10/17	0%
59		ASPHALT PAVING	Fri 3/17/17	Sat 4/15/17	0%
60		PAVER BRICKS	Tue 3/21/17	Wed 4/19/17	0%
61		TEMP. STRIPING/ SIGNAGE	Fri 3/31/17	Sat 4/29/17	0%
62		**CLOSEOUT PROJECT**	**Sat 4/1/17**	**Sun 4/30/17**	**0%**
63		FINAL LANDSCAPE [UNDERSTORY PLANTINGS]	Sat 4/1/17	Sun 4/30/17	0%
64		PRIVATE PROPERTY RESTORATION	Sat 4/1/17	Sun 4/30/17	0%
65		FRANCHISE UTILITY TIE-INS	Sat 4/1/17	Sun 4/30/17	0%
66		FINAL ASPHALT [FINAL LIFT]	Sat 4/1/17	Sun 4/30/17	0%
67		FINAL STRIPING	Sat 4/1/17	Sun 4/30/17	0%
68		PUNCH LIST	Sat 4/1/17	Sun 4/30/17	0%
69		FINAL INSPECTIONS	Sat 4/1/17	Sun 4/30/17	0%
70		DEMOBILIZATION	Sat 4/1/17	Sun 4/30/17	0%



BURKHARDT CONSTRUCTION, INC.

PROJECT
BRINY AVE.
SR A1A/S. OCEAN BLVD.
E. ATLANTIC BLVD

EXHIBIT D

BURKH-3 OP ID: RAL

ACORD

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 10/02/2015

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 EPRESENTATIVE 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
Brown & Brown of Florida, Inc.
1201 W Cypress Creek Rd # 130
P.O. Box 5727
Ft. Lauderdale, FL 33310-5727
Ken E Willits, CPCU, CFP, CRIS

CONTACT NAME:
PHONE (A/C, No, Ext): 954-776-2222 FAX (A/C, No): 954-776-4446
E-MAIL ADDRESS:

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : Amerisure Insurance Company	19488
INSURER B : Amerisure Mutual Ins. Company	23396
INSURER C : North River Insurance Company	21105
INSURER D : Lloyd's of London	15792
INSURER E :	
INSURER F :	

INSURED
Burkhardt Construction, Inc.
1400 Alabama Avenue, Suite 20
West Palm Beach, FL 33401-7048

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 INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
B	X COMMERCIAL GENERAL LIABILITY						EACH OCCURRENCE	$ 1,000,000
	CLAIMS-MADE X OCCUR			GL2089541	10/01/2015	10/01/2016	DAMAGE TO RENTED PREMISES (Ea occurrence)	$ 100,000
							MED EXP (Any one person)	$ 5,000
							PERSONAL & ADV INJURY	$ 1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:			3/2/16			GENERAL AGGREGATE	$ 2,000,000
	POLICY X PRO-JECT LOC						PRODUCTS - COMP/OP AGG	$ 2,000,000
	OTHER:			Risk Mgr				$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	$ 1,000,000
A	X ANY AUTO			CA2089542	10/01/2015	10/01/2016	BODILY INJURY (Per person)	$
	ALL OWNED AUTOS / SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	HIRED AUTOS / NON-OWNED AUTOS						PROPERTY DAMAGE (Per accident)	$
								$
	UMBRELLA LIAB X OCCUR						EACH OCCURRENCE	$ 4,000,000
C	EXCESS LIAB CLAIMS-MADE			5811059709	10/01/2015	10/01/2016	AGGREGATE	$ 8,000,000
	DED X RETENTION $ 0							$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y/N						PER STATUTE / OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	N/A					E.L. EACH ACCIDENT	$
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	$
							E.L. DISEASE - POLICY LIMIT	$
D	Professional Liab			B0621P0028087001	07/22/2015	07/22/2016	Per Claim	1,000,000
	Claims-Made			RETENTION:$15,000			Aggregate	1,000,000

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

Certificate holder and Pompano Beach CRA listed as additional insured as respects General Liability if required by written contract.

CERTIFICATE HOLDER

POMPABC

City of Pompano Beach
100 W. Atlantic Blvd. Rm276
Pompano Beach, FL 33060

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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The ACORD name and logo are registered marks of ACORD

BURKCON-01 FRENCHM

ACORD

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 12/29/2015

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	CONTACT NAME:	
Insurance Office of America, Inc. Abacoa Town Center 1200 University Blvd, Suite 200 Jupiter, FL 33458	PHONE (A/C, No, Ext): (561) 776-0660	FAX (A/C, No): (561) 776-0670
	E-MAIL ADDRESS:	
	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A : Builders Mutual Insurance Company	10844
INSURED	INSURER B :	
Burkhardt Construction Inc 1400 Alabama Ave West Palm Beach, FL 33401	INSURER C :	
	INSURER D :	
	INSURER E :	
	INSURER F :	

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 INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
	COMMERCIAL GENERAL LIABILITY						EACH OCCURRENCE	$
	CLAIMS-MADE OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	$
							MED EXP (Any one person)	$
							PERSONAL & ADV INJURY	$
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	$
	POLICY PRO-JECT LOC						PRODUCTS - COMP/OP AGG	$
	OTHER:							$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	$
	ANY AUTO						BODILY INJURY (Per person)	$
	ALL OWNED AUTOS / SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	HIRED AUTOS / NON-OWNED AUTOS						PROPERTY DAMAGE (Per accident)	$
								$
	UMBRELLA LIAB / OCCUR						EACH OCCURRENCE	$
	EXCESS LIAB / CLAIMS-MADE						AGGREGATE	$
	DED / RETENTION $							$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y/N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	N/A		WCP1036664	01/01/2016	01/01/2017	X PER STATUTE / OTH-ER	
							E.L. EACH ACCIDENT	$ 1,000,000
							E.L. DISEASE - EA EMPLOYEE	$ 1,000,000
							E.L. DISEASE - POLICY LIMIT	$ 1,000,000

3/3/16 Basic Risk Mgr

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

CERTIFICATE HOLDER

City of Pompano Beach
100 W. Atlantic Blvd.
Rm. 276
Pompano Beach, FL 33060

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

C. Ray Dorsey III

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#25

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CITY OF POMPANO BEACH
BUDGET ADJUSTMENT

ORIGINATING DEPT.: Finance 1310

DATE: 3-1-16

ACCOUNT DESCRIPTION	FND	DP	DV	SUB	EL	OB	AVAILABLE FUNDS	CURRENT BUDGET	* INCREASE	* DECREASE	REVISED BUDGET
General Fund Balance	001	00	00	392	10	00			2,480,740		
Transfer to Capital Project Fund	001	99	10	599	91	05	75,476	1,425,476	2,480,740		3,906,216
Transfer From General Fund	302	00	00	381	10	01	75,476	1,425,476	2,480,740		3,906,216
Briny Avenue (CIP 12-208) Project Admin.	302	74	86	530	65	01	10,000	10,000		10,000	—
Briny Avenue Design (CIP 12-208)	302	74	86	530	65	03	1,028	13,904		1,028	12,876
Briny Ave. Survey Fees (CIP 12-208)	302	74	86	530	65	07	724	1,724		724	1,000
Briny Ave. Construction (CIP 12-208)	302	74	86	530	65	12	2,486,898	2,506,441	2,492,492		4,998,933
								TOTAL			

*** USE WHOLE DOLLARS ONLY**

REASON: To provide supplemental funding for Briny Avenue Project (CIP# 12-208) Current General Fund Available Undesignated Fund Balance is $11.6 million.

S. Libble 3/2/16
Department Head Date

Adjustment is within total budget of **department** - Yes____ No X
Adjustment requires only City Manager approval - Yes____ No X
Adjustment requires City Commission approval - Yes X No____

Adjustment approved at City Commission Meeting of _____

Finance Director / Date	Budget Office / Date	City Manager / Date	AUDITED BY / Date	INPUT BY	CONTROL NO.
S. Libble 3/2/16			3/2/16		

PB 1330 (Revised 5/05)

Distribution By Finance: White Copy - Finance Yellow Copy - Department Pink Copy - Budget

Meeting Date: 3/8/16 Agenda Item 25

REQUESTED COMMISSION ACTION:

____ Consent ____ Ordinance ____ Resolution X Consideration/Discussion ____ Presentation

SHORT TITLE Approval to award Bid L-14-16, School Crossing Guard Service, to the lowest responsive and responsible bidder, The Butler Group of South Florida LLC d/b/a Nextaff, for an annual contract, at an estimated cost of $571,725.00 per year.

Summary of Purpose and Why:

Bid L-14-16 was issued to establish an annual contract for the provision of school crossing guard services. The contractor will provide all necessary training, supervision, and personnel required to staff crossing locations throughout the City. Bid award is recommended to the lowest responsive and responsible bidder, The Butler Group of South Florida LLC d/b/a Nextaff. The contract period is one year, commencing August 18,2016, with contract renewal possible as stated in the bid specifications. Based on the estimated number of hours required per year, and the hourly rates, annual expenditures from this contract may total $571,725.00. This solicitation was assigned a voluntary 5% Local Business participation goal, and a 5% Small Business Enterprise participation goal; the recommended bidder is a certified SBE firm, and did not indicate Local Business participation; however, forty two (42) of the forty eight (48) (87%) employees assigned to the current Nextaff crossing guard service contract are Pompano Beach residents. City Commission approval of this contract award is requested.

(1) Origin of request for this action: staff
(2) Primary staff contact:: Mark Beaudreau, Recreation Programs Administrator 954 786-4191
(3) Expiration of contract, if applicable: n/a
(4) Fiscal impact and source of funding: Approximately $571,725 per year, from account 001-9910-599.31-60, General Fund / Non-Departmental / Other Professional Services.

DEPARTMENTAL COORDINATION	DATE	DEPARTMENTAL RECOMMENDATION	DEPARTMENTAL HEAD SIGNATURE
Parks & Recreation	2-24-16	Approve	[illegible]
General Services	2/22/16	Approve	[illegible]
Finance	2/25/16	Approve	[illegible]
Budget	2/26/16	Approve	[illegible]

X City Manager [illegible]

ACTION TAKEN BY COMMISSION:

Ordinance	Resolution	Consideration	Workshop
1st Reading	1st Reading	Results:	Results:
2nd Reading			

MEMORANDUM

Purchasing #16-050
February 22, 2016

To: Dennis W. Beach, City Manager

Through: Otis J. Thomas, General Services Director

From: Cassandra LeMasurier, Purchasing Supervisor

Subject: Award Bid L-14-16, School Crossing Guard Service

Contract Need/Background

Bid L-14-16 was issued to establish an annual contract for the provision of school crossing guard services. The awarded contractor will be responsible for providing fifty eight (58) crossing guards and three (3) field supervisors for school crossings each school day, and for providing all necessary equipment, training, and supervision. The Recreation Programs Director recommends the contract be awarded to The Butler Group of South Florida LLC d/b/a Nextaff, the lowest responsive and responsible bidder. The Butler Group of South Florida LLC d/b/a Nextaff is the current vendor for this contract. Forty two (42) of the forty eight (48) school crossing guards assigned to the City of Pompano Beach contract are Pompano Beach residents.

Attached you will find copies of the memorandum and bid award recommendation form submitted by the Parks & Recreation Department, copies of the bid tabulation, and bid solicitation document.

Bidders List

The Bidders List was created by using companies suggested by the requesting department, companies that have responded to prior bids, companies that have requested their names be placed on the Bid List, and companies from appropriate listings in other source books. The General Services Department conducted outreach to eight (8) Pompano Beach staffing companies to notify them of this bid opportunity.

Number of firms responding with complete bids.....6

Advertising

The Bid was advertised in the Sun Sentinel, and notices were sent to bid notice agencies throughout the nation. Bid notices are also posted on the City's web page and sent to all registered bidders by email.

Funding

The total annual value of this contract, based on the hourly rates bid, and the estimated hours per year required, is $571,725.00. Expenditures for crossing guard service will be charged to account 001-9910-599.31-60, General Fund / Non-departmental / Other Professional Services.

Award Recommendation

After reviewing the responses to this bid with the Parks & Recreation Department, it is recommended that a one-year contract award be made to the low responsive and responsible bidder, The Butler Group of South Florida LLC d/b/a Nextaff at the hourly rates bid. The contract period will be one (1) year, commencing August 18, 2016, with four (4) additional one-year (twelve month) automatic renewals subject to the terms and conditions contained in the bid specifications. This solicitation was assigned a voluntary 5% Local Business participation goal, and a 5% Small Business Enterprise participation goal; the recommended bidder is a certified SBE firm, and did not indicate Local Business participation, however 87% of the employees assigned to the current Nextaff crossing guard services contract are Pompano Beach residents.

enclosures

cc: file

pompano beach
Florida's Warmest Welcome

MEMORANDUM

Parks and Recreation

To: Otis Thomas, General Services Director

From: Missy Kitts, Recreation Manager MK

Thru: Mark Beaudreau, Recreation Programs Administrator MB

Date: February 11, 2016

RE: Award to Bid # L-14-16, School Crossing Guard Service

Bid #L-14-16 was issued to establish a contract for the provision of School Crossing Guard Services since the current agreement will expire on August 17, 2016. The Parks, Recreation and Cultural Arts Department recommends the lowest, responsive bidder for School Crossing Guard Services for an annual contract of $571,725.00 be awarded to The Butler Group of South Florida, LLC d/b/a Nextaff. The contract period is one year, commencing August 18, 2016, with an automatic renewal possible as stated in the bid specifications. The contractor will provide all necessary training, supervision, and personnel required to staff crossing locations throughout the City.

Please prepare an Agenda item to the City Commission for approval of the bidder at the next Commission meeting, the funding for these services will be available from Other Professional Services 001-9910-599-31-60.

Please contact me if there are any questions or concerns.

Thank you in advance.

BID AWARD RECOMMENDATION FORM

From: Purchasing Division Cassie LeMasurier Date February 3, 2016

To: Parks & Recreation Department Attn.: Missy Kitts

Subject: Bid No. L-14-16 Item/service: School Crossing Guard Service

Attached is the Bid Tabulation for subject item/service requisitioned by your department. Please complete this form in order that proper presentation and recommendations may be made to the City Commission for its approval, as appropriate. Your response should be typed. Please return this form to the Purchasing Division within three weeks of receipt.

This form must be accompanied by a memorandum explaining the item/service to be purchased, what it will be used for, stating that it is either a replacement or an additional item, and any other pertinent information which might be requested by the City Commission. This memo should also contain a detailed justification if you are rejecting a low bidder (see below).

1. SOURCE OF FUNDS:

Budgeted Code: 001-9910-599-3160

Title: Other Professional Services

2. RECOMMENDATION:

(a) Which bidder do you recommend?

The Butler Group of South Florida, LLC d/b/a Nextaff

(b) Is the recommended bid the lowest bid received?

Yes x No _____

Note: If you recommend award to other than the low bidder detailed justification must be furnished for rejection of all lower bids, in an accompanying memorandum.

(c) If references were required, were they checked?

Yes _____ No _____ Not applicable for this bid X

Signature: Mary A Beard Date: 2-12-16

Title: ~~Parks & Recreation Director~~ Recreation Programs Director
(Department Head)

CITY OF POMPANO BEACH -- BID TABULATION
Bid #: L-14-16 Title: School Crossing Guard Service
Date 2/3/2016

Bidder:	**Action Labor of Florida/Staffing Connection 6555 N. Powerline Road #306 Ft. Lauderdale, FL 33309**	**American Guard Services, Inc. 1299 E. Artesia Blvd. #200 Carson, CA 90746**	**Digos Enterprises LLC 2010 N.W. 1st Terrace Pompano Beach, Fl 33060**
Hourly rate for crossing guard:	$11.09	$12.24	$11.95
Hourly rate for field supervisor:	$11.09	$13.24	$11.95
Estimated annual cost to the City:	$582,225.00	$646,380.00	$627,375.00
SBE goal 5%, forms submitted:	No SBE participation	No SBE participation	Bidder is a certified SBE firm
Local Business goal 5%, forms submitted:	No Local participation	No Local participation	Bidder is a Local business
Notes:			Company has not provided School Crossing Guard Services in

CITY OF POMPANO BEACH -- BID TABULATION
Bid #: L-14-16 Title: School Crossing Guard Service
Date 2/3/2016

Bidder:	**Elite Tactical Security, Corp.** **8140 SW 24th Place** **Mirimar, FL 33025**	**Kemp Group International Corporation** **2111 S.W. 60th Way** **Miramar, FL 33023**	**The Butler Group of South Florida, LLC d/b/a Nextaff** **3810 Inverrary Blvd., Suite 205** **Lauderhill, Fl 33319**
Hourly rate for crossing guard:	$15.00	$15.50	$10.89
Hourly rate for field supervisor:	$16.00	$15.50	$10.89
Estimated annual cost to the City:	$791,280.00	$813,750.00	$571,725.00
SBE goal 5%, forms submitted:	Bidder will subcontract to SBE/MBE firm approximately 20%	Bidder is a certified SBE firm	Bidder is a certified SBE firm
Local Business goal 5%, forms submitted:	No Local participation	No Local participation	No Local participation
Notes:	Company has not provided School Crossing Guard Services in the		

City of Pompano Beach, Purchasing Division
1190 N.E. 3rd Avenue, Building C
Pompano Beach, Florida, 33060

BID L-14-16 - SCHOOL CROSSING GUARD SERVICE

January 4, 2016

The City of Pompano Beach is currently soliciting bids to establish a contract for the provision of School Crossing Guard Service. Bids will be received until **2:00 p.m. (local), February 3, 2016** in the Purchasing office at 1190 North East 3rd Avenue, Building C, Pompano Beach, Florida. These bids will then be publicly opened at the above time and date in the presence of City officials. Bid openings are open to the public. All bidders and/or their representatives are invited to be present.

Once opened, the bids will be tabulated, evaluated, and presented to the appropriate City officials for contract award.

There are three (3) sections in this bid: Specifications/Special Conditions, General Conditions, and Proposal. Please read all sections thoroughly. Complete the bid in accordance with the instructions and return all numbered pages, initialed at the bottom of each page, when you submit your bid package. Failure to do so may result in the rejection of your bid.

If you need any additional information regarding this bid, please contact Cassandra LeMasurier, Purchasing Supervisor, at (954) 786-4098.

SECTION I - SPECIFICATIONS/SPECIAL CONDITIONS

A. Intent

The intent of this bid is to establish an annual contract for the provision of School Crossing Guard Service as and when needed. The company awarded this contract will be responsible for providing crossing guards at locations specified by the City, shall be completely responsible for the supervision of such personnel in accordance with contract specifications, terms and conditions, and shall exercise exclusive control over persons employed to fulfill these contract requirements.

B. Addenda

The issuance of a written addendum is the only official method whereby interpretation, clarification or additional information can be given. If any addenda are issued to this Bid

solicitation the City will attempt to notify all known prospective Bidders, however, it shall be the responsibility of each Bidder, prior to submitting their bid, to contact the City Purchasing Office at (954) 786-4098 to determine if addenda were issued and to make such addenda a part of their Bid proposal.

C. Questions And Communication

All questions regarding the solicitation are to be submitted in writing to the Purchasing Office, 1190 N.E. 3rd Avenue, Building C (Front), Pompano Beach, Florida 33060, fax (954) 786-4168 or email purchasing@copbfl.com. All questions must include the inquiring firm's name, address, telephone number and solicitation name and number. Questions must be received at least seven (7) calendar days before the scheduled solicitation opening. Oral and other interpretations or clarifications will be without legal effect. Any addendum necessary to answer questions will be posted to the City's website, and it is the Proposer's responsibility to obtain all addenda before submitting a response to the solicitation.

D. Contract Period

The initial contract period shall commence August 17, 2016 and ending August 16, 2017. The contract shall be automatically renewed for four (4) additional one-year (twelve month) periods unless the General Services Director or the successful bidder receiving award shall give notice to the other party of intent not to renew for the additional period, which notice must be delivered by certified mail and must be received at least sixty (60) days prior to the end of the initial contract period. All terms and conditions shall remain firm for the initial period of the contract, and any renewal period.

In the event delivery/service is scheduled to end because of the expiration of this contract, the Contractor shall continue to deliver/service upon the request of the General Services Director. The extension period shall not extend for more than ninety (90) days beyond the expiration date of the existing contract. The Contractor shall be compensated for the product/service at the rate in effect when the City invokes this extension clause.

E. Basis of Award

Award will be made to the lowest responsive, responsible bidder. The per hour charges proposed will include all costs for labor, equipment, supervision, insurance, and any other costs incurred by the contractor in performing the work specified.

The City reserves the right to make the sole determination of bidder's responsiveness and responsibility. Investigation by the City to evaluate bids submitted may include an inspection of a bidder's facilities, evaluation of financial stability of bidder, and investigation of other factors relating to bidder's capacity to perform the contract. The City reserves the right to request to review a bidder's audited financial statement, bank references, and other business references. Bidders must demonstrate that they have

sufficient capacity to fulfill the contract requirements of providing school crossing guard services in the City of Pompano Beach, Broward County, Florida, as specified herein.

F. Cost Adjustment

The hourly charge offered and accepted must remain firm for the initial one (1) year contract period, and shall remain consistent throughout the actual school year, except for any changes in the State of Florida or Federal Minimum Wage Rates. State of Florida or Federal Minimum Wage Rate changes shall be limited in adjustment only to the direct cost of the increase and must be passed-thru directly to the Contractor's employees; no administrative or overhead costs of any kind may be added to such increase. Please consider this when providing your pricing for this bid.

Thereafter, any extensions which may be approved by the City shall be subject to the following: Costs for any extension terms shall be subject to an adjustment only if increases or decreases occurs throughout the local industry. The City will use changes in the State of Florida and Federal Minimum Wage Rates and the latest yearly percentage increase in the All Urban Consumers Price Index (CPI-U) as published by the Bureau of Labor Statistics, U.S. Department of Labor, and shall not exceed five percent (5%) or the CPI, whichever is lower.

Any requested adjustment shall be fully documented and submitted to the City at least one hundred and twenty (120) days prior to the contract anniversary date. Any approved cost adjustments shall become effective on the beginning date of the approved contract extension.

The City may, after examination, refuse to accept the adjusted costs if they are not properly documented, or considered to be excessive, or if decreases are considered to be insufficient. In the event the City does not wish to accept the adjusted costs and the matter cannot be resolved to the satisfaction of the City, the Contract may be cancelled with ninety (90) days written notice or it may not be renewed for the additional optional renewal period(s).

G. Insurance

CONTRACTOR shall not commence services under the terms of this Agreement until certification or proof of insurance detailing terms and provisions has been received and approved in writing by the CITY's Risk Manager. Proof of the insurance coverage required hereunder shall be provided as part of this bid. The insurance described herein reflects the insurance requirements deemed necessary for this contract by the City. No contractor or sub-contractor shall commence work under this agreement without the minimal insurance set forth herein, nor without the approval by the City of Pompano Beach Risk Manager. It is not necessary to have this level of insurance in effect at the time of submittal, but certificates indicating that the insurance is currently carried or a

letter from the Carrier indicating upgrade ability will speed the review process to determine the most qualified Proposer.

CONTRACTOR is responsible to deliver to the CITY's Risk Manager for his timely review and written approval/disapproval Certificates of Insurance which evidence that all insurance required hereunder is in full force and effect and which name on a primary basis, the CITY as an additional insured on all such coverage.

Throughout the term of this Agreement, CITY, by and through its Risk Manager, reserve the right to review, modify, reject or accept any insurance policies required by this Agreement, including limits, coverages or endorsements. CITY reserves the right, but not the obligation, to review and reject any insurer providing coverage because of poor financial condition or failure to operate legally. Policies shall be issued by companies authorized to conduct business in Florida who have adequate Policyholders and Financial ratings in the latest ratings of A.M. Best.

Failure to maintain the required insurance shall be considered an event of default. The requirements herein, as well as CITY's review or acceptance of insurance maintained by CONTRACTOR, are not intended to and shall not in any way limit or qualify the liabilities and obligations assumed by CONTRACTOR under this Agreement. CONTRACTOR shall not continue Work pursuant to this Contract unless all required insurance remains in full force and effect.

Throughout the term of this Agreement, CONTRACTOR and all subcontractors or other agents hereunder, shall, at their sole expense, maintain in full force and effect, the following insurance coverages and limits described herein, including endorsements.

A. Worker's Compensation Insurance covering all employees and providing benefits as required by Florida Statute, Chapter 440, regardless of the size of the company (number of employees) or the state in which the work is to be performed or of the state in which Contractor is obligated to pay compensation to employees engaged in the performance of the work. Contractor further agrees to be responsible for employment, control and conduct of its employees and for any injury sustained by such employees in the course of their employment.

B. Liability Insurance.

(1) Naming the City of Pompano Beach as an additional insured as City's interests may appear, on General Liability Insurance only, relative to claims which arise from Contractor's negligent acts or omissions in connection with Contractor's performance under this Agreement.

(2) Such Liability insurance shall include the following <u>checked types of insurance</u> and indicated minimum policy limits.

Bidder Name _____

Type of Insurance		Limits of Liability

GENERAL LIABILITY: Minimum $1,000,000 Per Occurrence and $2,000,000 Per Aggregate
* Policy to be written on a claims incurred basis

XX	comprehensive form	bodily injury and property damage
XX	premises - operations	bodily injury and property damage
__	explosion & collapse hazard	
__	underground hazard	
XX	products/completed operations hazard	bodily injury and property damage combined
XX	contractual insurance	bodily injury and property damage combined
XX	broad form property damage	bodily injury and property damage combined
XX	independent contractors	personal injury
XX	personal injury	

AUTOMOBILE LIABILITY: Minimum $1,000,000 Per Occurrence and Aggregate. Bodily injury (each person) bodily injury (each accident), property damage, bodily injury and property damage combined.

XX comprehensive form
XX owned
XX hired
XX non-owned

REAL & PERSONAL PROPERTY

__ comprehensive form — Agent must show proof they have this coverage.

EXCESS LIABILITY		Per Occurrence	Aggregate
__ other than umbrella	bodily injury and property damage combined	$1,000,000	$1,000,000

PROFESSIONAL LIABILITY		Per Occurrence	Aggregate
XX	* Policy to be written on a claims made basis	$1,000,000	$1,000,000

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(3) If Professional Liability insurance is required, Contractor agrees the indemnification and hold harmless provisions of the Agreement shall survive the termination or expiration of the Agreement for a period of three (3) years unless terminated sooner by the applicable statute of limitations.

C. Employer's Liability. CONTRACTOR and all subcontractors shall, for the benefit of their employees, provide, carry, maintain and pay for Employer's Liability Insurance in the minimum amount of One Hundred Thousand Dollars ($100,000.00) per employee, Five Hundred Thousand Dollars ($500,000) per aggregate.

D. Policies: Whenever, under the provisions of this Agreement, insurance is required of the CONTRACTOR, the CONTRACTOR shall promptly provide the following:

(1) Certificates of Insurance evidencing the required coverage;

(2) Names and addresses of companies providing coverage;

(3) Effective and expiration dates of policies; and

(4) A provision in all policies affording CITY thirty (30) days written notice by a carrier of any cancellation or material change in any policy.

E. Insurance Cancellation or Modification. Should any of the required insurance policies be canceled before the expiration date, or modified or substantially modified, the issuing company shall provide thirty (30) days written notice to the CITY.

F. Waiver of Subrogation. CONTRACTOR hereby waives any and all right of subrogation against the CITY, its officers, employees and agents for each required policy. When required by the insurer, or should a policy condition not permit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement, then CONTRACTOR shall notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy which includes a condition to the policy not specifically prohibiting such an endorsement, or voids coverage should CONTRACTOR enter into such an agreement on a pre-loss basis.

G. Notice of Claims. CONTRACTOR and all subcontractors shall notify the City's Risk Manager in writing within thirty (30) days of any notice of a potential claim or the filing of a claim relating to the Work being performed for the City.

H. Termination for Cause

If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner its obligations under this agreement, or if the Contractor shall violate any of the provisions of this agreement, the City may, upon written notice to the Contractor, terminate the right of the Contractor to proceed under this agreement or with such part or parts of the agreement as to which there has been default, and may hold the Contractor liable for any damages caused to the City by reason of such default and termination. The City may withhold any payments due to the Contractor for the purpose of setoff until the amount of damages due the City from the Contractor is determined.

I. Qualifications

The Contractor, and any persons employed by the Contractor, shall never have been convicted of any offense involving moral turpitude.

For service provided under this contract, the Contractor shall employ persons who are neat, clean, well groomed, courteous and at least twenty one (21) years of age. The Contractor must obtain approval from the designated City representative for all persons to be employed as crossing guards before such persons commence work. If requested by the City, contractor agrees to remove any employee and substitute an acceptable person at that crossing post. Contractor is responsible for ensuring employees have completed all required training before being assigned to work as crossing guards.

Contractor must provide the City with a list of names, and telephone numbers, and training dates of all guards, back-up guards, and field supervisors. Changes to the list are to be provided to the City within (48) forty eight hours.

Criminal Background History Check: The Contractor, at no cost to the City, must conduct a State of Florida and national criminal background history check on all school crossing guards, back-up guards, supervisors and trainers assigned to this contract including sexual predator and sexual offender checks. The Contractor must provide the Contract Administrator with proof that the check has been performed prior to employing a crossing guard, back-up guard, supervisor or trainer to be assigned to the contract. Guards, back-up guards, supervisors, and trainers with felony arrest history, misdemeanor arrest history involving moral turpitude, or being listed as a sexual predator or offender, shall not work on this contract without the express written consent of the Contract Administrator. The Contractor must provide the Contract Administrator with the results of the criminal background history check prior to employment. Use of guards, back-up guards, supervisors or trainers who have not successfully passed the criminal background history check may result in rejection of invoices for service and may serve as grounds for termination of the Contract. Contractor must mandate that all employees assigned to this contract report any criminal charges brought against them immediately. Contractor, upon

receipt of such information, will immediately notify the Contract Administrator. Annual criminal background history re-checks as provided for in this paragraph, at no cost to the City, for all persons assigned to this Contract shall be required each summer prior to commencement of the new school year in August.

J. Daily Time Sheets

The Contractor must maintain a daily time sheet with the signature of the employee on each work shift and the location of their guard post. A copy of this log will be submitted daily to the City.

K. Invoices

The City will accept invoices no more frequently than once per month. Each invoice shall be accompanied by a time sheet detailing all employee time logged for the invoice period. The time sheet must list each guard by name, location, and daily hours worked. Invoices shall be paid completely by the City within twenty (20) days of receipt of the invoice, except for items questioned. The City shall notify the Contractor within fifteen (15) days of receipt of invoice of any items questioned. The Contractor shall prepare verification data for the amount claimed and provide complete cooperation during such investigation of any areas in the invoice subject to question.

L. Training

It shall be the responsibility of the Contractor to ensure that all persons employed as crossing guards receive proper training as required by law. The contractor may perform the training with its own staff if they are certified crossing guard trainers, or sub-contract for certified training to meet this requirement.

Formal training of all new or former crossing guards shall be conducted as per the standards established by the State of Florida Department of Transportation, in accordance with Section 316.75, Florida Statutes, known as the "Ramon Turnquest School Crossing Guard Act." Such training shall be conducted by certified school crossing guard trainers, as required by the Florida Department of Transportation, and consist of, at a minimum:

(1) Classroom Training
(2) Field Training

The Contractor will provide at least one (1) training/re-training session per year, which shall be attended by all of the Contractor's employees assigned to work on the City contract. Any additional training, such as training of new employees throughout the school year, will be the sole responsibility of the Contractor.

M. Schedule Of Service

It is anticipated that (58) fifty-eight school crossing guards will be required for each school day. However, this is an estimate and the designated City representative will keep the Contractor informed as to the exact number of school crossing guards that will be required at any one time.

The Contractor shall be required to provide coverage at the (48) forty-eight school crossings, located within the City limits. See Exhibit "A" for list of locations. The City reserves the right to increase or decrease the number of crossing locations to be staffed. The Contractor must be flexible and provide guards for the hours needed on the instructions of appropriate City personnel.

A minimum of four (4) hours (which will vary slightly with each school) coverage daily at each school will be scheduled as follows:

> Guards must be available to provide school crossing services one (1) hour before the start of the designated school, and one-half (½) hour after the close of the designated school.

It is estimated that school crossing guard services will be required for a total of approximately 210 days per year. The City will inform the contractor of the specific dates when service will be required when the school schedule is made available by the School Board of Broward County.

A maximum of four (4) hours per school day will be paid for each guard, and six (6) hours per school day for each supervisor. The City will not pay for training hours.

N. Daily Field Supervision

The Contractor shall provide three (3) experienced field supervisors overseeing the operations at all times the guards are on duty. All supervisory personnel shall be certified school crossing guards. It will be the responsibility of the field supervisor(s) to ensure that all crossings are properly staffed at all times such staffing is required by the City.

O. Guard Back Up

The Contractor must provide each working guard with the name and telephone number of a back up in case the working guard cannot be at his post. The Contractor must ensure that the back-up guard is fully trained and familiar with the specific crossing location.

P. Twenty-Four (24) Hour Answering Service

The Contractor must provide for his employees a 24-hour answering service. During non-working hours when the field supervisor is not on duty a working guard shall, in the event that he cannot be at his assigned post, first contact his back up and then contact the service. This service will then contact the Contractor who will in turn confirm that the back-up guard will be on duty at his assigned crossing.

Q. Equipment

The Contractor is responsible for supplying all equipment necessary for the school crossing guards to perform their duties, to include, but not be limited to, the following equipment for each guard: A hand-held stop sign (retroreflective), a fluorescent and retroreflective safety vest, fluorescent orange gloves, and a metal whistle with lanyard. Any required replacement of aged, lost or damaged equipment shall be the responsibility of the Contractor.

The Contractor shall provide all other equipment that may be required.

R. School Year Schedule

The school year begins in mid-August and will run until approximately the beginning of June, with appropriate holidays and teacher work days that do not require coverage. In addition to the regular school year, summer school at all schools usually begins around the middle of June and lasts for approximately six (6) weeks. The City will inform the Contractor of the specific dates when they are made available.

S. Personnel Removal/Reassignment/Substitution

The City acknowledges that all employees and contractors of the Contractor shall be considered to be, at all times, the sole employees or contractors of the Contractor under its sole discretion and not an employee, Contractor, or agent of the City. However, the City reserves the right to request the Contractor to remove any Contractor employee it deems careless, incompetent, insubordinate, or otherwise objectionable and whose continued performance of the services is not in the best interest of the City. Such Contractor employee will be replaced with an acceptable substitute employee. Such request, if made by the City, must be complied with immediately.

T. Transition from Existing Contract

It is the City's desire that the successful contractor coordinate with the current contractor to offer the persons currently employed as crossing guards first consideration for any available crossing guard work in accordance with the successful contractor's employment terms and conditions.

U. Small Business Enterprise Program

The Pompano Beach City Commission has established a voluntary Small Business Enterprise (SBE) Program to encourage and foster the participation of Small Business Enterprises in the central procurement activities of the City. The City of Pompano Beach is strongly committed to ensuring the participation of Small Business Enterprises (SBE's) as contractors and subcontractors for the procurement of goods and services. The

definition of a SBE, for the purpose of the City's voluntary program, is taken from the State of Florida Statute 288.703(1).

As of the date of publication of this solicitation, a small business means an independently owned and operated business concern that employs 200 or fewer permanent full-time employees and that, together with its affiliates, has a net worth of not more than $5 million or any firm based in Florida that has a Small Business Administration 8(a) certification. As applicable to sole proprietorships, the $5 million net worth requirement shall include both personal and business investments.

The City encourages all firms to undertake good faith efforts to identify appropriate Small Business Enterprise partners. Sources of information on certified Small Business Enterprises include the Broward County Small Business Development Division, the State of Florida Office of Supplier Diversity, South Florida Water Management District, and other agencies throughout the State. The City includes links to these organizations from the City's website www.pompanobeachfl.gov. Please indicate in your response if your firm is a certified Small Business Enterprise.

The City has set a 5% voluntary Small Business Enterprise Goal for this project. SBE Forms are located at the end of this bid solicitation, and all firms responding must return a response of participation or non-participation in order to be considered for bid evaluation purposes.

Please indicate in your response if your firm is a certified Small Business Enterprise, and include the completed "Good Faith Effort Report" form with your bid proposal. SBE forms are included at the end of this bid solicitation. Bidders should submit Exhibit A, detailing the list of SBE firms to be used on the proposed contract, and a completed Letter of Intent, Exhibit B, for all participating SBE firms. Submit Exhibit C listing SBE firms that were solicited but not selected. Submit Exhibit D explaining your firm's good faith efforts to include SBE firms on this contract.

V. Local Business Program

On March 23, 2010, the City Commission approved a Resolution establishing a Local Business Program, a policy to increase the participation of City of Pompano Beach businesses in the City's procurement process.

You can view the list of City businesses that have a current Business Tax Receipt on the City's website, and locate local firms that are available to perform the work required by the bid specifications. The business information, sorted by business use classification, is posted on the webpage for the Business Tax Receipt Division: www.pompanobeachfl.gov.

The City has set a 5% voluntary Local Business goal for this project. Local Business program forms are located at the end of this bid solicitation, and all firms

responding <u>must return</u> a response of participation or non-participation in order to be considered for bid evaluation purposes.

The City of Pompano Beach is strongly committed to insuring the participation of City of Pompano Beach Businesses as contractors and subcontractors for the procurement of goods and services. Bidders are encouraged to participate in the City of Pompano Beach's voluntary Local Business Program by including, as part of their bid package, the Local Business Participation Form, listing the local businesses that will be used on the contract, and the Letter of Intent Form from each local business that will participate in the contract. Bidders should utilize businesses that are physically located in the City of Pompano Beach with a current Business Tax Receipt. Bidders who are unable to meet the recommended voluntary goals should also provide the Local Business Unavailability Form, listing firms that were contacted but not available, and the Good Faith Effort Report describing the efforts made to include local business participation in the contract.

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SECTION II - GENERAL CONDITIONS

1. Submission and Receipt of Bids

1.1. Bidders must use the form furnished by the City.

1.2. Bids having any erasures or corrections must be initialed by the bidder in ink. Bid shall be typewritten or filled in with pen and ink. Manual signature must be in ink.

1.3. It will be the sole responsibility of the bidder to have their bid delivered to the Purchasing office before the closing hour and date shown for receipt of bids.

1.4. Bid envelopes are provided with the bid forms. Your bid should be returned in the envelope (with the correct postage affixed if the bid is mailed) and should show the following information:

1.4.1. Your return mailing address in the upper left-hand corner.

1.4.2. Bid Number - write or type the bid number that appears on the first page of the bid form on the line for it on the front of the envelope.

1.4.3. Bid Items - write or type the title of the bid on line "Sealed bid for: _____".

1.5. If not using the City-provided envelope to mail your bid, or if using a delivery service other than the U.S. Post Office, use the following address:

City of Pompano Beach
Purchasing Division
1190 N.E. 3rd Avenue, Building C
Pompano Beach, FL 33060

1.6. Late bids will not be considered and will be returned unopened.

1.7. Bids transmitted by facsimile will not be accepted.

2. Completion of Bid Forms

Bidder is to fill in all of the blank spaces on the bid forms and return all numbered pages. Bidder should initial each page at the bottom to indicate he has read and understands the provisions contained on that page.

3. Signature Required

All bids must show the company name and be signed by a company officer or employee who has the authority to bind the company or firm by their signature. UNSIGNED BIDS WILL BE REJECTED. All manual signatures must be original - no rubber stamp, photocopy, etc.

4. Prices to be Firm

Bidder certifies that prices, terms and conditions in the bid will be firm for acceptance for a period of ninety (90) days from the date of bid opening unless otherwise stated by the City. Bids may not be withdrawn before the expiration of ninety (90) days. Prices shall be firm, with no escalator clauses unless specified by the City. Bids may be withdrawn after ninety (90) days only upon written notification to the City.

5. Extensions

If there is an error in extensions (mathematical calculations), unit prices will prevail.

6. Delivery

6.1. All items are to be bid F.O.B. delivered with freight charges prepaid and included, to designated addresses as specified by the City on its purchase order(s) or in letter(s) of authorization.

6.2. Bidder must state specific number of calendar days required for delivery of each item bid in appropriate space on the bid pages for consideration of award of this bid.

6.3. Delivery time will be a factor for any orders placed as a result of this bid. The City reserves the right to cancel such order(s) or any part thereof, without obligation, if delivery is not made within the time(s) specified herein and hold the vendor in default. (See Section 10.)

7. Signed Bid Considered an Offer

This signed bid is considered an offer on the part of the bidder, which offer shall be considered accepted upon approval by the City Commission of the City of Pompano Beach (if required). The City of Pompano Beach will issue a purchase order or a letter of authorization to the successful bidder, as authorization for delivery of the items awarded subject to requirements of detailed specifications and those contained herein.

In the event of default on the part of the bidder after such acceptance, the City may take such action as it deems appropriate including legal action for damages or specific performance.

8. Quality

All materials used for the manufacture or construction of any supplies, materials or equipment covered by this bid shall be new. The items bid must be new, the latest model, of the best quality and highest grade workmanship unless otherwise specified in this bid by the City.

9. Brand Names

Whenever proprietary names are used, (whether or not followed by the words "or approved equal"), the item(s) will be subject to acceptance and/or approval by authorized City personnel, and said personnel will deem it their prerogative to select the item(s) which are lowest bid, item by item, meeting specifications from the information furnished by the bidder with the bid and/or sample inspection or testing of the item(s) called for herein.

10. Default Provisions

In the event of default by the bidder, the City reserves the right to procure the item(s) bid from other sources and will hold the bidder responsible for excess costs incurred as a result. A contractor who defaults on a City contract may be banned from doing business with the City for a period of 36 months from the date of default.

11. Samples

Samples, when requested, must be furnished at, or before, bid opening, (unless otherwise specified), and will be delivered at no charge to the City. If not used and/or destroyed in testing, said sample(s) will, at bidder's request, be returned within thirty (30) days of bid award at bidder's expense. If requested by the City, samples and/or inspection of like items are to be made available in the southeast Florida area.

12. Acceptance of Materials

The material delivered as a result of this bid shall remain the property of the seller until a physical inspection and actual usage of the item(s) is made and thereafter deemed acceptable to the satisfaction of the City, in compliance with the terms and specifications contained herein. In the event that the item(s) supplied to the City is/are found to be defective, or does/do not conform to specifications, the City reserves the right to cancel the order upon written notice to the seller and return the item(s) to the seller at the seller's expense.

13. Manufacturers' Certifications

The City reserves the right to obtain separate manufacturer certification of all statements made in the bid.

14. Copyrights and Patent Rights

Bidder warrants that there has been no violation of copyrights or patent rights in manufacturing, producing and/or selling the item(s) ordered or shipped as a result of this bid, and successful bidder agrees to hold the City harmless from any and all liability, loss or expense by any such violation.

15. Laws and Regulations

All applicable laws and regulations of the Federal government, the State of Florida, and ordinances of the City of Pompano Beach will apply to any resulting bid award.

16. Taxes

The City of Pompano Beach is exempt from any taxes imposed by the State and Federal government. Exemption certificates will be provided upon request. State sales tax exemption certificate #85-8012621672C-6 and Federal exemption tax #59-74-0083K apply and appear on each purchase order.

17. Conflict of Instructions

If a conflict exists between the General Conditions and instructions contained herein, and the Specific Conditions and instructions contained herein, the specifics shall govern.

18. Exceptions to Specifications

For purposes of evaluation, bidder must indicate any exception to the specifications, terms, and/or conditions, no matter how minor. This includes any agreement or contract forms supplied by the bidder that are required to be signed by the City. If exceptions are not stated by the bidder, in his bid, it will be understood that the item(s)/services fully comply with the specifications, terms and/or conditions stated by the City. Exceptions are to be listed by the bidder on an attachment included with his bid. The City will not determine exceptions based on a review of any attached sales or manufacturer's literature.

19. Warranties

The City of Pompano Beach will not accept any disclaimer of the warranties of merchantability and fitness for a particular purpose for the product(s) offered. Proposals will clearly state any additional warranties and guarantees against defective materials and workmanship. A copy of the complete manufacturer's warranty statement is to be submitted with the bid.

20. Retention of Records and Right to Access Clause

The successful bidder shall preserve and make available all financial records, supporting documents, statistical records, and any other documents pertinent to this contract for a period of five (5) years after termination of this contract; or if an audit has been initiated and audit findings have not been resolved at the end of these five (5) years, the records shall be retained until resolution of audit finding.

21. Facilities

The City reserves the right to inspect the bidder's facilities at any time, without prior notice.

22. Anti-collusion Statement

By submitting this bid, the bidder affirms that this bid is without previous understanding, agreement, or connection with any person, business, or corporation submitting a bid for the same materials, supplies, or equipment, and that this bid is in all respects fair, and without collusion or fraud.

Additionally, bidder agrees to abide by all conditions of this bid and certifies that they are authorized to sign this bid for the bidder. In submitting a bid to the City of Pompano Beach, the bidder offers and agrees that if the bid is accepted, the bidder will convey, sell, assign or transfer to the City of Pompano Beach all rights, title and interest in and to all causes of action it may now or hereafter acquire under the Anti-trust laws of the United States and the State of Florida for price fixing relating to the particular commodities or services purchased or acquired by the City of Pompano Beach. At the City's discretion, such assignment shall be made and become effective at the time the City tenders final payment to the bidder.

23. Indemnification

Contractor covenants and agrees that it will indemnify and hold harmless the City and all of the City's officers, agents, and employees from any claim, loss, damage, costs, charge or expense arising out of any act, action, neglect or omission by contractor during the performance of the contract, whether direct, or indirect, and whether to any person or property to which the City of said parties may be subject, except that neither the contractor nor any of its sub-contractors will be liable under this section for damages arising out of injury or damage to persons or property directly caused or resulting from the sole negligence of City or any of its officers, agents, or employees.

24. Reservation for Rejections and Award

The City reserves the right to accept or reject any or all bids or parts of bids, to waive irregularities and technicalities, and to request re-bids. The City also reserves the right to award the contract on such items the City deems will best serve the interests of the City. The City further reserves the right to award the contract on a "split order" basis, or such combination as shall best serve the interests of the City unless otherwise specified.

25. Interpretations

Any questions concerning the conditions and specifications contained in this bid should be submitted in writing and received by the Purchasing Division no later than five (5) working days prior to the bid opening. The City of Pompano Beach shall not be responsible for oral interpretations given by any City personnel or representative or others. The issuance of a written addendum is the only official method whereby interpretation, clarification or additional information can be given.

26. Failure to Respond

If you elect not to bid, please return enclosed "Statement of No Response" form by the bid due date, and state your reason(s) for not bidding. Failure to respond, either by submitting a bid, or by submitting a "Statement of No Response" form, may result in your name being removed from our mailing list.

27. Bid Tabulations

Bidders who wish to receive a copy of the bid tabulation should request it by enclosing a stamped, self-addressed envelope with their bid, or by requesting a tabulation be sent to their fax machine. Bid results will not be given out by telephone. The City does not notify unsuccessful bidders of contract awards.

28. Assignment

Successful bidder may not assign or transfer this contract, in whole or part, without prior written approval of the City of Pompano Beach.

29. Termination for Convenience of City

Upon seven (7) calendar days written notice delivered by certified mail, return receipt requested, to the successful bidder, the City may without cause and without prejudice to any other right or remedy, terminate the agreement for the City's convenience whenever the City determines that such termination is in the best interest of the City. Where the agreement is terminated for the convenience of the City the notice of termination to the successful bidder must state that the contract is being terminated for the convenience of the City under the termination clause and the extent of the termination. Upon receipt of such notice, the contractor shall promptly discontinue all work at the time and to the extent indicated on the notice of termination, terminate all outstanding sub-contractors and purchase orders to the extent that they relate to the terminated portion of the contract and refrain from placing further orders and subcontracts except as they may be necessary, and complete any continued portions of the work.

30. Public Entity Crimes

In accordance with Florida State Statute 287.133 (2)(a): 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 s. 287.017 for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

31. Governing Procedures

This bid is governed by the applicable sections of the City's General Services Procedures Manual. A copy of the manual is available for review at the City Purchasing office.

32. Identical Tie Bids

In accordance with Section 287.087, State of Florida Statutes, preference shall be given to businesses with Drug-free Workplace Programs. Whenever two or

more bids which are equal with respect to price, quality, and service are received for the procurement of commodities or contractual service, a bid received from a business that certifies that it has implemented a Drug-free Workplace Program shall be given preference in the award process.

Established procedures for processing tie bids will be followed if none of the tied vendors have a Drug-free Workplace Program. In order to have a Drug-free Workplace Program, a business shall:

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

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

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

4) In the statement specified in subsection (1), notify the employees that, as a condition of working on the commodities or contractual services that are under 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 of any State, for a violation occurring in the workplace no later than five (5) days after such conviction.

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

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

33. Invoicing/Payment

All invoices should be sent to City of Pompano Beach, Accounts Payable, P.O. Drawer 1300, Pompano Beach, Florida, 33061. In accordance with Florida Statutes, Chapter 218, payment will be made within 45 days after receipt of merchandise and a proper invoice. The City will attempt to pay within fewer days if bidder offers a payment discount. The City cannot make advance payments, make deposits in advance of receipt of goods, or pay C.O.D. Bidders should state any payment discount in space provided on Proposal form.

34. Optional Contract Usage

As provided in Section 287.042(17), Florida Statutes, State of Florida agencies may purchase from a contract resulting from this solicitation, provided the Department of Management Services, Division of Purchasing, has certified its use to be cost effective and in the best interest of the State. Contractor(s) may sell such commodities or services certified by the Division to State of Florida agencies at the contractor's option.

35. Non Discrimination

There shall be no discrimination as to race, color, religion, gender, national origin, ancestry, and physical or mental disability in the operations conducted under this contract. Included as applicable activities by the contractor under this section are the solicitation for, or purchase of, goods or services, or the subcontracting of work in performance of this contract.

36. Notice To Contractor

The employment of unauthorized aliens by any contractor is considered a violation of Section 274A(e) of the Immigration and Nationality Act. If the contractor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of the contract.

Bidder Name _____

SECTION III - PROPOSAL

IMPORTANT!!! -- BID MUST BE SIGNED TO BE CONSIDERED FOR AWARD PER GENERAL CONDITIONS SECTION 3

Undersigned Bidder proposes to provide School Crossing Guard Service for the City of Pompano Beach in accordance with the specifications contained herein, as follows:

Hourly rate for crossing guard: $_____

Hourly rate for field supervisor: $_____

Estimated annual cost to the City:

58 guards x $_____/hr. x 4 hrs./day x 210 school days/yr. = $ _____

3 field supervisors x $_____/hr. x 6 hrs./day x 210 school days/yr. = $ _____

GRAND TOTAL $ _____

Conflict of Interest: For purposes of determining any possible conflict of interest, all bidders must disclose if any City of Pompano Beach employee is also an owner, corporate officer, or employee of their business. Indicate either "Yes" (a City employee is also associated with your business), or "No". If yes, give person(s) name(s) and position(s) with your business. (Note: If answer is "Yes", you must file a statement with the Supervisor of Elections, pursuant to Florida Statutes 112.313.)

No ___ Yes ___ Name & position _____

Drug-Free Workplace: Whenever two or more bids which are equal with respect to price, quality, and service are received for the procurement of commodities or contractual service, a bid received from a business that certifies that it has implemented a Drug-free Workplace Program shall be given preference in the award process. If bidder's company has a Drug-free Workplace Program as outlined in General Conditions, section 32., so certify below:

Yes, bidder has a drug-free workplace program ___ No _____

Name & address of company submitting bid:

.....

.....

..... zip .....

Federal Employer Identification #: .....

Telephone number: .....

"Fax" number: .....

Email address: .....

Acknowledgment of the following Addenda is noted:

Addendum Number(s)_____ Date(s) Issued _____

Manual signature of company officer: .....

IMPORTANT!!! -- SIGN IN BOX ABOVE ↑ AND TYPE OR PRINT NAME BELOW ↓

Signer's name (typed or printed): .....

Title of signer: .....

Bidder Name _____

Bidders must answer the following questions (use attachments to your bid as necessary.)

1. Has your company provided School Crossing Guard contract services in the past?

   YES _____ NO _____

   If "yes", in an attachment, list current and prior crossing guard contract information including a description of the contract, duration of the contract, name of client, contact person, address, telephone number.

   If "no", in an attachment, explain fully why you consider your company qualified to perform this service for the City of Pompano Beach.

2. How many years has your organization been in business? _____

3. Have you ever failed to complete work awarded to you?

   YES _____ NO _____

   If Yes, in an attachment, provide details of any such incident.

4. Will you sub-contract any part of the work included in the scope of this bid?

   YES _____ NO _____

   If Yes, in an attachment, list all subcontractors you will use on this contract.

5. In an attachment, list at least three (3) client references (excluding the City of Pompano Beach); furnish company name, contact, telephone number, description of service provided and dates of service.

6. Who will provide crossing guard training?

   _____ your firm _____ a subcontractor

   Name(s) of trainers: _____

   With your bid, submit a copy of the certificate showing each proposed trainer has been certified by the State of Florida.

Bidder Name _____

EXHIBIT A

CROSSING LOCATIONS

Charles Drew Elementary

6:45 to 8:00	3:00 to 3:30
NW 9th Court/NW 27th Avenue	
NW 9th Street/NW 30th Avenue	

Cresthaven Elementary

6:35 to 7:50	1:50 to 2:20
NE 6th Avenue/NE 24th Street	
NE 6th Avenue/NE 25th Street	
NE 7th Terrace/NE 25th Street	
NE 8th Terrace/NE 25th Court	

Cypress Elementary

6:45 to 8:20	3:20 to 3:50
900 S Cypress Road	
SW 3rd Avenue(Midblock)/SW 8th Street	
SW 6th Street/S Dixie Highway	
SW 6th Street/S Dixie Highway	
Racetrack Road/S Dixie Highway	
Racetrack Road/S Dixie Highway	

Crystal Lake Middle

8:20 to 9:30	4:00 to 4:30
NE 3rd Avenue/NE 33rd Street(Ped Light)	
NE 3rd Avenue/NE 39th Street	
NE 3rd Avenue/Copans Road	
NE 3rd Avenue/Copans Road	
NE 3rd Avenue/Sample Road	
NE 3rd Avenue/Sample Road	
NE 33rd Street/N Dixie Highway	
NE 33rd Street/N Dixie Highway	
Sample Road/N Dixie Highway	
Sample Road/N Dixie Highway	

Markham Elementary

6:45 to 8:10	3:10 to 3:40
NW 15th Avenue/NW 15th Street	
NW 15th Street/NW 18th Drive	
Hammondville Road/NW 18th Avenue	
Hammondville Road/NW 18th Avenue	

McNab Elementary

7:00 to 8:00	2:00 to 2:30
1350 SE 9th Avenue	
Saint Coleman	
7:00 to 8:00	**2:00 to 3:15**
SE 9th Avenue/McNab Road	
S Federal Highway/McNab Road	
S Cypress Road/McNab Road	

Norcrest Elementary

7:00 to 8:00	2:00 to 2:30
NE 15th Avenue/NE 40th Street	
NE 15th Terrace/NE 40th Street	
NE 16th Terrace/NE 39th Street	
NE 17th Avenue/NE 42nd Court	
NE 18th Terrace/NE 39th Street	

Palmview Elementary

6:30 to 7:50	2:50 to 3:20
NE 1st Avenue/NE 25th Court	
NE 1st Avenue/NE 26th Court	
NE 1st Avenue(Cypress Rd)/Copans Road	
NE 1st Avenue(Cypress Rd)/Copans Road	
NW 3rd Avenue(Esther Rolle)/Copans Road	
NW 3rd Avenue/NW 18th Court	

Pompano Beach Elementary

6:45 to 7:45	2:45 to 3:15
NE 4th Street/NE 13th Avenue	
NE 5th Avenue/NE 6th Street	
NE 5th Avenue/NE 8th Street	
NE 6th Street/NE 11th Avenue	
NE 6th Street/N Federal Highway	
NE 8th Street/NE 13th Avenue	
1000 N Federal Highway	

Pompano Beach Middle

8:10 to 9:15	3:45 to 4:15
1000 N Dixie Hwy(NW 10th Street/Dixie)	
NE 5th Avenue/NE 6th Street	
NE 6th Street/N Federal Highway	
NE 6th Street/N Dixie Highway	
NE 11th Avenue/E Atlantic Boulevard	
NE 11th Avenue/E Atlantic Boulevard	
S Cypress Road/E Atlantic Boulevard	
S Cypress Road/E Atlantic Boulevard	

Sanders Park Elementary

6:30 to 8:00	2:00 to 2:30
NW 6th Avenue/NW 15th Street	
NW 6th Avenue/NW 16th Street	

Small Business Enterprise Goal and Forms

SBE GOAL ANNOUNCEMENT

BID # L-14-16

The City of Pompano Beach is strongly committed to ensuring the participation of Small Business Enterprises (SBE's) as contractors and subcontractors for the procurement of goods and services.

The SBE criteria being used is as stated in FSS 288.703. As of the date of publication of this solicitation, a small business means an independently owned and operated business concern that employs 200 or fewer permanent full-time employees and that, together with its affiliates, has a net worth of not more than $5 million or any firm based in Florida that has a Small Business Administration 8(a) certification. As applicable to sole proprietorships, the $5 million net worth requirement shall include both personal and business investments.

Bidders are encouraged to participate in the City of Pompano Beach's Voluntary SBE Program by including as part of their bid package the SBE Participation Form (Exhibit "A"), and the Letter of Intent Form (Exhibit "B").

Bidders who are unable to meet the recommended voluntary goals should also provide the SBE Unavailability Form and Good Faith Effort Report (Exhibits "C" and "D").

The recommended, voluntary goals for this bid are 5% for Small Business Enterprises.

Bidder Name _____

CITY OF POMPANO BEACH, FLORIDA
SMALL BUSINESS ENTERPRISE
PARTICIPATION FORM

Bid Number & Title: _____ Contractor's Name: _____

Name of Firm	Contact Person Telephone Number	Type of Work To Be Performed	Contract Amount

(BIDDER SHOULD INCLUDE CERTIFICATES FOR ANY FIRMS LISTED ON THIS PAGE)

FOR CITY USE ONLY

Total Contract Amount _____ Total SBE Contract Amount_____

Are documents requested submitted accordingly ___ YES ___ NO

SBE EXHIBIT "A"

LETTER OF INTENT TO PERFORM AS A SUBCONTRACTOR

Bid Number_____

TO: _____
(Name of Prime or General Bidder)

The undersigned intends to perform subcontracting work in connection with the above contract as (check below)

_____ an individual _____ a corporation

_____ a partnership _____ a joint venture

The undersigned is prepared to perform the following work in connection with the above Contract, as hereafter described in detail:

_____

_____

_____

at the following price: _____

_____ _____
(Date) (Name of SBE Contractor)

(address): _____

_____

BY: _____

SBE EXHIBIT "B"

SMALL BUSINESS ENTERPRISE (SBE) UNAVAILABILITY FORM

BID # _____

I, _____
(Name and Title)

of _____, certify that on the _____day of

_____, _____, I invited the following SBE CONTRACTOR(s) to bid work items to be performed in the City of Pompano Beach:

SBE Contractor Name, Address	Work Items Sought	Form of Bid Sought (i.e., Unit Price, Materials/Labor Labor Only, etc.)

Said SBE CONTRACTOR(s):

___ Did not bid in response to the invitation

___ Submitted a bid which was not the low responsible bid

___ Other: _____

Signature: _____

Date: _____

Note: Attach additional documents as available.

SBE EXHIBIT "C"

GOOD FAITH EFFORT REPORT

BID #_____

1. What portions of the contract have you identified as SBE opportunities?

_____ _____ _____

_____ _____ _____

_____ _____ _____

2. Did you provide adequate information to identified SBE? Please comment on how you provided this information.

_____

_____

_____

3. Did you send written notices to SBEs?

____ Yes ____ No

If yes, please include copy of the notice and the list of individuals who were forwarded copies of the notices.

4. Did you advertise in local publications?

____ Yes ____ No

If yes, please attach copies of the ads, including name and dates of publication.

5. Did you contact any organizations with large constituents of SBE members for possible sub-contractors? Please attach list of resource organizations used.

6. What type of efforts did you make to assist SBEs in contracting with you ?

_____

_____

7. List the SBEs you will utilize and subcontract amount.

_____ $_____

_____ $_____

_____ $_____

8. Other comments: _____

_____

_____

_____

_____

Note: Please attach the unavailability letters with this report.

SBE EXHIBIT "D"

Local Business Program Goals and Forms

LOCAL BUSINESS PARTICIPATION GOAL ANNOUNCEMENT

BID # _____

The City of Pompano Beach is strongly committed to ensuring the participation of City of Pompano Beach Businesses as contractors and subcontractors for the procurement of goods and services.

Bidders are encouraged to participate in the City of Pompano Beach's voluntary Local Business Program by including, as part of their bid package, the Local Business Participation Form (Exhibit "A"), and the Letter of Intent Form (Exhibit "B").

Bidders should utilize businesses that are physically located in the City of Pompano Beach with a current Business Tax Receipt.

You can view the list of City businesses that have a current Business Tax Receipt on the City's website, and locate local firms that are available to perform the work required by the bid specifications. The business information, sorted by business use classification, is posted on the webpage for the Business Tax Receipt Division: http://pompanobeachfl.gov/pages/department_directory/development_services/business_tax_receipt_division/business_tax_receipt_division.html.php

Bidders who are unable to meet the recommended voluntary goals should also provide the Local Business Unavailability Form and Good Faith Effort Report (Exhibits "C" and "D").

The recommended voluntary goal for this bid is 5% for Local Businesses.

RETURN THIS FORM WITH YOUR BID Bidder Name _____

CITY OF POMPANO BEACH, FLORIDA
LOCAL BUSINESS PARTICIPATION FORM

Bid Number & Title: _____ Prime Contractor's Name: _____

Name of Firm, Address	Contact Person, Telephone Number	Type of Work to be Performed	Contract Amount

LOCAL BUSINESS EXHIBIT "A"

LOCAL BUSINESS
LETTER OF INTENT TO PERFORM AS A LOCAL SUBCONTRACTOR

Bid Number_____

TO: _____
(Name of Prime or General Bidder)

The undersigned City of Pompano Beach business intends to perform subcontracting work in connection with the above contract as (check below)

_____ an individual _____ a corporation

_____ a partnership _____ a joint venture

The undersigned is prepared to perform the following work in connection with the above Contract, as hereafter described in detail:

_____

_____

_____

_____

_____

_____

_____

_____

_____

at the following price: _____

_____ _____
(Date) (Name of Local Business Contractor)

(address): _____

_____

BY: _____

LOCAL BUSINESS EXHIBIT "B"

LOCAL BUSINESS
UNAVAILABILITY FORM

BID #_____

I,_____
(Name and Title)

of_____, certify that on the _____day of

_____, _____, I invited the following LOCAL BUSINESSES to bid work items to be performed in the City of Pompano Beach:

Business Name, Address	Work Items Sought	Form of Bid Sought (i.e., Unit Price, Materials/Labor, Labor Only, etc.)

Said Local Businesses:

___ Did not bid in response to the invitation

___ Submitted a bid which was not the low responsible bid

___ Other:_____

Signature: _____

Date: _____

Note: Attach additional documents as available.

LOCAL BUSINESS EXHIBIT "C"

GOOD FAITH EFFORT REPORT
LOCAL BUSINESS PARTICIPATION

BID #_____

1. What portions of the contract have you identified as Local Business opportunities?

_____

_____

_____

_____

2. Did you provide adequate information to identified Local Businesses? Please comment on how you provided this information.

_____

_____

_____

3. Did you send written notices to Local Businesses?

____ Yes ____ No

If yes, please include copy of the notice and the list of individuals who were forwarded copies of the notices.

4. Did you advertise in local publications?

____ Yes ____ No

If yes, please attach copies of the ads, including name and dates of publication.

5. What type of efforts did you make to assist Local Businesses in contracting with you ?

_____

_____

7. List the Local Businesses you will utilize and subcontract amount.

_____ $_____

_____ $_____

_____ $_____

8. Other comments: _____

_____

_____

_____

_____

LOCAL BUSINESS EXHIBIT "D"

BID L-14-16, SCHOOL CROSSING GUARD SERVICE

STATEMENT OF NO RESPONSE

If you do not intend to bid on this requirement, please complete and return this form by the bid opening deadline to the City of Pompano Beach Purchasing Division, Building C, 1190 N.E. 3rd Avenue, Pompano Beach, Florida 33060; this form may be faxed to (954) 786-4168. Failure to respond, either by submitting a bid, or by submitting a "Statement of No Response" form, may result in your firm's name being removed from our mailing list.

WE, the undersigned, have declined to bid on this solicitation for the following reason(s):

_____ We do not offer this product or an equivalent

_____ Our workload would not permit us to perform

_____ Insufficient time to respond to the Invitation for Bid

_____ Unable to meet specifications (explain below)

_____ Other (specify below)

Remarks _____

_____

_____

_____

_____

COMPANY NAME _____

ADDRESS _____

TELEPHONE _____

SIGNATURE/TITLE _____

DATE _____

Meeting Date: 03/08/16 Agenda Item 26

REQUESTED COMMISSION ACTION:

___ Consent ___ Ordinance ___ Resolution X Consideration/Discussion ___ Presentation

SHORT TITLE Approval to award Bid E-04-16, Alsdorf Park Phase 2 Parking Improvements, to the second low bidder, Roadway Construction LLC, in the amount of $899,852.00.

Summary of Purpose and Why:

Bid E-04-16 was issued to establish a contract for the labor, equipment, tools, materials and incidentals for the construction of parking lot improvements at Alsdorf Park. Specific improvements include storm sewers, grading & sodding of swales, asphalt pavement placement, resurfacing, striping, signage, sidewalks, landscaping, irrigation, lighting and minor utility relocations. As the apparent low bidder withdrew their bid, award is recommended to the second low bidder, Roadway Construction LLC, in the amount of $899,852.00. The General Services Department performed an outreach to local parking and roadwork companies to inform them about this project. A total of nineteen (19) local companies were notified. City Commission approval of this contract award is requested.

(1) Origin of request for this action: staff
(2) Primary staff contact:: Horacio Danovich, CIP Manager 954 786-7834
(3) Expiration of contract, if applicable: n/a
(4) Fiscal impact and source of funding: As needed, from account 302-7476-572.65-12, Capital Project Fund/ CIP: #12-198

DEPARTMENTAL COORDINATION	DATE	DEPARTMENTAL RECOMMENDATION	DEPARTMENTAL HEAD SIGNATURE
CIP	2/17/16	Approve	
General Services	2/16/16	APPROVE	
Finance	2/17/16	Approval	
Budget	2-19-16	Approval	

X City Manager

ACTION TAKEN BY COMMISSION:

Ordinance	Resolution	Consideration	Workshop
1st Reading	1st Reading	Results:	Results:
2nd Reading			

MEMORANDUM

Purchasing #16-046
February 16, 2016

To: Dennis W. Beach, City Manager

Through: Otis J. Thomas, General Services Director OT

From: Jeffrey English, Purchasing Agent JE

Subject: Award Bid E-04-16, Alsdorf Park Phase-2 Parking Improvements

Contract Need/Background

Bid E-04-16 was issued for the Engineering Department to establish a contract for the furnishing of all labor, equipment, tools materials and any other incidentals required for the construction of parking lot improvements at Alsdorf Park.

Attached you will find copies of the memorandum and the bid award recommendation form submitted by the Engineering Department, the bid tabulation, and bid solicitation document.

Bidders List

The Bidders List was created by using companies suggested by the requesting department, companies that have responded to prior bids, companies that have requested their names be placed on the Bid List, and companies from appropriate listings in other source books.

Number of firms responding with complete bids.....9

Advertising

The Bid was advertised in the Sun Sentinel, and notices were sent to bid notice agencies throughout the nation. Bid notices are also posted on the City's web page.

Funding

The contract will be funded from budgeted funds in account 302-7476-572.65-12/Capital Project Fund/CIP 12-197.

Market Research

The General Services Department performed an outreach to local parking and roadwork companies to inform them about this project. Out of a total of nineteen (19) local companies notified, two responded.

Award Recommendation

After reviewing the responses to this bid with the Engineering Department it is recommended that the award for E-04-16 be made to the 2nd lowest bidder, Roadway Construction LLC, in the amount of $899,852.00.

enclosures

cc: file

pompano beach
Florida's Warmest Welcome

MEMORANDUM

Engineering

Memorandum No. 16-42

DATE: February 8th, 2016

TO: Jeffrey English, Purchasing Agent

FROM: Anthony Alhashemi, Project Manager

SUBJECT: Alsdorf Park (CIP No. 12-197) – Bid Award Recommendation

---

On January 26th, 2016 bids were opened for the above referenced project. The lowest bidder was Sagaris Corp with a price of $ 808,520.00. Sagaris Corp had discrepancies in their unit pricing which cause Sagaris Corp to withdraw their bid from contention. The second lowest bidder was Roadway Construction, LLC.

The Bid submitted by Roadway Construction, LLC totaled the amount of $ 899,852.00.

The references supplied by Roadway Construction, LLC have been checked and have performed similar projects in scope for Miami-Dade County, City of North Lauderdale and City of North Miami.

Being the low bidder due to Sagaris Corps withdrawal and coupled with favorable references, it is my recommendation that the award of this contract be made to Roadway Construction, LLC based on their Bid of
$ 899,852.00.

One Executed Bid Award Recommendation form is attached. Please prepare an agenda package for inclusion on the City Commission agenda for consent approval.

Should you have any questions, please do not hesitate to contact me at extension 4029.

CC: John Sfiropoulos, Horacio Danovich, Juan Carlos Samuel

BID AWARD RECOMMENDATION FORM

From: Purchasing Division Jeff English Date 02/12/16

To: Engineering Department Attn.: Anthony Alhashemi

Subject: Bid No. E-04-16 Item/service: Alsdorf Park Phase 2 Parking Improvements

Attached is the Bid Tabulation for subject item/service requisitioned by your department. Please complete this form in order that proper presentation and recommendations may be made to the City Commission for its approval, as appropriate. Your response should be typed. Please return this form to the Purchasing Division within three weeks of receipt.

This form must be accompanied by a memorandum explaining the item/service to be purchased, what it will be used for, stating that it is either a replacement or an additional item, and any other pertinent information which might be requested by the City Commission. This memo should also contain a detailed justification if you are rejecting a low bidder (see below).

1. SOURCE OF FUNDS:

Budgeted Code: 302-7476-572.65-12

Title: Alsdorf Park

2. RECOMMENDATION:

(a) Which bidder do you recommend?

Roadway Construction, LLC

(b) Is the recommended bid the lowest bid received?

Yes ____ No X

Note: If you recommend award to other than the low bidder detailed justification must be furnished for rejection of all lower bids, in an accompanying memorandum.

(c) If references were required, were they checked?

Yes X No ____ Not applicable for this bid ____

Signature: [signature] Date: 2/16/16

Title: City Engineer
(Department Head)

CITY OF POMPANO BEACH -- BID TABULATION
Bid #: E-04-16 Title: Alsdorf Park Phase 2 Parking Improvements
Date 01/26/16

Bidder:	Charland Rurey Construction, 2210 NW 3rd Ave. Ste. B3 Pompano Beach, FL 33060	Emerald Construction Corp. 1211 Stirling Rd. Ste. 106 Dania Beach, FL. 33004	JWR Construction 1311 W Newport Ctr. Dr. Ste. C Deerfield Beach, FL 33442
PARK IMPROVEMENTS			
Demolition	$18,000.00	$70,000.00	$19,415.00
Drainage System	$107,514.00	$190,000.00	$76,435.00
Earthwork	$41,000.00	$230,000.00	$70,263.00
Concrete Sidewalks	$21,660.00	$105,000.00	$50,524.00
Pavement Modifications	$219,438.00	$10,000.00	$198,559.00
Sealcoat Pavement	$11,040.00	$35,000.00	$0.00
Pavement Marking	$14,532.00	$20,000.00	$21,838.00
Electrical and Lighting	$183,000.00	$210,000.00	$208,000.00
Utility Relocations	$0.00	$10,000.00	$0.00
Park Improvements Subtotal	$616,184.00	$880,000.00	$645,034.00
MISCELLANEOUS			

CITY OF POMPANO BEACH -- BID TABULATION
Bid #: E-04-16 Title: Alsdorf Park Phase 2 Parking Improvements
Date 01/26/16

Bidder:	Miguel Lopez Jr. Inc. 7711 NW 74th Ave. Medley, FL. 33166	Roadway Construction, LLC 6750 N Andrews Ave. Ste. 200 Ft. Lauderdale, FL. 33309	Sagaris Corp. 1847 N University Dr. Coral Springs, FL. 33071
PARK IMPROVEMENTS			
Demolition	$38,045.25	$58,800.00	$4,500.00
Drainage System	$137,866.00	$103,715.00	$95,000.00
Earthwork	$18,237.00	$67,125.00	$210,000.00
Concrete Sidewalks	$64,278.50	$70,745.00	$3,300.00
Pavement Modifications	$190,633.45	$156,234.00	$37,000.00
Sealcoat Pavement	$21,344.55	$15,624.00	$14,000.00
Pavement Marking	$1,744.25	$14,000.00	$22,000.00
Electrical and Lighting	$231,265.00	$232,960.00	$175,000.00
Utility Relocations	$7,500.00	$10.00	$10,000.00
Park Improvements Subtotal	$710,914.00	$719,213.00	$570,800.00
MISCELLANEOUS			

CITY OF POMPANO BEACH -- BID TABULATION
Bid #: E-04-16 Title: Alsdorf Park Phase 2 Parking Improvements
Date 01/26/16

Bidder:	Southeastern Engineering Contractors, Inc. 12054 NW 98th Ave. Hialeah Gardens, FL. 33018	Stanford & Sons dba Stanford Construction 1081 NW 12th Terr. Pompano Beach, FL. 33069	Sun Up Enterprises 16641 Waters Edge Dr. Weston, FL. 33326
PARK IMPROVEMENTS			
Demolition	$52,205.00	$104,991.86	$59,485.00
Drainage System	$91,950.00	$123,924.00	$89,093.98
Earthwork	$96,100.00	$84,362.97	$27,284.56
Concrete Sidewalks	$29,240.00	$53,379.58	$20,319.25
Pavement Modifications	$327,820.00	$171,855.87	$221,845.00
Sealcoat Pavement	$17,350.00	$18,810.00	$18,125.00
Pavement Marking	$8,260.00	$6,689.10	$6,737.75
Electrical and Lighting	$237,300.00	$177,000.00	$199,500.00
Utility Relocations	$1,770.00	$10,000.00	$3,100.00
Park Improvements Subtotal	$861,995.00	$751,013.38	$645,490.54
MISCELLANEOUS			

CITY OF POMPANO BEACH -- BID TABULATION
Bid #: E-04-16 Title: Alsdorf Park Phase 2 Parking Improvements
Date 01/26/16

Bidder:	Charland Rurey Construction, 2210 NW 3rd Ave. Ste. B3 Pompano Beach, FL 33060	Emerald Construction Corp. 1211 Stirling Rd. Ste. 106 Dania Beach, FL. 33004	JWR Construction 1311 W Newport Ctr. Dr. Ste. C Deerfield Beach, FL 33442
Signage	$1,500.00	$8,000.00	$6,000.00
Landscaping and Irrigation	$88,129.00	$94,000.00	$112,727.00
Miscellaneous Subtotal	$89,629.00	$102,000.00	$118,727.00
GENERAL CONDITIONS			
Mobilization	$131,261.00	$30,000.00	$200,502.00
Maintenance of Traffic	$3,500.00	$30,000.00	$1,500.00
Bond and Insurance	$12,406.00	$70,829.00	$44,672.00
Indemnification	$10.00	$10.00	$10.00
Compliance with Trench Safety Act	$10.00	$10.00	$10.00
Construction Allowance	$50,000.00	$50,000.00	$50,000.00
General Conditions Subtotal	$197,187.00	$180,849.00	$296,694.00

CITY OF POMPANO BEACH -- BID TABULATION
Bid #: E-04-16 Title: Alsdorf Park Phase 2 Parking Improvements
Date 01/26/16

Bidder:	Miguel Lopez Jr. Inc. 7711 NW 74th Ave. Medley, FL. 33166	Roadway Construction, LLC 6750 N Andrews Ave. Ste. 200 Ft. Lauderdale, FL. 33309	Sagaris Corp. 1847 N University Dr. Coral Springs, FL. 33071
Signage	$3,845.00	$3,080.00	$7,700.00
Landscaping and Irrigation	$134,853.24	$101,752.00	$85,000.00
Miscellaneous Subtotal	$138,698.24	$104,832.00	$92,700.00
GENERAL CONDITIONS			
Mobilization	$25,500.00	$5,404.00	$60,000.00
Maintenance of Traffic	$3,500.00	$5,404.00	$15,000.00
Bond and Insurance	$15,000.00	$14,979.00	$20,000.00
Indemnification	$10.00	$10.00	$10.00
Compliance with Trench Safety Act	$10.00	$10.00	$10.00
Construction Allowance	$50,000.00	$50,000.00	$50,000.00
General Conditions Subtotal	$94,020.00	$75,807.00	$145,020.00

CITY OF POMPANO BEACH -- BID TABULATION
Bid #: E-04-16 Title: Alsdorf Park Phase 2 Parking Improvements
Date 01/26/16

Bidder:	Southeastern Engineering Contractors, Inc. 12054 NW 98th Ave. Hialeah Gardens, FL. 33018	Stanford & Sons dba Stanford Construction 1081 NW 12th Terr. Pompano Beach, FL. 33069	Sun Up Enterprises 16641 Waters Edge Dr. Weston, FL. 33326
Signage	$6,490.00	$8,401.80	$4,760.00
Landscaping and Irrigation	$178,770.00	$98,843.00	$117,742.00
Miscellaneous Subtotal	$185,260.00	$107,244.80	$122,502.00
GENERAL CONDITIONS			
Mobilization	$90,080.00	$114,809.11	$81,000.00
Maintenance of Traffic	$6,850.00	$3,300.00	$6,000.00
Bond and Insurance	$20,084.00	$20,527.94	$12,000.00
Indemnification	$10.00	$10.00	$10.00
Compliance with Trench Safety Act	$10.00	$10.00	$10.00
Construction Allowance	$50,000.00	$50,000.00	$50,000.00
General Conditions Subtotal	$167,034.00	$188,657.05	$149,020.00

CITY OF POMPANO BEACH -- BID TABULATION
Bid #: E-04-16 Title: Alsdorf Park Phase 2 Parking Improvements
Date 01/26/16

Bidder:	Charland Rurey Construction, 2210 NW 3rd Ave. Ste. B3 Pompano Beach, FL 33060	Emerald Construction Corp. 1211 Stirling Rd. Ste. 106 Dania Beach, FL. 33004	JWR Construction 1311 W Newport Ctr. Dr. Ste. C Deerfield Beach, FL 33442
GRAND TOTAL	**$903,000.00**	**$1,162,849.00**	**$1,060,455.00**
Addenda Acknowledged?	yes, 1 & 2	yes, 1 & 2	yes, 1 & 2
Bid Bond?	5%	5%	5%
Notes:		General Conditions Subtotal corrected for tabulation	Sealcoat Pavement is included in Pavement Modifications, and Utility Relocations is included in Electrical and Lighting

CITY OF POMPANO BEACH -- BID TABULATION
Bid #: E-04-16 Title: Alsdorf Park Phase 2 Parking Improvements
Date 01/26/16

Bidder:	Miguel Lopez Jr. Inc. 7711 NW 74th Ave. Medley, FL. 33166	Roadway Construction, LLC 6750 N Andrews Ave. Ste. 200 Ft. Lauderdale, FL. 33309	Sagaris Corp. 1847 N University Dr. Coral Springs, FL. 33071
GRAND TOTAL	**$943,632.24**	**$899,852.00**	**$808,520.00**
Addenda Acknowledged?	yes, 1 & 2	yes, 1 & 2	yes, 1 & 2
Bid Bond?	5%	5%	5%
Notes:	Park Improvements Subtotal corrected for tabulation		Park Improvement and Miscellaneous subtotals corrected for tabulation. Bid was withdrawn.

CITY OF POMPANO BEACH -- BID TABULATION
Bid #: E-04-16 Title: Alsdorf Park Phase 2 Parking Improvements
Date 01/26/16

Bidder:	Southeastern Engineering Contractors, Inc. 12054 NW 98th Ave. Hialeah Gardens, FL. 33018	Stanford & Sons dba Stanford Construction 1081 NW 12th Terr. Pompano Beach, FL. 33069	Sun Up Enterprises 16641 Waters Edge Dr. Weston, FL. 33326
GRAND TOTAL	**$1,214,289.00**	**$1,046,915.23**	**$917,012.54**
Addenda Acknowledged?	yes, 1 & 2	yes, 1 & 2	yes, 1 & 2
Bid Bond?	5%	5%	5%
Notes:			

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BID/CONTRACT DOCUMENTS

Alsdorf Park Phase 2 - Parking Improvements
BID E-04-16

For the City of Pompano Beach, Florida

MANDATORY PRE-BID CONFERENCE: January 5, 2016, 10:00 a.m. (local)
ENGINEERING CONFERENCE ROOM
1201 N.E. 5th AVENUE,
POMPANO BEACH, FLORIDA 33060

BID OPENING: January 19, 2016, 2:00 p.m. (local)
PURCHASING DIVISION
1190 N.E. 3RD AVENUE, BUILDING C (FRONT)
POMPANO BEACH, FLORIDA 33060

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INVITATION TO BID

Sealed Proposals for **Bid E-04-16, Alsdorf Park Phase 2 Parking Improvements,** addressed to the City of Pompano Beach, Purchasing Office, 1190 N.E. 3rd Avenue, Building C (front) Pompano Beach, Florida 33060, will be received until **2:00 p.m. (local), on January 19, 2016** and will be publicly opened and read aloud. Any bids received after the time and date will not be considered.

A Mandatory Pre-Bid Conference will be held on January 5, 2016 at 10:00 a.m. (local) in the Engineering Conference Room, 1201 N. E. 5th Avenue, Building C (Front), Pompano Beach, Florida 33060. Bids will not be accepted from firms that do not attend the pre-bid conference.

On March 23, 2010, the City Commission approved a Resolution establishing a Local Business Program, a policy to increase the participation of City of Pompano Beach businesses in the City's procurement process. The City has set a 10% voluntary Local Business participation Goal for this project. Local Business Program Forms are located in this bid/contract document, and all bidders must return the Local Business forms in order to be considered for bid evaluation purposes.

The City has set a 15% voluntary Small Business Enterprise Goal for this project. SBE Forms are located in this bid/contract document, and all bidders must return the SBE forms in order to be considered for bid evaluation purposes.

The project consists of furnishing all labor, equipment, tools, and materials for the construction of parking lot improvements at Alsdorf Park. Specific improvements include storm sewers, grading & sodding of swales, asphalt pavement placement, resurfacing, striping, signage, sidewalks, landscaping, irrigation, lighting and minor utility relocations. The project location is at 2901 NE 14th Street, Pompano Beach, FL. 33062.

Bid documents may be obtained at no charge from the City of Pompano Beach website www.pompanobeachfl.gov.

Each proposal must be submitted on the prescribed form and accompanied by a certified check or bid bond executed on the prescribed form, payable to the City of Pompano Beach, Florida, in an amount not less than 5 percent (5%) of the amount bid. The bid form must be filled in completely and accurately, particularly as it pertains to alternate bid items.

The successful Bidder will be required to furnish the necessary additional bond(s) for the faithful performance of the Contract Documents. All bid bonds, contract bonds, insurance contracts and certificates of insurance shall be either executed by or countersigned by a licensed resident agent of the surety or insurance company having his place of business in the State of Florida, and in all ways complying with the insurance laws of the State of Florida. Further, the said surety or insurance company shall be duly licensed and qualified to do business in the State of Florida. **Bid bonds and performance and payment bonds are required. Insurance is required for all bids.**

In order to perform public work, the successful Bidder shall, as applicable, hold or obtain such Contractor' and Business Licenses as required by State Statutes.

Before a Contract will be awarded for the work contemplated herein, the OWNER will conduct such investigation as is necessary to determine the performance record and ability of the apparent low Bidder

to perform the size and type of Work specified under the Contract Documents, and to postpone the award of the Contract for a period of time which, however, shall not exceed 90 Days from the bid opening date.

Dated this

CITY OF POMPANO BEACH

By: Jeff English, Purchasing Agent

INSTRUCTIONS TO BIDDERS

1. DEFINED TERMS

Terms used in these Instructions to Bidders, which are defined in the Standard GENERAL CONDITIONS of the Construction Contract, have the meanings assigned to them in the GENERAL CONDITIONS. The term "Bidder" means one who submits a Bid directly to OWNER, as distinct from a sub-bidder, who submits a bid to a Bidder. The term "Successful Bidder" means the lowest, qualified, responsible and responsive Bidder to whom OWNER (on the basis of OWNER'S evaluation as hereinafter provided) makes an award. The term "Bidding Documents" includes the Invitation to Bid, Instructions to Bidders, the Bid Proposal, and the proposed Contract Documents (including all Addenda issued prior to receipt of Bids).

2. COPIES OF BIDDING DOCUMENTS

2.1 Complete sets of the Bidding Documents may be obtained from the City of Pompano Beach website at no charge.

2.2 Complete sets of Bidding Documents must be used in preparing Bids; the OWNER assumes no responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.

2.3 OWNER, in making copies of Bidding Documents available on the above terms, does so only for the purpose of obtaining Bids on the Work and does not confer a license or grant for any other use.

3. QUALIFICATIONS OF BIDDERS

To demonstrate qualifications to perform the Work, and to be considered for award, each Bidder must submit written evidence, such as previous experience, present commitments and other such data as may be called for in this document.

4. PUBLIC ENTITY CRIMES

In accordance with Florida State Statute 287.133 (2)(a): 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 s. 287.017 for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

5. DRUG FREE WORKPLACE

In accordance with Section 287.087, State of Florida Statutes, preference shall be given to businesses with Drug-free Workplace Programs. Bidder should complete and provide Statement Under Section 287.087 Florida Statutes on Drug-Free Workplace.

6. ANTI-KICKBACK ACT

The successful bidder must comply with the Copeland "Anti-Kickback Act" (19 U.S.C. Section 874), as supplemented in U.S. Department of Labor Regulations (29 CFR, Part 3).

7. EXAMINATION OF CONTRACT DOCUMENTS AND SITES

7.1 It is the responsibility of each Bidder before submitting a Bid, to (a) examine the Contract Documents thoroughly, (b) visit the site to become familiar with local conditions that may affect costs, progress, performance or furnishing of the Work, (c) consider federal, state and local Laws and Regulations that may affect cost, progress, performance or furnishing of the Work, (d) study and carefully correlate Bidder's observations with the Contract Documents, and (e) notify OWNER of all conflicts, errors or discrepancies in the Contract Documents.

7.2 Information and data reflected in the Contract Documents with respect to or contiguous to the site is based upon information and data furnished to OWNER by owners of such facilities or others, and OWNER does not assume responsibility for accuracy or completeness thereof unless it is expressly provided otherwise.

7.3 Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders on subsurface conditions, Underground Facilities and other physical conditions, and possible changes in the Contract Documents due to differing conditions appear in the General Conditions.

7.4 Before submitting a Bid, each Bidder will, at Bidder's own expense, make or obtain any additional examinations, investigations, explorations, tests and studies and obtain any additional information and data which pertain to the physical conditions (surface, subsurface and Underground Facilities) at or contiguous to the site or otherwise which may affect cost, progress, performance or furnishing of the Work and which Bidder deems necessary to determine its Bid for performing and furnishing the work in accordance with the time, price and other terms and conditions of the Contract Documents.

7.5 On request in advance, OWNER will provide each Bidder access to the site to conduct such explorations and tests as each Bidder deems necessary for submission of a Bid. Bidder shall fill all holes, clean up and restore the site to its former condition, or better, upon completion of such explorations.

7.6 The lands upon which the Work is to be performed, rights-of-way and easements for access thereto and other lands designated for use by CONTRACTOR in performing the Work are identified in the Contract Documents. All additional lands and access thereto required for temporary construction facilities or storage of materials and equipment are to be provided by CONTRACTOR. Easements for permanent structures or permanent changes in existing structures are to be obtained and paid for by OWNER unless otherwise provided in the Contract Documents.

7.7 The submission of a Bid will constitute an incontrovertible representation by Bidder that Bidder has complied with every requirement of this section and the General Conditions, that without exception the Bid is premised upon performing and furnishing the Work required by the Contract Documents and such means, methods, techniques, sequences or procedures of construction as may be indicated in or required by the Contract Documents, and that the Contract Documents are sufficient in scope and detail to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

8. INTERPRETATIONS AND ADDENDA

8.1 All questions must be in writing or be asked at the Pre-Bid Conference. All questions are to be submitted in writing to the Purchasing Office, 1190 N.E. 3rd Avenue, Building C (Front), Pompano Beach, Florida 33060; questions may be submitted by fax to (954) 786-4168, or by email to purchasing@copbfl.com. All questions must include the inquiring firm's name, address, telephone number, fax number, and bid name and number.

All written questions must be received by **5:00 p.m. on January 12, 2016** at the above location. No further questions will be accepted after this date. Oral and other interpretations or clarifications will be without legal effect. Questions may be faxed to (954) 786-4168, referencing the bid number on all pages faxed.

8.2 Addenda may also be issued to modify the Bidding Documents as deemed advisable by the OWNER.

9. BID SECURITY

9.1 Each Bid must be accompanied by Bid security made payable to OWNER in an amount of five percent of the Bidder's maximum Bid price and in the form of a certified or bank check or a Bid Bond issued by a surety meeting the requirements stated herein.

9.2 The Bid security of the Successful Bidder will be retained until such Bidder has executed the Agreement and furnished the required contract security, (if provided as a cashier's check or bank officer's check), whereupon the Bid security will be returned. If the Successful Bidder fails to execute and deliver the Agreement and furnish the required contract security within 10 days after the Notice of Award, OWNER may annul the Notice of Award and the Bid security of that Bidder will be forfeited. The Bid security of other Bidders whom OWNER believes to have reasonable chance of receiving the award may be retained by OWNER until a completed contract has been issued, whereupon Bid security furnished by such Bidders will be returned.

9.3 The Bid Bond, if provided, shall be issued by a Company having a registered agent in the State of Florida. This check or bond shall be retained by the payee as liquidated damages should the bidder refuse or fail to enter into a contract with the payee for the execution of the work embraced in the proposal, in the event the proposal of the bidder is accepted.

10. CONTRACT TIME

The number of days within which, or the dates by which, the Work is to be substantially completed and also completed and ready for final payment (the Contract Time) are set forth in the section entitled Bid Proposal.

11. LIQUIDATED DAMAGES

11.1 Provisions for liquidated damages, if any, are set forth in the Agreement.

11.2 All bidders must state in the Bid Proposal the amount of consideration required by the Bidder in return for the Bidder's promise of indemnity contained in the General Conditions. The amount to be stated shall be no less than $10.00.

12. SUBSTITUTE OR "OR-EQUAL" ITEMS

The Contract, if awarded, will be on the basis of materials and equipment described in the Drawings or specified in the Specifications without consideration of possible substitute or "or-equal" items. Whenever it is indicated in the Drawings or specified in the Specifications that a substitute or "or-equal" item of material or equipment may be furnished or used by Contractor if acceptable to OWNER, application for such acceptance will not be considered by OWNER until after the effective date of the agreement.

13. SUBCONTRACTORS, SUPPLIERS AND OTHERS.

13.1 Each Bid must identify the names and address of Subcontractors, Suppliers and other persons and organizations including those who are to furnish the principal items of material and equipment listed in the Bid Proposal section. If requested, the apparent Successful Bidder, and any other Bidder so requested, shall within seven days after the Bid opening submit to OWNER a list of all such Subcontractors, Suppliers and other persons and organizations proposed for those portions of the Work for which such identification is required. Such list shall be accompanied by an experience statement with pertinent information regarding similar projects and other evidence of qualification for each such Subcontractor, Supplier, other persons or organization, if requested by OWNER. If OWNER after due investigation has reasonable objection to any proposed Subcontractor, Supplier, other person or organization, may before the Notice of Award is given request the apparent Successful Bidder to submit an acceptable substitute without an increase in Bid price. If apparent Successful Bidder declines to make any such substitution, Owner may award the contract to the next lowest Bidder that proposes to use acceptable Subcontractors, Suppliers and other persons and organizations. The declining to make requested substitutions will not constitute grounds for sacrificing the Bid Security of any Bidder. Any Subcontractor, Supplier, other person or organization listed and to whom OWNER does not make written objection prior to the giving of the Notice of Award will be deemed acceptable to OWNER subject to revocation of each acceptance after the Effective Date of Agreement.

13.2 In contracts where the Contract Price is on the basis of Cost-of-the Work Plus a fee, the apparent Successful Bidder, prior to the Notice Award, shall identify in writing to OWNER those portions of the Work that such Bidder proposes to subcontract and after the Notice of Award may only subcontract other portions of the Work with OWNER'S written consent.

13.3 No CONTRACTOR shall be required to employ any Subcontractor, Supplier, other person or organization against who CONTRACTOR has reasonable objection.

14. BID PROPOSAL

14.1 The Bid Proposal is included with the Bidding Documents.

14.2 All blanks on the Bid Proposal are to be completed in ink or by typewriter. The City requests three (3) copies of the bid be submitted, (one original, and two copies). Bidders are to complete and return pages 13-39.

14.3 Bids by corporations must be executed in the corporate name by the president or a vice-president (or other corporate officer accompanied by evidence of authority to sign) and the corporate seal must be affixed and attested by the secretary or an assistant secretary. The corporate address and state of incorporation must be shown below the signature.

14.4 Bids by partnerships must be executed in the partnership name and signed by a partner, whose title must appear under the signature and the official address of the partnership must be shown below the signature.

14.5 All names must be typed or printed below the signature.

14.6 The Bid should contain an acknowledgment of receipt of all Addenda (the numbers of which should be filled in on the Bid Proposal).

14.7 The address and telephone number for communications regarding the Bid must be shown.

14.8 All blank spaces in the bid form must be filled in, both words and figures where required. In case of discrepancy between unit prices and totals, unit prices will prevail.

15. SUBMISSION OF BIDS

15.1 Bids shall be submitted before the time and at the place indicated in the Invitation to Bid and shall be submitted in an opaque sealed envelope. The envelope shall be marked on the exterior with the Project title, City Bid Number, the name and address of the Bidder, and addressed to:

Jeff English, Purchasing Agent
City of Pompano Beach, Florida
1190 N.E. 3rd Avenue, Bldg. C (front)
Pompano Beach, Florida 33060

The Bid shall be accompanied by the Bid Security and other required documents. If not mailed, please deliver to the Purchasing Office, 1190 N.E. 3rd Avenue, Building C (front), Pompano Beach, Florida, 33060.

15.2 More than one Bid received for the same work from an individual, firm or partnership, Corporation or Association under the same or different names will not be considered. Reasonable grounds for believing that any Bidder is interested in more than one Bid for the same work will cause the rejection of all such Bids in which the Bidder is interested. If there are reasonable grounds for believing that collusion exists among the Bidders, the Bids of participants in such collusion will not be considered.

15.3 If you wish to receive a copy of the bid tabulation sheet after opening, please submit a stamped, self-addressed envelope with your bid. Bid results ***will not*** be read to you over the phone. Bid tabulations are also posted on the City's website.

16. MODIFICATION AND WITHDRAWAL OF BIDS

16.1 Bids may be modified or withdrawn by an appropriate document duly executed (in the manner that a Bid must be executed) and delivered to the place where Bids are to be submitted at any time prior to the opening of Bids.

16.2 After bids are opened, and a contractor defaults on a City contract, the contractor may be banned from doing business with the City for a period of 36 months from the date of default.

17. OPENING OF BIDS

Bids will be opened and (unless obviously non-responsive) read aloud publicly. An abstract of the amounts of the base Bids and major alternates (if any) will be made available to Bidders after the opening of Bids.

18. BIDS TO REMAIN SUBJECT TO ACCEPTANCE

18.1 All bids will remain subject to acceptance for ninety (90) days after the day of the Bid opening, but OWNER may, in its sole discretion, release any Bid and return the Bid Security prior to that date.

18.2 Extensions of time when Bids shall remain open beyond the ninety (90) day period may be made only by mutual agreement between OWNER, the Successful Bidder, and the surety, if any, for the Successful Bidder.

19. AWARD OF CONTRACT

19.1 OWNER reserves the right to reject any and all Bids, to waive any and all informalities not involving price, time and changes in the Work and to negotiate contract terms with the Successful Bidder, and the right to disregard all nonconforming nonresponsive, unbalanced or conditional Bids. Also, OWNER reserves the right to reject the Bid of any Bidder if OWNER believes that it would not be in the best interest of the Project to make an award to that Bidder, whether because the Bid is not responsible or the Bidder is unqualified or of doubtful financial ability or fails to meet any other pertinent standard or criteria established by OWNER. Discrepancies in the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum therefor will be resolved in favor of the correct sum.

19.2 In evaluating Bids, OWNER will consider the qualifications of the Bidders, whether or not the Bids comply with the prescribed requirements, and such alternates, unit prices and other data, as may be requested in the Bid form or prior to the Notice of Award.

19.3 OWNER may consider the qualifications and experience of Subcontractors, Suppliers, and other persons and organizations proposed for those portions of the Work as to which the identity of Subcontractor, Suppliers, and other persons and organizations must be submitted as provided in the Supplementary Conditions. OWNER also may consider the operating costs, maintenance requirements, performance data and guarantees of major items of materials and equipment proposed for incorporation in the Work when such data is required to be submitted prior to the Notice of Award.

19.4 OWNER may conduct such investigations as OWNER deems necessary to assist in the evaluation of any Bid and to establish the responsibility, qualifications and financial ability of Bidders, proposed Subcontractors, Suppliers and other persons and organizations to perform and furnish the Work in accordance with the Contract Documents to OWNER'S satisfaction within the prescribed time.

19.5 If the contract is to be awarded, it will be awarded to the lowest Bidder whose evaluation by OWNER indicates to OWNER that the award will be in the best interests of the Project.

19.6 If the contract is to be awarded, OWNER will give the Successful Bidder a Notice of Award within ninety (90) after the day of the Bid opening.

20. CONTRACT SECURITY

When the Successful Bidder delivers the executed Agreement to OWNER, it must be accompanied by the required Performance and Payment Bonds.

21. SIGNING OF AGREEMENT

When OWNER gives a Notice of Award to the Successful Bidder, it will be accompanied by the required number of unsigned counterparts of the Agreement with all other written Contract Documents attached. Within ten (10) days thereafter, CONTRACTOR shall sign and deliver the required number of counterparts of the Agreement and attached documents to OWNER with the required Bonds. Within fifteen (15) days thereafter OWNER shall deliver one fully signed counterpart to CONTRACTOR. Each counterpart is to be accompanied by a complete set of the Drawings with appropriate identification.

22. TAXES

The CONTRACTOR shall pay all applicable sales, consumer, use and other similar taxes required by law. The CONTRACTOR is responsible for reviewing the pertinent state statutes involving the sales tax and complying with all requirements.

23. NOTICE TO CONTRACTOR

The employment of unauthorized aliens by any contractor is considered a violation of Section 274A(e) of the Immigration and Nationality Act. If the Contractor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of the contract.

24. NON DISCRIMINATION

There shall be no discrimination as to race, color, religion, gender, national origin, ancestry, and physical or mental disability in the operations conducted under this contract. Included as applicable activities by the contractor under this section are the solicitation for, or purchase of, goods or services, or the subcontracting of work in performance of this contract.

25. OCCUPATIONAL HEALTH AND SAFETY

In compliance with Chapter 442, Florida Statues, any items included in the latest edition of "Florida Substance List" which are delivered from a contract resulting from this bid must be accompanied by a Material Safety Data Sheet (MSDS). The MSDS must be maintained by the user agency and must include the following information:

(a) The chemical name and the common name of the toxic substance.

(b) The hazards or other risks in the use of toxic substance, including:

1. The potential for fire, explosion, corrosiveness, and reactivity;

2. The known acute and chronic health effects of risks from exposure, including the medical conditions which are generally recognized as being aggravated by exposure to the toxic substance; and

3. The primary routes of entry and symptoms of overexposure.

(c) The proper precautions, handling practices, necessary personal protective equipment, and other safety precautions in the use of or exposure to the toxic substances, including appropriate emergency treatment in case of overexposure.

(d) The emergency procedure for spills, fire disposal, and first aid.

(e) A description in lay terms of the known specific potential health risks posed by the toxic substance intended to alert any person reading this information.

(f) The year and month, if available, that the information was compiled and the name, address, and the emergency telephone number of the manufacturer responsible for preparing the information.

Any questions regarding this requirement should be directed to:

Department of Labor and Employment Security, Division of Safety, 2002 Old St. Augustine Road, Tallahassee, Florida, 32399; telephone: 1-800-367-4378.

ALL TOXIC SUBSTANCES MUST BE LABELED FOR IDENTIFICATION, IN ACCORDANCE WITH O.S.H.A. STANDARDS.

Notice: Federal I.D. Number must be referenced on your invoice for us to process payment. Please note I.D. Number on Bid Response page.

26. PERMITS AND FEES

The Contractor awarded the project which is the scope of this bid document shall be required to obtain and pay for the permits and/or fees indicated on the chart below in the amounts set forth or pursuant to the formula for percent or unit method which is indicated.

Fees cannot be waived and must be collected by the City from the Contractor. Contact the City Department indicated for additional details regarding the required permit or fee.

FEE OR PERMIT	CITY DEPARTMENT	COST (SET FEE OR PERCENT OF PROJECT AMOUNT)
All construction within City right-of-way	Engineering	Waived
All utilities tie-ins to City water, sewers, and drainage	Engineering	Waived
Paving	Engineering	Waived
Fire plan review for new construction, additions and alterations	Building Inspection	See City Code of Ordinances 95.14
Fire alarm and fire sprinkler plan review (new installations)	Fire Plan Review	See City Code of Ordinances 95.14
Fire hydrant flow test	Fire Plan Review	See City Code of Ordinances 95.14
Business Tax Receipt (only if the contractor has a temporary office in the City of Pompano Beach)	Zoning	See City Code of Ordinances
Site plan review	Zoning	See City Code of Ordinances
Rezoning	Zoning	See City Code of Ordinances
Variance	Zoning	See City Code of Ordinances
Tree Permit application fee	Zoning	See Zoning Code/City Code of Ordinances
Landscape reinspection fee	Zoning	See Zoning Code/City Code of Ordinances
Capital recovery fees	Customer Service	See City Code of Ordinances 50.13 and 51.11
Tapping fee	Customer Service	See City Code of Ordinances
Deposits (water bill)	Customer Service	Deposit based upon size of meter (only applies if contractor responsible for water bills during period between meter installation and City acceptance of project.)
Administrative fee	Customer Service	See City Code of Ordinances
Building permit	Building Inspection	See Bldg Fee Schedule/City Code of Ordinances
Building Reinspection fee	Building Inspection	See Bldg Fee Schedule/City Code of Ordinances
Certificate of occupancy	Building Inspection	See Bldg Fee Schedule/City Code of Ordinances
Lien law	Building Inspection	$5.00
Surcharge Bwd. Cty. Bd. of Rules & Appeals	Building Inspection	$0.60 per $1,000 valuation
Surcharge Fla. Statute 553.721	Building Inspection	1.5% of permit fees, minimum $2.00
Surcharge Fla. Statute 468.631	Building Inspection	1.5% of permit fees, minimum $2.00

BID PROPOSAL

PROJECT IDENTIFICATION

Project Name: Alsdorf Park Phase 2 - Parking Improvements
Bid Number: E-04-16

THIS BID IS SUBMITTED TO

OWNER: City of Pompano Beach, Florida

Address: 1190 N. E. 3rd Avenue, Pompano Beach, Florida 33060

BIDDER-COMPANY NAME

Name: _____

Address: _____

_____

NAME OF PERSON TO CONTACT FOR ADDITIONAL INFORMATION ON THIS BID

Name & Title: _____

Telephone Number: _____

Fax Number: _____

Email: _____

Date: _____

1. The undersigned BIDDER proposes and agrees, if this Bid is accepted, to enter into an agreement with OWNER in the form included in the Contract Documents to perform and furnish all Work as specified or indicated in the Contract Documents for the Contract Price and within the Contract Time indicated in this Bid and in accordance with the other terms and conditions of the Contract Documents.

2. BIDDER accepts all of the terms and conditions of the Advertisement or Invitation to Bid and Instructions to Bidders, including without limitation those dealing with the disposition of Bid Security. This Bid will remain subject to acceptance for ninety (90) Days after the Bid Opening. BIDDER will sign and submit the Agreement with the Bonds and other documents required by Bidding Requirements within ten (10) days after the date of OWNER'S Notice of Award.

3. In submitting this Bid, BIDDER represents, as more fully set forth in the Agreement, that:

A. BIDDER has examined copies of all the bidding Documents and of the following Addenda (receipt of all which is hereby acknowledged):

Date	Number
_____	_____
_____	_____
_____	_____
_____	_____

B. BIDDER 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.

C. BIDDER has studied carefully all reports and drawings of physical conditions which are identified in the bid.

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

E. Bidder has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing site conditions and assumes responsibility for such. No additional examinations, investigations, explorations, tests, reports or similar information or data in respect of said site are or will be required by Bidder in order to perform and furnish the Work at Work Contract Price, within the Contract Time and in accordance with other terms and conditions of the Contract Documents.

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

G. BIDDER has given OWNER written notice of all conflicts, errors or discrepancies that it has discovered in the Contract Documents and the written resolution thereof by Owner is acceptable to Bidder.

H. This Bid is genuine and not made in the interest or on behalf of any undisclosed person, firm or corporation and is not submitted in conformity with any agreement or rules of any group, or corporation; BIDDER has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid; BIDDER has not solicited or induced any person, firm or

corporation to refrain from bidding; and BIDDER has not sought by collusion to obtain for itself any advantage over any other Bidding or over OWNER.

4. BIDDER agrees that the construction of the Project will be substantially complete within 180 calendar days after the date when the Contract Time commences to run as provided in the GENERAL CONDITIONS, and completed and ready for final payment within 210 calendar days after the date when the Contract Time commences to run.

   BIDDER accepts the provisions of the Agreement as to liquidated damages in the event of failure to complete the Work on time.

5. BIDDER agrees that all Federal, State and local sales and use taxes are included in the stated bid prices for the Work.

6. BIDDER further proposes to accept as full payment for the work proposed herein the amounts computed under the provisions of the Contract Documents and based on the following unit prices (if applicable) represent a true measure of the labor, materials, equipment and any other incidentals required to perform the work, including all allowances for overhead and profit for each type and unit of work called for in these Contract Documents.

7. **BID PROPOSAL**

For the following, furnish all tools, materials, labor and any other incidentals required for the construction of parking lot improvements at Alsdorf Park. Specific improvements include storm sewers, grading & sodding of swales, expanded pavement, resurfacing, striping, signage, sidewalks, landscaping, irrigation, lighting and minor utility relocations according to the plans and as specified herein:

(The rest of the page has been left blank intentionally.)

Item No.	Description	01 20 00 Section	Estimated Quantities	Unit	Total Based on Estimated Quantities
	PARK IMPROVEMENTS				
1	DEMOLITION	1.02	1	LS	$
2	DRAINAGE SYSTEM	1.03	1	LS	$
3	EARTHWORK	1.04	1	LS	$
4	CONCRETE SIDEWALKS	1.05	1	LS	$
5	PAVEMENT MODIFICATIONS	1.06	1	LS	$
6	SEALCOAT PAVEMENT	1.07	1	LS	$
7	PAVEMENT MARKING	1.08	1	LS	$
8	ELECTRICAL AND LIGHTING	1.09	1	LS	$
9	UTILITY RELOCATIONS	1.10	1	LS	$
	PARK IMPROVEMENTS SUBTOTAL				$
	MISCELLANEOUS				
10	SIGNAGE	1.11	1	LS	$
11	LANDSCAPING AND IRRIGATION	1.12	1	LS	$

	MISCELLANEOUS SUBTOTAL				$
	GENERAL CONDITIONS				
12	MOBILIZATION	1.13	1	LS	$
13	MAINTENANCE OF TRAFFIC	1.14	1	LS	$
14	BOND AND INSURANCE	1.15	1	LS	$
15	INDEMNIFICATION FOR OWNER-ENGINEER	1.16	1	LS	$10.00
16	COMPLIANCE WITH TRENCH SAFETY ACT	1.17	1	LS	$10.00
17	CONSTRUCTION ALLOWANCE	1.18	1	AL	$50,000.00
	GENERAL CONDITIONS SUBTOTAL				$
	GRAND TOTAL				$

8. The above includes all the necessary excavation, backfill, grading, restoration, and removal of materials attendant upon the construction of the work, complete in place, and the disposal of all excess materials, and the final cleaning up of the work.

DATE _____ BIDDER: _____
(Corporation Name) (Partnership Name) (Trade Name)

BY: _____
Name & Title of Signer

_____
Manual Signature

Company Name: _____

Company Address: _____

_____(Zip) _____

Telephone #: (_____)_____

Facsimile #: (_____)_____

Federal I.D. #_____

State of Florida Contractor's license #_____

Broward County Certificate of Competency #:_____
Expiration Date: _____

9. At the preconstruction conference, the BIDDER shall submit a complete detailed schedule of shop drawing submittals which will show lead time for:

Date of Planned submittal.
Date of anticipated receipt of review (usually three weeks after submittal).
Delivery lead time.
Anticipated installation date.

10. Qualifications Of Bidders

To demonstrate qualifications to perform the Work, and to be considered for award, each Bidder must submit written evidence, such as previous experience, present commitments and other such data as may be called for below (or in SUPPLEMENTARY CONDITIONS). Each Bid must contain evidence of Bidder's qualification to do business in the State where the Project is located or covenant to obtain such qualification prior to executing the Agreement.

10.1 How many years has your organization been in business as a General Contractor?

_____

10.2 What is the last project of this nature that you have completed?

_____

10.3 Have you ever failed to complete work awarded to you? If Yes, where and why?

_____

_____

10.4 List all work performed over the last year.

Project Name _____

Owner's Name _____

Owner's Address _____

_____

Phone Number _____

Nature of Work _____

Original Contract Completion Time (Days) _____

Original Contract Completion Date _____

Actual Final Contract Completion Date _____

Original Contract Price _____

Actual Final Contract Price _____

(Attach additional information as required)

10.5 List all work of similar type, complexity, and comparable value over the past five (5) years and the nature of work performed. (Attach additional information on separate sheet)

Project Name _____

Owner's Name _____

Owner's Address _____

_____

Phone Number _____

Nature of Work _____

Original Contract Completion Time (Days) _____

Original Contract Completion Date _____

Actual Final Contract Completion Date _____

Original Contract Price _____

Actual Final Contract Price _____

10.6 The following are names as three (3) individuals or corporations for which you have performed work of this nature and to which you list as references, excluding the City of Pompano Beach.

NAME	ADDRESS	TELEPHONE	CONTACT PERSON

10.7 Have you personally inspected the proposed work and have you a complete plan for it performance?

_____

10.8 Will you sub-contract any part of this work? _____ Yes _____ No

If Yes, list all proposed subcontractors to be used on this project if the Bidder is awarded the Contract for this project. The successful Bidder shall submit a COMPLETE list of any work that he proposes to subcontract and the proposed subcontractors prior to execution of the contract.

CLASSIFICATION OF WORK	NAME AND ADDRESS OF SUBCONTRACTOR

(Submit any additional contractors to be used on a separate sheet.)

10.9 The following information shall be provided for this project:

(a) Estimated total construction manhours _____

(b) Percent manhours to be performed by Contractor's permanent staff _____

(c) Percent manhours to be performed by direct hire employees _____

(d) Percent manhours to be performed by Subcontractors _____

11. Equipment

11.0 What equipment do you own that is available for the proposed work?

_____

_____

_____

11.1 What equipment will you rent for the proposed work?

_____

_____

11.2 What equipment will you purchase for the proposed work?

_____

_____

12. Conflict Of Interest

For purposes of determining any possible conflicts of interest, all bidders must disclose if any City of Pompano Beach employee is also an owner, corporate officer, or employee of their business.

Indicate either "yes" (a City employee is also associated with your business), or "no". If yes, give person(s) names and position(s) with your business.

Yes _____ Name(s) and Position(s) _____

No _____

(Note: If answer is "yes", you must file a statement with the supervisor of Elections, pursuant to Florida Statutes 112.313).

13. If the BIDDER is:

An Individual

By

_____(SEAL)

(Individual's Name)

doing business as

_____

Business address:

_____

_____

Phone No.:

_____

A Partnership

By

_____(SEAL)

(Firm Name)

_____

(General Partner)

Business address:

_____

Phone No.:

_____

A Corporation

By

_____

(Corporation Name)

_____

(State of Incorporation)

By

_____

(Name of Person Authorized to sign)

_____

(Title)

(Corporate Seal)

Attest

_____
(Secretary)

Business address:

_____

_____

Phone No.: _____

A Joint Venture

By

_____
(Name)

_____
(Address)

By

_____
(Name)

_____
(Address)

(Each joint venturer must sign. The name for each individual, partnership and corporation that is a party to the joint venture should be in the manner indicated above.)

END OF SECTION

STATEMENT UNDER SECTION 287.087
FLORIDA STATUTES, ON DRUG-FREE WORKPLACE

TO BE RETURNED WITH BID

Preference must be given to Contractors submitting certification with their bid or proposal, certifying they have a drug-free workplace in accordance with Florida Statutes, Section 287.087. This requirement affects all public entities of the State and becomes effective January 1, 1991.

Preference shall be given to businesses with drug-free workplace programs. Whenever two or more bids which are equal with respect to price, quality and service are received by the State or by any political subdivision for the procurement of commodities or contractual services, a bid received from a business that certifies that it has implemented a drug-free workplace program shall be given preference in the award process. Established procedures for processing tie bids will be followed if none of the tied vendors have a drug-free workplace program. In order to have a drug-free workplace program, a business shall:

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

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

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

(4) In the statement specified in subsection (1) notify the employees that as a condition of working on the commodities or contractual services that are under 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) 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 an employee who is so convicted.

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

As the person authorized to sign this statement, I certify that his firm complies with the above requirements.

_____ _____
CONTRACTOR'S SIGNATURE CONTRACTOR'S PRINTED NAME

Date: _____

VENDOR CERTIFICATION REGARDING SCRUTINIZED COMPANIES LISTS

Respondent Vendor Name: _____

Vendor FEIN: _____

Section 287.135, Florida Statutes, prohibits agencies from contracting with companies, for goods or services over $1,000,000, that are on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.

As the person authorized to sign on behalf of Respondent, I hereby certify that the company identified above is not listed on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List. I understand that pursuant to section 287.135, Florida Statutes, the submission of a false certification may subject company to civil penalties, attorney's fees, and/or costs.

Certified By: _____

Authorized Signature Print Name and Title: _____

LOCAL BUSINESS PARTICIPATION GOAL ANNOUNCEMENT

BID # _____

The City of Pompano Beach is strongly committed to insuring the participation of City of Pompano Beach Businesses as contractors and subcontractors for the procurement of goods and services.

Bidders are encouraged to participate in the City of Pompano Beach's voluntary Local Business Program by including, as part of their bid package, the Local Business Participation Form (Exhibit "A"), and the Letter of Intent Form (Exhibit "B").

Bidders should utilize businesses that are physically located in the City of Pompano Beach with a current Business Tax Receipt.

You can view the list of City businesses that have a current Business Tax Receipt on the City's website, and locate local firms that are available to perform the work required by the bid specifications. The business information, sorted by business use classification, is posted on the webpage for the Business Tax Receipt Division: http://pompanobeachfl.gov/pages/department_directory/development_services/business_tax_receipt_division/business_tax_receipt_division.html.php

Bidders who are unable to meet the recommended voluntary goals should also provide the Local Business Unavailability Form and Good Faith Effort Report (Exhibits "C" and "D").

The recommended voluntary goal for this bid is 10% for Local Businesses.

TO BE RETURNED WITH BID

CITY OF POMPANO BEACH, FLORIDA
LOCAL BUSINESS PARTICIPATION FORM

Bid Number & Title: _____ Prime Contractor's Name: _____

Name of Firm, Address	Contact Person, Telephone Number	Type of Work to be Performed	Contract Amount

EXHIBIT "A"

TO BE RETURNED WITH BID

LOCAL BUSINESS
LETTER OF INTENT TO PERFORM AS A LOCAL SUBCONTRACTOR

Bid Number_____

TO: _____
(Name of Prime or General Bidder)

The undersigned City of Pompano Beach business intends to perform subcontracting work in connection with the above contract as (check below)

_____ an individual _____ a corporation

_____ a partnership _____ a joint venture

The undersigned is prepared to perform the following work in connection with the above Contract, as hereafter described in detail:

_____

_____

_____

_____

_____

_____

_____

_____

at the following price: _____

_____ _____
(Date) (Name of Local Business Contractor)

(address): _____

_____

BY: _____

EXHIBIT "B"

TO BE RETURNED WITH BID

LOCAL BUSINESS
UNAVAILABILITY FORM

BID # _____

I,_____
(Name and Title)

of_____, certify that on the _____day of

_____, _____, I invited the following LOCAL BUSINESSES to bid work items to be performed in the City of Pompano Beach:

Business Name, Address	Work Items Sought	Form of Bid Sought (i.e., Unit Price, Materials/Labor, Labor Only, etc.)

Said Local Businesses:

___ Did not bid in response to the invitation

___ Submitted a bid which was not the low responsible bid

___ Other:_____

Signature: _____

Date: _____

Note: Attach additional documents as available.

EXHIBIT "C"

TO BE RETURNED WITH BID

GOOD FAITH EFFORT REPORT
LOCAL BUSINESS PARTICIPATION

BID #_____

1. What portions of the contract have you identified as Local Business opportunities?

_____

_____

_____

_____

2. Did you provide adequate information to identified Local Businesses? Please comment on how you provided this information.

_____

_____

_____

3. Did you send written notices to Local Businesses?

____ Yes ____ No

If yes, please include copy of the notice and the list of individuals who were forwarded copies of the notices.

4. Did you advertise in local publications?

____ Yes ____ No

If yes, please attach copies of the ads, including name and dates of publication.

5. What type of efforts did you make to assist Local Businesses in contracting with you ?

_____

_____

7. List the Local Businesses you will utilize and subcontract amount.

_____ $_____

TO BE RETURNED WITH BID

_____ $_____

_____ $_____

8. Other comments: _____

_____

_____

_____

_____

EXHIBIT "D"

SBE GOAL ANNOUNCEMENT

BID # E-04-16

The City of Pompano Beach is strongly committed to insuring the participation of Small Business Enterprises (SBE's) as contractors and subcontractors for the procurement of goods and services.

The SBE criteria being used is as stated in FSS 288.703. As of the date of publication of this solicitation, a small business means an independently owned and operated business concern that employs 200 or fewer permanent full-time employees and that, together with its affiliates, has a net worth of not more than $5 million or any firm based in Florida that has a Small Business Administration 8(a) certification. As applicable to sole proprietorships, the $5 million net worth requirement shall include both personal and business investments.

Bidders are encouraged to participate in the City of Pompano Beach's Voluntary SBE Program by including as part of their bid package the SBE Participation Form (Exhibit "A"), and the Letter of Intent Form (Exhibit "B").

Bidders who are unable to meet the recommended voluntary goals should also provide the SBE Unavailability Form and Good Faith Effort Report (Exhibits"C" and "D").

The recommended, voluntary goals for this bid are 15% for Small Business Enterprises.

TO BE RETURNED WITH BID

CITY OF POMPANO BEACH, FLORIDA
SMALL BUSINESS ENTERPRISE
PARTICIPATION FORM

Bid Number & Title: _____ Contractor's Name: _____

Name of Firm	Contact Person Telephone Number	Type of Work To Be Performed	Contract Amount

(BIDDER SHOULD INCLUDE CERTIFICATES FOR ANY FIRMS LISTED ON THIS PAGE)

FOR CITY USE ONLY

Total Contract Amount _____ Total SBE Contract Amount_____

Are documents requested submitted accordingly ___ YES ___ NO

EXHIBIT "A"

TO BE RETURNED WITH BID

LETTER OF INTENT TO PERFORM AS A SBE SUBCONTRACTOR

Bid Number_____

TO: _____
(Name of Prime or General Bidder)

The undersigned intends to perform subcontracting work in connection with the above contract as (check below)

_____ an individual _____ a corporation

_____ a partnership _____ a joint venture

The undersigned is prepared to perform the following work in connection with the above Contract, as hereafter described in detail:

_____

_____

_____

at the following price: _____

_____ _____
(Date) (Name of SBE Contractor)

(address): _____

_____

BY: _____

SBE EXHIBIT "B"

TO BE RETURNED WITH BID

SMALL BUSINESS ENTERPRISE (SBE)
UNAVAILABILITY FORM

BID # _____

I, _____
(Name and Title)

of _____, certify that on the _____day of

_____, _____, I invited the following SBE CONTRACTOR(s) to bid work items to be performed in the City of Pompano Beach:

SBE Contractor Address	Work Items Sought	Form of Bid Sought (i.e., Unit Price, Materials/Labor Labor Only, etc.)

Said SBE CONTRACTOR(s):

___ Did not bid in response to the invitation

___ Submitted a bid which was not the low responsible bid

___ Other: _____

Signature: _____

Date: _____

Note: Attach additional documents as available.

SBE EXHIBIT "C"

TO BE RETURNED WITH BID

GOOD FAITH EFFORT REPORT

BID #_____

1. What portions of the contract have you identified as SBE opportunities?

   _____ _____ _____

   _____ _____ _____

   _____ _____ _____

2. Did you provide adequate information to identified SBE? Please comment on how you provided this information.

   _____

   _____

   _____

3. Did you send written notices to SBEs?

   ____ Yes ____ No

   If yes, please include copy of the notice and the list of individuals who were forwarded copies of the notices.

4. Did you advertise in local publications?

   ____ Yes ____ No

   If yes, please attach copies of the ads, including name and dates of publication.

5. Did you contact any organizations with large constituents of SBE members for possible sub-contractors? Please attach list of resource organizations used.

6. What type of efforts did you make to assist SBEs in contracting with you ?

   _____

   _____

TO BE RETURNED WITH BID

7. List the SBEs you will utilize and subcontract amount.

_____ $_____

_____ $_____

_____ $_____

8. Other comments: _____

_____

_____

_____

_____

Note: Please attach the unavailability letters with this report.

SBE EXHIBIT "D"

BID BOND

STATE OF FLORIDA)
ss
)

KNOW ALL MEN BY THESE PRESENTS, that we , _____

_____ as principal, and

_____

hereinafter called Surety, are held and firmly bound unto The City of Pompano Beach, Pompano Beach, Florida, a political subdivision of the State of Florida, and represented by its City Commission hereinafter called OWNER, in the sum of _____ Dollars ($ _____) lawful money of the United States of America, for the payment of which well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigned, jointly and severally, by these presents.

WHEREAS, the Principal contemplates submitting or has submitted a Bid to the OWNER for the furnishing of all labor, materials, equipment, machinery, tools, apparatus, means of transportation for, and the performance of the work covered in the Proposal and the detailed Drawings and Specifications, entitled:

(Bid Name) _____

WHEREAS, it was a condition precedent to the submission of said bid that a cashier's check or bid bond in the amount of 5 percent of the base bid be submitted with said bid as a guarantee that the Bidder would, if awarded the Contract, enter into a written Contract with the OWNER for the performance of said Contract, within 10 consecutive calendar days after written notice having been given of the award of the Contract.

NOW, THEREFORE, the conditions of this obligation are such that is the Principal within 10 consecutive calendar days after written notice of such award being given to Principal, enters into the contract to such award and gives a Performance and Payment Bond, each in an amount equal to 100 percent of the base bid, satisfactory to the OWNER, then this obligation shall be void; in the event of the failure of Principal to enter into such contract and bond, the sum herein stated shall be due and payable to the OWNER and the Surety herein agrees to pay the sum immediately upon demand of the OWNER in good and lawful money of the United States of America, as liquidated damages for failure thereof of said Principal; otherwise, it shall remain in full force and effect.

IN WITNESS WHEREOF, the said _____,

as Principal herein, has caused these presents to be signed in the name by its _____

_____ and attested by its _____ under its corporate seal,

and the said _____

_____ as Surety herein, has caused these presents to be signed in its name by

its _____

under its corporate seal, this _____ day of _____ A.D. _____ (year)

Signed, sealed and delivered in
the presence of:

_____
Principal -

_____

By: _____

_____
As to Principal

_____

Surety
By:_____
Attorney-in-Fact
(Power-of-Attorney to be attached)

_____

By: _____
Resident Agent

END OF SECTION

AGREEMENT

THIS AGREEMENT is dated as of the _____ day of _____ in the year _____ by and between CITY OF POMPANO BEACH, FLORIDA (hereinafter call OWNER) and _____ (hereinafter called CONTRACTOR).

OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

Article 1. **WORK**

The project consist of the furnishing of all labor, equipment and materials for:

_____
_____
_____
_____
_____
_____

The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows: (Bid Name) _____.

Article 2. ENGINEER

The Project has been designed by _____ who is hereinafter called ENGINEER and who is to act as OWNER'S representative, assume all duties and responsibilities and have the rights and authority assigned to ENGINEER in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

Article 3. CONTRACT TIME

The Work will be substantially completed within _____ days from the date the Contract Time commences to run as provided in the GENERAL CONDITIONS, and completed and ready for final payment in accordance with the GENERAL CONDITIONS within _____ days from the date the Contract Time commences to run.

Article 4. LIQUIDATED DAMAGES

OWNER and CONTRACTOR recognize that time is of the essence of the Agreement and that OWNER will suffer financial loss if the Work is not completed within the times specified in Article 3, above, plus any extensions thereof allowed in accordance with the GENERAL CONDITIONS. They also recognize the delays, expense and difficulties involved in the proving in a legal or arbitration proceeding the actual loss suffered by OWNER if the Work is not completed on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay OWNER two hundred and 00/100 dollars ($200.00) for each day that expires after the time specified in Article 3 for Substantial Completion, plus any monies paid by the OWNER to the ENGINEER for additional engineering and inspection services until the Work is substantially complete. After Substantial Completion if CONTRACTOR shall neglect, refuse or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by OWNER, CONTRACTOR shall pay the OWNER one hundred and 00/100 ($100.00) for each day that expires after the time specified in Article 3 for completion of Work and readiness for final payment, plus any monies paid by the OWNER to the ENGINEER for additional engineering and inspection services.

Article 5. CONTRACT PRICE

OWNER shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents in current funds as follows:

See BID PROPOSAL attached from bid/contract documents.

Article 6. PAYMENT PROCEDURES

6.1 CONTRACTOR shall submit Applications for Payment in accordance with the GENERAL CONDITIONS. Applications for Payment will be processed by ENGINEER as provided in the GENERAL CONDITIONS.

6.2 Progress Payments. OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR'S Applications for Payment as recommended by ENGINEER, on or about the 1st day of each month during construction as provided below. All progress payments will be on the basis of the progress of the Work measured by the schedule of values established in the GENERAL CONDITIONS (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements.

6.2.1 Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below, but, in each case, less the aggregate of payments previously made and such amounts as ENGINEER shall determine, or OWNER may withhold, accordance with the GENERAL CONDITIONS.

10% of Work completed will be withheld by OWNER as retainage.

6.2.2 Upon Substantial Completion, in an amount sufficient to increase total payments to CONTRACTOR to 90% of the Contract Price, less such amounts as ENGINEER shall determine, or OWNER may withhold, in accordance with the GENERAL CONDITIONS.

6.3 Final Payment. Upon final completion and acceptance of the Work in accordance with the GENERAL CONDITIONS, OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER as provided in said GENERAL CONDITIONS.

Article 7. CONTRACTOR'S REPRESENTATIONS

In order to induce OWNER to enter into this Agreement, CONTRACTOR makes the following representations:

7.1 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.

7.2 CONTRACTOR has studied carefully all reports of explorations and tests of subsurface conditions and drawings of physical conditions which are identified in the bid, and accepts the determination set forth in the bid of the extent of the technical data contained in such reports and Drawings upon which CONTRACTOR is entitled to reply.

7.3 CONTRACTOR has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests, reports and studies in addition to or to supplement physical 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 Time and in accordance with other terms and conditions of the Contract Documents, including specifically the provisions of the GENERAL CONDITIONS; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or will be required by CONTRACTOR for such purposes.

7.4 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, or investigations, explorations, tests, reports, studies or similar information or data in respect of said Underground Facilities are or will be required by CONTRACTOR in order to perform and furnish the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents.

7.5 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.

7.6 CONTRACTOR has given ENGINEER written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR.

Article 8. CONTRACT DOCUMENTS

The Contract Documents which comprise the entire agreement between OWNER and CONTRACTOR concerning the Work consist of the following:

8.1 This Agreement.

8.2 Exhibits to this Agreement.

8.3 Performance and other Bonds, identified as exhibits Performance and Payment Bond.

8.4 Notice of Award.

8.5 GENERAL CONDITIONS.

8.6 SUPPLEMENTARY CONDITIONS.

8.7 Specifications bearing the title (Bid Name _____ consisting of (# of sections ____) and (_____)pages, as listed in table of contents thereof.

8.8 Drawings, consisting of a cover sheet and sheets numbered (___) through (____) inclusive with each sheet bearing the following general title:

(Bid Name)_____

8.9 Addenda numbers _____ to _____, inclusive.

8.10 Contractor's Bid pages.

8.11 Contractor's Sworn Statement on Drug-Free Workplace Section 287.087, Florida Statutes, on Drug-Free Workplace and consisting of one (1) page.

8.12 Documentation submitted by CONTRACTOR prior to Notice of Award (Pages _____ to _____, inclusive).

8.13 The following which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto: All Written Amendments and other documents amending, modifying, or supplementing the Contract Documents pursuant to the GENERAL CONDITIONS.

8.14 The documents listed in paragraphs 8.2 et seq. above are attached to this Agreement (except as expressly noted otherwise above). There are no Contract Documents other than those listed above in the Article 8.

8.15 The insurance certificate detailing terms and provisions of coverage as required by the bid and approved by the City of Pompano Beach Risk Manager.

The Contract Documents may only be amended, modified or supplemented as provided in the GENERAL CONDITIONS.

Article 9. MISCELLANEOUS

9.1 Terms used in this Agreement which are defined in the GENERAL CONDITIONS will have the meanings indicated in the GENERAL CONDITIONS.

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

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

"CITY":

Witnesses:

CITY OF POMPANO BEACH

_____
Signature

By:_____
LAMAR FISHER, MAYOR

_____
Signature

By:_____
DENNIS W. BEACH
CITY MANAGER

Attest:

_____
ASCELETA HAMMOND
CITY CLERK

(SEAL)

Approved As To Form:

_____
MARK E. BERMAN
CITY ATTORNEY

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this _____ day of _____, 2016 by LAMAR FISHER as Mayor, DENNIS W. BEACH, as City Manager and ASCELETA HAMMOND, City Clerk of the City of Pompano Beach, Florida, a municipal corporation, who is personally known to me.

NOTARY'S SEAL:

_____
NOTARY PUBLIC, STATE OF FLORIDA

_____
(Name of Acknowledger Typed, Printed or Stamped)

_____
Commission Number

CONTRACTOR

_____
(Print name of company

Witnesses:

By:_____

_____

Print Name:_____

_____

Title:_____

ACKNOWLEDGMENT OF CONTRACTOR, IF AN INDIVIDUAL

STATE OF }
} ss:
COUNTY OF }

On this _____ day of _____, _____, before me personally came and appeared _____, to me known to me to be the person described in and who executed the foregoing contract and acknowledged that he executed the same.

Witness my hand and official notarial seal at _____

_____ the day and year above written.

_____
Notary Public

My Commission Expires: _____

ACKNOWLEDGMENT OF CONTRACTOR, IF A PARTNERSHIP

STATE OF }
} ss:
COUNTY OF }

On this _____ day of _____, _____, before me personally came and appeared _____, known to me to be one of the members of the partnership of _____ _____ described in and who executed the foregoing instrument and he acknowledged that he executed the same on behalf of said partnership and that same is the act and deed of said partnership.

Witness my hand and official notarial seal at _____ _____ the day and year above written.

_____
Notary Public

My Commission Expires: _____

ACKNOWLEDGMENT OF CONTRACTOR, IF A CORPORATION

STATE OF }
} ss:
COUNTY OF }

On this _____ day of _____, _____, before me personally came and appeared _____, to me known, who, being by me duly sworn, did depose and say that he resides at _____ _____, that he is the _____ of _____, the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that one of the impressions affixed to said instrument is an impression of such seal; that he is the proper official of said corporation designated to execute such contract, that he has authority so to do, that he executed same for and in behalf of said corporation, and this his act is the act and deed of said corporation.

Witness my hand and official notarial seal at _____ _____ the day and year above written.

_____
Notary Public

My Commission Expires: _____

Bond No. _____

Performance Bond

Project No:
Project Title:

KNOW ALL PERSONS BY THESE PRESENTS, that:

_____

as Principal, and

_____

a corporation duly authorized to transact business in the State of Florida, as Surety, are held and firmly bound unto The City of Pompano Beach, Florida, a body Corporate and politic under the laws of Florida, in the sum of:

_____

(Written Amount) (Figures)

good and lawful money of the Unites States, well and truly to be paid, and for the payment whereof, we the undersigned, Principal and Surety, jointly and severally, hereby firmly bind ourselves, our heirs, assigns, successors, and legal representatives.

WHEREAS, the above bounded Principal (hereafter alternately referred to as "Contractor") did on

_____

enter into a Contract with the said The City of Pompano Beach, Florida (hereafter alternately referred to as "Owner") a body corporate and politic as aforesaid, in and by which the said above bounded Principal did undertake and agree to furnish all labor, implements, machinery, equipment, tools and materials necessary therefore and to install, build, erect, construct the project named above in accordance with the certain plans and specifications prepared by:

_____

to which plans and specifications and said contract reference is here made and all thereof made a part hereof as if fully set forth herein.

WHEREAS, it was one of the conditions of the award of said contract with The City of Pompano Beach, Florida that these presents should be executed.

NOW THEREFORE, the conditions of this obligation are such that if the above bounded Principal shall in all aspects fully comply with, carry out and perform the terms and conditions of said contract and his obligations thereunder, including the Specifications, Proposal, Plans and Contract Documents therein referred to and made a part hereof, and therein provided for and shall indemnify and save harmless The City of Pompano Beach, Florida against and from all costs, expenses, damages, injury, or be subjected by reason of any wrongdoing, misconduct, want of care or skill, negligence, or default, including patent infringement on the part of said Principal or his agents, employees or subcontractors, in the execution or performance of said contract and shall promptly pay all just claims for damages or injury to property and for all work done or skill, tools, and machinery, supplies, labor, and materials furnished and debts incurred by said principal in or about the construction or improvements or additions contracted for, then this obligation to be void, otherwise, to remain in full force and effect.

Whenever Contractor shall be, and declared by the Owner to be in default under the Contract, the Surety may promptly remedy the default, or shall promptly:

1. Complete the Contract in accordance with its terms and conditions: or
2. Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by Surety of the lowest responsible Bidder, or, if the Owner elects, upon determination by Owner and Surety jointly of the lowest responsible Bidder, arrange for a contract between such Bidder and Owner, and make available as work progresses (even though there should be a default or a succession of defaults under the Contract or Contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the Contract Price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the Contract Price," as used in this paragraph, shall mean the total amount payable by Owner to Contractor under the Contract and any amendments thereto, less the amount properly paid by Owner to Contractor.

To the limit of the amount of this Bond, Surety's liability to Owner shall include but not be limited to, the cost of the completion of the construction contract and correction of defective work before or after completion of the construction contract; additional legal, design professional, and liquidated damages as specified in the Contract Documents arising out of and in connection with Principal's default and Surety's actions, inactions, and all costs incident to ascertaining the nature and extent of the Principal's default, including engineering, accounting and legal fees.

And the said Surety to this Bond, for value received, hereby stipulates and agrees that no change, extension of time, alterations or additions to the terms of the contract or to the work to be performed thereunder or the specifications accompanying same shall in any way affect its obligation on this Bond, and it does hereby waive notice of any such change, extensions of the time, alteration or addition to the terms of the contract or to the work or to the specifications. Additionally, Surety hereby stipulates and agrees that the bond penalty set forth above shall automatically increase coextensively with any Owner approved change orders which increase the overall contract amount.

Contractor shall give written notice to Owner of any alleged default by the Owner under the Construction Contract. Owner shall have not less than ninety (90) days after receipt of such notice to cure such default before the surety is allowed to assert the default as a defense against Owner. The only types of default that may be asserted against Owner shall be monetary defaults. The surety waives any defense of timeliness of completion if time extensions are granted by the Owner to the Construction Contractor.

No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors or assigns. Any suit under this Bond must be instituted within five (5) years from the date the cause of action accrued.

IN TESTIMONY WHEREOF, the Principal and Surety have caused these presents to be duly signed in, at Pompano Beach, Broward County, Florida, this

_____ day of _____

Countersigned By:

Contractor:

_____

By: (Signature) _____

(SEAL)

Surety:

By: _____

(SEAL OF SURETY)

Address:

Bond No. _____

PAYMENT BOND FORM

Project No:

Project Title:

Facility Name:

BY THIS BOND, WE, _____, as Principal,

and _____, a corporation, as Surety, are bound to The City of Pompano Beach, Florida, herein called "Owner", in the sum of :

_____

(Written Amount) (Figures)

for the payment of which we bind ourselves, our heirs, personal representatives, successors, and assigns, jointly and severally. This Payment Bond is intended to be governed by 255.05, F.S.

THE CONDITION OF THIS BOND is that if Principal:

1. Promptly makes payments to all lienors supplying labor, material, and supplies used directly or indirectly by Principal in the prosecution of the work provided in the contract dated

_____

between Principal and Owner for construction of the Project named above, the contract being made a part of this bond by reference; and

2. Pays Owner all loss, damage, expenses, costs, and attorney's fees, including appellate proceedings, that Owner sustains because of default by Principal under paragraph 1. of this bond;

then this bond is void; otherwise, it remains in full force.

Any changes in or under the contract documents and compliance or noncompliance with formalities connected with the contract or with the changes do not affect Surety's obligation under this bond.

Dated on :_____

Name of Surety: _____

(SEAL OF SURETY)

By: _____

Attorney in Fact

Name of Principal: _____

(SEAL OF PRINCIPAL)

By:

_____

Its authorized officer

General Conditions of the Contract

ARTICLE 1. DEFINITIONS.

1.01 **The Contract Documents:** The Contract Documents consist of the Agreement Form, Addenda, Supplementary Conditions, General Conditions, Documents contained in the Project Manual, Drawings, Plans, Specifications, and all modifications issued after execution of the Contract.

1.02 **The Owner, the Contractor, and the Project Consultant:** are those mentioned as such in the Contract Documents.

1.02.01 **Owner**: The City of Pompano Beach, Florida, (also referred to as the "City").

1.02.02 **Contractor**: The "party of the second part" to the Contract. The person, firm or corporation with whom a contract has been made with the Owner for the performance of the Work defined by the Contract Documents.

1.02.03 **Project Consultant:** The individual, partnership, corporation, association, joint venture, or any combination thereof, of properly registered professional architects, engineers or other design professionals who has entered into a contract with the Owner to provide professional services for development of the design and Contract Documents for the Work of this Project and provide Construction Contract Administration as described in the Contract Documents.

1.03 **City Engineer:** City Engineer of the City of Pompano Beach, Florida.

1.04 **Final Completion**: Means that date subsequent to the date of Substantial Completion at which time the Contractor has completed all of the Work (or designated portion thereof) in accordance with the Contract Documents as certified by the Project Consultant and/or approved by the Owner. In addition, Final Completion shall not be deemed to have occurred until any and all governmental bodies, boards, entities, etc., which regulate or have jurisdiction of the Work, have inspected, approved and certified the Work.

1.06 **Inspector:** An employee(s) of The City of Pompano Beach, Florida, referred to hereinafter as the "**Inspector,**" who(m) is/are assigned by the City Engineer to periodically inspect the Project during the construction process, and who assist(s) the City Engineer in reviewing field performance and its compliance with the Contract Documents.

1.06.01 **Resident Inspector:** An employee or subconsultant of the **Project Consultant** employed to perform either periodic or full-time specific inspection duties.

1.07 **Other Contractors**: Any person, firm or corporation with whom a Contract has been made by the Owner for the performance of any work on the site, which work is not a portion of the Work covered by the Contract.

1.08 **Owner's Representative**: The City Official who has been delegated responsibility by the City Manager to act as the City's project coordinator. (In most cases, the City Engineer shall be assigned this duty.)

1.09 **Phase**: A designated subdivision of the Work, usually with its own requirements for Substantial and Final Completion, and liquidated damages. A Phase may be designated for completion by the Owner's own forces, or by Other Contractors.

1.10 **The Project**: The total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner or by separate contractors.

1.11 **Punch List**: A list of items of work required to render complete, satisfactory, and acceptable the construction services provided for in the Contract Documents and created pursuant to Florida Statute 218.735(7)(a).

1.12 **Subcontractor**: A person or entity other than a materialman or laborer who enters into a Contract with Contractor for the performance of any part of Contractor's Work. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

1.13 **Sub-subcontractor**: A person or entity other than a materialman or laborer who enters into a contract with a Subcontractor for the performance of any part of such Subcontractor's contract. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor. The term "Sub-subcontractor" does not include separate subcontractors of a separate contractor.

1.14 **Submittals**: Are prepared by the Contractor or those working on his behalf (subcontractors, material suppliers, and others) to show how a particular aspect of the Work is to be fabricated and installed. The Contractor's submittals include shop drawings, product data, samples, mock-ups, test results, warranties, maintenance agreements, workmanship bonds, project photographs, record documents, field measurement data, operating and maintenance manuals, reports, certifications, periodic and final "as-builts", surveys, videos and other types of information described in the specifications.

1.15 **Substantial Completion**: The term Substantial Completion as used herein, shall mean that point at which, as certified in writing by the Project Consultant, the Work, or a designated portion thereof, is at a level of completion in substantial compliance with the Contract Documents such that the Owner or its designee can enjoy use or occupancy and can use or operate it in all respects for its intended purpose. In the event the Work includes more than one Phase, the Owner, at its discretion, may set Substantial Completion dates for each Phase and may impose provisions for liquidated damages for each Phase.

1.16 **Subconsultant:** A person or organization of properly registered professional architects, engineers or other design professionals who has entered an agreement with the Project Consultant to furnish professional services in support of the Project Consultants agreement with the Owner.

1.17 **Superintendent**: The executive representative for the Contractor present on the work at all times during progress, authorized to receive and fulfill instructions from the Owner and the Project Consultant and capable of superintending the work efficiently.

1.18 **Work**: The totality of the obligations, including construction and other services, imposed on the Contractor by the Contract Documents, whether completed or partially completed, and including all labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

1.19 **Written Notice**: Shall be deemed to have been duly served if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, if delivered at or sent by registered mail or other traceable delivery service to the last business address known to him who gives notice. Electronic, FAX or other telephonic transmission shall not be considered as written notice.

ARTICLE 2. THE WORK.

2.01 The Contractor shall perform all of the Work required by the Contract Documents and shall provide materials, supplies, tools, equipment, labor and services directly related to the Work, and shall perform the Work in a good and workmanlike manner with sufficient manpower to perform the Work in accordance with the time requirements set forth in the Contract Documents, and shall perform all other acts and supply all other things necessary to complete the Work in strict accordance with the Contract Documents.

2.02 When completed the Work shall conform to the requirements of the Contract Documents and be completely ready for occupancy and finally completed.

2.03 The Contractor represents and warrants to the Owner that:

2.03.01 It is financially solvent and has sufficient working capital to perform the obligations under this Construction Contract;

2.03.02 It is experienced and skilled in the construction of the type of project described in the Contract Document;

2.03.03 It is able to provide the labor, materials, equipment and machinery necessary to complete the Work for the agreed upon price;

2.03.04 It is fully licensed under all applicable laws and authorized to do business in the State of Florida in the name of the entity identified as the "Contractor" in the Construction Contract, and is legally permitted to perform all the work set forth in this Construction Contract.

2.03.05 It has visited the jobsite and examined its nature and location, including without limitation: the surface conditions of the site and any structure or obstruction both natural or man-made; the surface water conditions and water ways of the site and surrounding area; the subsurface conditions of the land as disclosed by soil test borings; and the location of electric and utility lines and water, sanitary, sewer and storm drain lines, as well as site ingress and egress. The Contractor acknowledges receipt and has reviewed the site geotechnical report provided for the Owner.

2.03.06 It will comply with all federal, state and local governmental laws, rules and regulations relating to its responsibilities as set forth in the Contract Documents.

ARTICLE 3. COORDINATION AND CORRELATION OF DRAWINGS AND SPECIFICATIONS.

3.01 The Contractor represents that:

3.01.01 The Contractor and Subcontractors have fully examined and compared all Drawings, Specifications and other Contract Documents including but not limited to those relating to the architectural, structural, mechanical, electrical, civil engineering and plumbing elements and have compared and reviewed all general and specific details on the Drawings and the various technical and administrative requirements of the Specifications.

3.01.02 All construction materials, labor, methods, means, techniques, sequences and procedures required to carry out the Work, all safety precautions and programs required in connection with carrying out the Work, all conflicts, discrepancies, errors and omissions that Contractor is aware of as a result of the examination and comparison of the Contract Documents have been either corrected or clarified to the satisfaction of the Contractor prior to execution of this Construction Contract.

3.01.03 The Contract Sum is reasonable compensation and represents the total lump sum cost for the Work and that all systems and Work shall be functional and in accordance with the requirements of the Contract Documents.

3.01.04 The Contract Time is adequate for the performance of the Work.

3.02 The Contractor is responsible for all means, methods, techniques and sequencing of construction.

3.03 If, after execution of this Construction Contract, the Contractor detects a conflict, discrepancy, error or omission in the Contract Documents then it shall immediately notify Project Consultant and Owner prior to proceeding with the specific portion of the Work.

ARTICLE 4. INTENT AND INTERPRETATION.

4.01 With the respect to the intent and interpretation of this Contract, the Owner and the Contractor agree as follows:

4.01.01 The Contractor shall have a continuing duty to read, examine, review, compare and contrast each of the documents which make up this Contract and shall immediately give written notice to the Owner and the Project

Consultant of any conflict, ambiguity, error or omission which the Contractor may find with respect to these documents before proceeding with the affected Work.

4.01.02 The Contract Documents are complementary, and what is called for by one shall be as binding as if called for by all.

4.01.03 The intent of the Contract Documents is to include all labor, materials, equipment services and transportation necessary for the proper execution of the Work. The Contractor shall continually refer to drawing, specifications and other Contract Documents in this regard.

4.01.04 In the event of a conflict among the Contract Documents, the most stringent requirement to the Contractor shall control.

4.02 The Project Consultant shall be the initial interpreter of the requirements of the Contract Documents and the judge of the performance thereunder.

4.02.01 The Project Consultant shall render interpretations necessary for the proper execution or progress of the Work with reasonable promptness on written request of either the Owner or the Contractor, and shall render written decisions, within a reasonable time, on all claims, disputes, change order requests, substitution requests, requests for interpretation and other matters in question between the Owner and the Contractor relating to the execution or progress of the Work or the interpretation of the Contract Documents.

4.02.02 Interpretations and decisions of the Project Consultant shall be consistent with the intent of and reasonably inferable from the Contract Documents.

4.02.03 In the capacity of interpreter the Project Consultant shall endeavor to secure faithful performance by both the Owner and the Contractor, and shall not show partiality to either.

ARTICLE 5. OWNERSHIP OF THE CONTRACT DOCUMENTS WHICH MAKE UP THE CONTRACT

5.01 Subject to any rights the Project Consultant may have, the Contract Documents and each of them, as well as any other documents, intellectual property, software, computer-assisted material or disks relating to or regarding the Work, shall be and remain the property of the Owner. This shall be the case even if prepared, created or provided by the Project Consultant, Contractor, Subcontractor or others.

5.02 The Contractor shall have the right to keep copies of same upon completion of the Work; provided, however, that in no event shall the Contractor use, or permit to be used, any portion or all of same on other projects without the Owner's prior written authorization.

5.03 The Contractor agrees to provide any and all items referred to in this Paragraph to Owner upon demand by Owner. In the event Contractor fails to provide same to Owner as demanded, Contractor acknowledges that the Owner will need same and will be irreparably harmed and be subject to an injunction to provide same.

ARTICLE 6. TEMPORARY UTILITIES.

6.01 Water For Execution of the Work: The Contractor shall provide temporary water lines sufficient to supply all water needed for the construction and other services required by the Contract Documents and shall pay for all service connections and water used by the Contractor or Subcontractors unless the contrary is provided for elsewhere in the Contract Documents.

6.02 Electrical Energy: The Contractor shall provide temporary electrical energy and power lines sufficient to supply all electricity needed for the construction and other services required by the Contract Documents and shall pay for all service connections and electricity used by the Contractor or Subcontractors unless the contrary is provided for elsewhere in the Contract Documents.

6.03 Temporary Sanitary Facilities And Sewers:

6.03.01 The Contractor shall provide and maintain in a neat and sanitary condition such accommodations and facilities for the use of his employees as may be necessary to comply with the regulations of any governmental agencies, departments, etc. which address or govern these issues.

6.03.02 No nuisance will be permitted.

6.03.03 Upon completion of Work, such facilities shall be removed and the premises left in a sanitary condition.

6.03.04 Contractor is not permitted to use restrooms or other sanitary facilities within the Owner's existing building or on-site facilities unless the contrary is provided for elsewhere in the Contract Documents.

ARTICLE 7. PROGRESS.

7.01 Contractor shall provide the Owner with full information in advance as to its plans for performing each part of the Work. This shall include, but not be limited to, schedules provided to the Owner as Post-Award Information and subsequently updated schedules submitted to the Owner on a monthly basis as required in Article 10 below, as a condition precedent to payment(s).

7.01.01 Such schedule shall be in a form acceptable to the Owner.

7.01.02 The Contractor's schedule shall be updated no less frequently than monthly (unless the parties otherwise agree in writing) and shall be updated to reflect conditions encountered from time to time and shall apply to the total Project.

7.01.03 Each such revision shall be provided to the Owner and the Project Consultant.

7.01.04 Compliance with the requirements of this Subparagraph shall be a condition precedent to payment to the Contractor, and failure by the Contractor to comply with said requirements shall constitute a material breach of this Contract.

7.01.05 By providing these Schedules to Owner, Owner does not in any way acknowledge or consent that the Schedules are acceptable or reasonable, but it is simply reviewing same for its own informational purposes.

7.02 If at any time during the progress of Work, the Contractor's actual progress is inadequate to meet the requirements of the Contract Documents, such as the required completion dates, the Owner may so notify Contractor who shall thereupon take such steps as may be necessary to improve its progress so as to complete the Work on or before the required Substantial Completion Date.

7.02.01 If within a reasonable period as determined by Owner, the Contractor does not improve performance to meet the requirements of the Contract Documents, such as the required completion dates, then the Owner may require an increase in any or all of the following: Contractor's Subcontractor crews and Contractor's own labor force, the number of shifts, overtime operation, Contractor's supervision and additional days of work per week, all without cost to Owner.

7.02.02 Neither such notice by Owner nor Owner's failure to issue such notice shall relieve Contractor of its obligation to achieve the quality of work and rate of progress required by the Contract Documents.

7.03 Failure of Contractor to comply with the instructions of the Owner may be grounds for determination by Owner that Contractor is not prosecuting its Work with such diligence as will assure completion within the time specified.

7.04 Upon such determination, Owner, in addition to any and all other rights set forth in the Contract Documents and remedies afforded Owner under the Contract Documents or at law, may:

7.04.01 Elect to proceed with the Work with its own employees, agents, contractors, subcontractors, suppliers and assess all costs, expenses or fees for same against contractors and/or

7.04.02 Terminate for cause Contractor's right to proceed with the performance pursuant to the Contract Documents, or any separable part thereof, in accordance with the applicable provisions of the Contract Documents.

ARTICLE 8. EXPEDITING

8.01 The Work, equipment and material provided under this Contract may be subject to expediting by Owner.

8.02 Owner shall be allowed reasonable access to the shops, factories and other places of business of the Contractor and/or Subcontractors for expediting purposes.

8.03 As required by Owner, Contractor shall supply schedules and progress reports for Owner's use in expediting, and Contractor shall cooperate with Owner and require Subcontractors to cooperate with Owner in such expediting.

8.04 Any expediting performance by Owner shall not relieve Contractor of its sole and primary responsibility for timeliness of delivery of the equipment and material to be provided under the Contract Document.

ARTICLE 9. COMPLETION

9.01 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Project Consultant a comprehensive Punch List of items to be completed or corrected prior to final payment. Failure to include an item on the Punch List does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

9.01.01 For a Project with an estimated cost of less than $10 million, the Punch List shall be completed within thirty (30) calendar days after Substantial Completion of the Project, as same is defined in the Contract Documents. If Substantial Completion is not defined in the Contract Documents, the list shall be completed upon reaching beneficial occupancy or use.

9.01.02 For a Project with an estimated cost of $10 million or more, the Punch List shall be completed within thirty (30) calendar days, unless otherwise extended elsewhere in the Contract Documents, but not to exceed sixty (60) calendar days, after reaching Substantial Completion, as same is defined in the Contract Documents. If Substantial Completion is not defined in the Contract Documents, the list shall be completed upon reaching beneficial occupancy or use.

9.02 For a Project involving the construction of more than one building or structure, or involving a multiphased project, a Punch List shall be created for each building, structure, or phase of the Project pursuant to the limitations provided for above in 9.01.01 and 9.01.02, as applicable.

9.03 The failure to include any corrective work or pending items not yet completed on the List does not alter the responsibility of the Contractor to complete all the construction services purchased pursuant to the contract. All items that require correction under the Contract Documents and that are identified after the preparation and delivery of the Punch List remain the obligation of the Contractor as defined by the Contract Documents.

9.04 Upon completion of all of the items on the Punch List, the Contractor may submit a payment request for all remaining retainage withheld by the local governmental entity pursuant to this section. If a good faith dispute exists as to whether one or more items identified on the list have been completed pursuant to the Contract Documents, the Owner may continue to withhold an amount not to exceed 150 percent of the total costs to complete the outstanding item.

9.05 In the event that the Contractor fails, in whole or in part, to comply with the obligations and responsibilities required hereunder in paragraph 9.01, the Owner need not pay or process any payment request for remaining retainage.

ARTICLE 10. CONTRACT PAYMENTS

10.01 Schedule of Values:

10.01.01 The Contractor shall maintain and update the Schedule of Values originally provided to the Owner as Post-Award Information.

10.01.02 The Contractor's Schedule of Values apportions the Contract Price among the different elements of the required Work for purposes of periodic and final payments and shall be submitted as detail in support of the Contractor's monthly Application for Payment.

10.01.03 The Schedule of values shall be presented with such detail, and supported with whatever information the Project Consultant or the Owner reasonably requests.

10.01.04 The Contractor shall not imbalance its Schedule of Values nor artificially inflate or exaggerate any element thereof. Contractor's failure to comply with this provision shall be grounds for Owner to terminate Contractor, as provided for elsewhere herein.

10.02 The Owner shall pay the Contract Price to the Contractor in accordance with the procedures provided herein.

10.02.01 On or before the **15th** day of each month after commencement of performance, but no more frequently than once monthly, the Contractor may submit an Application for Payment to the Owner for the period ending the last day of the previous month or other pay period as mutually defined and agreed to by the Contractor and Owner and as provided for in the Contract Documents. The Contractor shall also deliver a copy of the Application for Payment to the Project Consultant.

10.02.02 Said Application for Payment shall be in the format required elsewhere in the Contract Documents and include whatever supporting information as may be required by the Project Consultant, the Owner, or both.

10.02.03 The Owner shall not be required to pay for stored materials or equipment except as set forth in Article 25 below.

10.02.04 Each Application for Payment shall be signed by the Contractor and shall constitute the Contractor's representation that the quantity of work has reached the level for which payment is requested, that the Work has been properly installed or performed in substantial compliance with the requirements of the Contract Documents, and that the Contractor knows of no reason why payment should not be made as requested.

10.02.05 Upon receipt of the Application for Payment, the Project Consultant shall:

a. Within ten (10) days review the Application for Payment and may also review the Work at the Project site or elsewhere to determine whether the quantity and quality of the Work is as represented in the Application for Payment and is as required by the Contract Documents.

b. Approve in writing the amount which, in the opinion of the Project Consultant, is properly owing to the Contractor.

10.02.06 The Owner shall make payment to the Contractor within fifteen (15) days following the Project Consultant's written approval of the Application for Payment but in no event later than twenty-five (25) days after the invoice was received by the Owner.

10.02.07 The Owner may reject the Application for Payment within twenty (20) business days after the date on which the Application for Payment is stamped as received. The rejection shall be in writing and shall specify the deficiency in the payment request or invoice and the action necessary to make the payment request or invoice proper.

10.02.08 If the Owner disputes a portion of an Application for Payment, the undisputed portion must be timely paid.

10.02.09 The Contractor may submit a corrected Application for Payment which corrects the deficiency or deficiencies specified in writing by the Owner. The Owner shall either pay or reject the corrected Application for Payment within ten (10) business days after receipt of same.

10.02.10 If a dispute regarding the Application for Payment cannot be resolved pursuant to the process outlined herein, it must be resolved in accordance with the dispute resolution procedures outlined in Article 45.

10.02.11 The amount of each monthly payment shall be the amount approved for payment by the Project Consultant less such amounts, if any, otherwise owing by the Contractor to the Owner or which the Owner shall have the right to withhold as authorized by the Contract Documents or reasonable business practices. In the event of a dispute with regard to a portion of the Application for Payment, the Owner shall pay the undisputed portion pursuant to the timeline established in this Section.

10.02.12 The Project Consultant's approval of the Contractor's Applications for Payment shall not preclude the Owner from the exercise of any of its rights as set forth in the Contract Documents.

10.02.13 The submission by the Contractor of an Application for Payment also constitutes an affirmative representation and warranty that all Work for which the Owner has previously paid is free and clear of any lien, claim, or other encumbrance by any person whatsoever.

10.02.14 As a condition precedent to payment, the Contractor shall, as required elsewhere in the Contract Documents and as required by the Owner, also provide to the Owner documents relating to the Project, including but not limited to, updated schedules and daily logs, properly executed documents that all subcontractors, materialmen, suppliers or others having rights, acknowledge receipt of all sums due pursuant to all prior Payment Requests and waive and relinquish any rights or other claims of any nature relating to the Project.

10.02.15 Furthermore, the Contractor warrants and represent that, upon payment of the Application for Payment submitted, title to all work included in such payment shall be vested in the Owner.

10.02.16 Dollar Value/Time Graphs: Each of the Contractor's Application for Payment shall be accompanied by a graph, prepared by the Contractor, that consecutively tracks the percentage of completion of both the Application for Payment's dollar value attained and the contract time (calendar days) elapsed, all coinciding with the date of the Application for Payment.

10.03 When payment is received from the Owner, the Contractor shall within five (5) days pay all subcontractors, materialmen, laborers and suppliers the amounts they are due for all work covered by such payment. In the event such payments are not made in a timely manner the Owner may, in its discretion, invoke reasonable procedures in order to protect Owner's interest or Owner's desire to assist in having subcontractors, laborers, suppliers, materialmen or others paid.

10.04 It is mutually agreed that payments made under this Contract shall not constitute acceptance of defective or improper materials or workmanship nor shall same act as a waiver or release of future performance in accordance with the Contract Documents.

ARTICLE 11. WITHHOLDING PAYMENT TO CONTRACTOR

11.01 The Owner may withhold as retainage ten (10) percent of the payment owed to the Contractor until fifty-percent (50%) completion of the Project. After fifty-percent (50%) completion is reached, the Owner will reduce the amount of retainage withheld from each subsequent progress payment to five percent.

11.01.01 Fifty-percent (50%) completion shall be defined in the Contract Documents. If not defined, fifty-percent (50%) completion shall be the point at which the Owner has expended fifty-percent (50%) of the total cost of the construction services purchased with all costs associated with existing change orders and any other additions or modifications to the construction services provided for in the Contract Documents.

11.01.02 After fifty-percent (50%) completion of the Project, the Contractor may present to the Owner an Application for Payment of up to one-half of the retainage retained by the Owner prior to the fifty-percent completion date. The Owner shall promptly make such payment unless the Owner has grounds for withholding the payment retainage as provided herein.

11.02 If the City pays the retainage amount upon the Contractor's request which is attributable to the labor, services, or materials supplied by one or more contractors or suppliers, the Contractor shall timely remit payment of such retainage to those subcontractors or suppliers.

11.03 Regardless of the provisions in this Article, in no event shall the Owner be required to pay or release any amounts that are the subject of a good faith dispute, a claim brought pursuant to Fla. Stat. § 255.05, or otherwise the subject of a claim or demand by the Owner.

11.04 In addition to the Retainage, payments, including but not limited to Final Payment, may be withheld or reduced by the Owner in its sole discretion if any of the following exists:

11.04.01 The Work is not proceeding in accordance with the Construction Documents Schedule as anticipated by the Project Consultant or the Owner. In that event, the Project Consultant or the Owner will assess the anticipated delay and the Owner will use the amounts specified for Liquidated Damages as the basis for amounts withheld. Said funds shall be held until such time as the Project Consultant or Owner determine that the Work is back on schedule. By making said funds available to Contractor, Owner does not waive its right to assess liquidated damages at the completion of the Project;

11.04.02 Liquidated Damages as set forth in this Contract;

11.04.03 Defective Work unremedied;

11.04.04 Punch-List items unremedied;

11.04.05 Subject to Owner's written notice to Contractor in accordance with the Contract Documents back charge items for work performed by Owner or another contractor at the request of Owner, which work is within the scope of the Work under this Construction Contract;

11.04.06 Claims filed by subcontractors, laborers, suppliers, materialmen or others;

11.04.07 Failure to comply with any and all insurance requirements;

11.04.08 Failure of the Contractor to make payment properly to Subcontractors or others;

11.04.09 Damage to the Owner or another contractor;

11.04.10 Reasonable evidence that the Work will not be completed on or before the Substantial Completion or Final Completion Date;

11.04.11 Failure of the Contractor to carry out any of its obligations in accordance with the Contract Documents;

11.04.12 Failure of the Contractor to submit the information or documents required by this Contract or reasonably required by Owner, including but not limited to schedules and daily logs.

ARTICLE 12. CONTRACTOR'S RIGHT UPON NONPAYMENT.

12.01 If within thirty (30) days of the date payment to the Contractor is due, the Owner, without cause or basis hereunder, fails to pay the Contractor any amounts then due and payable to the Contractor, the Contractor shall have the right to cease work until receipt of proper payment after first providing ten (10) days written notice of its intent to cease work to the Owner.

ARTICLE 13. INFORMATION AND MATERIAL SUPPLIED BY THE OWNER.

13.01 The Owner shall furnish to the Contractor, prior to the execution of the Contract, any and all written and tangible material, including but not limited to surveys and other information concerning existing conditions on the Site.

13.02 The Owner shall also furnish, if appropriate, the legal description of the Project site, and any required survey.

ARTICLE 14. LICENSES AND PERMITS.

14.01 All licenses and permits necessary to commence and prosecute the Work to completion shall be procured and paid for by the Contractor, unless expressly provided for elsewhere in the Contract Documents.

14.03 All easements and rights-of-way will be procured and paid for by the Owner unless otherwise specifically provided within the Contract Documents.

ARTICLE 15. CEASE AND DESIST ORDER.

15.01 In the event the Contractor fails or refuses to perform the Work as required herein, the Owner may instruct the Contractor to cease and desist from performing the Work in whole or in part. Upon receipt of such instruction, the Contractor shall immediately cease and desist as instructed by the Owner and shall not proceed further until the cause for the Owner's instructions has been corrected and the Owner instructs that the Work may resume.

15.02 In the event the Owner issues such instruction to cease and desist, and in the further event the Contractor fails and refuses within seven (7) days of receipt of same to provide adequate assurance to the Owner that the cause of such instructions will be eliminated or corrected, then the Owner shall have the right, but not the obligation, to carry out the Work with its own forces, or with the forces of another contractor, and the Contractor shall be fully responsible and liable for the costs of performing such work by the Owner.

15.03 The rights set forth herein are in addition to, and without prejudice to, any other rights or remedies the Owner may have against the Contractor.

ARTICLE 16. DUTIES, OBLIGATIONS AND RESPONSIBILITIES OF THE CONTRACTOR.

16.01 The Contractor shall perform the Work in accordance with the Contract Documents.

16.02 The Contractor shall supervise the Work and bear full responsibility for any and all acts or omissions of those engaged in the Work on behalf of the Contractor.

16.03 The Contractor hereby warrants that all labor provided under this Contract shall be competent to perform the tasks undertaken, that the product of such labor shall yield only first-class results, that all material and equipment provided shall be new and of high quality, that the Work will be complete, of high quality, without defects, and in compliance with the requirements of the Contract Documents. Any Work not complying with the requirements of this Subparagraph shall constitute a breach of the Contractor's warranty.

16.04 Unless expressly provided for elsewhere in the Contract Documents, the Contractor shall obtain and pay for all required permits, fees, and licenses and shall comply with all legal requirements applicable to the Work.

16.05 The Contractor shall prepare and submit schedules and supporting documentation as required elsewhere in the Contract Documents.

16.06 Record Keeping on Site:

16.06.01 The Contractor shall keep a daily log, an updated copy of the Contract Documents, approved shop drawings and other submittals, and other documents and materials as required by the Contract Documents at the site.

16.06.02 All of these items shall be available to the Owner and the Project Consultant at all regular business hours.

16.06.03 Upon final completion of the Work, all of these items shall be finally updated and provided to the Owner and shall become the property of the Owner.

16.07 Shop Drawings And Other Submittals:

16.07.01 The Contractor shall submit for approval with reasonable promptness and in a timely manner so as to cause no delay in the Work, various submittals including shop drawings as required for the Work of the various trades.

16.07.02 These shop drawings and other submittals shall be in accordance with the requirements of the Contract Documents and shall be carefully checked in every respect and signed by the Contractor before submitting same to the Project Consultant.

16.07.03 Shop drawings and other submittals from the Contractor are not part of the Contract Documents but are documents prepared and utilized by the Contractor to coordinate the Work.

16.07.04 The Contractor shall not do any Work requiring shop drawings or other submittals unless such have been approved in writing by the Project Consultant.

16.07.05 All Work requiring approved shop drawings or other submittal shall be done in compliance with such approved documents. However, approval by the Project Consultant or the Owner shall not be evidence that Work installed pursuant thereto conforms with the requirements of the Contract Documents.

16.07.06 The Owner and the Project Consultant shall have no duty to review partial submittal or incomplete submittal except as may be provided otherwise within the Contract Documents.

16.07.07 The Contractor shall maintain a submittal log which shall include, at a minimum, the date of each submittal, the date of any resubmittal, the date of any approval or rejection, and the reason for any approval or rejection.

16.07.08 The Contractor shall have the duty to carefully review, inspect and examine any and all submittal and resubmittals before submission of same to Owner or the Project Consultant.

16.08 The Contractor shall maintain the Project site in a reasonably clean condition during performance of the Work. Upon final completion, the Contractor shall thoroughly clean the Project site of debris, trash and excess materials or equipment. In the event the Project is located at or near occupied facilities, then Owner may establish additional rules and regulations regarding condition at the Project, including but not limited to, keeping the Project and the occupied premises clean, safe and secure.

16.09 At all times, the Contractor shall permit the Owner and the Project Consultant to enter upon the Project site and to review or inspect the Work.

ARTICLE 17. SUBCONTRACTS.

17.01 The Contract Documents make no attempt to fix the scope of the Work of any Subcontractor nor the responsibilities of any such Subcontractor, it being understood that the Contractor shall fix the scope of all Work and responsibilities of the Subcontractor. Contractor shall not replace Subcontractor without good cause.

17.02 The Contractor shall continuously update information concerning Subcontractors submitted to the Owner as Post-Award Information by submitting:

17.02.01 The general form of Subcontract Agreement used by the Contractor within thirty (30) days of execution of the Construction Contract.

17.02.02 Updated listings of Subcontractors denoting changes to the list submitted as Post-Award Information within ten (10) days of said change.

17.02.03 Copies of executed Subcontractor Contracts within ten (10) days of their execution.

17.02.04 A complete accounting of all payments made to Subcontractors and the balances owed to the Subcontractors with each Application For Payment submitted by the Contractor.

17.03 All contracts with Subcontractors shall incorporate by reference the terms and conditions of this Construction Contract.

17.04 The Contractor shall cause and require to be included in all Subcontracts a provision for the benefit of the Owner binding the Subcontractors to remain bound by the Subcontracts in the event the Contractor is replaced by another contractor pursuant to the terms of the Contract Documents. The Contractor shall also include in all Subcontracts a provision requiring the Subcontractor, in the event of the Contractor's termination, to consent to the assignment of their Subcontracts to the Owner.

17.05 The Owner may at any time request from the Subcontractors, or any of them, a sworn statement of account with the Contractor and the Contractor shall cause to be included in all Subcontracts a requirement that the Subcontractors provide said sworn statement upon Owner's request.

17.06 Each Subcontractor and supplier must agree to assign all of its warranties to Owner. In addition each Subcontractor and supplier must warrant all of its Work, equipment, materials and labor to Owner in accordance with the terms and provisions of its contractual obligations to Contractor and any legal or statutory provisions that apply to its work, materials or equipment.

17.07 Owner may at its discretion require Contractor to have major sub-subcontractors or suppliers comply with the requirements of this Article 16 or other provisions of the Contract Documents.

ARTICLE 18. CONTRACTOR'S SUPERINTENDENT

18.01 Before starting the Work, Contractor shall designate an English speaking, competent, authorized representative (hereinafter Superintendent), acceptable to the Owner, to represent and act for the Contractor. The Contractor shall:

18.01.01 Inform Owner, in writing, of the name and address of such representative together with a clear definition of the scope of his authority to represent and act for Contractor and shall specify any and all limitation on such authority.

18.01.02 Keep the Owner informed of any subsequent changes in the foregoing.

18.02 The Superintendent shall be present (or be temporarily represented by a person familiar with the project work activities and schedule) at the site of the Work at all times when the Work is actually in progress.

18.04 All notices, determinations, instructions and other communications given to the Contractor's Superintendent shall be binding upon the Contractor.

18.05 The Superintendent shall maintain a daily log/report which shall include at least the following information: weather conditions; trades at site; manpower totals by trade; heavy equipment in use; activities in progress; and inspections at site. Copies of the daily entries shall be provided to the Owner once per month, or as required elsewhere in the Contract Documents.

ARTICLE 19. COOPERATION WITH OTHERS.

19.01 The Owner and other contractors and subcontractors may be working at the site during the performance of the Construction Contract, and Contractor's work may be interfered with as a result of such concurrent activities. Contractor shall fully cooperate with Owner and other contractors to avoid any delay or hindrance of the Work. Owner may require that certain facilities be used concurrently by Contractor and other parties and Contractor shall comply with such requirements.

19.02 If any part of the Contractor's work depends on proper execution or results from any work performed by the Owner or any separate contractor, the Contractor shall, prior to proceeding with the Work, promptly report to the Owner any apparent discrepancies or defects in such work that render it unsuitable for such proper execution and results. Failure of the Contractor to so report shall constitute an acceptance of the Owner or separate contractor's work as fit and proper to receive Contractor's Work, except as to defects which may subsequently become apparent in such work performed by others.

ARTICLE 20. SITE CONDITIONS.

20.01 Contractor shall have the sole responsibility to conduct reasonable inspection of the site and to satisfy itself concerning the nature and location of the Work and the general and local conditions, and particularly, but without limitation, with respect to the following: those affecting transportation, access, disposal, handling and storage of material; availability and quality of labor, water and electric power; availability and condition of roads; climatic conditions; location of underground utilities as depicted in the Contract Documents; governmental processes and requirements for obtaining permits other than issuance of the original building permits, certificates of occupancy and other regulatory/utility approvals; physical conditions at the work sites and the Project area as a whole; topography and ground surface conditions; subsurface geology, and nature and quality of surface and subsurface materials to be encountered; equipment and facilities needed preliminary to and during performance of the Construction Contract; and all other matter which can in any way affect performance of the Construction Contract, or the cost associated with such performance.

20.02 The failure of Contractor to acquaint itself with any applicable condition will not relieve it from the responsibility for properly estimating either the duration, difficulties, or the costs of successfully performing the Work.

20.03 Contractor may reasonably rely upon site documentation provided by the Owner. In the event that during the course of the Work Contractor encounters an underground utility facility that was not shown on the Contract Documents; or subsurface or concealed conditions at the Project site which differ materially from those shown on the Contract Documents and from those ordinarily encountered and generally recognized as inherent in work of the character called for in the Contract Documents; or unknown physical conditions of the Project site, of an unusual nature, which differ materially from that ordinarily encountered and generally recognized as inherent in work of the character called for in the Contract Documents, Contractor, without disturbing the conditions and before performing any work affected by such conditions, shall, within forty-eight (48) hours of their discovery, notify Owner and Project Consultant in writing of the existence of the aforesaid conditions. Project Consultant and Owner shall, within two (2) business days after receipt of Contractor's written notice, investigate the site conditions identified by Contractor. If, in the sole opinion of Project Consultant, the conditions do materially so differ and cause an increase or decrease in Contractor's cost of, or the time required for, the performance of any part of the Work, whether or not changed as a result of the conditions, Project Consultant shall recommend an equitable adjustment to the Contract Price, or the Contract Time, or both. If Owner and Contractor cannot agree on an adjustment in the Contract price or the Contract time, the adjustment shall be referred to Project Consultant for determination. Should Project Consultant determine that the conditions of the Project site are not so materially different to justify a change in the terms of the Contract, Project Consultant shall so notify Owner and Contractor in writing, stating the reasons, and such determination shall be final and binding upon the parties hereto. No request by Contractor for an equitable adjustment to the Contract under this provision shall be allowed unless Contractor has given written notice in strict accordance with the provisions of this Article. No request for an equitable adjustment or change to the Contract Price or Contract Time for differing site conditions shall be allowed if made after the date certified by Project Consultant as the date of substantial completion.

ARTICLE 21. RESPONSIBILITY FOR WORK SECURITY.

21.01 Contractor shall at all times conduct, at its expense, all operations under the Construction Contract in a manner to avoid the risk of loss, theft or damage by vandalism, sabotage or other means to any property.

21.01.01 Contractor shall promptly take such reasonable precautions as are necessary and adequate against any conditions which involve risk of a loss, theft or damage to its property.

21.01.02 Contractor shall continuously inspect all of its Work, materials, equipment and facilities to discover and determine any such conditions and shall be solely responsible for discovery, determination and correction of any such condition.

21.02 Contractor shall comply with all applicable laws and regulations.

21.02.01 Contractor shall cooperate with Owner on all security matters as set forth elsewhere in the Contract Documents and shall promptly comply with any project security requirements established by Owner.

21.02.02 These security requirements may be more stringent in the event portions of the facilities or project are occupied or otherwise being used.

21.02.03 Such compliance with these security requirements shall not relieve Contractor of its responsibility for maintaining property security for the above noted items, nor shall it be constructed as limiting in any manner Contractor's obligation to undertake reasonable action as required to establish and maintain secure conditions at the site.

21.03 Contractor shall prepare and maintain accurate reports of incidents of loss, theft or vandalism and shall provide these reports to Owner in a timely manner.

ARTICLE 22. PROTECTION OF WORK IN PROGRESS, MATERIALS AND EQUIPMENT.

22.01 Contractor shall be responsible for and shall bear any and all risks of loss or damage to Work in progress, all materials delivered to the site, and all materials and equipment involved in the Work until completion and final acceptance of the Work under this Contract.

22.02 Permanent openings for the introduction of work and materials to the structure and construction site shall be protected so that upon completion, the Work will be delivered to the Owner in proper, whole and unblemished condition.

ARTICLE 23. ADMINISTRATION OF THE CONTRACT.

23.01 The Project Consultant will provide Administration of the Contract.

23.01.01 For those projects for which the City Engineer serves as the Project Consultant, all references to the Project Consultant shall be considered to be the City Engineer.

23.01.02 In the event the Owner should find it necessary to replace the Project Consultant, the Owner shall retain a replacement and the role of the replacement shall be the same as the role of the original Project Consultant.

23.02 Unless otherwise directed by the Owner in writing, the Project Consultant will perform those duties and discharge those responsibilities allocated to the Project Consultant by the Owner.

23.03 Neither the Project Consultant nor the Owner will be responsible for construction means, methods, techniques, sequences or procedures, safety precautions and programs in connection with the Work or for the acts of omission or commission of the Contractor, its Subcontractors or their agents or employees.

23.04 The Project Consultant and Owner will each have the authority to reject Work which does not conform to the Contract Documents and to require special inspection or testing with prior approval by the Owner. Neither the Project Consultant's nor the Owner's authority to act under this Paragraph, nor any decision made by them in good faith either to exercise or not to exercise such authority, shall give rise to any duty or responsibility of the Project Consultant or the Owner to the Contractor, any Subcontractor, any of their agents or employees, or any other person performing any of the Work.

23.05 The Contractor shall forward all communications to the Project Consultant, with simultaneous copies to the Owner.

23.06 The Project Consultant will review and certify the Contractor's Application for Payments which the Owner must subsequently approve prior to Payment of the Contractor.

23.07 The Project Consultant shall approve shop drawings for design only, the Contractor being responsible for all dimensions, quantities, etc., necessary to complete the Work in compliance with the Drawings and Specifications and other Contract Documents.

23.08 The duties, responsibilities and limitations of authority of the Project Consultant and the Owner will not be modified nor extended without written consent of the Contractor, the Project Consultant, and the Owner.

23.09 Notwithstanding anything to the Contrary in these General Conditions or any other "Contract Document" as that term is defined in the Professional Services Agreement between the City of Pompano Beach, Florida and the Project Consultant, it is not the intention nor shall any of the provisions of those documents act as a release, limitation or discharge of the obligations or responsibilities of the Project Consultant pursuant to its agreement with the Owner.

ARTICLE 24. MATERIALS.

24.01 The Contractor shall provide materials and equipment as required in the Contract Documents. No substitution will be permitted except in the instance where a material is no longer available during the progress of the Work or is deemed by the Owner to be no longer suitable or appropriate for incorporation into the Work or for obvious economic benefits accruable to the Owner.

24.01.01 Any such substitution must be approved by the Project Consultant and Owner prior to incorporation of the proposed substitution into the Work.

24.01.02 Proposed substitutions must be submitted for consideration from the Contractor to the Project Consultant and the Owner. Documentation for the proposed substitution must include, but is not limited to substantiation of the Contractor's efforts to obtain the originally specified materials including documentary evidence from the original materials' manufacturer that such materials are not available.

24.01.03 Product delivery lead times shall not serve as a basis for any substitution request except for where approved in advance by the Owner.

24.01.04 All additional costs incurred by the Owner as the result of any substitution will be the direct responsibility of and borne by the Contractor.

24.02 The Contractor shall make written request to the Project Consultant for and obtain his written approval of the use of any materials proposed for use when "approval" materials are specified or a performance type specification is utilized without mentioning any standard by name.

24.03 If, in the opinion of the Project Consultant, a specified product or equipment no longer meets the quality of the products or equipment required for the Work, Project Consultant shall request a Change Order Proposal from the Contractor for modifying the Contract to incorporate the respective changes to the Work required, the Contract amount, and the Contract Time as beneficial to the Owner.

ARTICLE 25. STORED MATERIALS.

25.01 Contractor shall, at its expense, receive, unload, store in a secure place, and deliver from storage to the construction site all materials and equipment required for the performance of the Contract.

25.01.01 Contractor is not entitled to payment for same except for those materials which in Owner's discretion are properly stored and are going to be installed or incorporated into the construction of the Project within thirty (30) days of delivery to the construction site.

25.01.02 The storage facilities and methods of storing shall meet Owner's approval and shall be in accordance with manufacturer's recommendations, or Owner will not be obligated to pay for same.

25.01.03 Materials and equipment subject to degradation by outside exposure shall be stored in a weather tight enclosure provided by Contractor at its expense.

25.01.04 Owner may at its discretion require material to be stored in an air-conditioned location.

25.02 Provided the above conditions are met, the stored materials may be included in a subsequent Application for Payment if the Contractor also complies with the following:

25.02.01 An applicable purchase order is provided listing the materials in detail and identifying the Contract Documents, by name, with verification that the total value of the purchase order amount reconciles with the corresponding application for payment stored materials line item value.

25.02.02 Evidence that proper storage security is provided.

25.02.03 The Owner is provided legal title (free of liens or encumbrances of any kind) to the material that is stored or stockpiled.

25.02.04 The Contractor and/or its Subcontractor have provided insurance for the Stored Materials against loss, damage (from whatever source), or disappearance, including loss or theft prior to incorporation into the Work. By execution of the Contract, Contractor releases Owner from any responsibility for Stored Materials and assumes all liability for and risk of loss or damage, by whatever means, including Owner's alleged negligence, regardless of whether the Owner has paid for said Stored Materials.

25.03 Once any Stored Material is paid for by Owner, it shall not be removed from the designated storage area except for incorporation into the Project or upon subsequent written approval by Owner.

25.04 No Applications for Payment shall be submitted nor payments made based on the value of materials stored at locations other than the Project, unless otherwise approved in writing by the Owner.

25.05 It is further agreed between the parties that the transfer of title and the Owner's payment for any Stored Material pursuant to the Contract Documents shall in no way relieve the Contractor of the responsibility for providing and installing such material in accordance with the requirements of the Contract Documents.

25.06 The Contractor warrants that title to all of the Work or Stored Materials covered by the Application for Payment will pass to the Owner either by incorporation in the Project or upon receipt of payment by the Contractor, whichever occurs first, free and clear of all liens, claims, security, interest or encumbrance; and that none of the Work and none of the Stored Materials covered by the Application for Payments will have been acquired by the Contractor, or by any other person performing the Work at the site or providing materials and equipment to the Project, subject to an agreement under which an interest therein or encumbrance thereon is retained by the seller or otherwise imposed by the Contractor or such person.

25.07 In the event stored materials which Owner is paying for in advance of their being installed or incorporated into the Project pursuant to this Paragraph are not installed or incorporated into the Project within thirty (30) days of when they are delivered to the site, Contractor shall not be entitled to payment for any future stored materials on this Project and the amounts previously approved for payment for said materials shall be deducted from the Contractor's next application for payment..

ARTICLE 26. INSPECTION: REJECTION OF MATERIALS AND WORKMANSHIP.

26.01 All material and equipment provided and work performed shall be properly inspected by Contractor, at its expense, and shall at all times be subject to quality surveillance, inspections, observations or quality audit by Owner, Project Consultant and any inspectors conducting an inspection pursuant to code, law, regulations, etc.

26.01.01 Contractor shall provide safe and adequate facilities, and all samples, drawings, lists and documents necessary for such quality surveillance, observation or quality audit.

26.01.02 The Contractor shall permit and facilitate inspection of the Work by the Owner, Project Consultant, Inspectors for any governmental agency, authority, or board.

26.01.03 Owner also reserves the right to designate others such as consultants, commissioning authorities, test and balance agents, forensic specialists, etc. to conduct inspections during or subsequent to the Work as Owner in its discretion desires.

26.01.04 Owner and Project Consultant shall be afforded full and free access to the shops, factories or places of business of Contractor and its Subcontractors for such quality surveillance, observation or quality audit and to determine the status of the Work.

26.01.05 In the event the Project Consultant or Owner requires a factory inspection, the Contractor shall notify the suppliers that the material shall not be produced or fabricated without due notice to the Project Consultant and Owner and an opportunity for such inspection.

26.02 If any Work should be covered up without approval or consent of the Project Consultant or Owner, it must, if required by the Project Consultant or Owner, be uncovered for examination at the Contractor's expense.

26.03 If any material, equipment or workmanship is determined by Owner, City Engineer, Project Consultant or Inspector either during performance of the Work or on final quality surveillance, or during any applicable warranty period, to be defective or not complying with the requirements of this Construction Contract, Owner, City Engineer, Project Consultant or Inspector will notify Contractor in writing that such material, equipment or portions of the Work is rejected and Owner reserves the right to withhold payment on any such item or seek compensation from Contractor for same. Thereupon, Contractor shall, at its own expense, immediately remove, replace or correct such defective material, equipment or portions of the Work by making the same comply strictly with all requirements of the Contract Documents. The Contractor shall be responsible for the costs of any additional site observations, special inspections and/or testing, or other activities of either the Project Consultant or the Owner made necessary by the correction of such defective materials, equipment or portions of the Work.

26.04 Neither the failure to make such quality surveillance, observation or quality audit, nor to discover defective workmanship, materials, or equipment, shall prejudice the rights of Owner to correct or reject the same as hereinafter provided.

ARTICLE 27. WARRANTY.

27.01 Unless otherwise provided elsewhere in the Contract Documents, all material and equipment incorporated into any Work covered by the Contract Documents shall be new and, where not specified, of the most suitable grade of their respective kinds for their intended use, and all workmanship shall be in accordance with construction practices acceptable to Owner and Project Consultant.

27.02 Unless otherwise provided in the Contract Documents, Contractor warrants all Work, equipment, materials and workmanship to be in accordance with the Contract Documents, any and all applicable codes, proper and workmanlike, first class and free from defects for a period of twelve (12) months (unless longer guarantees or warranties are provided for elsewhere in the Contract Documents in which case the longer periods of time shall prevail) from and after Final Completion of the Work under the Contract Documents, regardless of whether the same were provided or performed by Contractor or by any Subcontractor.

27.03 Contractor's warranty with respect to latent defects shall be in accordance with Chapter 95, Florida Statutes, and other applicable provisions of State law.

27.04 In the event of damage or injury to persons or property or other consequential or resultant damages result from Contractor's breach of any warranties, then the Contractor will be responsible for same.

ARTICLE 28. OFFICE SPACE FOR THE OWNER'S PERSONNEL.

28.01 The Contractor shall provide, at Contractor's expense, for the duration of the Work, a suitable lockable office for any Owner designated personnel.

ARTICLE 29. PROJECT RECORD DOCUMENTS AND SURVEY.

29.01 A marked up record set of the Contract Documents and other project records as required elsewhere within the Contract Documents will be kept up to date by the Contractor on the jobsite at all times. These documents will be given to the Project Consultant at the completion of the Work as required by the Contract Documents, and properly labeled as "Project Record Documents."

29.02 In addition to the "Project Record Documents", the Contractor will cause to have prepared by a Surveyor, registered in the State of Florida, a site survey clearly representing all Work done under this Contract and updating the original survey as may have been provided by the Owner.

29.03 The Contractor shall submit Project Record Documents and Survey in the manner and format specified elsewhere in the Contract Documents.

29.04 This is a critical item and final payment will be withheld from the Contractor until "Project Record Documents" and survey are provided by the Contractor and approved by the Project Consultant.

ARTICLE 30. SALVAGE.

30.01 Any salvage resulting from clearing, grubbing, grading, draining, remodeling or altering any existing facilities on this site shall be the property of the Owner; and this material shall be piled or stacked on the site if the Owner desires this material.

30.02 If this material is not desired by the Owner, it shall be disposed of by the Contractor at his expense.

ARTICLE 31. CLAIMS BY THE CONTRACTOR.

31.01 Although Contractor acknowledges the No Damage for Delay clause set forth in Article 6 of the Agreement between Owner and Contractor, in the event the Contractor is entitled to assert any other claim against Owner for any reason, claims by the Contractor against the Owner (except for claims asserted under Article 20 which are treated as set forth therein), are subject to the following terms and conditions:

31.01.01 All Contractor claims against the Owner shall be initiated by a written claim submitted to the Owner, c/o the City Engineer, and the Project Consultant. Such claim shall be received by the Owner and the Project Consultant no later than fifteen (15) calendar days after the event, or the first appearance of the circumstances causing the claim, and same shall set forth in detail all known facts and circumstances supporting the claim and the actual damages or injuries suffered;

31.01.02 The Contractor shall continue diligently with its performance hereunder regardless of the existence of any claims submitted by the Contractor;

31.01.03 In the event the Contractor seeks to make a claim, as a condition precedent to any such claim the Contractor shall strictly comply with the notice requirements above and such claim shall be made by the Contractor before proceeding to execute any additional or changed Work. Failure of the condition precedent to occur, i.e., providing notice as required in Article 31.01.01 above, shall constitute a complete waiver by the Contractor of any claim for additional compensation or extension of time. This written notice requirement may not be waived by verbal representations or the acts of representatives of the Owner or Project Consultant;

31.01.04 In connection with any claim by the Contractor against the Owner for compensation in excess of the Contract Price, any liability of the Owner for the Contractor's cost shall be strictly limited to direct cost of labor and materials incurred by the Contractor at the jobsite and shall in no event include indirect cost, overhead, loss of profit, or consequential damages of the Contractor. The Owner shall not be liable to the Contractor for claims of third parties including, but not limited to, subcontractors, suppliers, laborers, etc.

ARTICLE 32. CHANGE ORDERS.

32.01 One or more changes to the Work within the general scope of this Contract may be ordered by the Owner by Change Order, Project Consultant's Supplementary Instructions, and Construction Change Directives.

32.02 The Contractor shall proceed with any extra Work or changes which alter the Contract by adding to, or deducting from the Contract Sum or Contract Time in strict accordance with the following terms and conditions:

32.02.01 Change Order shall mean a written order to the Contractor executed by the Owner and the Project Consultant after execution of this Contract, directing a change in the Work and may include a change in the Contract Price or the time for the Contractor's performance, or any combination thereof;

32.02.02 Any change in the Contract Price or time resulting from a Change Order shall be determined as follows:

a. By mutual agreement between the Owner and the Contractor as evidenced by (a) the change in the Contract Price or time being set forth in Change Order in accordance with Article 32.02.08 below, and (b) the execution of the Change Order; or,

b. If no mutual agreement occurs between the Owner and the Contractor, the change in the Contract Price, if any, shall be derived based upon the Cost Plus Price basis (as set forth in Article 32.02.08 below) by determining the "total actual costs" (in accordance with Article 32.02.09 below), incurred or savings achieved, resulting from revisions in the Work. Such total actual costs or savings shall include a component for direct jobsite overhead and profit but under no circumstances shall it include non-job site overhead expenses or costs or any other indirect costs or components. Any such costs or savings shall be documented in the format, and with such content and detail as the Owner or the Project Consultant requires. If agreement is not reached as to the change in time, Contractor shall be given a reasonable time based upon the scope of Work required by the change.

32.02.03 The execution of a Change Order by the Contractor shall constitute conclusive evidence of the Contractor's agreement to the ordered changes in the Work and the change in the Contract Price and the time for performance by the Contractor. The Contractor, by executing the Change Order, waives and forever releases any claim against the Owner for additional time or compensation for issues or matters relating to or arising out of or resulting from the Work included within or affected by the executed Change Order.

32.02.04 The Contractor shall notify and obtain the consent and approval of the Contractor's surety with reference to all Change Orders if such notice, consent or approval are required by the Owner, the Project Consultant, the Contractor's surety or by law. The Contractor's execution of the Change Order shall constitute the Contractor's warranty to the Owner that the surety has been notified of, and consents to, such Change Order and the surety shall be conclusively deemed to have been notified of such Change Order and to have expressly consented thereto, and that the penal sums of the performance and payment bonds furnished by Contractor and Surety are adjusted coextensively with the amount of the Change Order.

32.02.05 The Owner, without invalidating the Contract, may require the change for any reason whatsoever. All such Work shall be executed under the terms of the original Contract.

32.02.06 All change orders and adjustments shall be in writing and executed by the Contractor and Owner; otherwise, no claim for additional compensation or time will be allowed.

32.02.07 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change which results in a net decrease in the Contract Sum shall be the total actual cost (as set forth in Article 32.02.09 below) saved as confirmed by the Project Consultant. The amount shall not include an amount for the overhead and profit of the Contractor which the Owner is not required to pay as a result of the deletion or decrease. When both additions and credits covering related Work or substitutions are involved in a change, the overhead and profit shall be calculated on the basis of net increase, if any, with respect to that change.

32.02.08 The value of any change ordered under the Contract for extra Work and/or any reductions in Work required, shall be determined under one or more of the following procedures before a written Change Order is issued.

a. By **UNIT PRICES** named in the Contract or subsequently agreed upon by the Owner and the Contractor, which prices shall include Contractor's overhead and profit.

b. By **LUMP SUM PRICE** agreed upon actual reasonable costs and direct job site overhead by the Owner and the Contractor, which price shall include Contractor's overhead and profit but under no circumstances shall it include non job site overhead, expenses or costs or any other indirect costs; a breakdown of the estimated costs comprising the lump sum price may be required by the Project Consultant for his review. Percentage for overhead and profit shall be determined in accordance with the method listed for COST PLUS PRICE, subparagraph (c.) below.

c. By a **COST PLUS PRICE** based on total actual costs as defined in Article 32.02.09 below, plus an added percentage, all determined as follows:

OVERHEAD AND PROFIT:

JOB SITE OVERHEAD, including supervision and the furnishing, use and maintenance of small tools and ordinary equipment incidental to and required for the work of subcontractors (whether performed by them or others) shall be considered to be just and fully compensated for, by adding an amount equal to five percent (5%) of the sum of material costs (as defined under Article 34.08.09(a) below) and labor costs (as defined under Article 34.08.09(b) below), and rentals (as defined under Article 32.08.09(c) below). There shall be no compensation for any non job site overhead, expenses or costs.

PROFIT, may then be added by the subcontractor to the above material costs and labor costs, including the JOB SITE OVERHEAD allowance, at the rate of 10% of the sum of those costs.

JOB SITE OVERHEAD, including general supervision and the furnishing, use and maintenance of small equipment incidental to and required for the Work of the General Contractor (including that of his subcontractors) shall be considered to be just and fully compensated for by adding an amount equal to ten percent (10%) of the sum of material costs (as defined under Article 32.08.09(a) below and labor costs (as defined under Article 32.08.09(b) below) and rentals (as defined under Article 32.08.09(c) below). There shall be no compensation for any non job site overhead expenses or costs.

PROFIT may then be added by the Contractor to the above material costs and labor costs, including the JOB-SITE OVERHEAD allowance, at the rate of five percent (5%) of the sum of those costs.

d. BOND ALLOWANCE, for maintaining the Performance Bond at 100% of the contract amount, a sum of one percent (l%) of the total cost of the change, (including material, labor, overhead and profit, and equipment rentals) shall be allowed on all change orders.

32.02.09 The total actual costs of materials, labor and equipment rentals may include the following only:

a. Material costs actually recorded by the Contractor and/or subcontractors as they are delivered to the site and as evidenced from originally receipted invoices, listing appropriate quantities and unit prices. Records in proper form shall be maintained and available to the Project Consultant at all times.

b. Labor costs represented by the actual wages paid to all laborers, apprentices, journeymen, and foremen involved in and necessary to completing the particular construction operations, for each day and every hour such labor teams and foremen are actually employed and on the extra Work required, including the net cost of insurance, Social Security and Workmen's Compensation. The furnishing, use and maintenance of small tools and ordinary equipment normal to the work of individual workmen in the trades will be considered part of the labor costs. Records in proper form shall be maintained and available to the Project Consultant at all times.

c. Rentals for special equipment or machinery such as power driven roller, tractors, trucks, shovels, drills, mixers, pumps, hoists, etc., required for the economical performance of the Work, at reasonable rental prices agreed upon before work commences, shall be allowed the Contractor and/or his subcontractors by the Project Consultant for each and every hour such special equipment is in use on the particular work.

32.02.10 The Contractor is obligated to proceed with the Work for a Change Order, even though there has not been an agreement reached with the Owner as to an adjustment to the Contract Price or time, and even if there is a dispute as to same. In such instances the Owner, City Engineer or Project Consultant will issue a Construction Change Directive to Contractor providing for the scope of work to be performed and the payment therefore based on 32.02.09 above. A Change Order or proposed Change Order shall not be the basis of the Contractor not performing pursuant to the Contract Documents.

32.02.11 The Contractor, Owner and Project Consultant shall administer and document the Change Order process by utilizing the documentation specified elsewhere in the Contract Documents, including a Construction Change Directive.

32.03 The Project Consultant will have authority to order minor changes in the Work not involving an adjustment to the Contract Sum or Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order of the Project Consultant and such changes shall be binding on the Owner and the Contractor.

32.04 The Owner has authorized the following approval thresholds for Change Orders in the Name of The City of Pompano Beach, Florida under its General Services Manual, the rules of which are incorporated below:

A. The City Manager is authorized to approve change orders up to the cumulative total of 10 percent of the original construction contract amount, not to exceed $10,000 in the aggregate.

B. When the cumulative total of all change orders on a project has exceeded the ceiling established in 32.04A above, all subsequent change orders will require prior City Commission approval, except in emergency cases as declared by the City Manager, or where the change order in question would be in the form of a credit, thereby reducing the adjusted contract amount.

C. Approval of change orders under this policy shall be for the purposes of expediting the work in progress and shall be confirmed by City Commission action at the next regular meeting of the City Commission.

ARTICLE 33. DISCOVERING AND CORRECTING DEFECTIVE OR INCOMPLETE WORK.

33.01 In the event that the Contractor covers, conceals or obscures its work in violation of this Contract or in violation of a directive from the Owner or the Project Consultant, such work shall be uncovered and displayed for the Owner's or Project Consultant's inspection upon request, and shall be reworked at no cost in time or money to the Owner.

33.02 If any of the work is covered, concealed or obscured in a manner not covered by Subparagraph (A) above, it shall, if directed by the Owner or the Project Consultant, be uncovered and displayed for the Owner's or Project Consultant's inspection. If the uncovered work conforms substantially with this Contract, the costs incurred by the Contractor to uncover and subsequently replace such work shall be borne by the Owner; otherwise, such costs shall be borne by the Contractor.

33.03 The Contractor shall, at no additional cost in money to the Owner or extension of time correct work rejected by the Owner or by the Project Consultant as defective or failing to conform to this Contract. Additionally, the Contractor shall reimburse the Owner for all testing, inspections and other expenses incurred as a result thereof.

33.04 In addition to its warranty obligations set forth elsewhere herein, the contractor shall be specifically obligated to correct any and all defective or nonconforming work for a period of twenty-four (24) months following final completion upon written direction from the Owner.

33.05 The Owner may, but shall in no event be required to, choose to accept defective or nonconforming work.

33.05.01 In such event, the Contract Price shall be reduced, at Owner's option, by the greater of (i) the reasonable costs of removing and correcting the defective or nonconforming work, or (ii) the difference between the fair market value of the Project as constructed and the fair market value of the Project had it not been constructed in such a manner as to include defective or nonconforming work.

33.05.02 If the remaining portion of the unpaid Contract Price, if any, is insufficient to compensate the Owner for the acceptance of defective or nonconforming work, the Contractor shall, upon written demand from the Owner, pay the owner such remaining compensation for accepting defective or nonconforming work.

ARTICLE 34. SAFETY, PROTECTION OF WORK AND PROPERTY.

34.01 Contractor shall be fully and solely responsible for conducting all operations under this Construction Contract at all times in such a manner as to avoid the risk of bodily harm to persons and damage to property. Contractor shall continuously and diligently inspect all Work, material and equipment to discover any conditions which might involve such risks and shall be solely responsible for discovery and correction of any such conditions.

34.02 Contractor shall instruct its personnel on the requirements of the Contractor's safety program and shall coordinate with other contractors and subcontractors on safety matters.

34.03 Contractor shall provide safety equipment and enforce the use of such equipment by its employees.

34.04 Contractor shall maintain accurate accident and injury reports and shall provide to Owner a monthly summary of injuries and man hours lost due to injuries.

34.05 Contractor shall maintain all portions of the Work in a neat, clean and sanitary condition at all times.

34.06 Contractor shall assure that all Subcontractors shall, without expense to Owner, comply with the foregoing.

34.07 Contractor shall comply with any and all rules, regulations, laws, etc., which apply to safety requirements, including but not limited to OSHA requirements.

34.08 Safety Precautions and Programs:

34.08.01 The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

34.08.02 In the event the Contractor encounters on the site material reasonably believed to be asbestos or polychlorinated biphenyl (PCB) which has not been rendered harmless, the Contractor shall immediately stop Work in the area affected and report the condition to the Owner and Project Consultant in writing. The Work in the affected area shall not thereafter be resumed except by written notice from the Owner. The Work in the affected area shall be resumed in the absence of asbestos or polychlorinated biphenyl (PCB), or when it has been rendered harmless, by written agreement of the Owner, Contractor and Project Consultant.

34.08.03 The Contractor shall not be required to perform without consent any Work relating to asbestos or polychlorinated biphenyl (PCB).

34.09 Safety of Persons and Property

34.09.01 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

a. Employees on the Work and other persons who may be affected thereby;

b. The Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and

c. Other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

34.09.02 The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of person or property or their protection from damage, injury or loss.

a. The Contractor and his Subcontractors shall comply with and conform in all respects to the standard set forth in the Occupational Safety and Health Act (OSHA) of 1970.

b. The Contractor shall prominently post and maintain on the jobsite:

1) OSHA 200: Log and summary of occupational injuries and illnesses.

2) OSHA 2203: Provisions of the Act poster.

34.09.03 The Contractor shall implement and maintain a continuing safety program applicable to all Contractor employees, Subcontractors, and Sub-subcontractors, to include:

a. Designating a responsible member of the Contractor's organization at the site as the Contractor's "Safety Officer" whose duty shall be the prevention of accidents, safety inspections, and accident documentation. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and the Project Consultant.

b. Holding weekly safety meetings with employees and Subcontractors.

c. Implementing OSHA Voluntary Protection Programs.

d. Ensuring the presence of an American Red Cross (or other organization acceptable to the Owner) certified Cardiopulmonary Resuscitation (CPR) and first-aid trained individual on site at all times.

e. Compliance with the Drug Free Work Place Act of 1988, the Federal Omnibus Transportation Employee Testing Act of 1991, and the certification of compliance with the same as required by the Owner in Document 00457, Drug-Free Workplace Certification.

f. Erecting and maintaining reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

g. Ensuring that employees are not discriminated against or discharged for filing reasonable safety or health complaints or for otherwise exercising their rights in these regards.

34.09.04 When use of hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

34.09.05 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to properly caused in whole or in part by the Contractor, a Subcontractor or a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is reasonable, except damage or loss attributable to acts or omissions of the Owner or Project Consultant or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault of negligence of the Contractor.

34.09.06 The Contractor shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.

34.09.07 Building materials, Contractor's equipment and other supplies may be stored on the premises, but the placing of same shall be in substantial, watertight storage sheds upon the premises where directed in which he shall store all materials which would be damaged by weather. This shall in no manner relieve the Contractor from full responsibility for such materials. Sheds and other storage structures must be secured and anchored in a manner sufficient to withstand hurricane force winds as defined by applicable codes but not less than a 120 mile per hour wind uplift force.

34.10 **Emergencies:** In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss.

ARTICLE 35. ROYALTIES AND PATENTS.

35.01 The Contractor shall pay all royalties and license fees.

35.02 The Contractor shall be responsible for all infringement of patent rights and shall assume the defense, including payment of attorney fees and costs, of any suit brought against Contractor and/or Owner for infringement of any United States patent or for wrongful use of proprietary information of any third party.

35.03 Contractor hereby indemnifies and shall defend and hold harmless Owner and its representatives, respectively, from and against all claims, losses, costs, damages, and expenses, including attorney's fees, incurred by Owner and its representatives, respectively, as a result of or in connection with any claims or actions based upon infringement or alleged infringement of any patent, and arising out of the use of the equipment or materials provided under this Construction Contract by Contractor, or out of the process of actions employed by, or on behalf of Contractor in connection with the performances of this Construction Contract. Contractor shall, at its sole expense, promptly defend against any such claim or action unless directed otherwise by Owner or its representatives; provided that Owner or its representatives shall have notified Contractor upon becoming aware of such claims or actions, and provided further, that Contractor's aforementioned obligations shall not apply to equipment, materials, or processes furnished or specified by Owner or its representatives.

35.04 Contractor shall have the right, in order to avoid such claims or actions, to substitute at its expense non-infringing equipment, materials, or processes, or to modify such infringing equipment, materials and processes so they become non-infringing, or obtain the necessary licenses to use the infringing equipment, materials or processes, provided that such substituted and modified equipment, materials and processes shall meet all the requirements and be subject to all the provisions of the Contract Documents.

35.05 The indemnification pursuant to Florida Statute 725.06 and other Florida laws, etc., shall have a separate consideration of $1.00, receipt of which is hereby acknowledged and incorporated into the project sum. This is incorporated by reference into the Bid Documentation and Specifications if any.

ARTICLE 36. TAXES.

36.01 Contractor shall pay all taxes, levies, duties and assessments of every nature which may be applicable to any Work under this Contract.

36.02 The Contract Sum and any agreed changes thereto shall include all taxes imposed by law. Contractor shall make any and all payroll deductions as required by law.

36.03 Contractor herein indemnifies and holds the Owner harmless from any liability on account of any and all such taxes, levies, duties, assessments and deductions.

ARTICLE 37. INDEMNITY AND HOLD HARMLESS.

37.01 To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the Owner, its agents and employees and each of them hereinafter collectively referred to as the Owner, from and against any and all judgments, demands, claims, causes of action, liability, expenses, losses, costs, fines, and damages (including reasonable attorney's fees and expert's fees) of every kind and character brought against the Owner by any person,

party or entity of any kind or nature whatsoever arising out of, incident to, relating or regarding the Contractor's performance under this Agreement, the condition of the premises, and/or the Contractor's acts of omission or commission.

37.02 Contractor, however, shall not be responsible to Owner for damages resulting out of bodily injury or damages to property which a Court of competent jurisdiction determines as being attributed to the negligence of Owner, its respective agents, servants, employees or officers.

37.03 Said indemnifications by Contractor shall be extended to include all "Subcontractors", deliverers, suppliers, furnishers of material or anyone acting for, on behalf of, or at the request of the Contractor.

37.04 Contractor recognized the broad nature of this indemnifications and hold harmless clause and voluntarily makes this covenant and expressly acknowledge the receipt of Ten ($10.00) Dollars, which payment is incorporated into the Contract Sum, and such other good and valuable consideration provided by Owner in support of this indemnification in accordance with the laws of the State of Florida.

37.05 This clause shall survive termination of this Agreement and pursuant to Florida Statute 725.06 be incorporated by reference into any and all Bid Documentation or Specifications.

ARTICLE 38. TERMINATION BY THE CONTRACTOR.

38.01 If the Owner repeatedly fails to perform its material obligations to the Contractor for a period of 30 days after receiving written notice from the Contractor of its intent to terminate hereunder, the Contractor may terminate performance under this Contract by written notice to the Owner and the Project Consultant.

38.02 In such event, the Contractor shall be entitled to recover from the Owner as though the Owner had terminated the Contractor's performance for convenience pursuant to the terms and conditions of this Contract.

ARTICLE 39. OWNER'S RIGHT TO SUSPEND CONTRACTOR'S PERFORMANCE.

39.01 The Owner shall have the right at any time to direct the Contractor to suspend its performance, or any designated part thereof, for any reason whatsoever, or without reason. If any such suspension is directed by the Owner, the Contractor shall immediately comply with same;

39.02 In the event the Owner directs a suspension of performance under this Paragraph through no fault of the Contractor, the Owner shall pay the Contractor as full compensation for such suspension the Contractor's reasonable costs, actually incurred and paid, of the following items only:

39.02.01 Demobilization and remobilization, including such costs paid to subcontractors;

39.02.02 Preserving and protecting Work in place;

39.02.03 Storage of materials or equipment purchased for the Project, including insurance thereon;

39.02.04 Performing in a later, or during a longer, time frame than that contemplated by this Contract.

ARTICLE 40. TERMINATION BY THE OWNER.

40.01 The Owner may, at the Owner's option, for any reason and at any time terminate for convenience, any work under this Contract, in whole or, from time to time, in part, in accordance with the following terms and conditions:

40.02 The Owner shall give written notice of such termination to Contractor 7 days before it becomes effective.

40.02.01 The Contractor shall incur no further obligations in connection with the Work and the Contractor shall stop work when such termination becomes effective.

40.02.02 The Contractor shall also terminate outstanding orders and subcontracts.

40.02.03 The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders.

40.02.04 The Owner may direct the Contractor to assign the Contractor's right, title and interest under termination orders or subcontracts to the Owner or its designee.

40.02.05 The Contractor shall transfer title and deliver to the Owner such completed or partially completed Work and materials, equipment, parts, fixtures, information and Contract rights as the Contractor has.

40.02.06 When terminated for convenience, the Contractor shall be compensated as follows:

a. The Contractor shall submit a termination claim within one year to the Owner and the Project Consultant specifying the amounts due because of the termination for convenience together with costs, pricing or other data required by the Owner or the Project Consultant. If the Contractor fails to file a termination claim with the Owner's Project Consultant within one (1) year from the effective date of termination, the Owner shall have no further obligation to the Contractor and Contractor waives any and all rights for compensation based upon the termination.

b. The Owner and the Contractor may agree to the compensation, if any, due to the Contractor hereunder;

c. Absent agreement to the amount due to the Contractor, the Owner shall pay the Contractor the following amounts:

1. Contract prices for labor, materials, equipment and other services accepted under this Contract;

2. Reasonable costs incurred in preparing to perform and in performing the terminated portion of the Work, and in terminating the Contractor's performance, plus a fair and reasonable allowance for direct jobsite overhead (and not home office or other overhead) and profit thereon (such profit shall not include anticipated profit or consequential damages); provided, however, that if it appears that the Contractor would have not profited or would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss, if any;

3. Reasonable costs of settling and paying legitimate claims arising out of the termination of subcontractors or orders pursuant to this Paragraph. These costs shall not include amounts paid in accordance with other provisions hereof.

4. The total sum to be paid the Contractor under this Subparagraph shall not exceed the total Contract Price, as properly adjusted, reduced by the amount of payments otherwise made, and shall in no event include duplication of payment.

40.03 The Owner may terminate this Contract for cause in accordance with the following terms and conditions:

40.03.01 If the Contractor does not perform the Work, or any part thereof, in a timely manner, supply adequate labor, supervisory personnel or proper equipment or materials, or if it fails to timely discharge its obligations for labor, equipment and materials or proceeds to disobey applicable law, or otherwise commits a violation of a material provision of this Contract, then the Owner, in addition to any other rights it may have against the Contractor or others, may terminate the performance of the Contractor for cause upon seven (7) day written notice and assume possession of the Project site and of all materials and equipment at the site and may complete the Work.

40.03.02 In such case, the Contractor shall not be paid further until the Work is complete.

40.03.03 After final completion has been achieved, if any portion of the Contract Price (as it may be modified hereunder) remains after the cost to the Owner of completing the Work, including all costs and expenses of every nature incurred, has been deducted by the Owner, such remainder shall be paid to the Contractor. Otherwise, the

Contractor shall pay the Owner any and all costs, fees, damages or expenses which the Owner has paid or is obligated to pay in excess of the contract price (as it may be modified hereunder). This obligation for payment shall survive the termination of the Contract. In the event the employment of the Contractor is terminated by the Owner for cause pursuant to this Subparagraph and it is subsequently determined by a Court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience and the terms of Article 40.02 shall apply.

ARTICLE 41. CONTRACTOR'S INSURANCE

41.01 The Contractor shall maintain such insurance as will protect the Contractor and Owner from claims under Workmen's Compensation Acts, and from any other claims or damages for personal injury, including death and property damage, which may arise from operations under this Contract, whether such operations be by himself or by any subcontractor or anyone directly or indirectly employed by either, as more fully set forth below and in the amounts provided herein. Prior to commencement of the Work, all Certificates of Insurance executed by authorized representatives of the insurance company shall be filed with the Owner and shall be subject to its approval for accuracy of protection. In addition, the Owner may at any time require that Contractor or its insurer provide any other documentation regarding insurance to Owner including, but not limited to, the policy. The Contractor shall not commence Work under this Contract until the provisions of this paragraph have been complied with. Owner may withhold payments due to Contractor in accordance with this Contract or terminate or suspend this Contract with all costs or expenses associated with same to be paid by Contractor in the event Contractor fails to comply with any requirement in the Contract regarding insurance. In the event of cancellation of any policy, Contractor is obligated to immediately notify Owner of same and obtain policy(s) in accordance with the Contract Documents.

41.02 Contractor shall comply with any and all insurance obligation required by law, rules, regulations, etc., including but not limited to those required by State Regulations for Educational Facilities.

41.03 The Contractor will be required to provide a Certificate of Insurance indicating that Workers' Compensation has been provided for all employees in compliance with Chapter 440, Florida Statutes.

41.04 The Contractor shall procure and carry Comprehensive General Liability insurance including contractual and indemnification liability covering this Contract and Products/Completed Operations Liability Insurance covering personal injury and bodily injury in limits of not less than $1,000,000 for injury or death to any one person and not less than $2,000,000 each occurrence; and shall carry insurance against property damage in limits of not less than $1,000,000 per claimant and $2,000,000 per occurrence as a minimum coverage. The Contractor shall also procure and carry Owner's and Contractor's protective liability insurance. In the event that work to be performed hereunder by Contractor involves the removal and disposal of asbestos-related materials, Contractor shall, in addition to the foregoing coverages, also provide and carry Asbestos Liability-Occurrence form only, with $1,000,000 per occurrence, $2,000,000 aggregate. All insurance shall name the Owner as an additional insured, and shall remain in full force and effect for two (2) years following Contractor's completion of the work.

41.05 The Contractor shall carry at no additional expense to the Owner, Builders' Risk Insurance for the perils of fire, vandalism, malicious mischief and those included in extended coverage in the amount of one hundred percent (100%) of the values at risk. Such policies shall be written to protect the Contractor and the Owner as their interest may appear.

41.06 All Contractors shall maintain automobile liability insurance against bodily injury and property damage in at least the amounts of one million dollars ($1,000,000) per claimant, one million dollars ($1,000,000) per occurrence.

41.07 The insurance coverage amounts provided for in this Section are the minimum required insurance amounts. The Owner may require additional insurance or coverage on a case-by-case basis. Any insurance or coverage amounts in addition to those provided for herein shall be specified in the Contract Documents.

41.07 The Owner is not maintaining any insurance on behalf of Contractor covering against loss or damage to the Work or to any other property of Contractor. In the event Contractor maintains insurance against physical loss

or damage to Contractor's construction equipment and tools, such insurance shall include an insurer's waiver or rights of subrogation in favor of Owner.

41.08 The requirements contained herein as to types and limits, as well as Owner's approval of insurance coverage to be maintained by Contractor, are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by Contractor under the Contract.

41.09 The policies of such insurance in force, shall be issued by companies qualified to do business in the State of Florida and be acceptable to the Owner and shall provide that the Owner be given thirty (30) days advance written notice of the cancellation, expiration or any material change in the coverage afforded thereunder. The companies must be rated at least A-VI by AM Best or Aa3 by Moody's Investor Service. All policies must remain in effect during performance of the Work and for a period of one year after final completion.

41.10 Uninsured Claims. If any action by any person, firm or corporation is brought or threatened against the Owner or against the Contractor and the Owner for any alleged loss, damage or injury arising out of or in the consequence of the performance or nonperformance of the Contract which, in the reasonable opinion of the Owner, may not be covered by the contingent liability, public liability or property damage insurance policy, or, which together with other such actions or claims seeks a recovery in excess of the amount payable under such policies, the amount of such recovery sought or so much thereof as the Owner reasonably deems necessary, may be withheld by the Owner from any money due the Contractor. The Owner in its sole discretion may permit the Contractor to substitute other satisfactory security in lieu of the monies so withheld. If the liability of the Owner is determined by judgment or award of a court or other tribunal of competent jurisdiction, or if such recovery sought shall have been admitted by the Contractor to be valid, the Owner may pay such judgment, award of admitted recovery out of the monies retained by the Owner under the provisions of this subparagraph and return the remaining balance, if any, to the Contractor.

41.11 Adequate funds shall be retained for the insurance costs listed in the Schedule of Values attached to the Contractor's respective Applications for Payment to account for insurance coverage renewals on multi-year projects coupled with invoices to substantiate the annual costs.

ARTICLE 42. PERFORMANCE BOND AND PAYMENT BOND

42.01 For a Project with an estimated cost of $200,000.00 or more, the Contractor shall furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as specifically required in the Contract Documents on the date of execution of the Contract.

ARTICLE 43. RIGHT TO AUDIT PROVISIONS

43.01 Contractor's records which shall include but not be limited to accounting records, written policies and procedures, computer records, disks and software, videos, photographs, subcontract files (including proposals of successful and unsuccessful bidders), originals estimates, estimating worksheets, correspondence, change order files (including documentation covering negotiated settlements), and any other supporting evidence necessary to substantiate charges related to this contract (all the foregoing hereinafter referred to as "records") shall be open to inspection and subject to audit and/or reproduction, during normal working hours, by Owner's agent or its authorized representative to the extent necessary to adequately permit evaluation and verification of any invoices, payments or claims submitted by the contractor or any of his payees pursuant to the execution of the contract. Such records subject to examination shall also include, but not be limited to, those records necessary to evaluate and verify direct and indirect costs (including overhead allocations) as they may apply to costs associated with this contract.

43.02 For the purpose of such audits, inspections, examinations and evaluations, the Owner's agent or authorized representative shall have access to said records from the effective date of this contract, for the duration of the Work, and until 5 years after the date of final payment by Owner to Consultant pursuant to this contract.

43.03 Owner's agent or its authorized representative shall have access to the Contractor's facilities, shall have access to all necessary records, and shall be provided adequate and appropriate work space, in order to conduct audits in

compliance with this article. Owner's agent or its authorized representative shall give auditees reasonable advance notice of intended audits.

43.04 Contractor shall require all subcontractors, insurance agents, and material suppliers (payees) to comply with the provisions of this article by insertion of the requirements hereof in any written contract agreement. Failure to obtain such written contracts which include such provisions shall be reason to exclude some or all of the related payees' costs from amounts payable to the Contractor pursuant to this contract.

43.05 If an audit inspection or examination in accordance with this article, discloses overcharges (of any nature) by the Contractor to the Owner in excess of 10% percent of the total contract billings, the actual cost of the Owner's audit shall be paid by the Contractor.

ARTICLE 44. LAWS AND REGULATIONS

44.01 Contractor and its employees and representative shall at all times, comply with all applicable laws, ordinances, statutes, rules and regulations in effect at the time Work is performed pursuant to the Contract Documents.

44.02 If, during the term of this Construction Contract, there are any changed or new laws, ordinances or regulations not in existence at the time of signing this Construction Contract which become effective and which affect the cost or time of performance of the Construction Contract, Contractor shall within fifteen (15) days of the discovery of said law, ordinance or regulation, notify Owner in writing and submit detailed documentation of such effect in terms of both time and cost of performing the Construction Contract. Upon concurrence by Owner as to the effect of such changes, an adjustment in the compensation and/or time of performance may be made at Owner's discretion.

44.03 If any discrepancy or inconsistency should be discovered between the Contract Documents and any law, ordinance, regulation, order or decree, Contractor shall within fifteen (15) days of discovery of same report the same in writing to Owner who will issue such instructions as may be necessary.

ARTICLE 45. DISPUTE RESOLUTION.

45.01 The Owner and Contractor agree that, in the event of a dispute, the parties will attempt to resolve such dispute without litigation and that resolution through mediation procedures will be encouraged.

45.02 The existence of a dispute between the parties shall not be the basis of the Contractor unilaterally electing not to continue performance pursuant to the terms of the Contract Documents.

ARTICLE 46. GOVERNING LAW AND ATTORNEYS FEES.

46.01 The Construction Contract shall be governed by the laws of the State of Florida.

46.02 In the event either party institutes litigation regarding or relating to this Contract or for breach of any of its terms all litigation and appeals shall have venue in Broward County, Florida or in the U.S. District Court for the Southern District of Florida.

46.03 To the fullest extent permitted by law, Owner, Contractor, and Contractor's Surety do hereby each waive the right to trial by jury in any action or proceeding, including any counterclaims/crossclaims/third (or more remote) party complaints which may be brought by Owner, Contractor, or Surety, jointly and/or severally, arising out of or in any way related to this Construction Contract and/or attendant suretyship including, without limiting the generality thereof, any claim for damages resulting from any act or omission of Owner, Contractor, or Surety, jointly or severally, in any way connected with this Construction Contract.

ARTICLE 47. RIGHTS AND REMEDIES.

47.01 The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

ARTICLE 48. SUCCESSORS, ASSIGNS AND ASSIGNMENT.

48.01 The Owner and the Contractor each binds itself, its partners, successors, assigns and legal representatives to the other party in respect to all covenants, agreements and obligations contained in the Construction Contract. It is agreed that the Contractor shall not assign, transfer, convey or otherwise dispose of the contract or its right, title and interest in and to the same or any part thereof, without previous consent of the Owner and concurred to by the Sureties.

48.02 If requested by Owner the Contractor agrees to assign all Subcontracts required for performance of this Contract to the Owner upon the Owner or Project Consultant's determination that Contractor has defaulted under the Contract Documents. The Contractor shall include in all Subcontracts, equipment leases and purchase orders a provision requiring the subcontractor, equipment lessor or supplier, in the event of Contractor's default under this Contract, to consent to the assignment of their subcontracts to the Owner.

ARTICLE 49. PUBLIC RECORDS.

49.01 The City of Pompano Beach is a public agency subject to Chapter 119, Florida Statutes. The Contractor shall comply with Florida's Public Records Law. Specifically, the Contractor shall:

a. Keep and maintain public records that ordinarily and necessarily would be required by the City in order to perform the service;

b. Provide the public with access to such public records on the same terms and conditions that the City would provide the records and at a cost that does not exceed that provided in chapter 119, Fla. Stat., or as otherwise provided by law;

c. Ensure that public records that are exempt or that are confidential and exempt from public record requirements are not disclosed except as authorized by law; and

d. Meet all requirements for retaining public records and transfer to the City, at no cost, all public records in possession of the contractor upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt. All records stored electronically must be provided to the City in a format that is compatible with the information technology systems of the agency.

49.02 The failure of Contractor to comply with the provisions set forth in this Article shall constitute a Default and Breach of this Agreement and the City shall enforce the Default in accordance with the provisions set forth in Article 40.

SUPPLEMENTARY CONDITIONS

1. PERFORMANCE BOND AND PAYMENT BOND

The City will require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder.

2. RELEVANT PROJECT EXPERIENCE

Bidders shall show specific project experience as a prime contractor for a minimum of three projects within the last three years of similar or greater complexity and construction cost. Reference contact information must be furnished for all paving grading and drainage projects claimed as relevant experience under this requirement including: Project Name and Number, the municipality or government agency for whom the project was done, total project cost, when the project commenced and was completed, project manager with phone number, whether or not there were any changes to the contract cost or time, a complete list of warranty items that required attention after the completion of the project.

SPECIFICATIONS

As per attachments "Plans" and "Specs"

SECTION 01720

PROJECT RECORD DOCUMENTS

PART 1 GENERAL

1.01 THE REQUIREMENT

A. The CONTRACTOR shall at all times maintain at the site of the project a record copy of:
   1. Drawings
   2. Specifications
   3. Addenda
   4. Change Orders and other modifications to the Contract.
   5. Approved Shop Drawings, Product Data and Samples.
   6. Field Test Records.

1.02 RELATED WORK SPECIFIED ELSEWHERE

A. All applicable sections of the Specifications.
B. General conditions.

MAINTENANCE OF DOCUMENTS AND SAMPLES

C. Store documents and samples in CONTRACTOR'S field office apart from documents used for construction.
   1. Provide files and racks for storage of documents.
   2. Provide locked cabinet or secure storage space for storage of samples.
D. File documents and samples in accordance with CSI format.
E. Maintain documents in a clean, dry, legible condition and in good order. Do not use record documents for construction purposes.
F. Make documents and samples available at all times for inspection by CITY'S Representatives.

1.03 MARKING DEVICES

A. Provide felt tip marking pens for recording information in the color code designated by PROGRAM MANAGER.

1.04 RECORDING

Definition: The Project Record is the updated and revised plans and specifications, including a running account of all known revisions and changes made to the original plans and specifications, complete with copies of any field sketches and clarifications, issued over the course of construction. The Project Record is the responsibility of the CONTRACTOR.

A. The CONTRACTOR shall label each document, "PROJECT RECORD" in neat large printed letters, or by rubber stamp.
B. Record information concurrently with construction progress. Do not conceal any work until required information is recorded.
C. Drawings: Legibly mark to record actual construction:

1. Horizontal and vertical locations of underground utilities and appurtenances, referenced to permanent surface improvements.
2. Location of internal utilities and appurtenances concealed in the construction, referenced to visible and accessible features of the structure.
3. Field changes of dimension and detail.
4. Changes made by Field Order or by Change Order.
5. Details not on original Contract Drawings.
6. The Record Drawing set shall show benchmark positions and their vertical values. Benchmarks are optional for Plan Views, but required for Profile Views.

D. Specifications and Addenda; Legibly mark each Section to record:
1. Manufacturer, trade name, catalog number, and supplier of each produce and item of equipment actually installed.
2. Changes made by field order or by Change Order.

1.05 RECORD DRAWINGS

Definition: The Record Drawings are a revised set of drawing submitted by a contractor upon completion of a project. They reflect all changes made in the specifications and working drawings during the construction process, and show the exact dimensions, geometry, and location of all elements of the work completed under the contract.

A. The CONTRACTOR shall maintain full size (24"X 36") project record to reflect the "record" items of work as the work progresses. Upon completion of the work, the CONTRACTOR shall prepare a set of record drawings on full-size, reproducible material and an electronic file in (DWG format, AutoCAD, Version 2011 or more recent version OR GIS). The record drawings will, in the greatest possible detail, reproduce the exact final conditions of the entire project. Including, but not limited to, final survey, utilities, architecture, structural, civil conditions, electrical, mechanical, paving, landscaping, irrigation, updating all details and all notes, parking, and any other plans related to a specific project. For the purpose of producing the final record drawings, based on the project record, the CONSULTANT will furnish one set of full size design drawings on reproducible material and an electronic file (DWG format, AutoCAD, Version 2011 or more recent version OR GIS) to the CONTRACTOR on compact disk or any other electronic means.

Definition: Design drawings or construction drawings, are drawings that are subject to clarifications, but are complete with enough information (plan, sections, dimensions, details, and notes, etc.) to enable the depicted item's construction or replication without additional information.

B. At a minimum the project record shall be reviewed on the 20th working day of every third month, or more often, as deemed necessary by PROGRAM MANAGER, after the month in which the final Notice-to Proceed is given as well as on completion of WORK. Failure to maintain the project record up-to-date shall be grounds for withholding monthly progress payments until such time as the record drawings are brought up-to date.

C. The project record shall be accessible to the CITY at all times during construction period.

D. The cost of maintaining record changes, and preparation of the record drawings shall be included in the unit prices bid for the affected items. Upon completion of the WORK, the CONTRACTOR shall furnish the PROGRAM MANAGER the set of record drawings on full-size, reproducible material and an electronic file in (DWG format, AutoCAD, Version 2011 or more recent version OR GIS) Pay request quantities must match this same set

of record drawings . The completed Record drawings shall be delivered to the PROGRAM MANAGER at least 48 hours prior to final inspection of the work. The Final Inspection will not be conducted unless the Record Drawings are in the possession of the PROGRAM MANGER.

E. The completed (or final) record drawings shall be certified by a Professional Land Surveyor, a registered and licensed Architect, a registered and licensed Engineer, a registered and licensed Landscape Architect, registered in the State of Florida. This certification shall consist of the professional discipline official's embossed seal bearing the professional discipline official's registration number, signature and date on each sheet of the drawing set. In addition, the key sheet, cover sheet or first sheet of the plans set shall list the business address and telephone number for all of the professional discipline officials.

F. Representative items of work that should be shown on the record drawings as verified, changed or added are shown below:

1. All deviations from condition shown in the Construction Documents including Change Orders, Field Orders and other varying conditions.
2. Every utility (gas, telephone, power, water, force main, etc.) encountered and/or crossing drainage, water or sanitary sewer facilities (whether it is a conflict or has sufficient clearances) shall be located, both horizontally and vertically. The clearance between the facilities horizontal and vertical shall be noted. For instance, if a 2-inch gas main crosses over the top of a 6-inch potable water main, the bottom elevation of the gas main shall be noted and the top of the water main shall be noted. The difference between the two facilities will be the clearance between the two facilities. Parallel mains shall note the clearance between the outside of the mains. It shall be the CONTRACTOR's responsibility to note these crossings on a daily basis and insure that this information is reflected on the Record Drawing plan set. Crossings will not require state plane coordinates.
3. Pipelines that are "dead" or have been abandoned shall be located during construction and shall be annotated Record Drawing Plans.
4. As-built survey drawings shall meet applicable minimum technical standards for land surveys as outlined in Section 61G17 of the Florida Administrative Code.

NOTE: For technical information on AutoCAD and GIS, please refer to the "Electronic As Built Requirements" located on the City Engineering Website: http://pompanobeachfl.gov/pages/department_directory/public_works/engineering_division/engineering_division.html.php

PART 2 -PRODUCTS (Not Applicable)

PART 3 -EXECUTION (Not Applicable)

END OF SECTION -01720

Meeting Date: March 8, 2016 Agenda Item 27

REQUESTED COMMISSION ACTION:

Consent	Ordinance	X **Resolution**	Consideration/ Discussion	Presentation

SHORT TITLE APPOINTMENT TO THE SANDS AND SPURS ADVISORY BOARD

Summary of Purpose and Why:

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPOINTING _____ TO THE SAND AND SPURS ADVISORY BOARD OF THE CITY OF POMPANO BEACH TO FILL THE UNEXPIRED TERM OF ELIZABETH A. ADAMS; SAID TERM TO EXPIRE ON APRIL 26, 2017; PROVIDING AN EFFECTIVE DATE.

APPLICANTS: Carrie Gill – District 3
Julie R. Newton – District 1

Accomplishing this item supports achieving *Initiative 5.2.1.* "Ensure boards/committees are at 90% capacity with qualified members", as identified in the Strategic Plan.

This is a Commission's appointment.

The Board's membership is as follows: **Elizabeth A. Adams** (District 2 - Deceased) appointed by Comr. Burrie; **Sharon Tamayo** (District 3), appointed by former Vice Mayor Brummer; **Jerry K. Bowman, Sr.** (District 3), and **Marcia L. Kehl** (District 3), appointed by Comr. Hardin; **Thomas D. Dennis** (District 1) appointed by Mayor Fisher; **Mary Ann Barker** (District 1), **Sharon Fornes** (District 5/Alt. #1) and **Connie Tidwell** (District 3/Alt. #2) appointed by Comr. Dockswell.

(1) Origin of request for this action: City Clerk's Office
(2) Primary staff contact: Asceleta Hammond Ext. 4611
(3) Expiration of contract, if applicable:
(4) Fiscal impact and source of funding:

DEPARTMENTAL COORDINATION	DATE	DEPARTMENTAL RECOMMENDATION	DEPARTMENTAL HEAD SIGNATURE
City Clerk's Office	2/25/16	Approve	Asceleta Hammond
X City Manager			Dennis W. Beach

ACTION TAKEN BY COMMISSION:

Ordinance	Resolution	Consideration	Workshop
1st Reading	1st Reading	Results:	Results:
2nd Reading			

RESOLUTION NO. 2016-_____

CITY OF POMPANO BEACH
Broward County, Florida

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPOINTING _____TO THE SAND AND SPURS ADVISORY BOARD OF THE CITY OF POMPANO BEACH TO FILL THE UNEXPIRED TERM OF ELIZABETH A. ADAMS; SAID TERM TO EXPIRE ON APRIL 26, 2017; PROVIDING AN EFFECTIVE DATE.

WHEREAS, _____ is well qualified to serve as a member of the Sand and Spurs Advisory Board of the City of Pompano Beach and the City Commission desires to appoint a member thereto; now, therefore,

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA:

SECTION 1: That _____ is hereby appointed to the Sand and Spurs Advisory Board to fill the unexpired term of Elizabeth A. Adams; said term to expire on April 26, 2017.

SECTION 2: This Resolution shall become effective upon passage.

PASSED AND ADOPTED this _____ day of _____, 2016.

_____
LAMAR FISHER, MAYOR

ATTEST:

_____
ASCELETA HAMMOND, CITY CLERK

CITY OF POMPANO BEACH
ADVISORY BOARD / COMMITTEE
APPLICATION

City Clerk's Office Phone: 954-786-4611 Fax: 954-786-4095
Post Office Drawer 1300, Pompano Beach, FL 33061
www.mypompanobeach.org

Mr.___ Mrs.___ Ms. X Miss___ **Name:** CARRIE Gill
(Optional)

Residence Information:
Home Address: 900 N.E. 11th Ave
City/State/Zip: Pompano Beach, Florida 33060
Home Phone: N/A Cell Phone (954) 812-1645
Email: Psychoredneck1@yahoo.com Fax: N/A

Business Information:
Employer/Business Name: U-HAUL
Current Position / Occupation: Office Clerk
Business Address: 1220 SW. 8th ST.
City/State/Zip: Pompano Bch. Florida 33069
Business Phone: 1-800-290-4590 Fax: (954) 783-8500 Email: CarrieGill_@U-HAUL.com

Are you a U.S. Citizen? Yes X No___

Are you a resident of Pompano Beach? Yes X No___ Reside in District: 1__ 2X 3✓ 4__ 5__
ok

Do you own real property in Pompano Beach? Yes___ No X

Are you a registered voter? Yes X No___

Have you ever been convicted of a felony? Yes___ No X

Current or prior service on governmental boards and/or committees: N/A

Please make a check next to the Advisory Boards/Committees you would like to serve on:

	Affordable Housing		Cultural Arts		Parks and Recreation
	Air Park		Education		*Planning & Zoning/Local Planning Agency
	Architectural Appearance		Emergency Medical Services		*Police & Firefighter's Retirement System
	Budget Review		*Employee's Board of Appeals		Pompano Beach Economic Development Council
	Charter Amendment		Employee's Health Insurance		Recycling & Solid Waste
	Community Appearance		*General Employee's Retirement System	X	Sand & Spurs Riding Stables
	*Community Development		Golf		Marine
	CRA East		Historic Preservation		*Unsafe Structures
	CRA West		*Housing Authority of Pompano Beach		*Zoning Board of Appeals

***Financial Disclosure Form is required, if appointed to serve, upon appointment and upon resignation/retirement.**

In addition a Resume may be attached

Education: Allen A Rogers Ele - Deerfield Middle - Pompano High - U-HAUL University

Experience: Knowledge in Grounds Keeping (14 years on Golf Course)
Knowledge in Farm Operations (life Experiences)
Business Exp. (current Job)

Past Positions: Carpenter - Housewife - Mechanic - Machine Operator
Grounds Keeper - office clerk - Business Manager.

Hobbies: Cooking - CRAFTS - DOGS - Horses

Making any false statements herein may be cause for revocation by the City Commission of any appointment to a Board/Committee.

Signature: Carrie Gill Date: 10-1-10

Initials of Clerk or Deputy: MJ Date received or confirmed: 11-3-10

Please check one: ___ **New Application** ___ **Currently Serving on Board** ✓ **Updated Information**

Note: Application is effective for one year from date of completion. If you have any questions on the above, please call the City Clerk's Office at: 954-786-4611, or send via fax to: 954-786-4095.

CITY OF POMPANO BEACH
ADVISORY BOARD / COMMITTEE
APPLICATION

City Clerk's Office Phone: 954-786-4611 Fax: 954-786-4095
Post Office Drawer 1300, Pompano Beach, FL 33061
www.mypompanobeach.org

Mr.___ Mrs.___ Ms.___ Miss___ (Optional) Name: Julie R. Newton

Residence Information:
Home Address: 810 SE 13 Ct.
City/State/Zip: Pompano Beach FL 33060
Home Phone: 954-786-0925 Cell Phone:
Email: Fax:

Business Information:
Employer/Business Name:
Current Position / Occupation: N/A
Business Address:
City/State/Zip:
Business Phone: Fax: Email:

Are you a U.S. Citizen? Yes X No___

Are you a resident of Pompano Beach? Yes X No___ Reside in District: 1 X 2__ 3__ 4__ 5__

Do you own real property in Pompano Beach? Yes X No___

Are you a registered voter? Yes X No___

Have you ever been convicted of a felony? Yes___ No X

Current or prior service on governmental boards and/or committees: No

Please make a check next to the Advisory Boards/Committees you would like to serve on:

	Affordable Housing		Cultural Arts		Parks and Recreation
	Air Park		Education		*Planning & Zoning/Local Planning Agency
	Architectural Appearance		Emergency Medical Services		*Police & Firefighter's Retirement System
	Budget Review		*Employee's Board of Appeals		Pompano Beach Economic Development Council
	Charter Amendment		Employee's Health Insurance		Public Art Committee
	Community Appearance		*General Employee's Retirement System		Recycling & Solid Waste
				✓	Sand & Spurs Riding Stables
	*Community Development(CDAC)		Golf		Marine
	CRA East		Historic Preservation		*Unsafe Structures
	CRA West		*Housing Authority of Pompano Beach		*Zoning Board of Appeals

*Financial Disclosure Form is required, if appointed to serve, upon appointment and upon resignation/retirement.

* Please note add'l info on next page added 10/28/15

In addition a Resume may be attached

Education:

Experience: Stall owner S&S #61 since 1/2011
I try to attend all S&S advisory board meetings when I am in town.

Past Positions:

Hobbies:

Making any false statements herein may be cause for revocation by the City Commission of any appointment to a Board/Committee.

Signature: Jim R Newton

Date: 9/26/15

Initials of Clerk or Deputy: LAA

Date received or confirmed: 9/28/15

Please check one: X New Application ___ Currently Serving on Board ___ Updated Information

Note: Application is effective for one year from date of completion. If you have any questions on the above, please call the City Clerk's Office at: 954-786-4611, or send via fax to: 954-786-4095.

* Added 10/28/15

ORDINANCE NO. 2005-29

CITY OF POMPANO BEACH
Broward County, Florida

AN ORDINANCE AMENDING CHAPTER 33, "BOARDS AND COMMISSIONS", OF THE POMPANO BEACH CODE OF ORDINANCES BY AMENDING SECTION 33.100, "COMPOSITION", TO PROVIDE FOR AN ADDITIONAL MEMBER OF THE SAND AND SPURS ADVISORY BOARD AND ESTABLISHING A TERM OF OFFICE; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING AN EFFECTIVE DATE

WHEREAS, the City Commission established the Sand and Spurs Advisory Board consisting of five (5) members; and

WHEREAS, the City Commission now wishes to add an additional member to the Sand and Spurs Advisory Board and establish a term of office for member; and

WHEREAS, the City Charter has been amended to allow the City Commission to establish the number and term of office of members on advisory boards; and

WHEREAS, pursuant to law, ten (10) days' notice has been given by publication in a paper of general circulation in the City, notifying the public of this proposed Ordinance and of a public hearing in the City Commission Chambers of the City of Pompano Beach; and

WHEREAS, a public hearing before the City Commission was held pursuant to the published notice described above, at which hearing the parties in interest and all other citizens so desiring had an opportunity to be and were, in fact, heard; now, therefore,

BE IT ENACTED BY THE CITY OF POMPANO BEACH, FLORIDA:

SECTION 1. That Section 33.100 "Composition", of Chapter 33, "Boards and Commissions", of the Code of Ordinances of the City of Pompano Beach is hereby amended to read as follows:

§ 33.100 COMPOSITION.

~~In accordance with the terms of Section 234 of the Charter, t~~There shall be an Advisory Board known as the Sand and Spurs Advisory Board composed of ~~five~~ six (6) persons who serve for a term of three (3) years, except the sixth member appointed after the effective date of this ordinance may be initially appointed for a shorter term. The Public Works Administrator or his designee shall meet with the Board as its advisory with no vote.

. . .

SECTION 2. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance that 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 3. All ordinances or parts of ordinances in conflict herewith be and the same are hereby revoked.

SECTION 4. This Ordinance shall become effective upon passage.

PASSED FIRST READING this 11th day of January, 2005.

PASSED SECOND READING this 25th day of January, 2005.

JOHN C. RAYSON, MAYOR

ATTEST:

MARY L. CHAMBERS, CITY CLERK

GBL/jrm
12/16/04
l:ord/ch33/2005-87

ORDINANCE NO. 2001- 59

CITY OF POMPANO BEACH
Broward County, Florida

AN ORDINANCE AMENDING CHAPTER 33, "BOARDS AND COMMISSIONS", OF THE POMPANO BEACH CODE OF ORDINANCES BY AMENDING SECTION 33.100, "COMPOSITION", TO PROVIDE FOR ALTERNATE MEMBERS OF THE SAND AND SPURS ADVISORY BOARD; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE

WHEREAS, the City Commission established the Sand and Spurs Advisory Board without the provision for alternate members; and

WHEREAS, the City Commission now wishes to add alternate membership to the Sand and Spurs Advisory Board; and

WHEREAS, pursuant to law, ten (10) days' notice has been given by publication in a paper of general circulation in the City, notifying the public of this proposed Ordinance and of a public hearing in the City Commission Chambers of the City of Pompano Beach; and

WHEREAS, a public hearing before the City Commission was held pursuant to the published notice described above, at which hearing the parties in interest and all other citizens so desiring had an opportunity to be and were, in fact, heard; now, therefore,

BE IT ENACTED BY THE CITY OF POMPANO BEACH, FLORIDA:

SECTION 1: That Section 33.100 "Composition", of Chapter 33, "Boards and Commissions", of the Code of Ordinances of the City of Pompano Beach is hereby amended to read as follows:

§ 33.100 COMPOSITION.

In accordance with the terms of Section 234 of the Charter, there shall be an Advisory Board known as the Sand and Spurs Advisory Board composed of five persons. The Public Works Administrator or his designee shall meet with the Board as its advisory with no vote.

The City Commission shall appoint two (2) alternate members of the Sand and Spurs Advisory Board, who are residents of the City, to be designated as Alternate 1 and Alternate 2. Each alternate shall be appointed for a term of three (3) years, said terms to run concurrently. Alternate members shall be subject to removal for cause by the City Commission. Alternate member vacancies shall be filled for the unexpired term of the member. Should a temporary absence or disqualification of any member of the Sand and Spurs Advisory Board occur, the Chairman of the Board shall have the right and authority to designate one of the alternate members to serve as a substitute member during the continuance of such absence or disqualification. The Chairman shall rotate such assignments between the alternate members to the extent that availability of alternate members allows.

SECTION 2: If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance that 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 3: This Ordinance shall become effective upon passage.

PASSED FIRST READING this 8TH day of MAY, 2001.

PASSED SECOND READING this 22ND day of MAY, 2001.

WILLIAM F. GRIFFIN, MAYOR

ATTEST:

MARY L. CHAMBERS, CITY CLERK

GBL/jrm
3/14/01
I:ord/ch33/2001-228

ORDINANCE NO. 76-51

CITY OF POMPANO BEACH
Broward County, Florida

AN ORDINANCE AMENDING CHAPTER 33 OF THE CODE OF ORDINANCES OF THE CITY OF POMPANO BEACH BY THE ADDITION OF ARTICLE VI THEREIN, "SAND AND SPURS STABLES"; PROVIDING FOR THE CREATION AND ESTABLISHMENT OF THE SAND AND SPURS STABLES; PROVIDING FOR THE RULES AND REGULATIONS AND TERMS OF ITS OPERATION AND STALL FEES; PROVIDING FOR SAND AND SPURS ADVISORY BOARD; AMENDING CHAPTER 2 BY REPEALING ARTICLE VI, SAND AND SPURS ADVISORY BOARD; AND AMENDING SECTION 33.15 BY REPEALING SUBSECTION E, SAND AND SPURS STABLES FEES; PROVIDING A SAVINGS CLAUSE; PROVIDING A REPEALING CLAUSE; PROVIDING AN EFFECTIVE DATE.

WHEREAS, pursuant to law, fourteen (14) days' notice has been given by publication in a paper of general circulation in the City, notifying the public of this proposed ordinance and of a public hearing in the Commission Meeting Room of the City of Pompano Beach, Florida; and

WHEREAS, a public hearing before the City Commission was held, pursuant to the published notice described above, at which hearing the parties in interest and all other citizens so desiring had an opportunity to be and were in fact heard; now, therefore

BE IT ENACTED BY THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA:

SECTION 1: That Chapter 33 of the Code of Ordinances of the City of Pompano Beach is hereby amended by the addition of an Article VI entitled "Sand and Spurs Stables" to read as follows:

"ARTICLE VI - SAND AND SPURS STABLES

Section 33.40. There is hereby established the Sand and Spurs Stables of the City of Pompano Beach located at 1600 Northeast 5th Avenue, Pompano Beach, Florida, more particularly described on Exhibit A attached hereto.

Section 33.41. Hours of operation.

The hours of operation of the Sand and Spurs Stables shall be from 6:00 A. M. to thirty minutes after sunset daily.

Section 33.42. Purpose.

The purpose of Sand and Spurs Stables is to provide grounds for the care, housing, exercising and use of riding horses.

Section 33.43. Riding Stable Attendant.

The Riding Stable Attendant shall be the representative of the City of Pompano Beach at Sand and Spurs Stables and charged with enforcement of all rules and regulations of Sand and Spurs Stables and maintaining order.

Section 33.44. Stalls.

The City Manager shall establish a stall and traffic flow arrangement for the Sand and Spurs Stables with stall spaces in dimensions of 24 feet of frontage and 24 feet of depth.

Section 33.45. Permits for use of stalls.

A permit for the use of stall space at Sand and Spurs Stables may be obtained by submitting an application for same to the Department of Recreation and Parks on a form provided by said department.

The aforementioned permit shall be granted subject to the following limitations and provisions:

(1) The applicant may erect, place or alter a stall or stalls for the quartering of horses upon the designated space provided the stall is constructed or altered in accordance with plans and specifications to be submitted to and approved in writing by the City Recreation Director.

(2) The City may terminate all rights after giving thirty (30) days' written notice, which notice shall be sent by certified or registered mail to the applicant's address on the application. Applicant shall have such thirty (30) day period within which to sell to another Applicant approved by the City any stall or stalls owned by him. At the expiration of such thirty (30) day period, any stall or stalls remaining unsold shall become the sole and exclusive property of the City of Pompano Beach together with all fixtures and appurtenances thereto.

(3) Under no circumstances may any stall or stalls or other building be removed or dismantled, or other exterior alterations made except for routine maintenance without following the steps as outlined in number (1) above.

(4) The land upon which the Sand and Spurs Stables is situated is part of the Pompano Beach Airpark, and the manner in which airpark land may be utilized by the City is subject to regulation by the Federal Aviation Administration. Should any order, regulation or decree of said Federal Aviation Administration necessitate the abandonment of the Sand and Spurs Stables by the City, the City shall be under no obligation to reimburse stall users for any stall or stalls owned by them or for any other loss occasioned by such abandonment.

(5) Applicant may use the recreation area and facilities at Sand and Spurs Park including riding range, trails, water and lights. All persons shall keep the area clean and free of debris of all kinds whatsoever.

(6) Applicant shall take out and maintain at all times throughout his occupancy of stall space, such comprehensive general liability insurance with a combined single limit of $300,000.00, as shall protect him and any person authorized by him to use the facilities of Sand and Spurs Stables from claims for damages for personal injury, including accidental death, as well as from claims for property damage, including damage to his horse. No application shall be approved until Applicant has provided a certificate of such insurance satisfactory to the City Insurance Manager. Such certificate shall specify that the insurance provided thereunder shall not be cancelled without at least thirty (30) days' notice to the City of Pompano Beach and name the City of Pompano Beach as an additional insured.

(7) Upon Applicant's failure to pay all fees when due, the City may take and hold all property of the Applicant upon the premises and the value of any such property may be applied toward any monies owing the City.

(8) The rights and privileges and duties of the Applicant are non-transferrable.

Section 33.46. Application.

Persons desiring to use stall space at the Sand and Spurs Stables shall be required to file an application with the City of Pompano Beach. which application shall provide for the approval by the City Manager

and the Recreation Director, and for space assignment as approved by the Recreation Director.

Said application shall be accompanied by a statement to the effect that the applicant has received a copy of the rules and regulations governing the Sand and Spurs Stables. Said application shall also have attached thereto proof of ownership of the horse.

Section 33.47. Stall Fees.

1. City owned stall

a. Resident	$ 15.00 per month
b. Non-Resident	$ 45.00 per month

2. Stall owned by user

a. Resident	$ 8.00 per month
b. Non-Resident	$ 24.00 per month

3. Fees are payable quarterly in advance on or before the 10th day of the quarter.

Section 33.48. Rules and Regulations.

(1) Any and all horse owners must present a health certificate not more than thirty (30) days old issued by a licensed veterinarian showing the horse to be in reasonably good health and free from any communicable disease prior to admission on the grounds of Sand and Spurs Stables. Such health certificate shall include a blood test analysis showing a negative result. A second such certificate is required 120 days after admission to protect against any disease incubation period. Each year on the anniversary date of a horse's admission the owner must present a new health certificate.

The Recreation Director may order the removal of a horse from the premises of Sand and Spurs Stables if the horse is sick.

Should any horse be removed from the grounds due to illness, its re-admission to the grounds shall be subject to the same health requirements hereinabove given. Similar certificates of health may also be required from time to time when in the opinion of the Recreation Director it is necessary to protect persons or animals using Sand and Spurs Stables.

(2) In the event any horse that is stabled at Sand and Spurs Stables receives a positive test for a contagious disease, the other horses stabled at Sand and Spurs may be required to submit results of medical tests upon the request of the City Manager and also a second health test after the incubation period for the specific disease has expired.

(3) Stall users shall be responsible for the removal of all waste matter from the stall enclosures and for the placement of all bottles, trash and similar refuse in trash cans.

(4) The motor vehicle speed limit in the area of the stables shall be 5 miles per hour.

(5) There shall be no smoking west of the main road in the stable area and no obscene language anywhere on the premises. No alcoholic beverages shall be permitted on the grounds of Sand and Spurs Stables.

(6) Tack rooms must be kept clean at all times and are subject to inspection by the Recreation Department.

(7) No person shall be permitted to rent horses, and no riding lessons may be given at Sand and Spurs Stables.

(8) Only standard riding equipment will be allowed to be used at Sand and Spurs Stables. Riding equipment that is inhumane, unsafe or detrimental to the health and welfare of the horse or rider will not be permitted.

(9) Horses must have halter and halter shank on before being led from a stall. No grazing is permitted on the grounds. No fast riding of horses is permitted except on an approved course designated by the Riding Stable Attendant. Loose horses will be permitted only in rings designated by the Riding Stable Attendant and must be attended at all times.

(10) Horses may not be removed from the Sand and Spurs Stables premises except by the owner or by written permission of the owner.

(11) No bareback or double riding will be permitted except in rings and under supervision of the Recreation Department. No horse may be tied or allowed to stand along the rail inside the ring at any time.

(12) a. Individual horse owners at Sand and Spurs Stables may use the show ring for riding and practice purposes under the general supervision of the Riding Stable Attendant.

b. Use of the show ring may also be used for organized shows by recognized groups of horseowners subject to conditions as specified by the City Commission for any particular show.

(13) Mistreatment of horses will not be permitted.

(14) Any person who does not possess a Sand and Spurs Stables permit shall not be permitted to bring a horse or horses into the Stable area or to use the trails, riding rings or any of the facilities. This provision, however, shall not apply to persons who are official entrants in horse shows scheduled at Sand and Spurs by the Recreation Department.

(15) A space will be assigned by the Riding Stable Attendant for storage of jumps. The owner of the jumps will be fully responsible for the storing of same after their use in order to keep the ring clear. The jumps and time of use will be under the control of the Riding Stable Attendant. Prior to the use of any jumps by persons under the age of 18 years, written permission must be obtained from a parent or guardian allowing such person to use the jumps, assuming full responsibility for the safety of such person and for any injury which may result to him or her by the use of such jumps. No jumping will be permitted unless the Riding Stable Attendant is on duty.

(16) Should any permit holder neglect to maintain his stall in good repair, the Recreation Department may notify such person of the repairs necessary and upon failure of said person to make such repairs within ten (10) days, the Recreation Department may proceed to make such repairs and bill said person therefor; or, in the alternative, the Recreation Department may terminate the permit as provided herein.

(17) Destruction or abuse of, or vandalism to either private or public property shall be cause for suspension of a permit.

(18) Only one (1) horse may be stabled in a stall area. Foals over six (6) months old must have their own stall.

(19) Stallions shall not be permitted to be stabled at Sand and Spurs Stables.

(20) A copy of these Rules and Regulations shall be signed by each stall user and in the case of a minor a copy shall be signed by a parent or guardian and the minor and shall be displayed at all times in all tack rooms. A copy shall also be displayed on the bulletin board in the pavilion.

(21) No person shall ride a horse in such a way that is dangerous to the horse, the rider, or others.

(22) Failure to comply with these Rules and Regulations shall be cause for expulsion and termination of the relationship between a stall user and the City of Pompano Beach.

(23) Penalties for violation of these Rules and Regulations shall be as follows:

(a) Any person violating any ordinance or the rules and regulations of the Sand and Spurs Stables as adopted by the City Commission shall receive a written warning citation from the Riding Stable Attendant.

(b) Any person receiving 2 written warning citations on the same day shall have his riding privileges terminated for the duration of that day.

(c) Any person who shall receive 3 written warning citations within one 12 month period shall have their riding privileges suspended for one week.

(d) Any additional violations within one 12 month period shall be an additional one week suspension.

(e) Any person accumulating 10 written warning citations within a 12 month period shall have his or her permit terminated.

(f) Any person receiving citations under this section may appeal said citation to the City Commission if said appeal is submitted in writing to the City Manager within 3 business days of receipt of citation. The City Commission may void the citation if they find it wrongfully issued.

Section 33.49. The City Manager or his delegated subordinate shall have the authority to settle any controversies among persons at

the Sand and Spurs Stables and his decision in such matters shall be final and binding on all parties.

Section 33.50. It shall be unlawful for any person to obstruct or hinder the officials of the City of Pompano Beach in the performance of their duties of inspecting or administering the Sand and Spurs Stables or carrying out any of the duties necessary to the proper operation of the Sand and Spurs Stables.

Section 33.51. Any person violating any provisions of this Chapter shall be guilty of a misdemeanor and upon conviction thereof, shall be fined a sum of not more than $500.00.

Section 33.52. Sand and Spurs Advisory Board.

In accordance with the terms of Section 234 of the City Charter, there shall be an advisory board known as the Sand and Spurs Advisory Board composed of five persons. The Recreation Director shall meet with the Board as its advisor with no vote.

Section 33.53. Duties of Advisory Board.

The Sand and Spurs Advisory Board shall have the following duties:

(1) Initiate, make and recommend to the City Commission a master plan for the physical development of the Sand and Spurs Stables and to recommend proposed changes in such plan from time to time.

(2) Promote public interest in and understanding of the Sand and Spurs Stables.

(3) Keep a public record of its findings and recommendations.

(4) Advise and assist the City Commission in matters concerning the operation and use of the Sand and Spurs Stables.

(5) Such other duties as the City Commission may direct.

SECTION 2: That Chapter 2 of the Code of Ordinances of the City of Pompano Beach be amended by the repeal of Article VI, Sand and Spurs Stables Advisory Board, Section 2.25, Section 2.26 and Section 2.27.

SECTION 3; That Section 33.15 of the Code of Ordinances of the City of Pompano Beach be amended by the repeal of subsection E, Sand and Spurs Fees.

SECTION 4: If any section or provision of this ordinance shall be held invalid, such holding shall not affect or invalidate any other section or provision which is not of itself invalid.

SECTION 5: All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

SECTION 6: This ordinance shall become effective upon passage.

PASSED FIRST READING this 11th day of May, 1976.

PASSED SECOND READING this 18th day of May, 1976.

J. Maxim Ryder, Mayor

ATTEST:

CHARLOTTE YANZ, City Clerk

SCM/jep
#162
2/24/75
2/25/75
7/15/75
7/23/75

10/30/75
1/2/76
4/5/76

EXHIBIT A

A parcel of land in the NE 1/4 of the SE 1/4 of Sec. 26, Twp. 48 R42E and in the NW 1/4 of the SW 1/4 of Sec. 25, Twp. 48, R42E, more fully described as follows:

Beginning at the NE corner of the SE 1/4 of the SE 1/4 of Sec. 26-48-42 proceed westerly along the North line of the aforementioned SE 1/4 to a point 140' east of the East right-of-way line of the F.E.C.R.R., thence proceed northeasterly along a line which is 135 feet, more or less, east of and parallel to the East right-of-way line of the F.E.C.R.R. a distance of 790 feet, more or less, thence at a right angle to the last described course, run southeasterly to an intersection with the West right-of-way line of N. E. 5th Ave., thence run southwesterly along said right-of-way line, to an intersection with the North line of the SW 1/4 of the SW 1/4 of Sec. 25-48-42, thence westerly along said North line to the point of beginning.

Sand and Spurs Advisory Board MEMBERS

Name	Address	District	Phone	Appointed	Expires	Reso. No.
Marcia L. Kehl City Commission At Large	732 N.E. 7th Street (33060) marcia.kehl@copbfl.com	3	954-943-8546 h 954-545-7006 o 954-830-7615 c	9/8/2015	9/26/2018	2015-416
Sharon Tamayo City Commission At Large	151 S.E. 8th Street (33060)	3	954-654-5849	11/12/2013	12/9/2016	2014-74
Thomas D. Dennis City Commission At Large	947 S.E. 9th Avenue (33060) dennis2020@bellsouth.net	1	954-781-6926 h 954-942-1313 o	6/23/2015	6/26/2018	2015-348
Jerry Bowman, Sr. City Commission At Large	717 N.E. 3rd Street (33060) Bowm7920@bellsouth.net	3	954-942-6457 h 954-298-0854	11/12/2013	12/9/2016	2014-73
VACANCY City Commission At Large					4/26/2017 *Adams Term*	
Mary Ann Barker City Commission At Large	3208 Dow Street (33062) mabarker12@att.net	1	954-240-1568	9/8/2015	9/26/2018	2015-417
Alternate Members						
(1) Sharon Fornes City Commission At Large	2316 Cypress Bend Dr., Apt 320, (33069) sharon@777properties.com	5	954-972-1476 h 954-673-0848 c 954-390-7777 o	6/25/2013	7/1/2016	2013-297
(2) Connie L. Tidwell City Commission At Large	240 S.E. 3rd Street (33060) bodyspot1@yahoo.com	3	954-782-4573 h 954-914-9961 c 954-946-0241 o	6/25/2013	7/1/2016	2013-298
Nicole Louramore - Secretary	1201 N.E. 5th Avenue		954-786-4507			

Meets: Fourth Wednesday of the month @ 1:00pm in the Public Works Admin. Building
Elections: Annually in October