Meeting Date: April 26, 2016 Agenda Item 1

REQUESTED COMMISSION ACTION:

X Consent ____ Ordinance ____ Resolution ____ Consideration ____ Workshop

SHORT TITLE Irene Fletcher would like to sell her plot in Block 12, Lot 7, Plot 19 in the North Lawn back to the Pompano Beach Cemetery.
BRA #3232. ($225.00)

OR MOTION:

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. Irene Fletcher would like to disinter her husband John Fletcher and Sell the plot back to the City Cemetery.

QUESTIONS TO BE ANSWERED BY ORIGINATING DEPARTMENT:

(1) Origin of request for this action: Irene Fletcher
(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: 001-0000-364-10-00 $225.00

DEPARTMENTAL COORDINATION	DATE	DEPARTMENTAL RECOMMENDATION	DEPARTMENTAL HEAD SIGNATURE
Public Works	4/7/16	APPROVE	Robert A. McCaughan
Finance	4/8/16	APPROVE	S. Lebelle
Budget	4/12/16	APPROVE	
City Attorney		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			

to whom it may Concern:

I Dave Fletcher want to disinter my Father John Ronald Fletcher Block 12 Lot 7 Plot 19, and wish to sell plot back to City of Pompano

3/16/16

TRANSFER AND ASSIGNMENT OF BURIAL RIGHT AGREEMENT

I (we), Irene Hetzhen
(Assignor)

of 301 Hakeay Farm GA Canton GA 301K hereby
(Address)

assign, transfer and set over this date to City of Pompano
(Assignee)

Right(s), title and interest in and to Burial Right Agreement# 3232 entered to the 16 day of March 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 Irene Hetzhen
(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 City of Pompano
(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 12 Lot(s) 7 Plot(s) 19 Lawn _____

Irene Fletcher Henry
(Assignor)

(Assignor)

(Witness)

Subscribed and sworn to/affirmed before me on March 16, 2016, by ✓ who is personally known to me or has presented _____ as identification.

Dinah Evans
Notary Public

DINAH EVANS
MY COMMISSION # EE 198765
EXPIRES: May 15, 2018
Bonded Thru Notary Public Underwriters

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

Meeting Date: 04/26/16 Agenda Item 2

REQUESTED COMMISSION ACTION:

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

SHORT TITLE Approve ranking order for RFP E-21-16 Summer Youth Employment Training Program, and authorize staff to negotiate a contract with the highest-ranked firm, New Horizon Community Development Corp. (No cost at this time.).

Summary of Purpose and Why:

RFP E-21-16 was issued to select a single firm to administer the Summer Youth Employment Training Program (SYETP). The program serves youth ages 13-15 throughout City of Pompano Beach. SYETP participants will be placed in a part-time summer job for nine (9) weeks and also take part in focused educational activities that integrate life skills, life-long learning, and career planning. City Commission approval of the ranking order presented by the Selection/Evaluation Committee is requested, and authorization is requested for appropriate City staff to negotiate a contract with the highest-ranked firm, New Horizon Community Development Corp. Further authorization is requested to continue negotiations with the succeeding ranked firm should an impasse occur in the negotiations with the recommended firm. The recommended firm is a local Pompano Beach business.

(1) Origin of request for this action: Staff
(2) Primary staff contact: Michael Smith, Human Resources Director 954 786-5549
(3) Expiration of contract, if applicable: n/a
(4) Fiscal impact and source of funding: No cost at this time

DEPARTMENTAL COORDINATION	DATE	DEPARTMENTAL RECOMMENDATION	DEPARTMENTAL HEAD SIGNATURE
Human Resources	04/15/16	APPROVE	[illegible]
General Services	4/13/16	APPROVE	[illegible]
Budget	4/15/16	"	[illegible]
Finance	4/15/16	approval	S. Gabble

X City Manager [illegible]

ACTION TAKEN BY COMMISSION:

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

MEMORANDUM

Purchasing #16-067
April 13, 2016

To: Dennis W. Beach, City Manager

Through: Otis J. Thomas, General Services Director OT

From: Jeffrey English, Purchasing Agent JE

Subject: Award RFP E-21-16 Summer Youth Employment Training Program

Contract Need/Background

RFP E-21-16 was issued to establish a contract for the administration of the Summer Youth Employment Training Program (SYETP). The program serves youth ages 13-15 throughout City of Pompano Beach. SYETP participants will be placed in a part-time summer job for nine (9) weeks and also take part in focused educational activities that integrate life skills, life-long learning, and career planning.

Mailing List

The mailing list for this project was created by using companies suggested by the requesting department, companies that have responded to prior solicitations, companies that have requested their names be placed on the mailing list, and companies from appropriate listings in other sources.

Number of received proposals 2
Number of responsive proposals.....2

Advertising

The RFP was advertised in the Sun Sentinel, and notices were sent to bid notice agencies throughout the nation. The RFP package was also posted on the City's web page for download by interested firms.

Selection/Evaluation Committee

Two responses were received to the solicitation. The Selection/Evaluation Committee met on April 13 (in a public meeting) to evaluate and rank the responses. Copies of the minutes and voting matrix from the meeting are attached.

Market Research

The General Services Department performed outreach to local life skill and employment training companies to inform them about this project. A total of six (6) local companies were notified.

Recommendation

The recommendation from the Selection/Evaluation Committee to the City Commission is to approve the ranking order, and authorize the City staff to negotiate a contract with the highest-ranked firm, New Horizon Community Development Corp. Additional authorization is requested to continue negotiations with the succeeding ranked firm to complete a contract in case of an impasse in negotiations with the recommended firm. The recommended firm is a local Pompano Beach business.

attachments
cc: file

MINUTES
SELECTION / EVALUATION COMMITTEE

RFP #E-21-16
SUMMER YOUTH EMPLOYMENT TRAINING PROGRAM
Emma Lou Olsen Civic Center Craft Room
1801 N.E. 6th Street, Pompano Beach, FL.
9:48 a.m. 04/13/16

The committee consisted of the following voting members:
Bobby Bush, Senior Human Resource Analyst
Cynthia Kitts, Recreation Manager
Michael Smith, Human Resources Director
Non-voting member:
Jeffrey English, Purchasing Agent

The meeting was held to evaluate the proposals received in response to the City's solicitation to establish a contract for the administration of the Summer Youth Employment Training Program (SYETP). The program serves youth ages 13-15 throughout City of Pompano Beach. SYETP participants will be placed in a part-time summer job for nine (9) weeks and also take part in focused educational activities that integrate life skills, life-long learning, and career planning.

This meeting was posted as a "Public Meeting" at City Hall, the Purchasing Division office, and on the City's website. Two firms submitted responsive proposals to the City's Request for Proposals.

Michael Smith led the technical discussion. The Purchasing Representative reviewed evaluation procedures and distributed Conflict of Interest Statements for completion by all voting members.

Each Committee member had reviewed all of the responses in advance of the meeting. The Committee discussed each of the proposals in alphabetical order, and scored the responses using voting forms containing the evaluation criteria published in the RFP, with the following results:

1) New Horizon Community Development Corp..... 245
2) Jesus Supernatural Sword of Power Ministry #1.....219

A copy of the voting matrix is attached. The Committee decided oral presentations would not be required as the scoring results showed sufficient distinction between the responding firms. An agenda item will be prepared to present the ranking to the City Commission for their approval to negotiate a contract with New Horizon Community Development Corp.

The meeting adjourned at approximately 10:47 a.m.

RFP E-21-16
SUMMER YOUTH EMPLOYMENT TRAINING PROGRAM
04/13/16

	Total Potential Points	Jesus Supernatural Sword of Power Ministry #1, Inc.	New Horizon Community Development Corp., Inc.
Committee Member	Potential Points		
Bobby Bush			
Experience and Expertise	0-20	18	15
References	0-20	18	10
Resources and Methodology	0-30	20	25
Cost	0-30	15	25
	Total =	71	75

Committee Member	Potential Points		
Cynthia Kitts			
Experience and Expertise	0-20	20	20
References	0-20	15	18
Resources and Methodology	0-30	20	20
Cost	0-30	20	25
	Total =	75	83

Committee Member	Potential Points		
Michael Smith			
Experience and Expertise	0-20	15	18
References	0-20	16	18
Resources and Methodology	0-30	20	25
Cost	0-30	22	26
	Total =	73	87

Committee Members (Average)	Potential Points		
Experience and Expertise	0-20	18	18
References	0-20	16	15
Resources and Methodology	0-30	20	23
Cost	0-30	19	25
	Average Score =	73	82

Committee Members (Total)	Potential Points		
Experience and Expertise	0-60	53	53
References	0-60	49	46
Resources and Methodology	0-90	60	70
Cost	0-90	57	76
	Grand Total=	219	245

EVALUATION CRITERIA
RFP E-21-16 – SUMMER YOUTH EMPLOYMENT TRAINING PROGRAM

VENDOR NAME: Jesus Supernatural Sword of Power Ministry.

Criteria	Point Range	Score
1. Experience and Expertise Previous related work experience and qualifications in the subject area of personnel assigned. Demonstrates a clear understanding of scope of work and other technical or legal issues related to the project.	0-20	18
2. References History and performance of firm/project team on similar projects. References and recommendations from previous clients.	0-20	18
3. Resources and Methodology Adequacy of amount of quality resources assigned to the project. Overall approach to project. Consideration of services provided and approach to meeting goals and deadlines. Financial resources.	0-30	20
4. Cost Including the overall project-task budget and itemized cost breakdowns.	0-30	15
Total	**0-100**	71

List the reasons for this evaluation (justify the rating/scoring):

According to JSSPM proposal they started the program in the City of Pompano Beach and ran it for two years (2013 and 2014)

In the Fees and Costs Schedule there were several discrepancies, such as, the Scholarship amount and the Rental of 3 months.

Signature of Evaluator | 4/13/2014 Date | Bobby Bush Printed Name

EVALUATION CRITERIA
RFP E-21-16 – SUMMER YOUTH EMPLOYMENT TRAINING PROGRAM

VENDOR NAME: New Horizon Community Development Corp.

Criteria	Point Range	Score
1. Experience and Expertise Previous related work experience and qualifications in the subject area of personnel assigned. Demonstrates a clear understanding of scope of work and other technical or legal issues related to the project.	0-20	15
2. References History and performance of firm/project team on similar projects. References and recommendations from previous clients.	0-20	10
3. Resources and Methodology Adequacy of amount of quality resources assigned to the project. Overall approach to project. Consideration of services provided and approach to meeting goals and deadlines. Financial resources.	0-30	25
4. Cost Including the overall project-task budget and itemized cost breakdowns.	0-30	25
Total	**0-100**	75

List the reasons for this evaluation (justify the rating/scoring):

New Horizon only worked on one Summer Youth Employment Program, do not have a lot of experience.

In the fees and Costs Schedule $12,650 was dedicated to OTHER. This needs more detail information.

Signature of Evaluator | 4/13/2016 Date | Bobby Bush Printed Name

EVALUATION CRITERIA
RFP E-21-16 – SUMMER YOUTH EMPLOYMENT TRAINING PROGRAM

VENDOR NAME: Jesus Supernatural Sword

Criteria	Point Range	Score
1. Experience and Expertise Previous related work experience and qualifications in the subject area of personnel assigned. Demonstrates a clear understanding of scope of work and other technical or legal issues related to the project.	0-20	20
2. References History and performance of firm/project team on similar projects. References and recommendations from previous clients.	0-20	15
3. Resources and Methodology Adequacy of amount of quality resources assigned to the project. Overall approach to project. Consideration of services provided and approach to meeting goals and deadlines. Financial resources.	0-30	20
4. Cost Including the overall project-task budget and itemized cost breakdowns.	0-30	20
Total	**0-100**	75

List the reasons for this evaluation (justify the rating/scoring):

⊖ in the program schedule, they list the amount of weeks that do not match the RFP. - only 8 weeks.
⊖ concerns with lack of financial resources
⊖ concern with the budget not adding up. and amount of money being utilized in other items such as banquet.

Cynthia Kitts — Signature of Evaluator
4/13/16 — Date
Cynthia Kitts — Printed Name

EVALUATION CRITERIA
RFP E-21-16 – SUMMER YOUTH EMPLOYMENT TRAINING PROGRAM

VENDOR NAME: New Horizon Community Development

Criteria	Point Range	Score
1. Experience and Expertise Previous related work experience and qualifications in the subject area of personnel assigned. 10 Demonstrates a clear understanding of scope of work and other technical or legal issues related to the project. 10	0-20	20
2. References History and performance of firm/project team on similar projects. 10 References and recommendations from previous clients. 10	0-20	18
3. Resources and Methodology Adequacy of amount of quality resources assigned to the project. 10 Overall approach to project. Consideration of services provided and approach to meeting goals and deadlines. 10 Financial resources. 10	0-30	20
4. Cost Including the overall project-task budget and itemized cost breakdowns.	0-30	25
Total	**0-100**	83

List the reasons for this evaluation (justify the rating/scoring):

(+) listed the same length of program as described in RFP - the full 9 weeks
(+) list a more extensive list of work site organizations
(−) did not indicate any other financial resources.

Cynthia Kitts — Signature of Evaluator
4/13/16 — Date
Cynthia Kitts — Printed Name

EVALUATION CRITERIA
RFP E-21-16 – SUMMER YOUTH EMPLOYMENT TRAINING PROGRAM

VENDOR NAME: J.S.S.O.P.M.

Criteria	Point Range	Score
1. Experience and Expertise Previous related work experience and qualifications in the subject area of personnel assigned. Demonstrates a clear understanding of scope of work and other technical or legal issues related to the project.	0-20	15
2. References History and performance of firm/project team on similar projects. References and recommendations from previous clients.	0-20	16
3. Resources and Methodology Adequacy of amount of quality resources assigned to the project. Overall approach to project. Consideration of services provided and approach to meeting goals and deadlines. Financial resources.	0-30	20
4. Cost Including the overall project-task budget and itemized cost breakdowns.	0-30	22
Total	**0-100**	73

List the reasons for this evaluation (justify the rating/scoring):

Previous exp w/ city firm experienced some difficulty staying w/in fiscal constraints
Expenditures for non-educational components is high. (Supports & travel)
Program procedures were well developed.
Org proposes 8 week program 3 days/wk serving 50 participants.

Signature of Evaluator | 04.13.16 Date | MICHAEL W. SMITH Printed Name

EVALUATION CRITERIA
RFP E-21-16 – SUMMER YOUTH EMPLOYMENT TRAINING PROGRAM

VENDOR NAME: New Horizon CDC

Criteria	Point Range	Score
1. Experience and Expertise Previous related work experience and qualifications in the subject area of personnel assigned. Demonstrates a clear understanding of scope of work and other technical or legal issues related to the project.	0-20	18
2. References History and performance of firm/project team on similar projects. References and recommendations from previous clients.	0-20	18
3. Resources and Methodology Adequacy of amount of quality resources assigned to the project. Overall approach to project. Consideration of services provided and approach to meeting goals and deadlines. Financial resources.	0-30	25
4. Cost Including the overall project-task budget and itemized cost breakdowns.	0-30	26
Total	**0-100**	87

List the reasons for this evaluation (justify the rating/scoring):

Excellent exp with this firm last yr program.
Org. proposes 9 week program. 4 days per week.
Org. demonstrated good fiscal practices. Easy to attend resources
Org. has expanded sources for youth employment.
Principal is a long time educator with expertise
in goals of program. Serves 60 participants

Signature of Evaluator | 04.13.16 Date | Michael W. Smith Printed Name

CITY OF POMPANO BEACH RESPONSES

R.F.P. E-21-16

SUMMER YOUTH EMPLOYMENT TRAINING PROGRAM

APRIL 5, 2016

Company Responding:	Address	City, State, Zip
Jesus Supernatural Sword of Power Ministry #1, Inc.	3400 NE 1st Avenue	Pompano Beach, FL 33064
New Horizon Community Development Corp., Inc.	1518 NW 17th Avenue	Pompano Beach, FL 33069

pompano beach®

Florida's Warmest Welcome

CITY OF POMPANO BEACH
REQUEST FOR PROPOSALS

E-21-16

SUMMER YOUTH EMPLOYMENT TRAINING PROGRAM

RFP OPENING: April 5, 2016 2:00 P.M.
PURCHASING OFFICE
1190 N.E. 3RD AVENUE, BUILDING C (Front)
POMPANO BEACH, FLORIDA 33060

March 1, 2016

CITY OF POMPANO BEACH, FLORIDA

REQUEST FOR PROPOSALS
E-21-16
SUMMER YOUTH EMPLOYMENT TRAINING PROGRAM (SYETP)

The City is seeking proposals from qualified firms to administer the SYETP. The program serves youth ages 13-15 throughout City of Pompano Beach (City) by providing opportunities to become familiar with the world of work, gain employment experience, and identify educational pathways that support career and lifegoals. SYETP participants are placed in a part-time summer job and also take part in focused educational activities that integrate life skills, life-long learning, and career planning.

The City will receive sealed proposals until **2:00 p.m. (local), April 5, 2016**, 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.

Introduction

The value of employment experience during young adulthood is both immediate and long term. Youth with employment experience are more likely to see the connection between school and career success as well as increase their employability skills. Research also shows that the more teenagers work in one year, the more likely they are to work in the following year. Among low-income teenagers, higher employment rates have been associated with higher rates of high school graduation and lower teen pregnancy rates.

Although the benefits of employment experience are clear, it has become increasingly difficult for youth to find employment. Recent statistics on youth employment underscore the challenges faced by youth in the labor market, particularly in the City. Labor economists have expressed alarm over the pattern of youth employment in recent years; youth employment has reached historic lows. Information for the last fourteen months indicates that teen unemployment has ranged from 15.7% to 18.8%, more than three times the national average.

When the CITY established this program in 2013, it introduced innovative programmatic changes in SYETP, all of which expanded the ways in which youth could benefit from their employment experience. These innovations included an educational component to complement the work experience, targeting youth from neighborhoods of high poverty and unemployment, and increased accountability for placing youth in quality work assignments, including private sector placements.

In this RFP, the CITY builds upon these innovative features to ensure that both job placements and educational activities are age-appropriate, introduce a curriculum for the educational component, expand the number of private-sector jobs, diversify the types of jobs offered to participants and ensure that vulnerable youth with special barriers to employment are served through SYETP.

A. Scope Of Services

1. Goals and Objectives

The goals and objectives of the SYETP are:

a. To provide a valuable work experience at job sites that are safe and well supervised.
b. To assist youth in identifying their career interests through exposure to different industries, occupations, educational pathways, and the requirements for success in each of them.
c. To enable youth to acquire good work habits and develop employment-related skills.
d. To facilitate the long-term employment and self-sufficiency of youth.
e. To enable youth to develop a greater understanding of higher education and career options available to them.
f. To enable youth to develop financial literacy and other competencies that will prepare them to succeed in their transition to adulthood.

2. Assumptions Regarding Organizational Capability

a. The contractor will be fiscally sound and capable of managing the proposed program.
b. The contractor's Board of Directors would remain free of conflicts of interest and exercise active oversight of program management, including regular reviews of executive compensation, audits, and financial controls, and program operations and outcomes.
c. The contractor will successfully integrate the proposed program into its overall operations.
d. The contractor will have an effective internal monitoring system that includes quality assurance.
e. Performance measures will be established for all aspects of the program which will identify program, personnel, and fiscal issues.

3. Assumptions Regarding Program Approach

The CITY's assumptions regarding which approach will best achieve the agency's goals and objectives for SYETP are as follows:

a. Program Design

All programs will build on youths' strengths, foster their resiliency while providing them support, and promote healthy youth development. Programs will be designed to accommodate diversity in age, work experience, and past participation in SYETP, so that each participant can meaningfully add to their employment and educational experiences and further advance toward achieving their personal goals.

In keeping with effective youth development practices, programs will:

1. Offer activities that are age and stage appropriate,
2. Create an environment that engages the interest of youth,
3. Individualize services to youth,
4. Assure that youth benefit from ongoing support and relationships with caring adults,

5. Incorporate opportunities for youth to interact with peers.
6. Include active and self-directed learning.

In addition, programs will address the following:

b. Target Population

The population to be served by SYETP is youth who:

1. Are residents of City of Pompano Beach who will be aged 13 through 15 during the term of the program.
2. Are permitted to work and have valid working documents.
3. Have parental or guardian permission, and meet any other eligibility requirements mandated by current or future funding sources. (For example, state or federal funds allocated to the program may require that a certain percentage of participants reside in low to moderate income households.)

Contractors are to serve youth who reside in Pompano Beach are encouraged to enroll youth with disabilities.

4. Anticipated Levels of Service

The CITY regards the optimal SYETP program service level to be from fifty (50) to sixty (60) participants. The program for participants will run June 20, 2016 through August 19, 2016.

5. Contractor and Staff Qualifications and Experience

a. The contractor will have successful experience in program administration, maintenance and reporting of time records and payroll information.
b. The contractor will have the technological capacity to operate an Excel or web-based database.
c. The contractor and key staff will have at least two years of experience operating a summer youth employment program or providing other occupational and educational services for youth. This would include demonstrated experience developing work sites for youth, working effectively with youth and employers, recruiting youth participants, and placing them in jobs.
d. It would also include experience delivering individualized programming to youth in programs serving a large number of participants.
e. In addition, the contractor will have experience in providing youth with support services or referrals to other organizations that provide such services, to ensure that youth are able to participate successfully in SYETP.

The contractor will ensure that all paid staff--as well as volunteers, if utilized--are qualified and appropriately trained in areas such as youth development and employment.

6. Program Facility

There are four types of SYETP facilities:

a. Application intake facility, the contractor site where SYETP applications are accepted.

b. Program administration facility, the contractor site where SYETP administrative staff are located.
c. Educational facility(ies), the contractor site(s) where the educational activities of SYETP are delivered.
d. Work site facilities, the sites where the participant is employed.

These facilities may occupy the same or different sites, but the following conditions would apply:

• The application intake facility and the program administration facility would be located in the City of Pompano Beach.

• The application intake facility, program administration facility, and educational facility(ies) would be appropriate in size and design to adequately accommodate the SYETP staff, participants, and services they are intended to house.

• All facilities will be near public transportation. They would also be easily accessible for people with disabilities and would meet all requirements of the Americans with Disabilities Act (ADA). If they do not, alternative measures, approved by the CITY must be in place to make activities accessible to staff and program participants with disabilities, *e.g.* access to other suitable space.

• All facilities will meet applicable safety standards.

7. Participant Services

The contractor would deliver participant services as specified below:

a. Individual Service Strategy for Participants

On an individual basis, the contractor will make a reasonable effort to assess the employment related needs and interests of each enrollee and develop an Individual Service Strategy (ISS). The contractor would then place each participant in a job setting that matches these needs and interests, and monitor the participant throughout the program in accordance with the participant's specific service strategy. The contractor will provide the CITY with an ISS form, which would be completed for each participant and kept at the contractor location.

b. Work Site Development, Job Placement, and Program Schedule

The contractor will make a reasonable effort to place participants in work sites that match their talents and interests, and from which they can gain skills to compete in the labor market. The CITY encourages program designs that incorporate job placements, which expose participants to occupations with growth potential.

The contractor will identify a range of job opportunities in which participants can be placed to meet the required hours of employment and the goals of the employment experience. At least fifty (50) percent of the SYETP work sites must be in the private sector. The remaining work sites may be in not-for-profit organizations, government, or other public entities. Contractor will identify what methodology will be used to recruit potential employers.

Contractors will provide employment for participants at work sites for fifty percent (50%) of program time. The remaining 50 percent would be devoted to educational services. There is no set schedule for when employment or educational services must take place during the day; rather, contractors would choose a schedule that accommodates the needs of employers and participants. This flexibility in meeting the SYETP hours enables contractors to enroll youth who must attend summer school.

Once youth are enrolled in the program and ISS's are developed, contractors would make a reasonable effort to match each participant to an appropriate job. Job placements should offer participants opportunities to explore career interests, acquire good work habits, and develop employment-related skills. Contractors would provide policy and procedures guidelines to employers, provide in-service orientation to employers, and ensure implementation of appropriate work site policies and procedures.

For each participant, the contractor will secure and maintain a work site agreement with the participant's employer that is signed by the employer and summarizes the terms and information pertaining to the job placement. The Job Order Request form (Attachment 6) will be used for each job and worksite.

Contractors will submit the work site agreements to the CITY for review and approval. The contractor will provide job placement follow-up support to participants throughout the eight (8) week program period. Follow-up activities include monitoring the work site, resolving conflicts, and, where necessary, job replacement.

8. SYETP Educational Services and Curriculum

The contractor will provide educational services to all participants. Educational services will comprise at least 50 percent of the total program hours. Participants will be required to attend all educational/training sessions. Guidelines for the topics to be covered and scheduling are provided below.

a. Educational Services: Required Topics and Subtopics

The contractor will develop its own educational approaches that incorporate the topics and sub-topics. However, the curriculum or parts thereof will be subject to CITY approval prior to program start:

1. Program orientation: During the first week of the program, the contractor will provide each participant with program orientation. Topics should include information about the program, its timekeeping and payroll system, and preliminary issues of workplace readiness.

2. Workplace readiness: This topic would outline the "soft skills" and interpersonal competencies that are essential to workplace success, including the following required subtopics:

   • Communication and Conflict
   • Interview Skills
   • Resume Writing
   • Workplace Etiquette and Attire

3. Financial literacy: This topic would include basic personal financial management skills such as balancing a checkbook and understanding the basic principles of earning, spending, saving and credit.

   The required subtopics are:
   • Budget Basics
   • Investing
   • Self-sufficiency

4. Health education: This topic would include information on issues such as stress management, nutrition, fitness, HIV/AIDS and STD prevention, anti-smoking, and substance abuse education. The required subtopics are:

   • Sexual Health
   • Physical Health
   • Mental Health

5. Higher education exploration: This topic would outline the public and private post-secondary education options available to participants and include discussions of admissions requirements, study habits, and financial assistance. The required subtopics are:

   • Time Management
   • College/Post High School Education Choice
   • Application Process
   • Financial Aid

6. Career exploration: This topic would include the career options available to young adults, as well as the preparation necessary to attain different goals, and could include presentations by successful practitioners in a variety of professions. The required subtopics are:

   • Self-assessment
   • My Education Plan
   • Career Roadmap

7. Reflection and Analysis: During the last week of the program, the contractor will guide participants in a discussion and reflection on their summer employment experiences and explore employment and educational choices available to them in the future.

b. <u>Educational Services: Required Schedule</u>

The scheduling requirements for the delivery of the SYETP educational component are as follows.

1. Program orientation must be delivered to participants in the first week.

2. The session on reflection and analysis should take place in the final week.

3. All other sessions can be scheduled at any time during the program.

B. Tasks/Deliverables

The contractor will conduct the following administrative aspects of the program:

1. Outreach/Recruitment of Participants

The contractor will develop and implement an effective outreach and recruitment plan to identify and enroll youth residing in the proposed geographic service area.

2. Application, Intake, and Enrollment

After award of a contract the contractor will distribute the SYETP flyers, assist youth in completing the application.

Upon enrollment of an applicant, the contractor will complete the ISS to determine the participant's job placement, education activities, and support services.

3. Payroll

The contractor will collect information on the hours worked and educational sessions attended by each participant.

4. Record Keeping and Reporting

The contractor will provide the CITY OF POMPANO BEACH with a set of forms the contractor will use for record-keeping and reporting. The contractor would collect the following information:

a. ISS information. As discussed earlier in this section, the contractor would determine the needs of and complete an ISS for each participant. ISS forms will be available for review by CITY OF POMPANO BEACH contract managers during visits to each contractor site.

b. Work Site Agreements. As noted earlier, the contractor will maintain information on each job placement and a work site agreement for each sub-contractor.

c. Participant Hours Worked/Attendance. The contractor will provide timesheets to record participant hours spent at work sites and educational sessions Participants will be paid only for hours worked and hours in educational sessions, that can be verified through SYETP timesheets and attendance records.

d. Work Site Supervisory Evaluations of Participants. The CITY OF POMPANO BEACH will provide contractors with evaluation forms for distribution to employers. Contractors would instruct employers to complete evaluations of participants in the third and seventh weeks of the program. Contractors would collect evaluation forms from employers, and make them available to the CITY OF POMPANO BEACH.

e. Incident Reports. The CITY OF POMPANO BEACH will provide contractors with Incident Report Forms to document incidents including, but not limited to, injuries to participants, existing or suspected incidents of child abuse, property damage or loss, criminal activity, and incidents involving the police. Contractors would notify the CITY

OF POMPANO BEACH within 24 hours, complete, and send all supporting forms to the CITY OF POMPANO BEACH within three working days of any incident.

f. Close-out Report. Contractors would provide the CITY OF POMPANO BEACH with a summative report on the SYETP program, including information on participant plans (*e.g.*, school, employment, or training) after SYETP.

The SYETP contractor(s) receiving awards will be required to attend orientation sessions that will be offered by the CITY OF POMPANO BEACH.

C. Term of Contract

It is anticipated that the term of the contract awarded from this RFP will be from May 16, 2016 to September 2, 2016 with an option for the CITY OF POMPANO BEACH to renew for up to three (3) additional one-year periods.

D. 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.

E. 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: http://pompanobeachfl.gov/pages/department_directory/development_services/business_tax_receipt_division/business_tax_receipt_division.html.php

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

F. Required Proposal Submittal

Submission/Format Requirements

Submit one (1) original unbound and four (4) 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.
Information to be included in the proposal: In order to maintain comparability and expedite the review process, it is required that proposals be organized in the manner specified below, with tabs or dividers between the sections:

Title page:
Show the project name and number, the name of the Proposer's firm, address, telephone number, name of contact person and the date.

Table of Contents:
Include a clear identification of the material by section and by page.

Letter of Transmittal:
Briefly state the Proposer's understanding of the project and express a positive commitment to provide the services described herein. State the name(s) of the person(s) who will be authorized to make representations for the Proposer, their title(s), office and E-mail addresses and telephone numbers. Please limit this section to two pages.

Fees & Costs:
Include a concise narrative with sufficient detail indicating the proposed approach to providing the required services, including a description of the types and qualities of service that would be provided. Provide a cost for each of the major services provided along with the estimated number of expected work hours for each qualified staff.

Proposer shall itemize all costs to complete all and necessary tasks as described under Scope of Services. Costs associated with travel as well as miscellaneous expenses should be adequately described.

Schedule:

Proposer shall provide a timeline that highlights proposed tasks that will meet all applicable deadlines.

References:
Submit a client reference list, including name of contact, firm and/or governmental entity, address, telephone number and type of service provided to each reference.

Litigation:
Disclose any litigation within the past five (5) years arising out your firm's performance.

City Forms:
The RFP Proposal Signature Page must be completed, signed and returned. Proposer shall include attachments 1 – 5B. Proposer should return all RFP pages, initialed where indicated.

G. Insurance

The insurance described herein reflects the insurance requirements deemed necessary for this contract by the City. 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.

1. 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 Successful Proposer is obligated to pay compensation to employees engaged in the performance of the work. Successful Proposer 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.

2. Liability Insurance

   a. 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 Successful Proposer's negligent acts or omissions in connection with Successful Proposer's performance under this contract.

   b. 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 $200,000 per OCCURRENCE/$300,000 AGGREGATE***				
	* Policy to be written on a claims incurred basis			
XX	comprehensive form			
XX	premises - operations	bodily injury		
__	explosion & collapse hazard	property damage		
__	underground hazard	_____		
__	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 $200,000 per OCCURRENCE/$300,000 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				
__	comprehensive form	Consultant 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.
__	**PROFESSIONAL LIABILITY**		$1,000,000.	$1,000,000.
	* Policy to be written on a claims made basis			

c. If Professional Liability insurance is required, the successful proposer agrees the indemnification and hold harmless provisions of Section 12 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.

3. Employer's Liability. SUCCESSFUL PROPOSER 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.

4. Policies: Whenever, under the provisions of this Agreement, insurance is required of the SUCCESSFUL PROPOSER, the SUCCESSFUL PROPOSER shall promptly provide the following:

   a. Certificates of Insurance evidencing the required coverage;

   b. Names and addresses of companies providing coverage;

   c. Effective and expiration dates of policies; and

   d. A provision in all policies affording CITY thirty (30) days written notice by a carrier of any cancellation or material change in any policy.

5. 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.

6. Waiver of Subrogation. SUCCESSFUL PROPOSER 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 SUCCESSFUL PROPOSER 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 SUCCESSFUL PROPOSER enter into such an agreement on a pre-loss 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.

H. Selection/Evaluation Process

A Selection/Evaluation Committee will be appointed to select the most qualified firm(s). The Selection/Evaluation Committee will present their findings to the City Commission.

Proposals will be evaluated using the following criteria.

	Criteria	Point Range
1.	**Experience and Expertise** Previous related work experience and qualifications in the subject area of personnel assigned. Demonstrates a clear understanding of scope of work and other technical or legal issues related to the project.	0-20
2.	**References** History and performance of firm/project team on similar projects. References and recommendations from previous clients.	0-20
3.	**Resources and Methodology** Adequacy of amount of quality resources assigned to the project. Overall approach to project. Consideration of services provided and approach to meeting goals and deadlines. Financial resources.	0-30
4.	**Cost** Including the overall project-task budget and itemized cost breakdowns.	0-30
	Total	**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.

I. 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.

J. 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.

K. 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.

L. 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.

M. 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.

N. 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.

O. Contract Terms

The contract resulting from this RFP shall include, but not be limited to the following terms:

The contract shall include as a minimum, the entirety of this RFP 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.

P. Waiver

It is agreed that no waiver or modification of the contract resulting from this RFP, 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.

Q. Survivorship Rights

This contract resulting from this RFP shall be binding on and inure to the benefit of the respective parties and their executors, administrators, heirs, personal representative, successors and assigns.

R. Termination

The contract resulting from this RFP 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 RFP 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.

S. Manner of Performance

Proposer agrees to perform its duties and obligations under the contract resulting from this RFP 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.

T. 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.

U. RFP 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.

V. Standard Provisions

1. 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.

2. 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.

3. 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.

4. 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.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. Public Records

a. 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:

i. Keep and maintain public records that ordinarily and necessarily would be required by the City in order to perform the service;

ii. 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;

iii. 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

iv. 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.

b. 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.

W. Questions and Communication

All questions regarding the RFP 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.

X. 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.

PROPOSAL SIGNATURE PAGE
RFP E-21-16
SUMMER YOUTH EMPLOYMENT TRAINING PROGRAM

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. _____

Email Address _____

Signature _____ Date _____

Addendum Acknowledgment - Proposer acknowledges that the following addenda have been received and are included in his/her proposal:

Addendum No. _____ Date Issued _____

Addendum No. _____ Date Issued _____

Addendum No. _____ Date Issued _____

Attachment 1

CORPORATE GOVERNANCE CERTIFICATION

SUMMER YOUTH EMPLOYMENT & TRAINING PROGRAM (SYETP)

To enter into a contract with The City of Pompano Beach, each organization must certify that its organizational capability is sufficient to support the services it has contracted to provide. To certify, complete the form below (including the attached list of the members of the Board of Directors, with the name, title, address, telephone number, and e-mail address of each member). The certification must be notarized by a Notary Public.

I, _____, am the Chairperson of the Board of _____ ("Proposer"), a not-for-profit organization that has proposed to provide certain youth or community development services. I hereby certify that the Proposer:

1. Is governed by a Board of Directors, whose names and addresses are fully and accurately set forth on the attached list.
2. Maintains its corporate books and records, including minutes of each meeting, at the Proposer address stated on the Proposal Summary Form (Attachment 1 to this RFP).
3. Has held in the past 12 months _____ meetings of the Board of Directors at which a quorum was present.
4. Reviews, at least annually, at a meeting of the Board of Directors and has reviewed in the past 12 months each of the following topics:
    a. Executive compensation
    b. Internal controls, including financial controls
    c. Audits
    d. Program operations and outcomes

Name of Organization (Print):
Name of Board Chairperson (Print):
Signature of Board Chairperson

_____

Sworn to before me this _____ day of _____, 20___

_____

NOTARY PUBLIC

Attachment 2

BOARD OF DIRECTORS

Name of Organization: _____

Board Member Name	Board Position	Business Address/Phone	E-Mail Address

(Attach additional pages if needed)

Attachment 3

SUMMER YOUTH EMPLOYMENT TRAINING PROGRAM
REQUEST FOR PROPOSALS

WORK SITE DEVELOPMENT CHART

Name of Proposing Organization _____
Total Number of Program Participants Requested _____

Name of Proposer or Subcontractor	Employer Organization	Job Title	Summary or Rationale	Number of Anticipated Summer Jobs

(Attach additional pages if needed)

CITY OF POMPANO BEACH
REQUEST FOR PROPOSALS
SYETP BUDGET SUMMARY

Attachment 4

Proposer's Name: _____
Address: _____
_____

Tel #: _____ Fax #: _____ E-mail: _____
Ex. Director: _____ Tel #: _____ E-mail: _____
Fiscal Officer: _____ Tel #: _____ E-mail: _____
EIN: _____

PERSONNEL SERVICES	
Salaries and Wages	
Salaries and Wages (Staff Participants)	
Fringe Benefits	
TOTAL PERSONNEL SERVICES	
NON STAFF SERVICES	
Consultants	
Sub-Contractors	
Stipends	
Vendors	
TOTAL NON-STAFF SERVICES	
OTHER THAN PERSONNEL SERVICES	
Consumable Supplies	
Equipment Purchases	
Equipment Other	
Space Rental	
Travel	
Utilities & Telephone	
Other Operational Costs	
Fiscal Agent Services	
TOTAL OTHER THAN PERSONNEL SERVICES	
TOTAL COST	

Attachment 5 (A)

PRINCIPAL OFFICERS AND STAFF

Contractor is to provide a copy of the following:

1. State of Florida Corporations Annual Report to the Secretary of State
2. Organizations Articles of Incorporation

Attachment 5 (B)

PRINCIPAL OFFICERS AND STAFF

Organization Name: _____

Instructional Staff & Senior Managers: Please fill in the required identification information for all senior managers who oversee any of the entity's relevant transactions with the City. **At least one Instructional Staff & Senior Managers must be listed, or the Data Form below will be considered incomplete.** If an Instructional staff person has been identified on a previous page, fill in his/her name and write "See Attachment 5 (A)."

Instructional Staff & Senior Managers:

First Name:_____MI:___Last_____
Office Title:_____
Employer (if not employed by the entity):_____
Birth Date(mm/dd/yy): _____ Home Phone_____ Cell Phone_____
Home Address:_____City _____Zip_____

First Name:_____MI:___Last_____
Office Title:_____
Employer (if not employed by the entity):_____
Birth Date(mm/dd/yy): _____ Home Phone_____ Cell Phone_____
Home Address:_____City _____Zip_____

First Name:_____MI:___Last_____
Office Title:_____
Employer (if not employed by the entity):_____
Birth Date(mm/dd/yy): _____ Home Phone_____ Cell Phone_____
Home Address:_____City _____Zip_____

Remove the following previously-reported Senior Managers:
Name:_____Removal Date_____
Name:_____Removal Date_____

Certification

I certify that the information submitted on the pages pertaining to Attachment 5 (A) and ___additional pages are accurate and complete. I understand that willful or fraudulent submission of a material false statement may result in the entity being found non-responsible and therefore denied future City awards.

Meeting Date: April 26, 2016 Agenda Item 3

REQUESTED COMMISSION ACTION:

X Consent	Ordinance	X Resolution	Consideration/ Discussion	Presentation

SHORT TITLE A resolution of the City of Pompano Beach approving and authorizing the proper city officials to execute a first amendment to the agreement between the City of Pompano Beach and Xpress Youth Development Institute, Inc. to provide leadership, administrative and coaching services to competitive youth track leagues in the City.

Fiscal Impact: $10 for indemnification
Term of Contract: May 14, 2016 – May 13, 2017

Summary of Purpose and Why:

A license agreement with Xpress Youth Development Institute, Inc. to provide volunteer leadership, administration, and coaching services to competitive youth track leagues. This is the first amendment to the license agreement, which allows Xpress Youth Development Institute, Inc. to offer track programs to children at recreational facilities in the City of Pompano Beach.

Great Places – 2.4.2 – Establish three (3) partnerships with local, national and international event organizers to secure sports business in the area.

(1) Origin of request for this action: Staff initiated
(2) Primary staff contact: Mark Beaudreau, Recreation Programs Adm. Ext. 4191
(3) Expiration of contract, if applicable: May 13, 2017
(4) Fiscal impact and source of funding: $10 for indemnification – 001-3920-572-55-40

DEPARTMENTAL COORDINATION	DATE	DEPARTMENTAL RECOMMENDATION	DEPARTMENTAL HEAD SIGNATURE
Parks & Recreation	4-8-16	Approve	Mark Beaudreau
Internal Audit	4-12-16	Approve	[illegible]
Risk Management	4-19-16	approved	[illegible]
City Attorney	4-13-16		[illegible]
X City Manager			[illegible]

ACTION TAKEN BY COMMISSION:

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

pompano beach
Florida's Warmest Welcome

MEMORANDUM

Parks, Recreation & Cultural Arts

Memorandum 16-A055

DATE: April 8, 2016

TO: Dennis Beach, City Manager

FROM: Mark A. Beaudreau, Recreation Programs Administrator MAB

SUBJECT: Agenda Item – License Agreement with Xpress Youth Development Institute, Inc.

Please place the attached resolution on the April 26, 2016, City Commission Agenda. This is the first amendment to the license agreement is between the City and the Xpress Youth Development Institute, Inc. to provide voluntary leadership, administration, and coaching services to competitive youth track leagues in the city. The agreement allows Xpress Youth Development Institute, Inc. to hold track programs at various recreational facilities owned by the city. The agreement is for a term of one year May 13, 2016 – May 14, 2017. The City Attorney has added language in Article 8 B Contractor's Indemnification of City and Article 32 Public Records.

If you have any questions or need additional information regarding the agreement please call me at 954-786-4191.

MB/afh

cc: Jonathan Nasser, Interim Recreation Manager
Cynthia Kitts, Recreation Manager

City Attorney's Communication #2016-668

March 21, 2016

TO: Jonathan Nasser, Interim Recreation Manager

FROM: Mark E. Berman, City Attorney

RE: Resolution and First Amendment – Xpress Youth Development Institute, Inc.

As requested in your memorandum received in our office on March 18, 2016, Parks and Recreation Department Memorandum No. 16-A051, the above-referenced Agreement has been prepared and is attached at this time along with the appropriate Resolution captioned as follows:

> **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 XPRESS YOUTH DEVELOPMENT INSTITUTE, INC., TO PROVIDE LEADERSHIP, ADMINISTRATIVE AND COACHING SERVICES TO COMPETITIVE YOUTH TRACK LEAGUES IN THE CITY; PROVIDING AN EFFECTIVE DATE.**

Please feel free to give me a call if I may be of further assistance.

MARK E. BERMAN

/jrm
L:cor/recr/2016-668

Attachments

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 XPRESS YOUTH DEVELOPMENT INSTITUTE, INC., TO PROVIDE LEADERSHIP, ADMINISTRATIVE AND COACHING SERVICES TO COMPETITIVE YOUTH TRACK LEAGUES IN THE CITY; PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That a First Amendment between the City of Pompano Beach and Xpress Youth Development Institute, Inc., to provide leadership, administrative and coaching services to competitive youth track leagues in the City, 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 Xpress Youth Development Institute, 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

TAL/jrm
3/21/16
l:reso/2016-168

FIRST AMENDMENT

THIS IS A FIRST AMENDMENT TO THE AGREEMENT dated the _____ day of _____, 2016, by and between:

CITY OF POMPANO BEACH, a municipal corporation located in Broward County, Florida (hereinafter "CITY"),

and

XPRESS YOUTH DEVELOPMENT INSTITUTE, INC., a Florida not for profit corporation (hereinafter "CONTRACTOR").

WHEREAS, the parties entered into an Agreement to allow CONTRACTOR to use certain track facilities within the CITY for competitive track leagues in the City of Pompano Beach for boys and girls ages 5-18 on May 14, 2013, ("Original Agreement"), a copy of which is attached hereto and made a part hereof as Exhibit "A," and approved by City Resolution No. 2013-225; and

WHEREAS, the parties now desire to amend certain terms and conditions to the Original Agreement to include the retention requirements of public records pursuant to Chapter 119 of the Florida Statutes, to include the consideration requirements for the indemnification terms and conditions, and to extend the Original Agreement for one (1) additional one-year period, ending May 13, 2017.

NOW, THEREFORE, in consideration of the mutual terms and conditions, covenants and mutual promises hereinafter set forth, the CITY and CONTRACTOR agree as follows.

1. Each "WHEREAS" clause set forth above is true and correct and herein incorporated by reference.

2. The Original Agreement shall remain in full force and effect except as specifically amended hereinbelow.

3. The parties hereto agree to extend the Original Agreement for one (1) additional one-year period, ending May 13, 2017.

4. Article 8 of the Original Agreement is hereby amended as follows:

ARTICLE 8
CONTRACTOR'S INDEMNIFICATION OF CITY

. . .

B. CONTRACTOR shall indemnify, defend and save harmless the CITY from and against all claims, demands, losses, costs, damages, suits, judgments, penalties, expenses and liabilities of whatsoever kind arising directly or indirectly out of or in connection with the provision of services and merchandise under this Agreement whether same occurs or the cause arises on or away from the Mitchell/Moore Center. The Parties agree that $10.00 payable by CITY, receipt of which is hereby acknowledged, shall constitute specific consideration to CONTRACTOR for the indemnification to be provided under this Contract.

. . .

5. The Original Agreement is amended by adding additional language as follows:

ARTICLE 32
PUBLIC RECORDS

A. 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:

1. Keep and maintain public records that ordinarily and necessarily would be required by the city in order to perform the service;

2. 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 199, Fla. Stat., or as otherwise provided by law;

3. 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

4. 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 City.

B. The failure of Contractor to comply with the provisions set forth in this section shall constitute a Default and Breach of this Agreement and the city shall enforce the Default in accordance with the provisions set forth in this Agreement or as provided by law.

6. 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.

7. That no other amendment to the terms of the Original Amendment 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 hereunto set their hands and seals the day and year first above written.

"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

"CONSULTANT":

Witnesses:

XPRESS YOUTH DEVELOPMENT INSTITUTE, INC., a Florida Not For Profit Corporation

By: _____
JOSEPH BALLARD, President

_____
SCOTT R. MOORE
Print Name

_____
M. BOSANCE
Print Name

STATE OF FLORIDA

COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 11 day of April, 2016, by Joseph Ballard, President of XPRESS YOUTH DEVELOPMENT INSTITUTE, INC., a Florida Not For Profit Corporation, on behalf of the corporation. He is personally known to me or who has produced _____ _____ (type of identification) as identification.

NOTARY'S SEAL:

ANNE HOLLADY
Notary Public - State of Florida
My Comm. Expires Feb 1, 2019
Commission # FF 166298
Bonded through National Notary Assn.

Anne Hollady
NOTARY PUBLIC, STATE OF FLORIDA

Anne Hollady
(Name of Acknowledger Typed, Printed or Stamped)

FF 166298
Commission Number

TAL/jrm
3/21/16
I:agr/recr/2016-672

Exhibit A
Xpress Youth Development
Institute, Inc. Agreement
Resolution 2015-225

RESOLUTION NO. 2013-225

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 XPRESS YOUTH DEVELOPMENT INSTITUTE, INC., TO PROVIDE LEADERSHIP, ADMINISTRATIVE AND COACHING SERVICES TO COMPETITIVE YOUTH TRACK LEAGUES IN THE CITY; 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 Xpress Youth Development Institute, Inc., to provide leadership, administrative and coaching services to competitive youth track leagues in the City, 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 Xpress Youth Development Institute, Inc.

SECTION 3. This Resolution shall become effective upon passage.

PASSED AND ADOPTED this 14th day of May, 2013.

LAMAR FISHER, MAYOR

ATTEST:

MARY L. CHAMBERS, CITY CLERK
FP/ds
3/713
l:reso/2013-192f

City of Pompano Beach

AGREEMENT

with

Xpress Youth Development Institute, Inc.

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AGREEMENT

THIS AGREEMENT ("Agreement"), entered into this 14 day of May, 2013, by and between:

CITY OF POMPANO BEACH, a municipal corporation located in Broward County, Florida (hereinafter "CITY"),

and

XPRESS YOUTH DEVELOPMENT INSTITUTE, INC., a Florida non-profit corporation (hereinafter "CONTRACTOR").

WHEREAS, CONTRACTOR is an organized non-profit recreation group which provides leadership, administrative, coaching, mentoring, social networking, tutoring, crime prevention, and track and field services for competitive track leagues in the City of Pompano Beach for boys and girls ages 5-18; and

WHEREAS, the CITY recognizes CONTRACTOR as providing a valuable service to the community through its extensive use of volunteers and attendant resources; and

WHEREAS, CONTRACTOR is able and prepared to provide the services and the insurance set forth respectively in Exhibits 1 and 2 attached hereto and made a part hereof; and

WHEREAS, subject to the terms of this Agreement and the Lease and Funding Agreement For Lease of Recreational Facilities at Blanche Ely High School (the "Lease") between the CITY and the School Board of Broward County, Florida (the "SCHOOL BOARD") attached hereto and made a part hereof as Exhibit 3, CONTRACTOR may use the track facility at Blanche Ely High School (hereinafter collectively the "Track Facility") to provide leadership, administrative and coaching services to competitive youth track leagues in the City of Pompano Beach (the "Program" as further detailed in Exhibit 1); and

WHEREAS, subject to the terms of this Agreement, City also agrees to allow CONTRACTOR use of the Mitchell/Moore Center for Program activities should the Track Facility not be available for CONTRACTOR's use; and

WHEREAS, the CITY has determined entering into this Agreement with CONTRACTOR is in the best interest of the public; and

WHEREAS, the CITY and CONTRACTOR desire to enter into this Agreement setting forth the parties' mutual understandings and undertakings.

NOW, THEREFORE, in consideration of the conditions, covenants and mutual promises herein contained, the CITY and CONTRACTOR agree as follows.

ARTICLE 1
REPRESENTATIONS

A. **Representations of CITY.** CITY makes the following representations to CONTRACTOR which CITY acknowledges CONTRACTOR has relied upon in entering into this Agreement.

1. This Agreement is a valid, binding and permissible activity within the power and authority of the CITY and does not violate any CITY Code, Charter provision, rule, resolution, ordinance, policy or agreement of the CITY or constitute a default of any agreement or contract to which the CITY is a party.

2. The individuals executing the Agreement on behalf of the CITY are duly authorized to take such action, which action shall be, and is, binding upon the CITY.

3. CONTRACTOR shall be entitled to rely upon the accuracy and completeness of any information or reports supplied by CITY or by others authorized by the CITY's Recreation Programs Administrator.

B. **Representations of Express Youth Development Institute, Inc.** CONTRACTOR makes the following representations to CITY which CITY relies upon in entering into this Agreement.

1. Xpress Youth Development Institute, Inc. is a Florida non-profit corporation duly organized, existing and in good standing under the laws of the State of Florida with the power and authority to enter into this Agreement.

2. CONTRACTOR's execution, delivery, consummation and performance under this Agreement will not violate or cause Xpress Youth Development Institute, Inc. to be in default of any provisions of its governing documents, rules and regulations or any other agreement to which CONTRACTOR is a party or constitute a default thereunder or cause acceleration of any obligation of CONTRACTOR thereunder.

3. The individual executing this Agreement and related documents on behalf of Xpress Youth Development Institute, Inc. is duly authorized to take such action which action shall be, and is, binding on CONTRACTOR.

4. There are no legal actions, suits or proceedings pending or threatened against or affecting Xpress Youth Development Institute, Inc. or its principals that CONTRACTOR is aware of which would have any material effect on CONTRACTOR's ability to perform its obligations under this Agreement.

5. CONTRACTOR represents it has the ability, skill and resources to complete its requisite responsibilities under this Agreement.

6. The standard of care for all services furnished by CONTRACTOR and its employees, subcontractors or other agents under this Agreement will be the skill and care used by competitive youth track program administrators and coaches currently practicing under similar circumstances in the same locality.

7. The CITY shall be entitled to rely upon the administrative, coaching and technical skills of CONTRACTOR or by others authorized by CONTRACTOR under this Agreement.

8. CONTRACTOR represents and warrants it has and will continue to maintain all licenses and approvals required to conduct business and provide services under this Agreement and that it will at all times conduct its business activities in a reputable manner.

ARTICLE 2
NON-ASSIGNABILITY AND SUBCONTRACTING

This Agreement is not assignable and CONTRACTOR agrees it shall not sell, assign, transfer, merge or otherwise convey any of its interests, rights or obligations under this Agreement, in whole or in part, to any other person, corporation or entity.

Any attempt by CONTRACTOR to assign or transfer any of its rights or obligations under this Agreement without first obtaining the CITY's written approval will result in CITY's immediate cancellation of this Agreement. Specifically, no assignment of any right or obligation under this Agreement shall be binding on the CITY without the written consent of the City Commission of Pompano Beach.

In addition, this Agreement and the rights and obligations therein shall not be assignable or transferable by any process or proceeding in court, or by judgment, execution, proceedings in insolvency, bankruptcy or receivership, and in the event of CONTRACTOR's insolvency or bankruptcy, CITY may at its option terminate and cancel this Agreement without any notice of any kind whatsoever, in which event all rights of CONTRACTOR hereunder shall immediately cease and terminate.

Nothing herein shall be construed to create any personal liability on the part of the CITY or its agent(s) nor shall it be construed as granting any rights or benefits hereunder to anyone other than CITY and CONTRACTOR.

ARTICLE 3
TERM AND RENEWAL

The City hereby engages CONTRACTOR to serve as its Program Administrator for the Program at the Track Facility for a term of three (3) years, commencing May 14, 2013, and ending May 13, 2016. The CITY reserves the right to extend this Agreement with two (2) one-year renewal options provided both parties agree in writing to said extension. Renegotiation should commence at least 180 days prior to normal termination.

ARTICLE 4
RESPONSIBILITIES OF CONTRACTOR

CONTRACTOR shall provide the leadership, administrative and coaching services hereunder consistent with policies adopted by CITY which specifically require CONTRACTOR to at all times perform its obligations under this Agreement in a professional manner and also develop and adhere to written protocols to ensure public resources are properly tracked and appropriated. CONTRACTOR agrees to follow the policies and directives of the CITY's Recreation Programs Administrator but in the absence thereof, CONTRACTOR shall exercise its reasonable judgment in discharging its duties hereunder.

CONTRACTOR shall perform the duties set forth below at the Track Facility, including such other duties as the CITY may, from time to time, require.

1. CONTRACTOR shall plan, administer and coordinate all aspects of the Program at the Track Facility, including supervising all CONTRACTOR's coaches, employees, volunteers and other representatives or agents.

2. CONTRACTOR's provision of Program services hereunder shall be offered at competitive prices for the Broward County area which must be pre-approved in writing by the CITY's Recreation Programs Administrator.

3. CONTRACTOR shall be responsible to pay any and all sales taxes and other charges of any nature or kind which may be assessed against CONTRACTOR's provision of services under this Agreement.

4. CONTRACTOR is responsible for hiring and managing its own administrative and coaching staff, all of which shall be a minimum of eighteen (18) years old, under CONTRACTOR's exclusive direction and control and not deemed employees or agents of the CITY.

5. CONTRACTOR shall be solely responsible for compensating its administrative and coaching staff and complying with all federal, state and local laws, ordinances and regulations pertaining to employment of such persons including, but not limited to, the provisions of workers' compensation insurance and all other benefits required by law.

6. CONTRACTOR shall be responsible to ensure that all its administrative and coaching staff, employees, volunteers and other agents or representatives are suitable for employment in a municipal facility in terms of general character, knowledge, ability, public relations potential, manner and conduct.

7. CONTRACTOR shall promptly respond to complaints from the CITY, Program participants, and patrons of the Track Facility or Mitchell/Moore Center regarding its staff or other representatives and timely take appropriate disciplinary action as warranted by the circumstances.

8. CONTRACTOR shall develop a comprehensive competitive youth track program for boys and girls ages 5-18 which shall include individual, group and league instruction. If the participation level of an instruction program or other like activity requires the use of more than the Track Facility, CONTRACTOR is responsible to promptly notify the CITY's Recreation Programs Administrator who has sole and absolute discretion whether to provide additional facilities.

9. CONTRACTOR shall immediately provide the CITY's Recreation Program Administrator written notice of any repairs or maintenance necessary to keep the Track Facility or Mitchell/Moore Center in good and safe condition.

10. CONTRACTOR shall operate and conduct the business covered by this Agreement in accordance with all applicable federal, state and local laws, including the laws of Broward County and the charter, ordinances and other regulations of the City of Pompano Beach as may now exist or as may hereafter be adopted. CONTRACTOR, at its sole expense, shall purchase all necessary licenses and permits required by the State of Florida, Broward County, and the City of Pompano Beach, and be responsible to pay any and all sales taxes and other charges of any nature or kind, which may be assessed against CONTRACTOR's provision of Program services under this Agreement. Proof of such licenses, approvals and sales tax payments shall be submitted to the CITY's Recreation Programs Administrator upon request.

11. CONTRACTOR shall develop, organize and promote youth track leagues, tournaments, socials and member relations at the Track Facility.

12. CONTRACTOR shall give the SCHOOL BOARD and CITY prompt written notice of any accidents occurring at the Track Facility in which damage to property or injury to a person occurs.

13. CONTRACTOR shall give the CITY prompt written notice of any accidents occurring at Mitchell/Moore Center in which damage to property or injury to a person occurs.

ARTICLE 5
RESPONSIBILITIES OF CITY

CITY shall provide CONTRACTOR with use of the Track Facility for the reasons set forth herein at days and times which have been pre-approved in writing by the CITY's Recreation Programs Administrator. Interruptions in availability of the Track Facility due to acts of God or any other circumstance beyond the CITY's control shall not be considered a violation of this paragraph.

ARTICLE 6
ACCOUNTING AND RECORD KEEPING PROCEDURES

A. CONTRACTOR shall be required to record and preserve complete and accurate records for all activities and revenues generated under this Agreement for a period of

five (5) years after its termination or as otherwise required by applicable law(s), including the required retention period of the Florida Public Records Act, Chapter 119, Florida Statutes. However, if an audit has been initiated and audit findings have not been resolved, the records shall be retained until resolution of the audit findings.

B. CONTRACTOR shall make available at reasonable time for CITY's examination all membership rosters; attendance, financial and statistical records; federal/state tax returns; and any other documents attendant to CONTRACTOR's provision of Program services under this Agreement.

C. CONTRACTOR and its employees shall maintain a daily log that provides the names, dates and time of all its employees, volunteers or agents utilizing the Track Facility or Mitchell/Moore Center which shall at all times be available to CITY personnel.

ARTICLE 7
CITY'S RIGHT TO AUTHORIZE USE OF THE TRACK FACILITY

The CITY, through its Recreation Programs Administrator, reserves the right to authorize use of the Track Facility for special group functions upon reasonable written notice to CONTRACTOR.

ARTICLE 8
CONTRACTOR'S INDEMNIFICATION OF CITY

A. CONTRACTOR shall indemnify, defend and save harmless the SCHOOL BOARD and CITY from and against all claims, demands, losses, costs, damages, suits, judgments, penalties, expenses and liabilities of whatsoever kind arising directly or indirectly out of or in connection with the provision of services and merchandise under this Agreement whether same occurs or the cause arises on or away from the Track Facility.

B. CONTRACTOR shall indemnify, defend and save harmless the CITY from and against all claims, demands, losses, costs, damages, suits, judgments, penalties, expenses and liabilities of whatsoever kind arising directly or indirectly out of or in connection with the provision of services and merchandise under this Agreement whether same occurs or the cause arises on or away from the Mitchell/Moore Center.

C. CONTRACTOR shall be solely responsible for insuring all stock and inventory at the Track Facility against damage or loss of any nature or kind. CONTRACTOR acknowledges and agrees that CITY and the SCHOOL BOARD assume no responsibility whatsoever for any property placed at the Track Facility and that CITY and the SCHOOL BOARD are hereby expressly released and discharged from any and all liability for any loss, injury or damage to persons or property which may be sustained by reason of CONTRACTOR's presence and occupancy at the Track Facility.

D. CONTRACTOR shall be solely responsible for insuring all stock and inventory at the Mitchell/Moore Center against damage or loss of any nature or kind. CONTRACTOR

acknowledges and agrees that CITY assumes no responsibility whatsoever for any property placed at the Mitchell/Moore Center and that CITY is hereby expressly released and discharged from any and all liability for any loss, injury or damage to persons or property which may be sustained by reason of CONTRACTOR's presence and occupancy at the Mitchell/Moore Center.

ARTICLE 9
INSURANCE

CONTRACTOR shall maintain insurance in the amounts and subject to all conditions set forth on the standardized insurance form attached as Exhibit 2. CONTRACTOR shall not commence operations under this Agreement until certification or proof of insurance detailing terms and provisions of coverage has been received and approved by the CITY's Risk Manager

ARTICLE 10
INDEPENDENT CONTRACTOR

Both CITY and CONTRACTOR agree that CONTRACTOR is an independent contractor and not a CITY employee.

ARTICLE 11
DEFAULT AND DISPUTE RESOLUTION

A. If either party claims the other is in default of this Agreement, the parties may, but are not required to, timely schedule a conference or meeting and make every reasonable effort to reach an amicable resolution. Both parties shall be entitled to have representatives present at any such meeting or conference.

B. If there is a default of any covenant or obligation under this Agreement, the defaulting party shall be given ten (10) calendar days to cure said default after written notice to the other in accordance with Article 16 herein.

C. If the party receiving written notice of default provides written notice denying same within ten (10) calendar days of receipt or the alleged default has not been remedied within ten (10) calendar days after receipt of written notice and is continuing, either party may appeal in writing to the City Manager for the CITY in accordance with Article 16 herein.

Upon receipt of said written appeal or demand, the City Manager for the CITY may request additional information relating to the dispute from either or both parties which shall be provided within a reasonable time. Upon the City Manager's receipt and timely review of the disputed matter, the City Manager may make a decision regarding the alleged default as he/she deems appropriate under the circumstances. If the City Manager's decision is not implemented within the deadline set forth therein, the forty-five (45) day advance written notice provision set forth in Article 16 herein shall not apply and it shall be lawful for CITY to immediately terminate this Agreement and in addition to any other remedies provided by law, CITY may possess itself of all rights and privileges heretofore enjoyed by CONTRACTOR.

ARTICLE 12
ANNUAL PERFORMANCE GOALS AND EVALUATION

The CITY's Recreation Programs Administrator shall annually review and evaluate CONTRACTOR's performance based on performance criteria developed by CITY utilizing the scope of services under this Agreement as set forth in Exhibit 1. The CITY shall provide CONTRACTOR with a written summary of said evaluation and provide an adequate opportunity for CONTRACTOR to discuss its evaluation with the CITY's Recreation Programs Administrator.

ARTICLE 13
TERMINATION

The CITY may terminate this Agreement, in whole or in part, for convenience, cause, default or negligence upon forty-five (45) days advance written notice to CONTRACTOR in accordance with Article 16 herein. CONTRACTOR may terminate this Agreement, in whole or in part, for cause, default or negligence upon forty-five (45) day advance written notice to CITY in accordance with Article 16 herein.

ARTICLE 14
NO DISCRIMINATION

CONTRACTOR, while acting pursuant to this Agreement and in the solicitation or purchase of goods or services, shall not discriminate against any worker, employee, patron, or member of the public on the basis of race, color, creed, religion, age, sex, maritial status, national origin, or physical or mental disability.

ARTICLE 15
PUBLIC ENTITY CRIMES ACT

Through execution of this Agreement and in accordance with Section 287.133, Florida Statutes, CONTRACTOR certifies that it is not listed on the convicted vendors list maintained by the State of Florida, Department of General Services.

ARTICLE 16
NOTICES AND DEMANDS

Whenever it is provided herein that notice, demand, request, or other communication shall or may be given to, or served upon, either of the parties by the other, it must be in writing, sent by certified United States mail with return receipt requested, addressed to the party to whom it is intended at the places designated below until changed by written notice in compliance with the provisions of this Article. For the present, the parties designate the following respective places for giving of notice, to-wit:

For CITY:
City Manager
City of Pompano Beach
P.O. Drawer 1300
Pompano Beach, Florida 33061
dennis.beach@copbfl.com
(954) 786-4601 office
(954) 786-4504 fax

With a copy to:
Recreation Program Administrator
City of Pompano Beach
1801 NE 6th Street
Pompano Beach, Florida 33060
mark.beaudreau@copbfl.com
(954) 786-4191 office
(954) 786-4113 fax

For CONTRACTOR:
Joseph Ballard
4821 NW 19 Street
Coconut Creek, FL 33063
Phone#: (754) 366-9918
Email: jxpress.jb@gmail.com
Fax: (954) 917-8896

ARTICLE 17
GOVERNING LAW AND VENUE

The Agreement shall be governed by the laws of the State of Florida, both as to interpretation and performance. CITY and CONTRACTOR submit to the jurisdiction of Florida courts and federal courts located in Florida. The parties agree that proper venue for any suit at law or in equity attendant to this Agreement shall be instituted and maintained only in courts of competent jurisdiction in Broward County, Florida.

No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and in addition to every other remedy given herein, now or hereafter existing at law or in equity or by statue or otherwise.

ARTICLE 18
CONTRACT ADMINISTRATOR

The CITY's Recreation Program Administrator or his/her designee shall serve as the CITY's Contract Administrator during the performance of services under this Agreement.

Joseph Ballard shall serve as CONTRACTOR's Contract Administrator during the performance of services under this Agreement.

ARTICLE 19
NO CONTINGENT FEE

CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONTRACTOR, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for CONTRACTOR any fee,

commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement.

In the event of CONTRACTOR's breach or violation of this provision, the CITY shall have the right to terminate this Agreement without liability and, at CITY's sole discretion, to recover the full amount of such fee, commission, percentage, gift or consideration.

ARTICLE 20
ATTORNEY'S FEES

In the event of litigation between the parties, the prevailing party shall be entitled to recover all costs of collection, including a reasonable attorney's fees and court costs. The provisions of this paragraph shall survive termination of this Agreement.

ARTICLE 21
FORCE MAJEURE

Neither party shall be obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, war, civil disorder, sabotage, accident, flood, acts of God or by any reason of any other matter or condition beyond the control of either party which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall economic hardship or lack of funds be considered an event of force majeure.

If CITY or CONTRACTOR are unable to perform, or are delayed in their performance of any obligations under this Agreement by reason of any event of force majeure, such inability or delay shall be excused at any time during which compliance therewith is prevented by such event and during such period thereafter as may be reasonably necessary for either party to correct the adverse effect of such event of force majeure.

In order to be entitled to the benefit of this Article, a party claiming an event of force majeure shall be required to give prompt written notice to the other party specifying in detail the event of force majeure and also diligently proceed to correct the adverse effect of any force majeure. The parties agree that, as to this Article, time is of the essence.

ARTICLE 22
WAIVER AND MODIFICATION

Failure to insist upon strict compliance with any terms, covenants or conditions of this Agreement shall not be deemed a waiver of such, nor shall any waiver or relinquishment of such right or power at any time be taken to be a waiver of any other breach.

CITY and CONTRACTOR may request changes to modify certain provisions of this Agreement, including increasing or decreasing the scope of services to be provided. However, unless otherwise provided for herein, any such changes must be contained in a written amendment executed by both parties with the same formality of this Agreement.

ARTICLE 23
RELATIONSHIP BETWEEN THE PARTIES

CONTRACTOR is being contracted by CITY for the purposes and to the extent set forth in this Agreement and, as such, shall be free to dispose of such other portion of its time and skill as does not interfere with its obligations hereunder.

ARTICLE 24
MISCELLANEOUS TERMS AND CONDITIONS

A. Each March 1st under this Agreement, CONTRACTOR shall provide the CITY's Recreation Programs Administrator a current membership roster; practice, game, tournament and public event schedule; and a list of any special services requested from the CITY for that calendar year. In addition, to the extent possible, CONTRACTOR is required to provide written notification to CITY thirty (30) days in advance of any subsequent schedule changes.

B. CONTRACTOR shall utilize the Track Facility or Mitchell/Moore Center exclusively for the activities described herein and not allow any part thereof to be used for any immoral or illegal purposes. CONTRACTOR shall not allow, suffer or permit the Track Facility or the Mitchell/Moore Center to be used for any purpose, business, activity, use or function to which the CITY objects, including gambling.

C. For each of CONTRACTOR's employees, volunteers, staff or other representatives providing services under this Agreement, at CONTRACTOR's sole expense and prior to allowing any of its representatives to provide services at the Center, CONTRACTOR shall (i) provide the CITY's Recreation Programs Administrator a written background check from Southeastern Security Consultants, Inc. in Marietta, Georgia or (ii) allow the CITY to conduct its own background check at CONTRACTOR's expense. CONTRACTOR's failure to comply with the obligations of this paragraph shall be deemed a material breach of this Agreement.

D. Pursuant to CITY-sponsored programs and at times designated by CITY, CONTRACTOR shall, at no cost to CITY or participants, provide forty (40) hours of youth instruction each year of this Agreement.

E. CONTRACTOR agrees to promote the Program to the citizens of Pompano Beach and that a minimum of 51% of Program participants will be residents of the City of Pompano Beach.

ARTICLE 25
SEVERABILITY

Should any provision of this Agreement or the application of such provisions be rendered or declared invalid by a court action or by reason of any existing or subsequently enacted legislation, the remaining parts or provisions of this Agreement shall remain in full force and effect.

ARTICLE 26
APPROVALS

Whenever CITY approval(s) shall be required for any action under this Agreement, said approval(s) shall not be unreasonably withheld.

ARTICLE 27
ABSENCE OF CONFLICTS OF INTEREST

CONTRACTOR represents it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with its performance hereunder. CONTRACTOR further represents no person having any interest shall be employed or engaged by it for said performance.

CONTRACTOR shall promptly notify the CITY in writing by certified mail of all potential conflicts of interest for any prospective business association, interest or other circumstance that may influence or appear to influence CONTRACTOR's judgment or quality of services being provided hereunder. Said notification shall identify the prospective business interest or circumstance and the nature of work that CONTRACTOR intends to undertake and shall request the CITY's opinion as to whether such association, interest or circumstance would, in the opinion of the CITY, constitute a conflict of interest if entered into by CONTRACTOR.

ARTICLE 28
BINDING EFFECT

The benefits and obligations imposed pursuant to this Agreement shall be binding and enforceable by and against the parties hereto.

ARTICLE 29
NO WAIVER OF SOVEREIGN IMMUNITY

Nothing contained in this Agreement is intended to serve as a waiver of sovereign immunity by CITY.

ARTICLE 30
NOT A LEASE

Both parties acknowledge and agree this Agreement shall not be deemed a lease of the Track Facility or the Mitchell/Moore Center but rather a privilege granted to CONTRACTOR by CITY to provide the leadership, administrative and coaching services contemplated herein to competitive youth track leagues in the City of Pompano Beach.

ARTICLE 31
ENTIRE AGREEMENT AND INTERPRETATION

This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein and both

parties agree there are no commitments, agreements or understandings concerning the subject matter herein that are not contained in this Agreement. Accordingly, both parties agree no deviation from the terms herein shall be predicated upon any prior representations or agreements, whether oral or written.

Regardless of which party or party's counsel prepared the original draft and subsequent revisions of this Agreement, both CITY and CONTRACTOR and their respective counsel have had equal opportunity to contribute to and have contributed to its contents, and this Agreement shall not be deemed to be the product of, and therefore construed against either party.

It is further agreed the omission of a term or provision contained in an earlier draft of this Agreement shall have no evidentiary significance regarding the contractual intent of the parties and that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document agreed to and executed by authorized representatives of both parties with the same formality of this Agreement.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.

"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 20th day of May, 2013, 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

"CONTRACTOR"

Witnesses:

XPRESS YOUTH DEVELOPMENT INSTITUTE, INC., a Florida non-profit corporation

Print Name: SCOTT R. MOORE

By: _____
JOSEPH BALLARD, PRESIDENT

Print Name: SHARON ALLEN

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this _____ day of _____, 2013, by Joseph Ballard as President of Xpress Youth Development Institute, Inc., a Florida non-profit corporation, who is personally known to me or who has produced _____ (type of identification) as identification.

NOTARY'S SEAL:

NOTARY PUBLIC, STATE OF FLORIDA

Notary Public State of Florida
Anne Hollady
My Commission EE046484
Expires 02/01/2015

Anne Hollady
(Name of Acknowledger Typed, Printed or Stamped)

EE046484
Commission Number

3/6/13
l:agr/recr/2013-660f

"EXHIBIT 1"

SCOPE OF SERVICES – XPRESS YOUTH DEVELOPMENT INSTITUTE, INC.

- Servicing the youth of Pompano Beach through mentoring and track and field services.
- Xpress Youth Development Institute, Inc. will inform the City of Pompano Beach of any grant money/sponsorship/awarded to Xpress Youth Development Institute, Inc.
- Conduct track practices at Blanche Ely High School.
- Host an organized track meet at Blanche Ely High School.
- Provide transportation to organized track meets with transportation service made available with the City of Pompano Beach.
- Register participants with AAU organization.
- Register organization with AAU organization which provides insurance benefits.
- Complete inter local agreement with Broward County School Board under City of Pompano Beach for facility usage (lease agreement).
- Provide background checks for volunteers through SSCI.
- Xpress Youth Development Institute, Inc. will complete all registration transactions.
- Xpress Youth Development Institute, Inc. will set their own amount for all fees associated with track program fees which are not under City of Pompano Beach Code of Ordinances.

"EXHIBIT 2"
STANDARDIZED INSURANCE REQUIREMENTS
OF THE CITY OF POMPANO BEACH

Insurance

The vendor/contractor shall not commence operations, labor, construction and/or installation of improvements to complete this project until certification or proof of insurance, detailing terms and provisions of coverage, has been received and approved by the City of Pompano Beach Risk Management Division.

The following insurance coverage shall be required.

A. Workers' Compensation Insurance for all its employees in accordance with the requirements of Florida Statute, Chapter 440. 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. Public Liability & Auto Liability Insurance

1) Naming the City of Pompano Beach as an additional insured in connection with the work being done under this contract.

2) The types of insurance and minimum policy limits that are required are indicated by "XXXX" below.

	Type of Insurance		LIMITS OF LIABILITY each occurrence	aggregate
	PUBLIC LIABILITY			
XXXX	Comprehensive Form			
XXXX	Premises - operations	Bodily Injury	$200,000.	$300,000.
____	Explosion & collapse hazard	Property Damage	$200,000.	$300,000.
____	Underground hazard	-- or --		
XXXX	Products (if items are sold)	Bodily Injury and		
XXXX	Contractual insurance	Property Damage		
____	Liquor legal (if items are sold)	Combined	$200,000.	$300,000.
XXXX	Independent contractors			
____	Personal injury	Personal Injury	$200,000.	$300,000.
	AUTOMOBILE LIABILITY			
XXXX	Comprehensive Form	Bodily Injury (each person/ each accident)	$200,000	$300,000.
____	Owned	Property Damage	$200,000.	$300,000.
____	Hired	-- or -- Bodily Injury and		
____	Non-owned	Property Damage combined	$200,000.	$300,000.
	EXCESS LIABILITY			
____	Umbrella form	Bodily injury and Property damage		
____	other than umbrella	Combined	$2,000,000.	$2,000,000.

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.

Firm shall furnish to the City the certification or proof of insurance required by the provisions set forth above, within five (5) days after notification of award of contract.

Mail certificate(s) to: City of Pompano Beach, Attention Risk Manager, P.O. Box 1300, Pompano Beach, Florida, 33061.

Exhibit 2

Insurance Xpress Youth Development Institute, Inc.

CERTIFICATE OF INSURANCE

DATE: 3/29/2010

CERTIFICATE NUMBER: 20160324409108

AGENCY:

ESIX 3 LLC
d/b/a Entertainment & Sports Insurance eXperts (ESIX)
d/b/a Entertainment and Sports Insurance Agency (California)
2727 Paces Ferry Road, Building Two, Suite 1500
Atlanta, GA 30339
678-324-3300 (Telephone)
678-324-3303 (Facsimile)

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND *CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES* NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

NAMED INSURED:

USA Track & Field, Inc.
132 East Washington Street, Suite 800
Indianapolis IN 46204

Pompano Xpress Track Club

INSURERS AFFORDING COVERAGE:

INSURER A: Philadelphia Indemnity Ins. Co.
INSURER B: Philadelphia Indemnity Ins. Co.

EVENT INFORMATION:

Pompano Xpress Track Club Invitational (4/2/2016 - 4/3/2016)

POLICY/COVERAGE INFORMATION:

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 AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS

INS	TYPE OF INSURANCE:	POLICY NUMBER(S):	EFFECTIVE:	EXPIRES:	LIMITS:	
A	GENERAL LIABILITY					
	X Occurrence	PHPK1403938	11/1/2015 12:01 AM	11/1/2016 12:01 AM	GENERAL AGGREGATE (Applies Per Event)	$3,000,000
	X Participant Legal Liability				EACH OCCURRENCE	$1,000,000
					DAMAGE TO RENTED PREMISES (Each Occ.)	$1,000,000
					MEDICAL EXPENSE (Any one person)	EXCLUDED
					PERSONAL & ADV INJURY	$1,000,000
					PRODUCTS-COMP/OP AGG	$3,000,000
B	UMBRELLA/EXCESS LIABILITY					
	X Occurrence	PHUB517449	11/1/2015 12:01 AM	11/1/2016 12:01 AM	EACH OCCURRENCE	$10,000,000
					AGGREGATE (Applies Per Event)	$10,000,000

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS:

Coverage applies to USA Track & Field sanctioned events and registered practices, including any directly related activities, such as event set-up and tear-down, participant check-in and award ceremonies.

The certificate holder is an additional insured as required by written contract or written agreement, but only for liability arising out of the negligence of the Named Insureds per the following endorsement: Additional Insured - Certificate Holders (Form PI-AM-002)

The General Liability policy is primary and non-contributory with respect to the negligence of the Named Insureds (Form CG 00 01).

The General Liability policy contains a blanket Waiver of Subrogation as required by contract per Waiver of Transfer of Rights of Recovery Against Others (Form CG 24 04).

Excess policy follows form of underlying General Liability.

APPROVED
RISK MANAGEMENT
04-11-16
JM

CERTIFICATE HOLDER:

City of Pompano Beach Parks & Recreation Department
1801 NE 6th Street
Pompano Beach FL 33060

NOTICE OF 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:

"EXHIBIT 3"

Lease & Funding Agreement for Lease of Recreational Facilities at Blanche Ely High School

13818

APPLICATION AND LEASE FOR USE OF PUBLIC SCHOOL FACILITIES

(Return to Issuing School for Principal's Approval)

The applicant requests authorization for use of the public school facilities indicated for the purpose and at the times shown below:

School: Blanche Ely High~~School~~ Facilities needed: Track

Dates: Feb. 2013--July 2013 From: 6:00 pm A.M. P.M. To: 8:00pm A.M. P.M.
(If necessary, attach a schedule showing dates of use)

Nature and purpose of use: Track Practice for Pompano Xpress

Name(s) of Speaker(s): _____

Custodian _____ To be paid by: _____ Security/Police: Yes: ____ #____
No: x

Equipment: _____ Special Assistance: _____ Other: _____

Name of Applicant (Lessee): City of Pompano Beach

Applicant's Mailing Address: 901 NW 10th Street, Pompano Beach, FL 33060

☐ SCHOOL ALLIED GROUP ☒ GOVERNMENT ORGANIZATION

☐ NOT-FOR-PROFIT 501(c)(3) (please attach IRS certification/documentation) ☐ OTHER

Applicant Contact Kacey Young Phone No.: 954-786-4131

Fax No.: 954-786-4175

Total Rental Fee: $ N/A (Organizations must prepay rental fee before gaining access to school facilities.)

A deposit in the amount of $ _____ must be submitted with the application no later than _____
This deposit shall receipted into the school's Internal Accounts Trust Fund. (The deposit will apply toward the total charges)

LIABILITY INSURANCE REQUIREMENTS (Governmental agencies may not be subject to liability insurance requirements.)

LIMITS:	Bodily Injury	$100,000 per person, $300,000 per occurrence
	Property Damage	$25,000 per occurrence

NOTE: A Certificate of Insurance reflecting the above limits must be attached to this application. **The School Board of Broward County, Florida, must be named as an additional insured under the general liability policy coverage.** Insurance requirements for Circus and Carnivals please refer to School Board policy 1341, paragraph 13.

I (person requesting lease), Kacey Young, signing on behalf of myself and the organization I represent, do hereby solemnly swear or affirm that we support the Constitution of the United States and of the State of Florida. I do hereby also swear or affirm on behalf of the organization named herein that no person is excluded from membership in such organization nor from participating in the activity or program covered by this agreement on the grounds of sex, race, color or national origin.

Date of Application: 1/31/13 Kacey Young
Signature of Applicant

Approved by: _____
Principal

Approved by: _____ 2/1/13
Superintendent or Designee

AUTHORIZATION OF USE OF PUBLIC SCHOOL FACILITIES IS CONDITIONED UPON ADVANCE PAYMENT OF THE CHARGE(S) SHOWN ABOVE AND COMPLIANCE WITH THE TERMS AND CONDITIONS ON THE REVERSE SIDE.

Original for School File (white)
Copy to Risk Management Department (yellow)

Exhibit 3

NOTICE OF FACILITY USAGE

The School Board of Broward County, Florida (SBBC)/ City of Pompano Beach (COP)

Date: Jan. 25, 2016

Location: Blanche Ely High School

Activity/ Event: Track Practice / Track Meet for Pompano Express City of Pompano

Facility	Dates	Times
Track Practice	Jan. 25 - June 30, 2016	6pm - 8pm
Track Meet	April 2, 2016	7am - 5pm

Charges (if applicable)

Service/Item	Amount
Track Practice	N/A
Track Meet (School Personnel)	704.00

Contact Person (COP): Ron Upshaw ~~95~~

Phone: 954-786-4131 Ron.Upshaw@CopbFL.com

Contact Person (SBBC): Connie Brown

Phone: 754-322-0956

Authorized Signature

Ron Upshaw

City of Pompano Representative

SBBC School Principal/Designee

Approved: ✓ Disapproved: _____

White-SBBC event location Yellow-SBBC Risk Management Pink-COP

SBBC: 2014 cbrown

Meeting Date: April 26, 2016 Agenda Item 4

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 SUBMIT A GRANT APPLICATION FOR THE 2017-2018 SMALL MATCHING GRANT WITH THE STATE OF FLORIDA, DEPARTMENT OF STATE, DIVISION OF HISTORIC RESOURCES, AGREEING TO EXECUTE AN AGREEMENT FOR THE GRANT IF THE GRANT IS AWARDED TO THE CITY, AND TO PROVIDE MATCHING FUNDS IN THE AMOUNT OF $50,000; PROVIDING AN EFFECTIVE DATE. (Fund 302, TBD subject to City Commission approval of FY17 CIP)

Summary of Purpose and Why:

The City of Pompano Beach is preparing to submit an application for the 2017-2018 State of Florida Small Matching Historic Grant. Funding will used for Phase II of renovations and restoration to the Blanche Ely House. The House, listed on the Local Register of Historic Places, was the home of Ms. Blanche Ely, Pompano Beach's pioneer educational activist for African American students. The House is owned by the City of Pompano Beach and contains objects and artifacts that tell the story of Pompano Beach's African American educational pioneers.

This agenda item is to allocate a 50/50 match of $50,000 towards Phase II renovations of the Blanche Ely House. The funding will be used to continue the Phase I restoration grant received from the State for 2016-2017, which will be used to bring the facility into compliance with ADA standards and change the Certificate of Occupancy from a Residence into a Place of Assembly/ museum. These improvements must occur for the building to be open to the public as an educational facility and cultural heritage museum.

Accomplishing this item supports achieving Initiative 2.8 "Further develop and promote cultural / heritage tourism opportunities" as identified in the City's 2013 Strategic Plan.

(1) Origin of request for this action: Development Services Division
(2) Primary staff contact: Robin Bird/Karen Santen Ext. 4926
(3) Expiration of contract, if applicable: NA
(4) Fiscal impact and source of funding: $50,000 (Fund 302, TBD subject to City Commission approval of FY 17 CIP)

DEPARTMENTAL COORDINATION	DATE	DEPARTMENTAL RECOMMENDATION	DEPARTMENTAL HEAD SIGNATURE
Dev. Services	April 5, 2016	Approval	Memo #16-154
City Attorney	4/13/16		
Budget	4/13/16		
X City Manager			

ACTION TAKEN BY COMMISSION:

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

S:\Grants General Information\Grants information\State of Florida\2016\Historic Preservation\Small matching BEH\Agenda - StrategicInitiative.docx

City Attorney's Communication #2016-723
April 8, 2016

TO: Karen Santen, Development Services, Grants Coordinator

FROM: Mark E. Berman, City Attorney

RE: Resolution – Small Matching Preservation Grant

As requested in your memorandum of April 5, 2016, Department of Development Services Memorandum No. 16-154, 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 SUBMIT A GRANT APPLICATION FOR THE 2017-2018 SMALL MATCHING GRANT WITH THE STATE OF FLORIDA, DEPARTMENT OF STATE, DIVISION OF HISTORIC RESOURCES, AGREEING TO EXECUTE AN AGREEMENT FOR THE GRANT IF THE GRANT IS AWARDED TO THE CITY, AND TO PROVIDE MATCHING FUNDS IN THE AMOUNT OF $50,000.00; 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/2016-723

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 SUBMIT A GRANT APPLICATION FOR THE 2017-2018 SMALL MATCHING GRANT WITH THE STATE OF FLORIDA, DEPARTMENT OF STATE, DIVISION OF HISTORIC RESOURCES, AGREEING TO EXECUTE AN AGREEMENT FOR THE GRANT IF THE GRANT IS AWARDED TO THE CITY, AND TO PROVIDE MATCHING FUNDS IN THE AMOUNT OF $50,000.00; PROVIDING AN EFFECTIVE DATE.

WHEREAS, historic preservation is an important part of our community; and

WHEREAS, the City of Pompano Beach desires to apply for Small Matching Grant ("Grant"), which would provide monies for a historical house restoration; and

WHEREAS, if the grant is awarded to the city, the City of Pompano Beach intends to restore and renovate the Blanche Ely House Museum; and

WHEREAS, if approved for the Grant, the City of Pompano Beach will enter into a Memorandum of Agreement between the City of Pompano Beach, Florida, and the Florida Department of State; and

WHEREAS, if approved for the Grant, the City of Pompano Beach will provide matching funds in the amount of $50,000.00 towards the restoration; now, therefore,

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

SECTION 1. The City Commission hereby supports the city's efforts to restore and renovate the Blanche Ely House Museum and approves the application for the Grant submittal with a matching fund amount of $50,000.00.

SECTION 2. That the proper city officials are hereby authorized to submit the Grant application.

SECTION 3. If awarded the grant, the City of Pompano Beach will enter into a Memorandum of Agreement between the City of Pompano Beach, Florida and the Florida Department of State.

SECTION 4. This Resolution shall become effective upon passage.

PASSED AND ADOPTED this _____ day of _____, 2016.

_____
LAMAR FISHER, MAYOR

ATTEST:

_____
ASCELETA HAMMOND, CITY CLERK

:jrm
4/8/16
L:reso/2016-188

pompano beach
Florida's Warmest Welcome

MEMORANDUM

Development Services

MEMORANDUM NO. 16-154

DATE: April 5, 2016

TO: Mark Berman, City Attorney

VIA: Robin M. Bird, Development Services Director

FROM: Karen Santen, Grants Coordinator KS.

RE: Request for Resolution- Small Matching Preservation Grant

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The City of Pompano Beach is preparing to submit a proposal for the Florida Division of Historical Resources FY2017-18 Florida Department of State Small Matching Historic Preservation Grant. Funding will be used for Phase II of renovations and restoration of the Blanche Ely House Museum. The full application will be submitted online and a brief description of the project is provided below. A draft of the grant application is enclosed.

Our department will be requesting $50,000 in grant funding which requires a 1-to-1 dollar match.

A resolution from the City Commission supporting the application and committing the funds is recommended for the application. Please prepare the appropriate resolution. For your convenience, we have drafted a sample resolution of support.

If you need additional information or have any questions, please contact me at extension 4926.

Thank you.

Project Description

The City of Pompano Beach is requesting funding for Phase II of restoration and renovations of the Blanche Ely House. The City previously received a Small Matching Preservation Grant from the state for FY2016-17 for Phase I of the same project. The site being renovated is the former home of Mrs. Blanche General Ely, a seven decade resident of Broward County. A preliminary assessment of the house and its contents indicated extensive damage as a result of mold, water leakage, insect and rodent infestation and lack of climate/humidity control.

Funding from the previous grant will be used for Phase I of restoration, which is needed to bring the facility into compliance with ADA standards and to change the Certificate of Occupancy from a Residence into a Place of Assembly/ museum. The FY2017-18 grant will provide the funds needed to finish improvements to the building to enable it to be open to the public as an educational facility and cultural heritage museum.

Florida Department of State

2018 Small Matching Grant Application

The City of Pompano Beach is requesting funding for Phase II of restoration and renovations of the Blanche Ely House (BEH). Located at 1500 NW 6th Avenue in Pompano Beach, BEH is one of the Broward County's first African American historical museums. The house, listed on the Local Register of Historic Places, was the home of Ms. Blanche Ely, Broward County's pioneer educational activist for African American students. It presently contains artifacts, photographs and media articles that tell the story of Pompano Beach's pioneering community throughout the 20th century.

Unfortunately, after many years of neglect, the house and its contents are in disrepair and in danger of being lost. Pompano Beach is undergoing plans to restore the house and certify it as a public museum. The results of a preliminary survey served as guidelines for the soundest conservation steps needed to ultimately open the house to the public as a museum, once again. With the help of architectural historian and preservation specialists, Robert S. Johnson Associates, survey findings indicated that the house and its artifacts displayed extensive damage as a result of mold, water leakage, insect and rodent infestation and lack of climate/humidity control. These issues have been addressed and the interior of the house has received basic cleaning and maintenance.

As a result of this preliminary survey, Pompano Beach will conduct the BEH restoration project in two phases:

Phase I: The City previously received a FY2016-17 Small Matching Preservation Grant from the State for Phase I of the BEH project. Funding from this grant is being used for restoration which is needed to bring the facility into compliance with ADA standards and to change the Certificate of Occupancy from a Residence into a Place of Assembly/ museum.

Phase II: The FY2017-18 grant will provide the funds needed for Phase II of the project which will complete renovations to the building so that it can be reopened to the public as an educational facility and cultural heritage museum.

The foundation originally organized to support the BEH is not currently active and the house has deteriorated over time. A new community group is now active in the museum's restoration. It is keeping the momentum flowing by working towards becoming a 501(c)3 that will help support future renovations and create public awareness. The 2014 budget for Pompano Beach allocated $103,000 of Capital Improvement Project funding to revitalize the house and restore the museum to its former glory. Most of this allocation has been used for preliminary repairs with remaining funds being used as a matching source. Previous funding from the State of Florida has enabled Pompano Beach to begin basic refurbishments, but further funding is required to ensure that the project is finished.

Direct Economic Impact (1500 characters)

DRAFT

from the ancillary spending of these tourists who will be frequenting local hotels, restaurants and businesses.

The BEH is located in the vicinity of the City's historic Old Downtown, where significant redevelopment is underway. When complete, this area will be transformed into a mixed-use, transit-oriented walkable community. Preserving the neighborhood's historic properties makes the area more valuable by creating an area that is unique, honors its past, attracts interest from the community and encourages investment. Historic preservation helps boost property values in this area that has experienced decades of neglect and abandonment.

The museum will have a small gift shop with books and artifacts from neighboring cultural icons. Tours of the house may free. In addition, donations will be accepted.

Threats

The most immediate threat to the Blanche Ely House is that it is a vacant building that is deteriorating and cannot be used and established as a museum until repairs have been made. It has structural damage resulting from water damage, roof collapse and damage from mold and rodents. An upgraded A/C and heating system has been installed to provide appropriate climate conditions for the house and the artifacts displayed within it. The roof has also been repaired. Damage still remains to the walls, ceiling and floors. An improved lighting and electrical system is needed to accommodate various uses and exhibits. Years of neglect have intensified these problems and need to be addressed.

The restoration project is at risk because those who are most passionate about the museum's preservation are Ms. Ely's former students. Unfortunately we are at the point where these supporters are aging and if action is not taken soon Mrs. Ely's story, and a significant part of the city's history, will be forgotten and lost.

An external threat exists as a result of the City's extensive growth and redevelopment as public investments in the city are stimulating private development. Much of this expansion is centered on the City's two community redevelopment areas - the East CRA and the NW CRA which include many of the City's most historic areas. Many of these properties are currently in the process of rehabilitation, however many are privately owned and continued redevelopment in the area will put them at risk of demolition. This grant will strengthen the significance of the Blanche Ely House Museum and pave the way for future historic preservation projects.

Minorities and Disabled

The BEH is located in a richly diverse metropolitan area comprised of historically African American and White neighborhoods, as well as an almost equal mix of Non-Hispanic White and Hispanic. The City's Local Register of Historic Places is composed almost entirely of buildings in this area which reflect the history and stories of the City's rich African American past. This project seeks to continue the City's efforts to fight for properties that represent the diverse cultures of the City's NW CRA neighborhoods.

Blanche Ely High School and the four elementary schools Ms. Ely helped to open are near the house and still educate primarily black students. These students will be primary beneficiaries of the wealth of knowledge and history available at the BEH. The City hopes to work on a

collaborative effort to develop educational programs for students and the public at the future museum. More details are provided in the Education and Historic Significance sections.

In order to serve the needs of all of its citizens and visitors, the City recognizes the importance of accessibility in all of its restoration projects. Many patrons visiting the BEHM may require additional consideration thus, ensuring that all restoration plans will meet or exceed federal, state and local regulations is a high priority. Specific plans include ADA approved ramps, handrails, restrooms and parking.

Education

Blanche Ely was an educational pioneer for the African American community in Pompano Beach. Spanning several decades, Mrs. Ely's influence and contributions to Pompano Beach's public education system are remarkably evident. She and her husband were Civil Rights Activists in the pursuit of equal educational opportunities for African American children. Beginning in the 1920's, her efforts made it possible for these students to attend school through the 11th grade with the potential to continue on to college. In remembrance of Mrs. Ely's legacy and contributions to the community, a group of individuals sought to preserve her house and turn it into a museum. The City of Pompano Beach fully supports revitalizing this museum and making it a true landmark with educational and cultural benefits for students, residents and visitors.

The BEH houses a collection of objects, articles and artifacts documenting the story of Pompano's Beach's African American community throughout the 20th century, an aspect of Broward County history not as well explored as others areas. The restoration of the house and its wealth of artifacts will educate and offer insight into Broward County's rich cultural history for all members of the community.

The City is discussing a partnership with the Broward County School District to create educational opportunities to supplement the current curriculum. Opportunities include field trips and special projects will incorporate Pompano Beach's African American heritage with emphasis on Mrs. Ely's contributions. Blanche Ely High School and the four elementary schools Ms. Ely helped to open will participate in the special programs.

Historic significance

Blanche General Ely (1904 -1993) was born in Reddick, Florida and was a resident of Pompano Beach for 7 decades. In 1923, Mrs. Ely was named principal of what was then called the "Pompano Colored School." When the school was destroyed in a hurricane, a new school was constructed. The 11th grade was added and, through Principal Ely's efforts, students completing that grade were prepared to proceed directly to college.

A Civil Rights Activist, Blanche Ely was the only female secondary school principal, white or black, in the State of Florida until the 1970's. In 1951, at the height of segregation and a time when Pompano Beach's population was rapidly expanding, Mrs. Ely lobbied for a new public high school to adequately serve the City's young adults. The school opened in 1954 and was named in her honor.

As an educator, she nourished young teachers and administrators to continue her work. She was instrumental in securing funding for a migrant housing project, from which emerged the Markham Elementary School. A housing project for low-income families was named Ely Estates and NW 6th Avenue was renamed for her. She & her husband, Professor Joseph Ely, sponsored the 1st federally funded lunch program in Broward County.

In 1970, Broward County School Board "phased-out" Blanche Ely High School. Principal Ely and the PTA filed a lawsuit which went to the U.S. Supreme Court resulting in the re-opening of Blanche Ely High School in 1975.

After her passing in 1993, her home was purchased by the City and leased to the Ely Educational Foundation (EEF) with the mission to care for, preserve and educate the public about Mrs. Ely. The Ely house became the City's first public display of African American history, serving as a holding place for a variety of Pompano Beach's historic artifacts.

Public awareness

Marketing efforts will be taken before, during and after the project to create public awareness throughout Greater Broward County. The City is proposing a series of publically available resources exploring not only Ms. Ely's contributions, but to offer glimpses into an often neglected period in Pompano's history. Brochures on her community involvement and academic achievements will be distributed at the house and other locations. Artifacts and news clippings displayed throughout the museum will educate visitors on the many social and educational "battles" that Mrs. Ely fought against racism, segregation and sexism.

Outreach projects will involve local schools and help teachers integrate the museum into their curriculum. Also under consideration is partnering with the American Association for State and Local History on various events, fundraising and special exhibits. A website promoting the BEHM is being planned.

Group educational meetings will stimulate conversations outside of the museum and continue the City's rich tradition of oral history. The City's Public Communications Department will issue press releases following the progression of the restoration and promoting the importance of the BEHM and other historic sites in Pompano Beach. In order to reach a larger audience, the City is currently designing a brochure, funded in part by Visit Florida, focusing on Pompano's significance as a historic and cultural tourism destination. The combination of these activities and resources will increase public awareness of Mrs. Ely's legacy to Pompano Beach, enlighten the public on a critical period in its history and demonstrate the importance of preserving its cultural heritage.

Meeting Date: April 26, 2016 Agenda Item 5

REQUESTED COMMISSION ACTION:

X Consent ____ Ordinance X Resolution ____ Consideration ____ Workshop

SHORT TITLE A resolution approving & authorizing the proper City officials to execute a Replay Access Agreement between the City of Pompano Beach and Broward County to access the voice recording system for Pompano Beach Fire Rescue.

OR MOTION: (No fiscal impact)

Summary of Purpose and Why:

This is the first amendment to Replay Agreements between Broward County and Replay Systems, Inc. The amendment establishes an agreement to allow municipalities to access the voice recording system of the Broward County Regional Consolidated Dispatch System. The amendment requires municipalities to execute the referenced Replay Access Agreement in order to be authorized users. As an authorized user, Pompano Beach Fire Rescue staff will have access to review audio recordings of 911 and Fire Dispatch communications related to emergency calls in Pompano Beach.

(1) Origin of request for this action: Staff
(2) Primary staff contact: John Jurgle, Fire Chief 954 786-4510
(3) Expiration of contract, if applicable:
(4) Fiscal impact and source of funding: No fiscal impact

DEPARTMENTAL COORDINATION	DATE	DEPARTMENTAL RECOMMENDATION	DEPARTMENTAL HEAD SIGNATURE OR ATTACHED MEMO NUMBER
Fire Administration	4-13-16	Approved	
City Attorney	4-13-16	✓	Memo #2016-297
Risk Manager	4-13-16	approved	

___ Advisory Board
___ Planning and Growth Management Director
___ Public Works Administrator
x City Manager

ACTION TAKEN BY COMMISSION:

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

Pompano Beach
Fire Rescue

FIRE ADMINISTRATION
MEMO # 16-A033

To: John Jurgle, Fire Chief

From: Michael Hohl, Assistant Fire Chief MH

Date: 01/11/16

Re: **Replay Access Agreement for 911 Dispatch Audio Tapes**

Please find attached an agenda item requesting Commission approval of the First Amendment to Replay Agreements between Broward County and Replay Systems, Inc. The amendment establishes an agreement to allow municipalities to access the voice recording system of the Broward County Regional Consolidated Dispatch System. The amendment requires municipalities to execute the referenced Replay Access Agreement in order to be authorized users. Once fully executed by all parties, Pompano Beach Fire Rescue staff will have access to review audio recordings of 911 and Fire Dispatch communications related to emergency calls in Pompano Beach. This access to audio tapes of 911 and Fire Dispatch communications is essential for continuous quality improvement review by Pompano Beach Fire Rescue staff. A copy of the entire agreement and first amendment is attached. Following approval by the City of Pompano Beach, this first amendment will be sent to the Broward County Commission for final approval.

Please note this amendment was previously approved by the City Commission on October 13, 2015. However, Broward County has since made some minor changes which have been approved by the City Attorney. These changes necessitate a new Resolution for approval by the City Commission.

City Attorney's Communication #2016-297
December 21, 2015

TO: Michael Hohl, Assistant Fire Chief

FROM: Mark E. Berman, City Attorney

RE: Resolution – Rescinding Resolution No. 2016-18 and Approving Replay Access Agreement

As requested, I have prepared and attached the following captioned Resolution:

> **A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, RESCINDING RESOLUTION NO. 2016-18, AND APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A REPLAY ACCESS AGREEMENT BETWEEN THE CITY OF POMPANO BEACH AND BROWARD COUNTY TO ACCESS THE VOICE RECORDING SYSTEM FOR POMPANO BEACH FIRE RESCUE; PROVIDING AN EFFECTIVE DATE.**

Please ensure that the correct Broward County contract is attached to the agreement prior to presenting the resolution to the City Commission.

MARK E. BERMAN

/jrm
L:cor/fire/adm/2016-297

Attachment

RESOLUTION NO. 2016-_____

CITY OF POMPANO BEACH
Broward County, Florida

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, RESCINDING RESOLUTION NO. 2016-18, AND APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A REPLAY ACCESS AGREEMENT BETWEEN THE CITY OF POMPANO BEACH AND BROWARD COUNTY TO ACCESS THE VOICE RECORDING SYSTEM FOR POMPANO BEACH FIRE RESCUE; PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Resolution No. 2016-18 is hereby rescinded in its entirety.

SECTION 2. That an Agreement between the City of Pompano Beach and Broward County to access the voice recording system for Pompano Beach Fire Rescue, 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 Broward County.

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
12/21/15
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BROWARD COUNTY FLORIDA

FIRST AMENDMENT TO REPLAY AGREEMENTS
BETWEEN BROWARD COUNTY AND REPLAY SYSTEMS, INC.

This First Amendment ("First Amendment") is entered into by and between Broward County, a political subdivision of the State of Florida ("County") and Replay Systems, Inc., a Florida corporation ("Replay") (collectively County and Replay are referenced as the "Parties").

A. This First Amendment amends the rights and obligations of County and Replay under the Assignment, Delegation, and Release Agreement, dated June 17, 2013 ("Assignment"), which assigned the Maintenance Agreement and the Digital Voice Agreement (as defined in the Assignment) (the "Replay Agreements") from the Broward Sheriff's Office to the County.

B. As contemplated by the parties under the Replay Agreements, Broward Sheriff's Office ("BSO") and the various municipalities of Broward County, including those that host a public safety answering points ("PSAP"), utilize the software licensed under the Replay Agreements and have the right, upon execution of a Replay PSAP Agreement (Digital Voice Exhibit A to the Assignment), to receive the benefit of Replay's services and purchase additional equipment or software from Replay. As contemplated under the Assignment, County has since consolidated the PSAP locations within Broward County. The Parties desire to recognize the consolidation and affirm and clarify the rights of BSO and the municipalities within Broward County, including but not limited to the municipalities hosting PSAP locations, under the Replay Agreements.

C. The Assignment imposed a not-to-exceed limitation in the amount of $150,000.00 on Optional Services that County may elect to acquire under the Replay Agreements. The Parties agree and stipulate that through the effective date of this First Amendment, the Parties have executed Work Authorizations for Optional Services in the combined total amount of $102,288.00. The Parties desire to increase the not-to-exceed limitation on Optional Services by an additional $100,000.00, for a total not-to-exceed amount for Optional Services of $250,000.00.

NOW THEREFORE, IN CONSIDERATION of the mutual terms and conditions, promises, covenants, and payments hereinafter set forth, County and Replay agree as follows:

1. The above recitals are true and correct and are incorporated herein by reference. All capitalized terms not expressly defined within this First Amendment shall retain the meaning ascribed to such terms in the Assignment or the Replay Agreements. Except as modified herein, all terms and conditions of the Assignment and the Replay Agreements, including all amendments thereto, shall remain in full force and effect. Amendments made pursuant to this First Amendment are indicated herein by use of strikethroughs to indicate deletions and bold/underlining to indicate additions.

2. The parties agree and affirm that as of the effective date of the Replay Agreements, Replay/VPI granted to County (as assignee of Broward Sheriff's Office) a perpetual, royalty-free,

nonexclusive, server license, for an unlimited number of concurrent users within the County regional public safety infrastructure, the BSO public safety network, or the networks of municipalities within Broward County, to all software licensed under the Replay Agreements ("Licensed Software") for on- and off-site access and use by County, its employees and agents, and any third party users authorized by County, including without limitation any municipalities in Broward County accessing the Licensed Software through County's regional public safety intranet and any other entities which County may engage to operate the Licensed Software, on any equipment, for County governmental and business purposes and for the benefit of and use by all governmental entities within Broward County, including the offices of County constitutional officers. The duration of the licenses is coterminous with the applicable software maintenance agreement with Replay.

3. BSO and any municipality within Broward County that accesses or uses the Licensed Software shall be bound by the terms and conditions of the Assignment and Replay Agreements (including as amended herein), and shall execute the attached Replay Access Agreement, a copy of which shall be provided to Replay. The County Administrator is authorized to execute the Replay Access Agreement on behalf of County.

4. Digital Voice Exhibit B, Price Proposals, is amended as follows:

> **This Digital Voice Exhibit B includes, as if fully set forth herein, the most current published manufacturer catalogues of VPI and Replay and all items listed therein, included as updated periodically by VPI or Replay. BOTH REPLAY AND** VPI PARTS AND EQUIPMENT WILL BE SOLD TO BROWARD COUNTY AT A 20% DISCOUNT RATE **(OTHER THAN NON-DISCOUNTABLE PARTS, WHICH SHALL BE PROVIDED ON A PASS THRU BASIS WITH ANY ADDITIONAL SERVICES SEPARATELY ITEMIZED IN THE APPLICABLE INVOICE OR WORK AUTHORIZATION). Replay shall provide sufficient documentation to justify the list price of any non-discountable part is fair and reasonable pricing to the satisfaction of County's Contract Administrator, absent which such item shall be deemed omitted from the list of available equipment.** County may elect to purchase any amount of the items listed below at the listed County Cost. The most currently published manufacturer's catalogue price at time of purchase (including County 20% discount) prevails if **lower** than as ~~set forth herein~~ **listed below**. At County's request, Replay will provide a copy of the most currently published **VPI and Replay** manufacturer catalogues.

* * *

5. Digital Voice Exhi~~bit C, Attachments~~ 2 and 3 to the Assignment (namely, the "Installation Sites" and the "Fee Schedule") are hereby updated and replaced in their entirety with the documents attached hereto as Digital Voice Exhibit C, Attachments 2 and 3.

6. Digital Voice Exhibit C, Attachment 4 as attached hereto states the equipment currently being maintained ("Equipment Inventory"), is hereby incorporated into the Assignment, and

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COUNTY ATTORNEY
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will be updated periodically in writing by the Replay and the County's Contract Administrator as equipment is added, removed, or the equipment inventory is otherwise modified.

7. Section 6.6 of the Assignment is amended as follows:

To the extent the County elects to purchase any additional goods or services from Replay as set forth in the Replay Agreements and/or listed on Digital Voice Exhibit B, Digital Voice Exhibit C, Attachment 3, or Maintenance Exhibit C (collectively, "Optional Services"), the County's Purchasing Director is authorized to negotiate, approve, and execute Work Authorization(s) in the form attached hereto as Exhibit E for such Optional Services totaling an amount not-to-exceed ~~One~~ **Two** Hundred Fifty Thousand Dollars (~~$150,000.00~~ **$250,000.00**).

8. Section 6.6 of the Assignment is amended as follows:

Notwithstanding anything to the contrary in the Replay Agreements, any fees for maintenance services or support services under the Replay Agreements shall be invoiced to the County in accordance with the Digital Voice Exhibit B (Price Proposals), Digital Voice Exhibit C, Attachment 3 (Fee Schedule), and Maintenance Exhibit C (Price List), and shall be paid by County within thirty (30) days of invoice in accordance the "Broward County Prompt Payment Ordinance" (Broward County Ordinance No. 89-49). The final invoice must be submitted no later than sixty (60) days after all services are completed and final payment shall not be made prior to formal acceptance of any software by the County Chief Information Officer, to the extent required by County Administrative Code Section 22.148. To be deemed proper, an invoice must comply with all requirements set forth in this Assignment and the Replay Agreements and must be submitted on the form and pursuant to instructions prescribed by the Contract Administrator. To be deemed proper, an invoice must comply with all requirements set forth in this Agreement and must be submitted pursuant to instructions prescribed by the Contract Administrator. The County shall have the right to withhold payment of the invoice based on Replay's failure to comply with any term, condition, or requirement of this Assignment or the Replay Agreements. **The County's Contract Administrator may authorize partial payment to Provider for any goods or services partially performed to the extent completed to the satisfaction of the County's Contract Administrator.**

9. The Parties agree and stipulate that the Maintenance Agreement is terminated by mutual agreement and no longer in effect, and all amounts due thereunder have been fully paid.

10. The effective date of this First Amendment shall be the date of complete execution by both Parties.

11. This First Amendment may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement: BROWARD COUNTY through its Director of Purchasing, authorized to execute same under the applicable Procurement Code, and REPLAY SYSTEMS, INC., signing by and through its _____, duly authorized to execute same.

BROWARD COUNTY

WITNESS:

(Signature)

Lucy Garcia

(Print Name of Witness)

BROWARD COUNTY, by and through its Director of Purchasing

By _____

Director of Purchasing

26th day of August, 2015

(Signature)

HAZEL MAE MATTHEW

(Print Name of Witness)

Approved as to form by
Joni Armstrong Coffey
Broward County Attorney
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Telecopier: (954) 357-7641

By _____ 6/12/15

René D. Harrod (Date)
Assistant County Attorney

Insurance requirements
approved by Broward County
Risk Management Division

By Risk Management Division 5/27/15

Signature (Date)

Jacqueline A. Binns

Risk Insurance and Contracts Manager

Print Name and Title above

RDH
05/15/15
2015-05-15 Replay First Amendment
#15-099.03

FIRST AMENDMENT TO REPLAY AGREEMENTS
BETWEEN BROWARD COUNTY AND REPLAY SYSTEMS, INC.

REPLAY SYSTEMS, LLC

WITNESSES:

_____
Signature

_____
Print Name of Witness

_____
Signature

_____
Print Name of Witness

REPLAY SYSTEMS, LLC

By _____
Authorized Signor

Scott Hurley, CEO
Print Name and Title

19th day of MAY, 2015

ATTEST:

_____
Corporate Secretary or authorized agent,
Edward E. Guerra
VP Sales & Service

(CORPORATE SEAL)

REPLAY ACCESS AGREEMENT FOR MUNICIPALITIES

This Replay Access Agreement for Municipalities is made and entered by and between the Broward County ("County") and _____ ("Authorized User").

A. The County and Replay are parties to a Maintenance Services Agreement Between Replay Systems, Inc. and The Broward Sheriff's Office for Providing Related Repair and Maintenance Services for Dictaphone Recording and Logging Equipment at Broward County PSAPs, dated June 30, 2006 (the "Maintenance Agreement") and an Agreement By and Between Sheriff of Broward County, Florida and Replay Systems, Inc. for Digital Voice Logging System, dated May 10, 2010 (the "Digital Voice Agreement"), which were assigned by the Broward Sheriff's Office to the County by the Assignment, Delegation and Release Agreement, dated June 17, 2013 ("Assignment") (collectively, including as amended, the "Replay Agreements").

B. The Replay Agreements granted a server software license to the County for use and access to the Replay software ("Licensed Software") that provides recording functionalities on the E911 voice recording system, which is utilized by the public safety answering points (PSAPs) in Broward County.

C. The Authorized User desires to use and access the Licensed Software solely for internal governmental purposes and agrees to be bound by the terms and conditions of the Replay Agreements for all such use and access as further set forth herein.

THEREFORE, in consideration of the mutual terms and conditions set forth herein, the County and Authorized User agree as follows:

1. The above recitals are true and correct and incorporated herein by reference.

2. The County authorizes Authorized User, as permitted under the Replay Agreements, to use and access to the Licensed Software solely for internal governmental purposes and strictly in accordance with the terms and conditions of the Replay Agreements.

3. The Authorized User agrees to limit its use and access of the Licensed Software solely for internal governmental purposes and agrees to abide by and be bound by the terms and conditions of use as stated in the Replay Agreements. The Authorized User further agrees that only individuals otherwise certified and authorized to use the CJIS system will be permitted use or access to the Licensed Software.

4. The Authorized User acknowledges and stipulates that its use and access to any data and documents, including voice recordings, accessed or obtained through the Licensed Software (collectively, "System Data") will comply at all times with the following:

a. System Data may not, without the prior written consent of County, be used by the Authorized User or its employees or agents for any purpose other than internal governmental purposes.

b. Any System Data that is used or stored by Authorized User other than wholly within the regional public safety network shall be protected by Authorized User at all times from unauthorized access, use, or disclosure.

c. Authorized User shall comply with all applicable data and privacy laws and regulations, including without limitation the Florida Information Protection Act of 2014, Florida Statutes Section 501.171.

d. Authorized User may not sell, market, publicize, distribute, or otherwise make available to any third party (unless required by law or court order) any System Data that contains protected health information (as defined by federal law) or personal identification information (as defined by Florida Statutes Section 817.568 or Section 817.5685).

5. The Authorized User acknowledges and stipulates that the County and Broward Sheriff's Office have entered into an agreement governing the operation of the regional public safety answering points in Broward County, including the respective custodial obligations under the Florida public records laws, Chapter 119 of the Florida Statutes. The County and the Authorized User hereby stipulate that for all Authorized Users other than Broward Sheriff's Office, the Authorized User is not the custodian of the System Data pertaining to the regional PSAPs or any other public records of the regional PSAPs that may be stored in or may otherwise be accessed using the Licensed Software (collectively, "Regional PSAP System Data"). The County and Authorized User acknowledge that any public records requests for Regional PSAP System Data shall be directed only to the document custodian designated by the County, and unless the Authorized User has been designated by the County as the applicable document custodian, the Authorized User is not authorized to respond to a public records request for any Regional PSAP System Data.

6. Authorized User expressly agrees to defend, indemnify and hold harmless County and its officers and employees from any claim, liability, fines, or damages arising from any breach by the by Authorized User or its employees, agents, subconsultants or suppliers of (a) any provision of this Replay Access Agreement for Municipalities, (b) any federal, state or local law relating to the unlawful use or disclosure of System Data, or (c) any unlawful use or disclosure of protected health information or any personal identification information contained within the System Data or the Licensed Software.

[Remainder of page intentionally blank.]

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement: BROWARD COUNTY through its BOARD OF COUNTY COMMISSIONERS, signing by and through its County Administrator, authorized to execute same, and the _____, signing by and through its _____, duly authorized to execute same.

BROWARD COUNTY

WITNESS:

_____
(Signature)

_____
(Print Name of Witness)

_____
(Signature)

_____
(Print Name of Witness)

BROWARD COUNTY, by and through its County Administrator

By_____
County Administrator

____ day of _____, 20___

Approved as to form by
Joni Armstrong Coffey
Broward County Attorney
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Telecopier: (954) 357-7641

By_____
René D. Harrod (Date)
Assistant County Attorney

Insurance requirements
approved by Broward County
Risk Management Division

By _____ 5/28/15
Signature (Date)

Risk Management Division

Jacqueline A. Binns
Print Name and Title above

Risk Insurance and
Claims Manager

REPLAY PSAP AGREEMENT BETWEEN BROWARD COUNTY, REPLAY SYSTEMS, INC. AND AUTHORIZED USER

AUTHORIZED USER

ATTEST:

_____
City Clerk

AUTHORIZED USER: _____

By: _____
City Mayor or Authorized Signator

_____
Print Name

_____ day of _____, 2015

I HEREBY CERTIFY that I have approved this agreement as to form and legal sufficiency subject to execution by the parties:

_____
City or BSO Attorney

_____
Print Name of City Attorney or BSO Attorney

DIGITAL VOICE EXHIBIT C, ATTACHMENT 2

Installation Sites

1) Public Safety Building PSAP Broward Sheriff's Office Public Safety Building 2601 West Broward Blvd. Ft. Lauderdale, FL 33311	5) Hollywood PSAP Hollywood Fire Station #74 2751 Stirling Road Hollywood, FL 33020 **(scheduled to be removed from service effective 10/1/15)**
2) EOC PSAP Broward County EOC 201 NW 84th Ave. Plantation, FL 33324	6) Plantation PSAP Plantation Police Dept. 471 North West 70th Terrace Plantation, FL 33317
3) North Regional PSAP Coconut Creek Public Safety Complex 4800 West Copans Road Coconut Creek, FL 33063	7) Central Regional PSAP Sunrise Public Safety Complex 10440 West Oakland Park Blvd. Sunrise, FL 33351
4) South Regional PSAP Pembroke Pines Fire Station #101 6057 SW 198th Terrace Pembroke Pines, FL 33332	8) Coral Springs PSAP Coral Springs Public Safety Building 2801 Coral Springs Drive Coral Springs, FL 33065

Note: Locations may be modified, added or deleted from this list if approved in advance by the County in writing. A formal amendment to this agreement will be required to modify consideration or any terms and conditions of this agreement document.

DIGITAL VOICE EXHIBIT C, ATTACHMENT 3

Fee Schedule

The last day of the current maintenance term for all Installation Sites (the "Maintenance End Date") is September 30, 2015. All maintenance fees have been fully prepaid for current and former Installation through the Maintenance End Date. All equipment being maintained is listed on the attached Equipment Inventory, which the parties shall update on at least an annual basis and verified as accurate in writing by the Contract Administrator. The current Equipment Inventory is attached hereto as Digital Voice Exhibit C, Attachment 4.

The amounts previously pre-paid toward all current and prior Installation Sites has resulted in a credit of $42,108, which will be applied to maintenance fees for the maintenance period commencing October 1, 2015.

Maintenance fees shall be invoiced annually in advance for all time periods on and after October 1, 2015, and paid on or before commencement of the maintenance services. The annual maintenance for each Site shall be 22% of the price of the equipment at the time of purchase (i.e., County's discounted purchase price of at least 20% off currently published manufacturer price, excluding VPI non-discountable items as shown in item description as "NON-DISCOUNTABLE" which shall be provided at cost) at the Site being maintained per the then-current Equipment Inventory, which shall be verified as accurate in writing by the Contract Administrator and Replay prior to issuance of each annual invoice. To the extent the Parties agree that any equipment being maintained is relocated, added or removed from service or support, or otherwise modified, the applicable maintenance fees shall be adjusted annually pro rata with the appropriate increase or credit applied to the next invoice.

Optional Services Fee Schedule

If and to the extent requested by County, the following fee schedule shall apply to the optional additional services as listed below. Hourly rate charges apply to time on site and do not apply for travel time.

Item	Hourly Rate
Additional Services - Monday-Friday 8:00AM to 5:00PM (EST)	$195
Additional Services - Saturday (EST)	$285
Additional Services Sunday and Holidays (EST)	$385

DIGITAL VOICE EXHIBIT C, ATTACHMENT 4

Equipment Inventory

The Equipment Inventory will be updated periodically, and serial numbers for the applicable equipment will be updated on an on-going basis.

Qty	Part Number / Serial Number	Description
		CORAL SPRINGS
27	VP-CVRE	VPI CAPTURE: Voice recording license. Per Activated Channel. **All Commercial and PSAPs over 64 channels. (Includes three concurrent licenses of Priority Playback)
12	VP-AVSW-RDT	Activ! Voice recording license for REDUNDANT systems. Per activated channel.
1	VP-PSAP	Public Safety Enhanced feature set package. Includes: ANI/ALI, Caller ID, Site license, instant recall license, site license for live monitor over LAN
2	VP-4U-PS-RAID1	4U Chassis - Win2008 server (Raid 1: dual 500GB drives). Includes DVD drive. 4 pci slots available.
3	VP-ANALOG-24	24 Port Analog Interface Card
3	RPL-CABLE25	25 ft 25-pair cable
2	VP-RLKT	Sliding rail or shelf kit
1	VP5-VPS-1-100	V-Portal Server Activation (CPU) License. Includes media services (archive mgt) reporting engine and rules engine. Sized to support systems licensed for between 1 and 100 seats or recording channels.
1	VP5-MM-1-100	Media Messaging Link Activation. Enables media control services & media meta-data capture. Sized to support between 1 and 100 recorded channels or agent positions.
1	VP-KVM-8PORT Monitor	8Port KVM switch with 19 inch slide monitor
		CENTRAL/SUNRISE
181	VP-CVRE	VPI CAPTURE: Voice recording license. Per Activated Channel. **All Commercial and PSAPs over 64 channels. (Includes three concurrent licenses of Priority Playback)
52	VP-CVR-Redundant	Activ! Voice recording license for REDUNDANT systems. Per activated channel.
1	VP-PSAP	Public Safety Enhanced feature set package. Includes: ANI/ALI, Caller ID, Site license, instant recall license, site license for live monitor over LAN
1	VP-PSAP	Public Safety Enhanced feature set package. Includes: ANI/ALI, Caller ID, Site license, instant recall license, site license for live monitor over LAN

Qty	Part Number / Serial Number	Description
2	VP5-VPS-1-100	V-Portal Server Activation (CPU) License. Includes media services (archive mgt) reporting engine and rules engine. Sized to support systems licensed for between 1 and 100 seats or recording channels.
1	VP5-VPS-1-250	V-Portal Server Activation (CPU) License. Includes media services (archive mgt) reporting engine and rules engine. Sized to support systems licensed for between 1 and 250 seats or recording channels.
2	VP5-MM-1-100	Media Messaging Link Activation. Enables media control services & media meta-data capture. Sized to support between 1 and 100 recorded channels or agent positions.
1	VP5-MM-1-100	Media Messaging Link Activation. Enables media control services & media meta-data capture. Sized to support between 1 and 100 recorded channels or agent positions.
2	RPL-SVR-VP5-MSSQL08	Microsoft SQL 2008 server standard R2 w/5 cal.
1	RPL-SVR-VP5-MSSQL08	Microsoft SQL 2008 server standard R2 w/5 cal.
2	VP-4U-PS-RAID1	4U Chassis - Win2008 server (Raid 1: dual 500GB drives). Includes DVD drive. 4 pci slots available.
1	RPL-SVR-VP5-4U-RAID1	4U Rack Mount: Intel Quad Core 3.0 Ghz CPU, 4 GB RAM, Hot swap RAID 1 x 2 (300 GB 10K RPM, 500GB 7200 RPM), 5 PCI-E expansion slots, Windows Server 2008 STND R1, Redundant 800w Hot swap power, 1 DVD/RAM multi-drive.
5	VP-ANALOG-24	24 Port Analog Interface Card
1	VP-ANALOG-24	24 Port Analog Interface Card
4	VP-ANALOG-24	24 Port Analog Interface Card
1	VP-PERIPHERALS	Monitor, keyboard, mouse and speakers package
10	RPL-CABLE25	25 ft 25-pair cable
3	VP-RLKT	Sliding rail or shelf kit
1	VP-KVM-2PORT	2 Port KVM switch
		SOUTH / PEMBROKE PINES
143	VP-CVRE	VPI CAPTURE: Voice recording license. Per Activated Channel. **All Commercial and PSAPs over 64 channels. (Includes three concurrent licenses of Priority Playback)
54	VP-CVR-Redundant	Activ! Voice recording license for REDUNDANT systems. Per activated channel.
2	*VP-PSAP*	*Public Safety Enhanced feature set package. Includes: ANI/ALI,* Caller ID, Site license, instant recall license, site license for live monitor over LAN
2	VP5-VPS-1-100	V-Portal Server Activation (CPU) License. Includes media services (archive mgt) reporting engine and rules engine. Sized to support systems licensed for between 1 and 100 seats or recording channels.

Qty	Part Number / Serial Number	Description
2	VP5-MM-1-100	Media Messaging Link Activation. Enables media control services & media meta-data capture. Sized to support between 1 and 100 recorded channels or agent positions.
2	RPL-SVR-VP5-MSSQL08	Microsoft SQL 2008 server standard R2 w/5 cal.
2	VP-LM	Live Monitoring and Instant Recall Server Site License.
2	VP-4U-PS-RAID1	4U Chassis - Win2008 server (Raid 1: dual 500GB drives). Includes DVD drive. 4 pci slots available.
2	VP-ANALOG-24	24 Port Analog Interface Card
4	VP-ANALOG-24	24 Port Analog Interface Card
3	VP-ANALOG-24	24 Port Analog Interface Card
9	RPL-CABLE25	25 ft 25-pair cable
2	VP-RLKT	Sliding rail or shelf kit
1	RPL-KVMPKG-8Port	19 inch LCD Monitor with 8 Port KVM Switch and Mouse. Part SMK-980S19D
		COCONUT CREEK
166	VP-CVRE	VPI CAPTURE: Voice recording license. Per Activated Channel. **All Commercial and PSAPs over 64 channels. (Includes three concurrent licenses of Priority Playback)
53	VP-CVR-Redundant	Activl Voice recording license for REDUNDANT systems. Per activated channel.
2	VP-PSAP	Public Safety Enhanced feature set package. Includes: ANI/ALI, Caller ID, Site license, instant recall license, site license for live monitor over LAN
2	VP5-VPS-1-100	V-Portal Server Activation (CPU) License. Includes media services (archive mgt) reporting engine and rules engine. Sized to support systems licensed for between 1 and 100 seats or recording channels.
2	VP5-MM-1-100	Media Messaging Link Activation. Enables media control services & media meta-data capture. Sized to support between 1 and 100 recorded channels or agent positions.
2	RPL-SVR-VP5-MSSQL08	Microsoft SQL 2008 server standard R2 w/5 cal.
2	VP-LM	Live Monitoring and Instant Recall Server Site License.
2	VP-4U-PS-RAID1	4U Chassis - Win2008 server (Raid 1: dual 500GB drives). Includes DVD drive. 4 pci slots available.
7	VP-ANALOG-24	24 Port Analog Interface Card
1	VP-ANALOG-24	24 Port Analog Interface Card
8	RPL-CABLE25	25 ft 25-pair cable
2	VP-RLKT	Sliding rail or shelf kit
1	RPL-KVM-8Port	19 inch LCD Monitor with 8 Port KVM Switch and Mouse. Part SMK-

Qty	Part Number / Serial Number	Description
		980S19D
		BROWARD PSB
24	VP-CVRE	VPI CAPTURE: Voice recording license. Per Activated Channel. **All Commercial and PSAPs over 64 channels. (Includes three concurrent licenses of Priority Playback)
1	VP-PSAP	Public Safety Enhanced feature set package. Includes: ANI/ALI, Caller ID, Site license, instant recall license, site license for live monitor over LAN
1	VP5-VPS-1000	V-Portal Server Activation (CPU) License. Includes media services (archive mgt) reporting engine and rules engine. Sized to support systems licensed for between 1 and 100 seats or recording channels.
1	RPL-SVR-VP5-MSSQL08	Microsoft SQL 2008 server standard R2 w/5 cal.
4	VP-4U-PS-RAID1	4U Chassis - Win2008 server (Raid 1: dual 500GB drives). Includes DVD drive. 4 pci slots available.
11	VP-ANALOG-24	24 Port Analog Interface Card
1	VP-DIGITAL-8	8 Port Digital Interface Card
12	RPL-CABLE25	25 ft 25-pair cable
4	VP-RLKT	Sliding rail or shelf kit
1	RPL-NAS-2TB	2TB NAS server - 2U rack mount with windows server OS loaded on a solid state drive, dual hot/swap power supplies and RAID5 hot/swap data drives
1	ServerCabinet	Server Cabinet 72"
1	RPL-KVM-8Port	19 inch LCD Monitor with 8 Port KVM Switch and Mouse. Part SMK-980S19D
		BROWARD EOC
36	VP-CVRE	VPI CAPTURE: Voice recording license. Per Activated Channel. **All Commercial and PSAPs over 64 channels. (Includes three concurrent licenses of Priority Playback)
21	VP-CVR-Redundant	Activ! Voice recording license for REDUNDANT systems. Per activated channel.
1	VP-PSAP	Public Safety Enhanced feature set package. Includes: ANI/ALI, Caller ID, Site license, instant recall license, site license for live monitor over LAN
1	VP5-MM-1-100	Media Messaging Link Activation. Enables media control services & media meta-data capture. Sized to support between 1 and 100 recorded channels or agent positions.
62	VP-CVRE	VPI CAPTURE: Voice recording license. Per Activated Channel. **All Commercial and PSAPs over 64 channels. (Includes three concurrent licenses of Priority Playback)
1	VP5-VPS-1-100	V-Portal Server Activation (CPU) License. Includes media services

Qty	Part Number / Serial Number	Description
		(archive mgt) reporting engine and rules engine. Sized to support systems licensed for between 1 and 100 seats or recording channels.
1	VP5-MM-1-100	Media Messaging Link Activation. Enables media control services & media meta-data capture. Sized to support between 1 and 100 recorded channels or agent positions.
2	VP-SVR-VP5-MSSQL08	Microsoft SQL 2008 server standard R2 w/5 cal.
2	VP-4U-PS-RAID1	4U Chassis - Win2008 server (Raid 1: dual 500GB drives). Includes DVD drive. 4 pci slots available.
5	VP-ANALOG-24	24 Port Analog Interface Card
1	VP-PERIPHERALS	Monitor, keyboard, mouse and speakers package
5	RPL-CABLE25	25 ft 25-pair cable
2	VP-RLKT	Sliding rail or shelf kit
1	ServerCabinet	Server Cabinet 20u
1	Playback PC	Playback PC
		PLANTATION
18	VP-CVRE	VPI CAPTURE: Voice recording license. Per Activated Channel. **All Commercial and PSAPs over 64 channels. (Includes three concurrent licenses of Priority Playback)
12	VP-CVR-Redundant	Activ! Voice recording license for REDUNDANT systems. Per activated channel.
1	VP-PSAP	Public Safety Enhanced feature set package. Includes: ANI/ALI, Caller ID, Site license, instant recall license, site license for live monitor over LAN
1	VP5-VPS-1-100	V-Portal Server Activation (CPU) License. Includes media services (archive mgt) reporting engine and rules engine. Sized to support systems licensed for between 1 and 100 seats or recording channels.
1	VP-2U-RAID1	2U Chassis - Win2003 Server (Raid 1: Dual 250 GB Drives). Includes DVD drive. 4 PCI slots available.
1	RPL-SVR-VP5-4U-RAID1	4U Rack Mount: Intel Quad Core 3.0 Ghz CPU, 4 GB RAM, Hot swap RAID 1 x 2 (300 GB 10K RPM, 500GB 7200 RPM), 5 PCI-E expansion slots, Windows Server 2008 STND R1, Redundant 800w Hot swap power, 1 DVD/RAM multi-drive.
1	VP-ANALOG-24	24 Port Analog Interface Card
1	VP-ANALOG-24	24 Port Analog Interface Card
2	RPL-CABLE25	25 ft 25-pair cable
2	VP-RLKT	Sliding rail or shelf kit
1	RPL-KVM-8PORT	8 Port KVM Switch with 19 inch slide-out monitor.
1	ServerCabinet	Server Cabinet 72"
1	RPL-Playback PC	Replay Systems Playback PC (no Monitor)

Qty	Part Number / Serial Number	Description
		ADDITIONAL INVENTORY
159	VP-CVRE	VPI CAPTURE: Voice recording license. Per Activated Channel. **All Commercial and PSAPs over 64 channels. (Includes three concurrent licenses of Priority Playback)
66	VP-CVR-Redundant	Activl Voice recording license for REDUNDANT systems. Per activated channel.
1	VP-NAS-2TB	2TB NAS appliance device (FROM MARGATE)
2	RPL-Playback PC	VPI playback workstation keyboard, mouse, speakers (excludes monitor) (FROM MARGATE)
1	VP-DIGITAL-8	8 Port Digital Interface Card (from Pompano)
1	VP-DIGITAL-8	8 Port Digital Interface Card (from Fort Laudedale)
73	VP-CVRE	VPI CAPTURE: Voice recording license. Per Activated Channel. **All Commercial and PSAPs over 64 channels. (Includes three concurrent licenses of Priority Playback)
16	VP-CVR-Redundant	Activl Voice recording license for REDUNDANT systems. Per activated channel.
1	VP-PSAP	Public Safety Enhanced feature set package. Includes: ANI/ALI, Caller ID, Site license, instant recall license, site license for live monitor over LAN
2	VP5-VPS-250	V-Portal Server Activation (CPU) License. Includes media services (archive mgt) reporting engine and rules engine. Sized to support systems licensed for up to 250 seats or recording channels.
2	VP5-MM-1-100	Media Messaging Link Activation. Enables media control services & media meta-data capture. Sized to support between 1 and 100 recorded channels or agent positions.
1	VP-MSS	Multi-Server Support
1	RPL-RAS	License of Remote Access software for service (no charge)
2	VP-4U-PS-RAID1	4U Chassis - Win2008 server (Raid 1: dual 500GB drives). Includes DVD drive. 4 pci slots available.
2	VP-ANALOG-24	24 Port Analog Interface Card
1	VP-PERIPHERALS	Monitor, keyboard, mouse and speakers package
2	RPL-CABLE25	25 ft 25-pair cable
2	VP-RLKT	Sliding rail or shelf kit
1	PlaybackPC	Playback PC

"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

BROWARD COUNTY
FLORIDA

Office of Communications Technology
115 S. Andrews Avenue, Room 325 • Fort Lauderdale, Florida 33301 • 954-357-8570 • FAX 954-357-8518

June 14, 2013

OK AD 6/14/13

To: Bertha Henry, County Administrator, Broward County

From: Rick Carpani, Director, Office of Communications Technology

Subject: Assignment Agreement for Replay Systems, Inc. – and Disclosure of Variance From County-Standard Terms & Conditions

Pursuant to the February 26, 2013 Board action, Agenda Item 8B, authorizing the County Administrator to enter into agreements required for the assignment of contracts and agreements to expedite the implementation and continued support of regional communications service delivery through the County's Office of Communications Technology, and pursuant to the May 7, 2013 Board action, Agenda Item 14, authorizing the County Administrator to execute agreements; purchasing contracts; system maintenance agreements for regional assets; operational agreements; municipal interlocal agreements; lease agreements and any other agreements that may be necessary to expedite the implementation/facilitation of the Consolidated Regional E-911 Communications System by October 1, 2013, enclosed herewith are three (3) originals of the ASSIGNMENT, DELEGATION AND RELEASE AGREEMENT between BROWARD COUNTY, SHERIFF OF BROWARD COUNTY, and REPLAY SYSTEMS, INC. for execution by the County Administrator. This assignment agreement also includes an amendment, in section 6.6, for the purchase of additional goods or services necessary to facilitate the Consolidated Regional E-911 Communications System.

Also attached for your reference are DISCLOSURE ITEMS FOR REPLAY SYSTEMS, INC. AGREEMENTS, containing the list of disclosure items and OCT's response to each item.

An agenda report will be completed at a later date with the motion to file the fully executed originals.

Upon execution, please return two (2) originals and one (1) certified copy to the Office of Communications Technology for subsequent filing with the Board.

Please contact me if you have any questions or concerns.

14 JUN '13 AM10:52

ASSIGNMENT, DELEGATION, AND RELEASE AGREEMENT

THIS ASSIGNMENT, DELEGATION, AND RELEASE AGREEMENT ("Assignment") is made by and among SCOTT J. ISRAEL, AS SHERIFF OF BROWARD COUNTY, FLORIDA ("Sheriff"), BROWARD COUNTY, a political subdivision of the State of Florida ("County"), and REPLAY SYSTEMS, INC., a Florida corporation with its principal place of business in Fort Lauderdale, Florida ("Replay").

WHEREAS, on or about June 30, 2006, the Sheriff and Replay entered into a Maintenance Services Agreement Between Replay Systems, Inc. and The Broward Sheriff's Office for Providing Related Repair and Maintenance Services for Dictaphone Recording and Logging Equipment at Broward County PSAPs (the "Maintenance Agreement");

WHEREAS, on or about May 10, 2010, Sheriff and Replay entered into an Agreement By and Between Sheriff of Broward County, Florida and Replay Systems, Inc. for Digital Voice Logging System (the "Digital Voice Agreement");

WHEREAS, pursuant to Section 9.3 of the Digital Voice Agreement, PSAP agreements have been executed between Replay, Sheriff and the following entities or municipalities: BSO Communications (PSB-CDC-1) (dated July 14, 2010); Broward County EOC (dated July 15, 2010); City of Coconut Creek (dated October 14, 2010); City of Coral Springs (dated August 17, 2010); City of Hollywood (dated July 8, 2010); City of Margate (dated September 1, 2010); City of Miramar (dated June 8, 2011); City of Plantation (dated January 3, 2011); City of Pompano (dated July 13, 2010); and City of Sunrise (dated February 8, 2011, and amended by Addendum dated August 9, 2012) (collectively, "Replay PSAP Agreements");

WHEREAS, EscrowTech International, Inc. and Voice Print International, Inc., an affiliate of Replay, entered into a Software Escrow Agreement, dated January 25, 2010, relating to the VPI Empower Suite, for which to which Sheriff is a Beneficiary as defined therein effective as of September 17, 2010 (the "Escrow Agreement");

WHEREAS, effective October 1, 2012 at 12:01 a.m. (the "Effective Date"), County has undertaken the operation of the Regional Communication System ("System") and in order that County may properly perform its functions as the operator of the System, it is appropriate that the Agreement be assigned to County;

WHEREAS, as of the Effective Date, County has agreed to assume Sheriff's rights, duties and obligations under the Maintenance Agreement, the Digital Voice Agreement, the Replay PSAP Agreements, and the Escrow Agreement (collectively herein as the "Replay Agreements");

WHEREAS, Sheriff is willing to assign the Agreement to County and County is willing to accept the assignment of the Replay Agreements;

WHEREAS, on February 26, 2013, the Broward County Board of County Commissioners ("Board") authorized the County Administrator to, *inter alia*, enter into agreements necessary for

the assignment of contracts and agreements necessary to expedite the implementation/facilitation of regional communications service delivery through the County's Office of Communications Technology; and

WHEREAS, the parties desire to enter into this Assignment in order to formalize the assignment to the County of all of the Sheriff's rights, obligations and responsibilities under the Replay Agreements.

NOW, THEREFORE, in consideration of the mutual terms, conditions, promises, covenants, and payments hereinafter set forth, Sheriff, County, and Replay agree as follows:

ARTICLE 1
DEFINED TERMS; RATIFICATION; CONFLICTS

1.1 Defined Terms. All defined terms in this Assignment shall have the same meaning as in the Replay Agreements, except as otherwise noted.

1.2 Ratification. Except as amended and modified by this Assignment, all of the terms, covenants, conditions, and agreements of the Replay Agreements are hereby ratified and shall remain in full force and effect. The parties specifically agree and affirm that the Digital Voice Agreement and Maintenance Agreement have been timely renewed in accordance with the terms thereof, and that support services after the expiration of the Warranty Period have been timely elected pursuant to Section 14.1 of the Digital Voice Agreement for all Installation Sites installed to date as listed on Digital Voice Attachment 4 attached hereto. The parties also specifically ratify the Statements of Work attached to or expressly referenced in all Replay PSAP Agreements executed prior to the date of this Assignment and stipulate that such Statements of Work were approved by the parties pursuant to Section 2.1 of the Digital Voice Agreement.

1.3 Conflicts. In the event of any conflict between the provisions of the Replay Agreements and the provisions of this Assignment, the provisions of this Assignment shall control.

1.4 Term. The terms of the Replay Agreements shall continue for the duration of the existing terms in accordance with the terms of those agreements.

ARTICLE 2
EFFECTIVENESS

The Effective Date of this Assignment shall be October 1, 2012 at 12:01 a.m. *nunc pro tunc*. The Assignment is expressly subject to and contingent upon the approval and execution of this Assignment by all parties. To the extent required by County Administrative Code Section 22.148, the County Chief Information Officer shall review this Assignment prior to execution by the County.

The County Administrator shall execute on behalf of the County under the authority granted by the Board with subsequent filing with the Board.

ARTICLE 3
ESTOPPEL

The Sheriff and Replay represent the following:

3.1 The Replay Agreements are the sole agreements pertaining to the provision of a digital voice logging system and maintenance services between Replay and the Sheriff, and the Agreements have not been modified in any manner except as stated herein;

3.2 Neither Sheriff nor Replay has given a notice of default under either of the Replay Agreements to the other party, neither Sheriff nor Replay is in default of its obligations under either of the Replay Agreements, and no known circumstances exist which, with the giving of notice or passage of time, would ripen into a default under either of the Replay Agreements; and

3.3 All obligations of the parties under the Replay Agreements up to the Effective Date of this Assignment have been fully performed and paid for by the respective parties except unless expressly stated herein.

ARTICLE 4
ASSIGNMENT AND DELEGATION

4.1 As of the Effective Date, Sheriff does hereby assign and delegate to County, as assignee, all of its right, title and interest in and to the Replay Agreements, including all right, title and interest in all reports, documents, or other data prepared and/or provided by Replay thereunder in connection with or related to the Replay Agreements.

4.2 As of the Effective Date, County, as assignee, hereby accepts the assignment and delegation of the Replay Agreements and further agrees to assume all of Sheriff's obligations thereafter under the Replay Agreements and agrees to perform and keep all of the terms, conditions, covenants, agreements, liabilities and obligations to be performed thereunder from and after the Effective Date.

4.3 Replay hereby acknowledges and consents to the assignment and delegation by Sheriff to County of the Replay Agreements as set forth herein.

ARTICLE 5
RELEASE

5.1 Except as otherwise expressly stated herein, Sheriff and Replay hereby release and forever discharge each other, and their respective successors and assigns for all actions, causes of actions, suits, debts, damages, judgments, claims, demands, agreements, promises and obligations whatsoever, in law or in equity, which each party had, now has, or may have, or which any successor or assign of each party can, shall or may have, against the other party arising out of, related to, or in connection with actions or omissions under the Replay Agreements prior to the Effective Date.

5.2 Replay hereby releases and forever discharges County and its successors and assigns for all actions, causes of actions, suits, debts, damages, judgments, claims, demands, agreements, promises and obligations whatsoever, in law or in equity, which Replay had, now has, or may have, or which any successor or assign can, shall or may have, against the County or the Sheriff arising out of, related to, or in connection with actions or omissions under the Replay Agreements prior to the Effective Date.

ARTICLE 6
AMENDMENT OF TERMS AND CONDITIONS OF ORIGINAL AGREEMENT

The Replay Agreements are hereby amended as set forth in this Article 6 as of the Effective Date. To the extent applicable, bold/underlining indicates insertions, and strikethrough indicates deletions.

6.1 As of the Effective Date, as between Replay and the County, all references in the Replay Agreements to "Sheriff," "BSO," "Customer," "User," or "Licensee" shall be deemed to refer to "County," and all references to the Sheriff's Communications Technology Division or "CTD" shall be deemed to refer to the County's Office of Communications, unless otherwise expressly stated herein.

6.2 The address for notices to County under this Assignment and the Replay Agreements, including without limitation Sections 23.8 and 31 of the Digital Voice Agreement and Section 15.1 of the Maintenance Agreement, is hereby amended such that any notice to County after the Effective Date shall be made to the following:

TO COUNTY:
Director of Office of Communications Technology
Attention: Richard Carpani
115 S. Andrews Ave., Suite 325
Fort Lauderdale, Florida 33301

The names, title, addresses for notices under the Replay Agreements can be changed using the notice procedures without the necessity of an amendment to the Replay Agreements.

6.3 Exhibit A to the Digital Voice Agreement (the "Replay PSAP Agreement") is hereby replaced in its entirety with the document attached as Digital Voice Exhibit A hereto, and shall be used as the referenced PSAP agreement under Section 9.3 of the Digital Voice Agreement after the date of this Assignment.

6.3.1 As to any Replay PSAP Agreement executed by a municipality prior to the date of this Assignment, it is hereby agreed and affirmed by Replay, Sheriff and County that all rights and obligations of Sheriff under that Replay PSAP Assignment are assigned in their entirety to County, and Sheriff and County shall cooperate and perform any additional actions necessary, if any, to memorialize said assignment and, if necessary, to enforce the terms of said Replay PSAP Agreement.

6.3.2 As to any municipality that purchased goods or services under to the Digital Voice Agreement prior to the date of this Assignment but has not executed a Replay PSAP Agreement, said municipality may execute the Replay PSAP Agreement attached as Exhibit A hereto within ninety (90) days of the date of this Assignment, which shall be deemed to comply with Section 9.3 of the Digital Voice Agreement.

6.4 Attachment 2 ("Installation Sites") and Attachment 3 ("Fee Schedule") to Exhibit C to the Digital Voice Agreement (the "Support Services" exhibit) are hereby replaced in their entirety with the documents attached hereto as, respectively, Digital Voice Attachment 2 and Digital Voice Attachment 3.

6.5 Exhibit C ("Price List") and Exhibit D ("Product and Equipment List") to the Maintenance Agreement are hereby replaced in their entirety with the documents attached hereto as, respectively, Maintenance Exhibit C and Maintenance Exhibit D. The parties agree and affirm that Maintenance Exhibit C hereto reflects the updated list of prices and fees for Services under the Maintenance Agreement as of the Effective Date of this Assignment, and this amended Exhibit D is deemed amended and incorporated pursuant to Section 6.1 of the Maintenance Agreement.

6.6 To the extent the County elects to purchase any additional goods or services from Replay as set forth in the Replay Agreements and/or listed on Digital Voice Exhibit B, Digital Voice Exhibit C, Attachment 3, or Maintenance Exhibit C (collectively, "Optional Services"), the County's Purchasing Director is authorized to negotiate, approve, and execute Work Authorization(s) in the form attached hereto as Exhibit E for such Optional Services totaling an amount not-to-exceed One Hundred Fifty Thousand Dollars ($150,000.00).

6.7 Notwithstanding anything to the contrary in the Replay Agreements, any fees for maintenance services or support services under the Replay Agreements shall be invoiced to the County in accordance with the Digital Voice Exhibit B (Price Proposals), Digital Voice Exhibit C, Attachment 3 (Fee Schedule), and Maintenance Exhibit C (Price List), and shall be paid by County within thirty (30) days of invoice in accordance the "Broward County

Prompt Payment Ordinance" (Broward County Ordinance No. 89-49). The final invoice must be submitted no later than sixty (60) days after all services are completed and final payment shall not be made prior to formal acceptance of any software by the County Chief Information Officer, to the extent required by County Administrative Code Section 22.148. To be deemed proper, an invoice must comply with all requirements set forth in this Assignment and the Replay Agreements and must be submitted on the form and pursuant to instructions prescribed by the Contract Administrator. To be deemed proper, an invoice must comply with all requirements set forth in this Agreement and must be submitted pursuant to instructions prescribed by the Contract Administrator. The County shall have the right to withhold payment of the invoice based on Replay's failure to comply with any term, condition, or requirement of this Assignment or the Replay Agreements.

6.8 Section 13.1 of the Digital Voice Agreement is hereby amended:

13.1 CONTRACTOR warrants that the products and goods provided pursuant to Agreement shall be free from defects in material, manufacturing and workmanship for a period of one (1) year from **the date of Final Acceptance**~~date of delivery~~ (the "Warranty Period"). As used herein, the term "defect" shall mean an aberration that prevents the applicable good or product from performing in accordance with its specifications.

6.9 Section 22 of the Digital Voice Agreement is hereby amended as follows:

CONTRACTOR shall indemnify, hold harmless and defend .... The **County**~~Sheriff~~ reserves the right to select defense counsel **to be provided by Contractor pursuant to this Section 22.1 at no cost to County**.

6.10 Section 50.2 of the Digital Voice Agreement is hereby amended as follows:

50.2 **Intentionally omitted.**~~In the event either party brings n action against the other to enforce any conditions or covenant of this Agreement, the prevailing party in such action shall be entitled to recover the court costs and reasonable attorneys' fees in the judgment rendered in such action.~~

6.11 Notwithstanding anything to the contrary in the Replay Agreements, Replay shall preserve and make available, at reasonable times for examination and audit by the County, all financial records, supporting documents, statistical records, and any other documents pertinent to the Replay Agreements for the required retention period of the Florida Public Records Act, Chapter 119, Florida Statutes, if applicable, or for three (3) years after the expiration or termination of the Replay Agreements, whichever is longer.

6.12 Notwithstanding anything in the Agreement to the contrary, the County may terminate this Assignment and the Replay Agreements if Replay is found to have submitted a false certification pursuant to Section 287.135, Florida Statutes, if Replay has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with

Activities in the Iran Petroleum Energy Sector List, if Replay has been engaged in business operations in Cuba or Syria, or if Replay has failed to promptly implement corrective action for audit deficiencies upon reasonable notice by the County. Notwithstanding anything contained in this Assignment or the Replay Agreements to the contrary, the rights and obligations of the parties under this paragraph shall be governed by Florida Statutes Section 287.135.

ARTICLE 7
MISCELLANEOUS

7.1 Severability. In the event any portion or provision of this Assignment or the Replay Agreements is found to be unenforceable by any court of competent jurisdiction, that provision or portion shall be deemed severed from and the balance of the agreement shall remain in full force and effect.

7.2 Joint Preparation. This Assignment has been jointly prepared by the parties hereto, and shall not be construed more strictly against any party.

7.3 Applicable Law and Venue. This Assignment and the Replay Agreements shall be interpreted and construed in accordance with, and governed by, the laws of the state of Florida. The parties agree that the exclusive venue for any lawsuit arising from, related to, or in connection with this Assignment or either of the Replay Agreements shall be in the state courts of the Seventeenth Judicial Circuit in and for Broward County, Florida. If any claim arising from, related to, or in connection with this Assignment or the Replay Agreements must be litigated in federal court, the parties agree that the exclusive venue for any such lawsuit shall be in the United States District Court or United States Bankruptcy Court for the Southern District of Florida. **BY ENTERING INTO THIS ASSIGNMENT, THE PARTIES EACH HEREBY EXPRESSLY WAIVE ANY AND ALL RIGHTS THE PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION ARISING FROM, RELATED TO, OR IN CONNECTION WITH THIS ASSIGNMENT OR ANY OF THE REPLAY AGREEMENTS.**

7.4. Third Party Rights. Nothing in this Assignment shall be construed to give any rights or benefits to anyone other than Sheriff, County and Replay.

7.5 Successors and Assigns. This Assignment shall inure to and be binding upon the authorized successors and assigns of the parties.

7.6 Assignment. Notwithstanding anything to the contrary in the Replay Agreements, Replay may not assign, transfer, subcontract, or encumber this Assignment, the Replay Agreements, or any right or interest therein without the prior written consent of County.

7.7 Recitals and Headings. The information contained in the Recitals set forth above is true and correct and is incorporated into the body of this Assignment. The headings contained herein are for reference purposes only and shall not affect in any way the meaning or interpretation of this Assignment.

7.8 Counterparts and Multiple Copies. Multiple copies of this Assignment may be executed by all parties, each of which, bearing original signatures, shall have the force and effect of an original document. This Assignment may be executed in counterparts, each of which shall have the force and effect of an original document, but all of which, taken together, shall constitute one and the same agreement.

[REMAINDER INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have made and executed this Assignment, Delegation, and Release Agreement: SCOTT J. ISRAEL, SHERIFF OF BROWARD COUNTY, FLORIDA, signing by and through himself in his official capacity or his duly authorized representative, BROWARD COUNTY through its County Administrator, authorized to execute same by the Broward County Board of Commissioners action on the 26th day of February, 2013, and REPLAY SYSTEMS, INC., signing through _____, duly authorized to execute same.

SHERIFF OF BROWARD COUNTY

By: _____ Date: 6/6/13
SCOTT J. ISRAEL, As Sheriff of Broward County

Approved as to form and legal sufficiency:

By: _____ Date: 05/30/13
Ronald M. Gunzburger, General Counsel
Office of the General Counsel

ASSIGNMENT, DELEGATION, AND RELEASE AGREEMENT AMONG SCOTT J. ISRAEL, AS SHERIFF OF BROWARD COUNTY, FLORIDA, BROWARD COUNTY, AND REPLAY SYSTEMS, INC.

BROWARD COUNTY

WITNESS:

(Signature)

MARYANNE DARBY

(Print Name of Witness)

(Signature)

ANDRÉ MORRELL

(Print Name of Witness)

BROWARD COUNTY, by and through its Board of County Commissioners

By _____
County Administrator

12th day of June, 2013

Approved as to form by
Joni Armstrong Coffey
Broward County Attorney
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Telecopier: (954) 357-7641

By _____ (6-6-13)
Andrea S. Froome (Date)
Senior Assistant County Attorney

and

By _____ 6/6/13
René D. Harrod (Date)
Assistant County Attorney

Insurance requirements approved by Broward County Risk Management Division

By _____ 6/6/13
Risk Management Division (Date)

Jacqueline A. Binns

Risk Insurance and Contracts Manager
Print Name and Title above

ASF/RDH
05/23/13
2013-05-23 Replay Assignment Agreement
13-104.00

BROWARD COUNTY COMMISSIONERS CREATED OCT 1st 1915

ASSIGNMENT, DELEGATION, AND RELEASE AGREEMENT AMONG SCOTT J. ISRAEL, AS SHERIFF OF BROWARD COUNTY, FLORIDA, BROWARD COUNTY, AND REPLAY SYSTEMS, INC.

REPLAY SYSTEMS, INC.

WITNESSES:

Signature

Robin M. Soldano

Print Name of Witness above

Signature

Alex Morales

Print Name of Witness above

REPLAY SYSTEMS, INC.

By: _____

Authorized Signor

Scott Hurley / CEO

Print Name and Title

30th day of MAY, 2013

ATTEST:

Corporate Secretary or other person authorized to attest

(CORPORATE SEAL)

DIGITAL VOICE EXHIBIT A
Replay PSAP Agreement

REPLAY PSAP AGREEMENT

This Replay PSAP Agreement is made and entered this __ day of __ , 20__, by and between the Broward County ("County"), Replay Systems, Inc. ("Replay") and the City of _____ ("City").

WHEREAS, the County and Replay are parties to an Agreement for a Digital Logging System for the County-owned communication centers, with the County's option to extend the Agreement along with the pricing to any or all PSAPs within Broward County ("Replay Agreement"); and

WHEREAS, the Replay Agreement covers the purchase of the digital recording equipment and software along with the implementation and support services for emergency telephone lines, non-emergency telephone lines and radios; and

WHEREAS, the City has requested that the City-owned PSAP received the digital recording equipment and software as set forth herein; and

WHEREAS, the County and Replay are desirous of extending the Replay Agreement and its pricing to the City as set forth herein.

THEREFORE, in consideration of the mutual terms and conditions set forth herein, the County and City agree as follows:

1. The above recitals are true and correct and incorporated herein by reference.

2. The County, City and Replay agree to the attached Statement of Work, which will include, but not be limited to, detail specifications, description of deliverables, Project Timeline, Cost and Payment Schedule, and the Acceptance Test Plan.

3. County will be responsible for the cost of the digital recording equipment and software at the PSAP for emergency telephone lines only along with the implementation and support costs associated with such equipment and software.

4. City will be responsible for the cost of the digital recording equipment and software at the PSAPs for radios and non-emergency telephone lines plus the implementation and support costs associated with such equipment and software.

5. The parties agree that the City shall not be entitled to purchase any additional equipment or software pursuant to this Replay PSAP Agreement or the Replay Agreement, unless such purchase is formalized in an amendment to this Replay PSAP Agreement signed with the same formalities as set forth herein.

6. The County shall not be responsible, in any manner, for the delivery and installation of any equipment purchased by the City pursuant to this Replay PSAP Agreement, the quality or reliability of such equipment purchased by the City, or the payment for such equipment. The City may not alter, modify, sell, transfer or otherwise alienate the equipment purchased pursuant to the Replay PSAP Agreement without the advance written consent of the County, except that the City may transfer any of the equipment to the County upon the written agreement of the City and County.

7. Nothing herein is intended nor shall be construed as creating an exclusive arrangement with Replay as to either the County or any City. This Agreement does not restrict any City from acquiring any goods and/or services from Replay or any other entity through a separate written agreement.

8. Except as otherwise provided herein, this Replay PSAP Agreement shall be subject to the terms and conditions set forth in the Replay Agreement.

[Remainder of page intentionally blank.]

IN WITNESS WHEREOF, the County, City and Replay execute this Replay PSAP Agreement on the date(s) shown below.

BROWARD COUNTY

WITNESS:

_____
(Signature)

_____
(Print Name of Witness)

_____
(Signature)

_____
(Print Name of Witness)

Insurance requirements
approved by Broward County
Risk Management Division

By _____
Signature (Date)

_____
Print Name and Title above

BROWARD COUNTY, by and through
its Board of County Commissioners

By_____
County Administrator

____ day of _____, 20___

Approved as to form by
Joni Armstrong Coffey
Broward County Attorney
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Telecopier: (954) 357-7641

By_____
Andrea S. Froome (Date)
Senior Assistant County Attorney

and

By_____
René D. Harrod (Date)
Assistant County Attorney

REPLAY PSAP AGREEMENT BETWEEN BROWARD COUNTY, REPLAY SYSTEMS, INC. AND CITY

CITY

ATTEST:

NAME OF CITY: _____

_____
City Clerk

By: _____
City Mayor

_____
Print Name

_____ day of _____, 2013

I HEREBY CERTIFY that I have approved this Assignment as to form and legal sufficiency subject to execution by the parties:

_____
City Attorney

_____
Print name of City Attorney

REPLAY PSAP AGREEMENT BETWEEN BROWARD COUNTY, REPLAY SYSTEMS, INC. AND CITY

REPLAY SYSTEMS, INC.

Witness: _____

By: _____
Authorized Representative

Its: Scott Hurley / CEO
Print Name & Title

Dated: 30th day of MAY, 2013

STATE OF Florida

COUNTY OF Broward

Sworn to (or affirmed) and subscribed before me this 30th day of May, 2013, by Scott Hurley.

(NOTARY SEAL)

_____
(Signature of Notary Public-State of Florida)

_____
(Name of Notary Typed, Printed, or Stamped)

ROBIN M. SOLDANO
Commission # DD 855979
Expires May 27, 2013
Bonded Thru Troy Fain Insurance 800-385-7019

Personally Known ✓ or Produced Identification _____
Type of Identification Produced_____

DIGITAL VOICE EXHIBIT B

Price Proposals

VPI PARTS AND EQUIPMENT WILL BE SOLD TO BROWARD COUNTY AT A 20% DISCOUNT RATE. County may elect to purchase any amount of the items listed below at the listed County Cost. The most currently published manufacturer's catalogue price at time of purchase (including County 20% discount) prevails if than as set forth herein. At County's request, Replay will provide a copy of the most currently published manufacturer catalogue.

OPTIONAL EQUIPMENT

PART NUMBER*	DESCRIPTION	PRICE**	COUNTY COST
	VPI SEAT LICENSING: (CAPTURE)		
VP5-CVR	VPI CAPTURE: VOICE RECORDING LICENSE. PER ACTIVATED CHANNEL.	$473	$378
VP5-CVRE	VPI CAPTURE ESSENTIAL: VOICE RECORDING LICENSE. PER ACTIVATED CHANNEL.	$315	$252
VP5-CVR-REDUNDANT	VPI CAPTURE REDUNDANT: VOICE RECORDING LICENSE FOR REDUNDANT CAPTURE PURPOSES ONLY, PER APPLICABLE TERMS. PER ACTIVATED CHANNEL.	$158	$126
VP5-CSR	VPI CAPTURE: SCREEN RECORDING LICENSE. PER SEAT.	$158	$126
VP5-CVSR	VPI CAPTURE WITH VOICE & SCREEN RECORDING LICENSES. PRICED PER SEAT.	$525	$420
VP5-LM2	LIVE MONITORING ONLY (ALLOWS LIVE MONITORING OF AGENTS NOT BEING RECORDED)	$158	$126
VP5-CVR-CD	VPI CAPTURE CAMPAIGN DIRECTOR: VOICE RECORDING LICENSE FOR SIEMENS CAMPAIGN DIRECTOR. PER ACTIVATED CHANNEL. LICENSING ONLY VALID WITH PURCHASE OF QUALITY (VP-Q) OR SCREEN RECORDING (VP-SR)	$210	$168
	VPI SEAT LICENSING: (QUALITY)		
VP5-QV	VPI QUALITY WITH VOICE RECORDING (REQUIRES ITEM RPL-TRAINING-ONSITE).	$557	$446
VP5-QPV	VPI QUALITY PRO WITH VOICE RECORDING. INCLUDES SMART EVALUATION FORM AND COACHING. (REQUIRES ITEM RPL-TRAINING-ONSITE).	$630	$504
VP5-QVS	VPI QUALITY WITH VOICE & SCREEN RECORDING (REQUIRES ITEM RPL-TRAINING-ONSITE).	$609	$487

PART NUMBER*	DESCRIPTION	PRICE**	COUNTY COST
VP5-QPVS	VPI QUALITY PRO WITH VOICE & SCREEN RECORDING. INCLUDES SMART EVALUATION FORM AND COACHING (REQUIRES ITEM RPL-TRAINING-ONSITE).	$693	$554
VPI SEAT LICENSING: (EMPOWER)			
VP5-EMP-E	VPI EMPOWER ESSENTIAL: VPI CAPTURE (VOICE AND SCREEN), QUALITY PRO AND PERFORMANCE APPLICATIONS. INTERNAL & EXISTING DATA COLLECTORS ONLY. DATA COLLECTORS & SERVICES SOLD SEPARATELY.(REQUIRES ITEM RPL-TRAINING-ONSITE).	$788	$630
VP5-EMP	VPI EMPOWER: VPI CAPTURE, (VOICE AND SCREEN) QUALITY PRO AND PERFORMANCE APPLICATIONS. ALLOWS CONNECTORS TO 3RD PARTY SYSTEMS. DATA COLLECTORS & SERVICES SOLD SEPARATELY. (REQUIRES ITEM RPL-TRAINING-ONSITE).	$1,008	$806
VPI SEAT LICENSING: (ADDON SEAT MODULES)			
VP5-COACHING	RULES BASED COACHING: SUPPORTS DESKTOP AND CLASSROOM COACHING. PER SEAT. (REQUIRES ITEM RPL-TRAINING-ONSITE).	$126	$101
VP5-P	VPI PERFORMANCE - PERFORMANCE TICKERS, SCORECARDS, KPI TRACKING & REPORTING. PER SEAT. (REQUIRES ITEM RPL-TRAINING-ONSITE).	$315	$252
VP5-P-E	VPI PERFORMANCE ESSENTIAL: SINGLE, PRE-BUILT DATA COLLECTOR ONLY. PERFORMANCE TICKERS, SCORECARDS, KPI TRACKING & REPORTING. PER SEAT.	$210	$168
VP5-Q_A	VPI QUALITY - AGENT EVALUATION. PER SEAT. (REQUIRES ITEM RPL-TRAINING-ONSITE).	$294	$235
VP5-Q-PSAP	VPI QUALITY PRO PSAP BUNDLE. PER DISPATCH / CALL TAKER POSITION. INCLUDES SMART EVALUATION FORM AND COACHING (REQUIRES ITEM VP5-PSAP)	$1,050	$840
SERVER LICENSING (V-PORTAL)			
VP5-VPS-1-100	V-PORTAL SERVER ACTIVATION (CPU) LICENSE. INCLUDES MEDIA SERVICES (ARCHIVE MGT.), REPORTING ENGINE AND RULES ENGINE. SIZED TO SUPPORT SYSTEMS LICENSED FOR BETWEEN 1 AND 100 SEATS OR RECORDING CHANNELS. (REQUIRES ITEM RPL-TRAINING-ONSITE).	$1,260	$1,008

PART NUMBER*	DESCRIPTION	PRICE**	COUNTY COST
VP5-VPS-101-300	V-PORTAL SERVER ACTIVATION (CPU) LICENSE. INCLUDES MEDIA SERVICES (ARCHIVE MGT.), REPORTING ENGINE AND RULES ENGINE. SIZED TO SUPPORT SYSTEMS LICENSED FOR BETWEEN 101 AND 300 SEATS OR RECORDING CHANNELS. (REQUIRES ITEM RPL-TRAINING-ONSITE).	$3,675	$2,940
VP5-VPS-301-1000	V-PORTAL SERVER ACTIVATION (CPU) LICENSE. INCLUDES MEDIA SERVICES (ARCHIVE MGT.), REPORTING ENGINE AND RULES ENGINE. SIZED TO SUPPORT SYSTEMS LICENSED FOR BETWEEN 301 AND 1,000 SEATS OR RECORDING CHANNELS. (REQUIRES ITEM RPL-TRAINING-ONSITE).	$13,125	$10,500
SERVER LICENSING (MEDIA MANAGER)			
VP5-MM-1-100	MEDIA MESSAGING LINK ACTIVATION. ENABLES MEDIA CONTROL SERVICES & MEDIA META-DATA CAPTURE. SIZED TO SUPPORT BETWEEN 1 AND 100 RECORDED CHANNELS OR AGENT POSITIONS.	$630	$504
VP5-MM-101-300	MEDIA MESSAGING LINK ACTIVATION. ENABLES MEDIA CONTROL SERVICES & MEDIA META-DATA CAPTURE. SIZED TO SUPPORT BETWEEN 101 AND 300 RECORDED CHANNELS OR AGENT POSITIONS.	$1,260	$1,008
VP5-MM-301-1000	MEDIA MESSAGING LINK ACTIVATION. ENABLES MEDIA CONTROL SERVICES & MEDIA META-DATA CAPTURE. SIZED TO SUPPORT BETWEEN 301 AND 1000 RECORDED CHANNELS OR AGENT POSITIONS.	$6,300	$5,040
OTHER SOFTWARE OPTIONS			
VP5-LM	LIVE MONITORING AND INSTANT RECALL SERVER SITE LICENSE.	$525	$420
VP5-LOGIN	ENABLES V-PORTAL TO CAPTURE AGENT AND ASSOCIATE THAT DATA WITH CALL FILES VIA WORK STATION LOG-IN. REQUIRES EACH AGENT HAS UNIQUE AGENT LOG-IN NAME & PASSWORD. PER WORKSTATION.	$27	$22
VP5-RP	REMOTE PLAYBACK & PERISHABLE PIN SERVER LICENSE. REQUIRES ANALOG CARD IN VPI SERVER FOR AUDIO TO BE PLAYED USING THESE FEATURES.	$1,050	$840
VP5-RNMS	REMOTE NETWORK MONITORING SOFTWARE. MUST RUN ON A COMPUTER ON THE SAME NETWORK AS VOICE PRINT SERVER(S)	$683	$546

PART NUMBER*	DESCRIPTION	PRICE**	COUNTY COST
	DATA COLLECTORS		
VP5-API	API BUNDLE. INCLUDES API, 1 VPI APPLICATION PACK AND 4 HOURS OF CONSULTING SERVICES	$2,100	$1,680
VP5-EDC	EXISTING VPI DATA COLLECTOR	$1,575	$1,260
VP5-EDC-B	EDIT TO AN EXISTING VPI DATA COLLECTOR. INCLUDES EDITS TO CHANGE / ADD UP TO 10 ELEMENTS FROM SOURCE DATA. DOES NOT INCLUDE SCREEN ANALYTICS LICENSING (IF REQUIRED).	$3,675	$2,940
VP5-EDC-I	EDIT TO AN EXISTING VPI DATA COLLECTOR. INCLUDES EDITS TO CHANGE / ADD FROM 10 - 25 DATA ELEMENTS FROM SOURCE DATA. DOES NOT INCLUDE SCREEN ANALYTICS LICENSING (IF REQUIRED).	$6,300	$5,040
VP5-CAD	CAD INTEGRATION. INCLUDES BASIC DATA COLLECTOR FOR UP TO 10 DATA ELEMENTS FROM CAD SYSTEM TO ASSOCIATE WITH CALL RECORDING. DOES NOT INCLUDE SCREEN ANALYTICS LICENSING (IF REQUIRED). REQUIRES CAD VENDOR TO PROVIDE VPI ACCESS OR VIEW TO SUBSET OF DATABASE.	$3,675	$2,940
VP5-NDC-B	NEW DATA COLLECTOR. CAPTURE OF UP TO 10 ELEMENTS FROM SOURCE DATA. DOES NOT INCLUDE SCREEN ANALYTICS LICENSING (IF REQUIRED).	$6,300	$5,040
VP5-NDC-I	NEW DATA COLLECTOR. CAPTURE FROM 10 - 25 ELEMENTS FROM SOURCE DATA. DOES NOT INCLUDE SCREEN ANALYTICS LICENSING (IF REQUIRED).	$11,550	$9,240
VP5-NDC-C	NEW DATA COLLECTOR. CAPTURE OVER 25 ELEMENTS FROM SOURCE DATA. DOES NOT INCLUDE SCREEN ANALYTICS LICENSING (IF REQUIRED).	$26,250	$21,000
VP5-SA	SCREEN ANALYTICS CAPTURE LICENSE. PER DESKTOP	$105	$84
VP5-URL-M	URL MONITORING APPLICATION. INCLUDES URL MONITORING TOOL, 1 VPI APPLICATION PACK AND 8 HOURS OF CONSULTING SERVICES.	$3,150	$2,520
VP5-LDAP	LDAP INTEGRATION	$630	$504

PART NUMBER*	DESCRIPTION	PRICE**	COUNTY COST
VP5-APPEND	FLAG OR ADD COMMENTS TO A LIVE CALL. PER WORKSTATION	$27	$22
VP5-MAS	MASTERMIND INTEGRATION	$3,150	$2,520
VP5-PSAP-1	PSAP ENHANCED PACKAGE: INSTANT RECALL (QTY 5), LIVE MONITOR (QTY 5), CALLER ID (IF AVAILABLE), INCIDENT CREATION & REDACTION TOOL.	$263	$210
VP5-PSAP-2	PSAP ENHANCED PACKAGE: INSTANT RECALL (QTY 5), LIVE MONITOR (QTY 5), CALLER ID (IF AVAILABLE), INCIDENT CREATION & REDACTION TOOL. INCLUDES CAPTURE OF ANI / ALI FROM 911 CONTROLLER DATA IF PROVIDED.	$903	$722
VP5-DETRUNK-ZONE	MOTOROLA DE-TRUNKING MEDIA MESSAGING FOR SMART ZONE SYSTEMS. SW ONLY.	$10,500	$8,400
VP5-DETRUNK-NET	MOTOROLA DE-TRUNKING MEDIA MESSAGING FOR SMART NET SYSTEMS. SW ONLY.	$5,250	$4,200
RPL-RAS	LICENSE OF REMOTE ACCESS SOFTWARE FOR SERVICE. ** (NO CHARGE)	$-	$-
		SERVER PLATFORMS	
RPL-SVR-VP5-2URM-RAID1X2	2U RACK MOUNT: INTEL 2.4 GHZ CPU, 12 GB RAM, HOT SWAP RAID 1 X 2 (300 GB 10K RPM, 500 GB 7200 RPM) 3 PCI-E EXPANSION SLOTS, WINDOWS SERVER 2008 STND R1(DOWNGRADE) OR R2 (64 BIT ONLY), REDUNDANT 700W HOT SWAP POWER, 1 DVD/RAM MULTI-DRIVE	$5,000	$5,000
RPL-SVR-VP5-4URM-001-2	4U RACK MOUNT: INTEL XEON QUAD CORE 2.4 GHZ CPU, 12GB RAM DDR3-1333, HOT SWAP 500GB 7200 RPM 32MB CACHE RAID 1 X 2, 3 PCI-E AND 3 PCI EXPANSION SLOTS, WINDOWS SERVER 2008 R2 64BIT, REDUNDANT 800W HOT SWAP POWER, 1 DVD/RAM MULTI-DRIVE.	$5,100	$5,100
RPL-SVR-VP5-2UNAS-RAID1	SERVER - SUPERMICRO 2U WITH HOT SWAP 720W PS, LGA 1366, INTEL QUAD-CORE. 2.4GHZ / 12MB CACHE CPU, 8GB, HOT SWAP 2TB NAS SERVER RAID1. 40GB SOLID STATE DRIVE, WINDOWS SERVER STND 2008, DVD/RAM MULTIDRIVE	$4,700	$4,700
RPL-SVR-VP5-MSSQL08	MICROSOFT SQL 2008 SERVER STANDARD R2 W/ 5 CAL. (OEM)	$2,200	$2,200
RPL-CPSS	CUSTOMER PROVIDED SERVER STAGING	$500	$500

PART NUMBER*	DESCRIPTION	PRICE**	COUNTY COST
	SERVER PERIPHERALS		
RPL-PERIPHERALS	MONITOR, KEYBOARD, MOUSE AND SPEAKERS PACKAGE	$400	$400
RPL-SERVERKIT	SERVER PERIPHERAL KIT FOR CPE: INCLUDES DVD-RAM DRIVE, SOUNDCARD, MODEM, REMOTE DIAGNOSTIC SOFTWARE AND USB MINI HUB.	$450	$450
RPL-RLKT	SLIDING RAIL KIT (EXCLUDES HP SERVERS)	$140	$140
RPL-SRLKT	SLIDING RAIL KIT: TOWER - RACK CONVERSION KIT FOR HP 110 SERVER	$570	$570
	VOICE INTERFACE UNITS		
VP5-DIGITAL-8	8 PORT DIGITAL INTERFACE CARD	$2,840	$2,272
VP5-DIGITAL-16	16 PORT DIGITAL INTERFACE CARD	$4,300	$3,440
VP5-DIGITAL-24	24 PORT DIGITAL INTERFACE CARD	$5,900	$4,720
VP5-ANALOG-8	8 PORT ANALOG INTERFACE CARD	$1,800	$1,440
VP5-ANALOG-24	24 PORT ANALOG INTERFACE CARD	$4,800	$3,840
VP5-T1-2-A	DUAL SPAN TRUNK / PCM 32 AUDIO INTERFACE CARD	$8,200	$6,560
VP5-CONTACT-48	CONTACT CLOSURE INTERFACE CARD. SUPPORTS UP TO 48 ANALOG INTERFACE CHANNELS.	$1,200	$1,200
VP5-MM-SYNTELLECT	MEDIA MESSAGING LINK ACTIVATION REQUIRING SYNTELLECT MIDDLEWARE	$150	$150
VP5-CVOIP-10	CAPTURE VOIP LICENSING. BUNDLE OF 10 LICENSES.	$257	$257
VP5-IPX-EX	BASE VOIP INTERFACE BOARD - SUPPORTS UP TO 480 SESSIONS AND 2 SPAN PORTS (1 PER SERVER REQUIRED). REQUIRES "VP-CVOIP" LICENSING.	$2,600	$2,080
VP5-IPX-30B	BASE VOIP INTERFACE BOARD - SUPPORTS UP TO 480 SESSIONS AND 2 SPAN PORTS (1 PER SERVER REQUIRED). ** (REQUIRES "VP5-CVOIP" LICENSING)	$1,880	$1,504
	3RD PARTY INTEGRATION SOLUTIONS		
VP5-SMARTZONE	DE-TRUNKING SOLUTION FOR MOTOROLA SMARTZONE ENVIRONMENTS. REQUIRES VPI DE-TRUNKING SOFTWARE	$24,570	$24,570
VP5-SMARTNET	DE-TRUNKING SOLUTION FOR MOTOROLA SMARTNET ENVIRONMENTS. REQUIRES VPI DE-TRUNKING SOFTWARE	$18,585	$18,585

PART NUMBER*	DESCRIPTION	PRICE**	COUNTY COST
VP5-MOTO REP	UPGRADE TO VP5-SMARTZONE OR VP5-SMARTNET TO INCLUDE TRUNKED RADIO REPORTING (INCLUDING 6 MONTHS OF HISTORICAL DATA)	$9,660	$9,660
DATA STORAGE			
RPL-DVD-2	MIRRORING 9.4 DVD-DRIVE UPGRADE, INCLUDES VOICE PRINT DUAL DVD-RAM ACTIVATION LICENSE, AN ADDITIONAL DVD-RAM DRIVE WITH 1-DOUBLE SIDED 9.4 GB DVD-RAM BLANK MEDIA.	$350	$350
RPL-NAS-1TB	1TB* NAS APPLIANCE – 1U RACK MOUNT WITH NON – WINDOWS ROM BASED OS, HOT/SWAP RAID DATA DRIVES	$3,370	$3,370
RPL-NAS-2TB	2TB* NAS SERVER - 2U RACK MOUNT WITH WINDOWS SERVER OS LOADED ON A SOLID STATE DRIVE, DUAL HOT/SWAP POWER SUPPLIES AND RAID5 HOT/SWAP DATA DRIVES (*NOTE: ACTUAL USABLE SPACE 1.85 TB)	$3,670	$3,670
RPL-NAS-NOOS	2TB NAS, NON-WINDOWS WITH RAID5, HOTSWAP	$1,500	$1,500
RPL-MHD-250	250 GB HARD DRIVE	$300	$300
OTHER PERIPHERAL HARDWARE COMPONENTS			
RPL-DLP	DYNAMETRIC LOGGER PATCH	VARIES	VARIES
RPL-B	BEEP TONE GENERATOR (FOR DIGITAL TELEPHONES).	VARIES	VARIES
RPL-BS	BEEP TONE GENERATOR (FOR DIGITAL TELEPHONES) WITH ON/OFF SWITCH.	VARIES	VARIES
RPL-KVM-4PORT	4 PORT KVM SWITCH	$540	$540
RPL-KVM-4PORT PKG	4 PORT KVM PACKAGE -INCLUDES (4) 10 FOOT CABLES	$680	$680
RPL-KVM-8PORT	8 PORT KVM SWITCH	$1,600	$1,600
RPL-KVM-8PORT PKG	8 PORT KVM PACKAGE -INCLUDES (8) 10 FOOT CABLES	$2,160	$2,160
RPL-MONITOR 17"	17" FLAT SCREEN CRT MONITOR	$299	$299
RPL-MONITOR 17"SP	17-IN LCD FLAT PANEL MONITOR, BUILT-IN SPEAKERS	$499	$499

PART NUMBER*	DESCRIPTION	PRICE**	COUNTY COST
RPL-MN-UPS	UPS UNINTERRUPTABLE POWER SUPPLY FOR SERVERS – MINIMUM OF 1000VA / 500 W, INPUT 120V / OUTPUT 120V. RUN TIME FOR SINGLE SERVER UP TO 1 HOUR. INCLUDES MONITORING SOFTWARE PLUS (2) EXTENDED POWER CABLES AND 1) USB CABLE.	$450	$450
RPL-TASCAM II	TASCAM CASSETTE RECORDER (DUAL DUPLICATION)	$749	$749
RPL-CABLE15	15FT 25-PAIR CABLE	$48	$48
RPL-CABLE25	25FT 25-PAIR CABLE	$56	$56
RPL-GRA98	5 PACK DVD RAM 9.4GB	$180	$180
RPL-GRA99	5 PACK DVD RAM 9.4GB NON-CARTRIDGED	$50	$50
RPL-GRA111	DVD MEDIA CLEANING KIT	$44	$44

*To the extent any part is discontinued or the part number is modified, the equivalent replacement part number shall be deemed to apply or as the parties otherwise agree.

** The current VPI pricelist is as of 2/12/2013, Replay catalog number VPI V5-021213-030713; the current Replay VPI V5 pricelist is as of 4/25/2013.

Optional Services

For the Broward County PSAP regionalization initiative, the 911 Voice Recording Systems (VRS) currently installed at the PSAPs will be relocated to the regional sites and consolidated to support the additional recording requirements at those sites. The County may request additional optional services from Replay to facilitate and affect this regionalization initiative through a Work Authorization which shall include a Statement of Work. Unless otherwise set forth in the Work Authorization, any such work shall be invoiced to County on a time and materials basis no more often than monthly in arrears, and the hourly rates for services shall be as follows:

Item	Hourly Rate
Additional Services - Monday-Friday 8:00AM to 5:00PM (EST)	$195
Additional Services - Saturday (EST)	$285
Additional Services Sunday and Holidays (EST)	$385

Price Proposal
Version 5

Date: 5/16/2013

Proposal # RH050913

Prepared For

Company: Broward Co OCT
Contact: Mark Jones
Install Address: Coconut Creek PSAP 4800 West Copans Road, Coconut Creek FL
115 South Andrews Avenue, Room 325
Ft. Lauderdale, Florida 33301
Phone: (954) 357-8013
Email: majones@broward.org

Prepared By

Company: Replay Systems
Contact: **Ryan Hurley**
Address: 6555 NW 9th Ave - Suite 105
Fort Lauderdale, FL 33309
Phone: (800) 722-3472 or (954) 267-9199
Email: **Eddie.Guererri@replaysystems.com**

Number of Channels: 62

Number of Positions: 32
Number of Instant Recall Licenses: 32

NOTES: Option A 32 Recording Licesnse 16 of 32 are redundant , Two 24 channel Analog Cards, Two 4U rank mounted servers, PSAP Pkg 2 , site License live monitor and instant recall

Quantity	Part Number	Description	List Price	Unit Price	Total Price
16	VP5-CVRE	VPI CAPTURE ESSENTIAL: Voice Recording License. Per Activated Channel.	$ 315	$ 252	$ 4,032
16	VPS-CVR-Redundant	VPI CAPTURE REDUNDANT: Voice Recording License for redundant capture purposes only, per applicable terms. Per activated channel.	$ 158	$ 126	$ 2,016
2	VP5-VPS-1-100	V-Portal Server Activation (CPU) License. Includes Media Services (archive mgt.), Reporting Engine and Rules Engine. Sized to support systems licensed for between 1 and 100 seats or recording channels. (Requires Item RPL-TRAINING-ONSITE).	$ 1,260	$ 1,008	$ 2,016
2	VP5-MM-1-100	Media Messaging Link Activation. Enables media control services & media meta-data capture. Sized to support between 1 and 100 recorded channels or agent positions.	$ 630	$ 504	$ 1,008
2	VP5-LM	Live Monitoring and Instant Recall Server Site License.	$ 525	$ 420	$ 840
2	VP5-PSAP-2	PSAP enhanced package: Instant Recall (qty 5), Live Monitor (qty 5), Caller ID (if available), Incident Creation & Redaction Tool. Includes capture of ANI / ALI from 911 Controller data if provided.	$ 903	$ 722	$ 1,444
				Software Subtotal:	$ 11,356
2	RPL-SVR-VP5-4URM-001-2	4U Rack Mount: Intel Xeon Quad Core 2.4 Ghz CPU, 12GB Ram DDR3-1333, Hot Swap 500GB 7200 RPM 32MB CACHE RAID 1 X 2, 3 PCI-E and 3 PCI Expansion Slots, Windows Server 2008 R2 64bit, Redundant 800w Hot Swap Power, 1 DVD/RAM Multi-Drive.	$ 5,100	$ 5,100	$ 10,200
2	RPL-SVR-VP5-MSSQL08	Microsoft SQL 2008 Server Standard R2 w/ 5 Cal. (OEM)	$ 2,200	$ 2,200	$ 4,400
2	RPL-ServerKit	Server Peripheral Kit for CPE: Includes DVD-RAM Drive, soundcard, modem, remote diagnostic software and USB Mini Hub.	$ 450	$ 450	$ 900
2	RPL-RLKT	Sliding Rail Kit (excludes HP servers)	$ 140	$ 140	$ 280
2	VP5-Analog-24	24 Port Analog Interface Card.	$ 4,800	$ 3,840	$ 7,680
1	RPL-KVMPKG -8Port	19 inch LCD Monitor with 8 Port KVM Switch and Mouse. Part SMK-980S19D	$ 1,600	$ 1,600	$ 1,600
2	RPL-Cable25	25FT 25-Pair Cable	$ 56	$ 56	$ 112
				Hardware Subtotal:	$ 25,172

Hardware / Software Subtotal	$ 36,528
Services	$ 4,720
TOTAL:	**$ 41,248**

Please check the plan you would like to purchase.

☐ **$8,036** **Extended Hardware & Software Support year 2**

Level 4: 24/7 phone support, parts, onsite 24/7 365. Amount quoted for budgetary purposes. May be

Quantity	Part Number	Description	List Price	Unit Price	Total Price
	added to total at customer's discretion.				

☐ I would not like to purchase an extended maintenance plan.

Customer Signature*: _____

Date: _____

PO Number: _____

Quote is valid for 90 days from date quoted above. Please read and initial the attached "Installation Assumptions". These conditions apply to any purchase.
Assured Performance Plan includes one year of warranty, plus two, three, or four additional years of support respectively.

Price Proposal
Version 5

Date: 5/16/2013

Proposal # RH050813

Prepared For

Company: Broward County OCT
Contact: Mark Jones
Install Address: Ft. Lauderdale PD 1300 W Broward Blvd, Ft. Lauderdale. Fl
115 South Andrews Avenue, Room 325
Ft. Lauderdale, Florida 33301
Phone: (954) 357-8013
Email: majones@broward.org

Prepared By

Company: Replay Systems
Contact: Ryan Hurley
Address: 6555 NW 9th Ave - Suite 105
Fort Lauderdale, FL 33309
Phone: (800) 722-3472 or (954) 267-9199
Email: Eddie.Guererri@replaysystems.com

Number of Channels: 65 Total

Number of Positions: 11
Number of Instant Recall Licenses: 11

NOTES: Option A: 11 Analog recording Licenses for 911 positions, 4U rack mounted server, PSAP PKg, with Site License of Live Monitor and Instant recall., 24 channel Analog card.

Quantity	Part Number	Description	List Price	Unit Price	Total Price
11	VP5-CVRE	VPI CAPTURE ESSENTIAL: Voice Recording License. Per Activated Channel.	$ 315	$ 252	$ 2,772
1	VP5-VPS-1-100	V-Portal Server Activation (CPU) License. Includes Media Services (archive mgt.), Reporting Engine and Rules Engine. Sized to support systems licensed for between 1 and 100 seats or recording channels. (Requires Item RPL-TRAINING-ONSITE).	$ 1,260	$ 1,008	$ 1,008
1	VP5-MM-1-100	Media Messaging Link Activation. Enables media control services & media meta-data capture. Sized to support between 1 and 100 recorded channels or agent positions.	$ 630	$ 504	$ 504
1	VP5-LM	Live Monitoring and Instant Recall Server Site License.	$ 525	$ 420	$ 420
				Software Subtotal:	$ 4,704
1	RPL-SVR-VP5-4URM-001-2	4U Rack Mount: Intel Xeon Quad Core 2.4 Ghz CPU, 12GB Ram DDR3-1333, Hot Swap 500GB 7200 RPM 32MB CACHE RAID 1 X 2, 3 PCI-E and 3 PCI Expansion Slots, Windows Server 2008 R2 64bit, Redundant 800w Hot Swap Power, 1 DVD/RAM Multi-Drive.	$ 5,100	$ 5,100	$ 5,100
1	RPL-SVR-VP5-MSSQL08	Microsoft SQL 2008 Server Standard R2 w/ 5 Cal. (OEM)	$ 2,200	$ 2,200	$ 2,200
1	RPL-PERIPHERALS	Monitor, Keyboard, Mouse and Speakers Package	$ 400	$ 400	$ 400
1	RPL-RLKT	Sliding Rail Kit (excludes HP servers)	$ 140	$ 140	$ 140
1	VP5-Analog-24	24 Port Analog Interface Card.	$ 4,800	$ 3,840	$ 3,840
1	RPL-Cable25	25FT 25-Pair Cable	$ 56	$ 56	$ 56
				Hardware Subtotal:	$ 11,736
				Hardware / Software Subtotal	$ 16,440
				Services	$ 1,935
				TOTAL:	**$ 18,375**

Please check the plan you would like to purchase.

☐ **$3,617** **Extended Hardware & Software Support year 2**

☐ _____

Level 4: 24/7 phone support, parts, onsite 24/7 365. Amount quoted for budgetary purposes. May be added to total at customer's discretion.

☐ I would not like to purchase an extended maintenance plan.

Customer Signature*: _____

Date: _____

Quantity	Part Number	Description	List Price	Unit Price	Total Price
	PO Number:	_____			

Quote is valid for 90 days from date quoted above. Please read and initial the attached "Installation Assumptions". These conditions apply to any purchase.
Assured Performance Plan includes one year of warranty, plus two, three, or four additional years of support respectively.

Price Proposal
Version 5

Date: 5/16/2013

Proposal # RH050913

Prepared For

Company: Broward Co OCT
Contact: Mark Jones
Install Address: Pembroke Pines PD 6057 SW198th Terrace, Pembroke Pines, FL 33332
115 South Andrews Avenue, Room 325
Ft. Lauderdale, Florida 33301
Phone: (954) 357-8013
Email: majones@broward.org

Prepared By

Company: Replay Systems
Contact: Ryan Hurley
Address: 6555 NW 9th Ave - Suite 105
Fort Lauderdale, FL 33309
Phone: (800) 722-3472 or (954) 267-9199
Email: Eddie.Guererri@replaysystems.com

Number of Channels: 100

Number of Positions: 27
Number of Instant Recall Licenses: 27

NOTES: Option A 82 Recording Licesnse 27 are redundant , (5) Five 24 channel Analog Cards, Two 4U rank mounted servers, PSAP Pkg 2 , site License live monitor and instant recall

Quantity	Part Number	Description	List Price	Unit Price	Total Price
55	VP5-CVRE	VPI CAPTURE ESSENTIAL: Voice Recording License. Per Activated Channel.	$ 315	$ 252	$ 13,860
27	VP5-CVR-Redundant	VPI CAPTURE REDUNDANT: Voice Recording License for redundant capture purposes only, per applicable terms. Per activated channel.	$ 158	$ 126	$ 3,402
2	VP5-VPS-1-100	V-Portal Server Activation (CPU) License. Includes Media Services (archive mgt.), Reporting Engine and Rules Engine. Sized to support systems licensed for between 1 and 100 seats or recording channels. (Requires Item RPL-TRAINING-ONSITE).	$ 1,260	$ 1,008	$ 2,016
2	VP5-MM-1-100	Media Messaging Link Activation. Enables media control services & media meta-data capture. Sized to support between 1 and 100 recorded channels or agent positions.	$ 630	$ 504	$ 1,008
2	VP5-LM	Live Monitoring and Instant Recall Server Site License.	$ 525	$ 420	$ 840
2	VP5-PSAP-2	PSAP enhanced package: Instant Recall (qty 5), Live Monitor (qty 5), Caller ID (if available), Incident Creation & Redaction Tool. Includes capture of ANI / ALI from 911 Controller data if provided.	$ 903	$ 722	$ 1,444
				Software Subtotal:	$ 22,570
2	RPL-SVR-VP5-4URM-001-2	4U Rack Mount: Intel Xeon Quad Core 2.4 Ghz CPU, 12GB Ram DDR3-1333, Hot Swap 500GB 7200 RPM 32MB CACHE RAID 1 X 2, 3 PCI-E and 3 PCI Expansion Slots, Windows Server 2008 R2 64bit, Redundant 800w Hot Swap Power, 1 DVD/RAM Multi-Drive.	$ 5,100	$ 5,100	$ 10,200
2	RPL-SVR-VP5-MSSQL08	Microsoft SQL 2008 Server Standard R2 w/ 5 Cal. (OEM)	$ 2,200	$ 2,200	$ 4,400
2	RPL-RLKT	Sliding Rail Kit (excludes HP servers)	$ 140	$ 140	$ 280
5	VP5-Analog-24	24 Port Analog Interface Card.	$ 4,800	$ 3,840	$ 19,200
1	RPL-KVMPKG-8Port	19 inch LCD Monitor with 8 Port KVM Switch and Mouse. Part SMK-980519D	$ 1,800	$ 1,800	$ 1,800
5	RPL-Cable25	25FT 25-Pair Cable	$ 56	$ 56	$ 280
				Hardware Subtotal:	$ 36,160

Hardware / Software Subtotal	$ 58,730
Services	$ 8,970
TOTAL:	**$ 67,700**

Please check the plan you would like to purchase.

☐ **$12,921** **Extended Hardware & Software Support year 2**

Level 4: 24/7 phone support, parts, onsite 24/7 365. Amount quoted for budgetary purposes. May be added to total at customer's discretion.

☐ I would not like to purchase an extended maintenance plan.

Customer Signature*: _____
Date: _____
PO Number: _____

Quote is valid for 90 days from date quoted above. Please read and initial the attached "Installation Assumptions". These conditions apply to any purchase. Assured Performance Plan includes one year of warranty, plus two, three, or four additional years of support respectively.

Price Proposal
Version 5

Date: 5/16/2013

Proposal # RH050913

Prepared For

Company: Broward County- Plantation PD

Contact: Mark Jones

Install Address: 451 NW 70th St., 2nd Floor, Plantation, FL

Phone: 954-562-7103

Email: majones@broward.org

Prepared By

Company: Replay Systems

Contact: **Eddie Guererri**

Address: 6555 NW 9th Ave - Suite 105
Fort Lauderdale, FL 33309

Phone: (800) 722-3472 or (954) 267-9199

Email: **Eddie.Guererri@replaysystems.com**

Number of Channels: 10

Number of Positions: 10

Number of Instant Recall Licenses: 10

NOTES: Option A: VPI 5.4. 10 Analog recording licensesfor 911 positions. 4U rackmounted server. PSAP pkg. 24 ch Analog Interface Card.

Quantity	Part Number	Description	List Price	Unit Price	Total Price
10	VPS-CVRE	VPI CAPTURE ESSENTIAL: Voice Recording License. Per Activated Channel.	$ 315	$ 252	$ 2,520
1	VPS-VPS-1-100	V-Portal Server Activation (CPU) License. Includes Media Services (archive mgt.), Reporting Engine and Rules Engine. Sized to support systems licensed for between 1 and 100 seats or recording channels. (Requires Item RPL-TRAINING-ONSITE).	$ 1,260	$ 1,008	$ 1,008
1	VPS-MM-1-100	Media Messaging Link Activation. Enables media control services & media meta-data capture. Sized to support between 1 and 100 recorded channels or agent positions.	$ 630	$ 504	$ 504
1	VPS-LM	Live Monitoring and Instant Recall Server Site License.	$ 525	$ 420	$ 420
1	VPS-PSAP-2	PSAP enhanced package: Instant Recall (qty 5), Live Monitor (qty 5), Caller ID (if available), Incident Creation & Redaction Tool. Includes capture of ANI / ALI from 911 Controller data if provided.	$ 903	$ 722	$ 722
				Software Subtotal:	$ 5,174
1	RPL-SVR-VPS-4URM-001-2	4U Rack Mount: Intel Xeon Quad Core 2.4 Ghz CPU, 12GB Ram DDR3-1333, Hot Swap 500GB 7200 RPM 32MB CACHE RAID 1 X 2, 3 PCI-E and 3 PCI Expansion Slots, Windows Server 2008 R2 64bit, Redundant 800w Hot Swap Power, 1 DVD/RAM Multi-Drive.	$ 5,100	$ 5,100	$ 5,100
1	RPL-SVR-VPS-MSSQL08	Microsoft SQL 2008 Server Standard R2 w/ 5 Cal. (OEM)	$ 2,200	$ 2,200	$ 2,200
1	VPS-Analog-24	24 Port Analog Interface Card.	$ 4,800	$ 3,840	$ 3,840
1	RPL-NAS-2TB	2TB* NAS Server - 2U Rack Mount with Windows Server OS loaded on a Solid State drive, dual hot/swap power supplies and RAIDS hot/swap data drives (*Note: actual usable space 1.85 TB)	$ 3,670	$ 3,670	$ 3,670
1	RPL-KVM-8Port	19 inch LCD Monitor with 8 Port KVM Switch and Mouse. Part SMK-980S19D	$ 1,800	$ 1,800	$ 1,800
1	RPL-Cable25	25FT 25-Pair Cable	$ 56	$ 56	$ 56
1	RPL-CAB-42U	42U Server Cabinet.	$ 1,500	$ 1,500	$ 1,500
				Hardware Subtotal:	$ 18,166
				Hardware / Software Subtotal	$ 23,340

Quantity	Part Number	Description	List Price	Unit Price	Total Price
				Services	$ 3,650
				TOTAL:	$ 26,990

Please check the plan you would like to purchase.

☐ **$5,135** **Extended Hardware & Software Support year 2**

Level 4: 24/7 phone support, parts, onsite 24/7 365. Amount quoted for budgetary purposes. May be added to total at customer's discretion.

☐ I would not like to purchase an extended maintenance plan.

Customer Signature*: _____

Date: _____

PO Number: _____

Quote is valid for 90 days from date quoted above. Please read and initial the attached "Installation Assumptions". These conditions apply to any purchase.

Assured Performance Plan includes one year of warranty, plus two, three, or four additional years of support respectively.

Price Proposal
Version 5

Date: 5/10/2013

Proposal # RH050913

Prepared For

Company: Broward County- Coral Springs PD
Contact: Mark Jones
Install Address: 2801 Coral Springs Drive, Coral Springs, FL

Phone: 954-562-7103
Email: majones@broward.org

Prepared By

Company: Replay Systems
Contact: Ryan Hurley
Address: 6555 NW 9th Ave - Suite 105
Fort Lauderdale, FL 33309
Phone: (800) 722-3472 or (954) 267-9199
Email: Eddie.Guererri@replaysystems.com

Number of Channels: 94

Number of Positions:
Number of Instant Recall Licenses:

NOTES:

Part 1: Coral Springs Upgrade to v5.4. Upgrade all existing licenses and software. Upgrade existing recording servers to meet v5 specs.

Quantity	Part Number	Description	List Price	Unit Price	Total Price
2	VP5-VPS-1-100	V-Portal Server Activation (CPU) License. Includes Media Services (archive mgt.), Reporting Engine and Rules Engine. Sized to support systems licensed for between 1 and 100 seats or recording channels. (Requires Item RPL-TRAINING-ONSITE).	$ 1,260	$ 1,008	$ 2,016
2	VP5-MM-1-100	Media Messaging Link Activation. Enables media control services & media meta-data capture. Sized to support between 1 and 100 recorded channels or agent positions.	$ 630	$ 504	$ 1,008
				Software Subtotal:	$ 3,024
2	RPL-SVR-VP5-MSSQL08	Microsoft SQL 2008 Server Standard R2 w/ 5 Cal. (OEM)	$ 2,200	$ 2,200	$ 4,400
2	RPL-VPI-ServerUpgrade	Add Raid array and increase Memory on existing server to meet v5.x specs.	$ 2,500	$ 2,500	$ 5,000
				Hardware Subtotal:	$ 9,400
				Hardware / Software Subtotal	$ 12,424
				Services	$ 3,400
				TOTAL:	**$ 15,824**

Please check the plan you would like to purchase.

☐ **$2,733** **Extended Hardware & Software Support year 2**

Level 4: 24/7 phone support, parts, onsite 24/7 365. Amount quoted for budgetary purposes. May be added to total at customer's discretion.

☐ I would not like to purchase an extended maintenance plan.

Customer Signature*: _____
Date: _____
PO Number: _____

Quote is valid for 90 days from date quoted above. Please read and initial the attached "Installation Assumptions". These conditions apply to any purchase. Assured Performance Plan includes one year of warranty, plus two, three, or four additional years of support respectively.

Price Proposal
Version 5

Date: 5/10/2013

Proposal # RH050913

Prepared For

Company: Broward County- Margate PD
Contact: Mark Jones
Install Address: 5790 Margate Blvd., Margate, FL

Phone: 954-562-7103
Email: majones@broward.org

Prepared By

Company: Replay Systems
Contact: **Ryan Hurley**
Address: 6555 NW 9th Ave - Suite 105
Fort Lauderdale, FL 33309
Phone: (800) 722-3472 or (954) 267-9199
Email: **Eddie.Guererri@replaysystems.com**

Number of Channels: 22

Number of Positions:
Number of Instant Recall Licenses:

NOTES:

Part 1: Margate Upgrade to v5.4. Upgrade all existing licenses and software.

Quantity	Part Number	Description	List Price	Unit Price	Total Price
1	VPS-VPS-1-100	V-Portal Server Activation (CPU) License. Includes Media Services (archive mgt.), Reporting Engine and Rules Engine. Sized to support systems licensed for between 1 and 100 seats or recording channels. (Requires item RPL-TRAINING-ONSITE).	$ 1,260	$ 1,008	$ 1,008
1	VPS-MM-1-100	Media Messaging Link Activation. Enables media control services & media meta-data capture. Sized to support between 1 and 100 recorded channels or agent positions.	$ 630	$ 504	$ 504
				Software Subtotal:	$ 1,512
1	RPL-SVR-VP5-4URM-001-2 Upgrade only	4U Rack Mount: Intel Xeon Quad Core 2.4 Ghz CPU, 12GB Ram DDR3-1333, Hot Swap 500GB 7200 RPM 32MB CACHE RAID 1 X 2, 3 PCI-E and 3 PCI Expansion Slots, Windows Server 2008 R2 64bit, Redundant 800w Hot Swap Power, 1 DVD/RAM Multi-Drive.	$ 2,500	$ 2,500	$ 2,500
1	RPL-SVR-VP5-MSSQL08	Microsoft SQL 2008 Server Standard R2 w/ 5 Cal. (OEM)	$ 2,200	$ 2,200	$ 2,200
				Hardware Subtotal:	$ 4,700
				Hardware / Software Subtotal	$ 6,212
				Services	$ 1,700
				TOTAL:	$ 7,912

Please check the plan you would like to purchase.

☐ **$1,367** **Extended Hardware & Software Support year 2**

Level 4: 24/7 phone support, parts, onsite 24/7 365. Amount quoted for budgetary purposes. May be added to total at customer's discretion.

☐ I would not like to purchase an extended maintenance plan.

Customer Signature*: _____

Date: _____

PO Number: _____

Quote is valid for 90 days from date quoted above. Please read and initial the attached "Installation Assumptions". These conditions apply to any purchase. Assured Performance Plan includes one year of warranty, plus two, three, or four additional years of support respectively.

Price Proposal
Version 5

Date: 5/16/2013

Proposal # RH051013

Prepared For

Company: Broward County OCT
Contact: Mark Jones
Install Address: Sunrise PD 10440 West Oakland Blvd, Sunrise FL. 33351
115 South Andrews Avenue, Room 325
Ft. Lauderdale, Florida 33301
Phone: (954) 357-8013
Email: majones@broward.org

Prepared By

Company: Replay Systems
Contact: Ryan Hurley
Address: 6555 NW 9th Ave - Suite 105
Fort Lauderdale, FL 33309
Phone: (800) 722-3472 or (954) 267-9199
Email: Eddie.Guererri@replaysystems.com

Number of Channels: 166

Number of Positions: 34
Number of Instant Recall Licenses: 34

NOTES: Option A: Upgrade V4 to V5.X Transfer 43 Recording Licenses and 5 redudant Licenses add on 33 Recording Licenses and 25 Redundant Licenses for a total on Option A 103 . Two 4U server upgrades for V5, Three 24 channel Analog Cards, PSAP PKG's will carry over from old system.

Quantity	Part Number	Description	List Price	Unit Price	Total Price
45	VP5-CVRE	VPI CAPTURE ESSENTIAL: Voice Recording License. Per Activated Channel.	$ 315	$ 252	$ 11,340
25	VPS-CVR-Redundant	VPI CAPTURE REDUNDANT: Voice Recording License for redundant capture purposes only, per applicable terms. Per activated channel.	$ 158	$ 126	$ 3,150
1	VPS-VPS-1-100	V-Portal Server Activation (CPU) License. Includes Media Services (archive mgt.), Reporting Engine and Rules Engine. Sized to support systems licensed for between 1 and 100 seats or recording channels. (Requires Item RPL-TRAINING-ONSITE).	$ 1,260	$ 1,008	$ 1,008
1	VPS-VPS-101-300	V-Portal Server Activation (CPU) License. Includes Media Services (archive mgt.), Reporting Engine and Rules Engine. Sized to support systems licensed for between 101 and 300 seats or recording channels. (Requires Item RPL-TRAINING-ONSITE).	$ 3,675	$ 2,940	$ 2,940
1	VPS-MM-1-100	Media Messaging Link Activation. Enables media control services & media meta-data capture. Sized to support between 1 and 100 recorded channels or agent positions.	$ 630	$ 504	$ 504
1	VPS-MM-101-300	Media Messaging Link Activation. Enables media control services & media meta-data capture. Sized to support between 101 and 300 recorded channels or agent positions.	$ 1,260	$ 1,008	$ 1,008
2	VPS-PSAP-2	PSAP enhanced package: Instant Recall Live Monitor Caller ID (if available), Incident Creation & Redaction Tool. Includes capture of ANI / ALI from 911 Controller data if provided. **Transfer 2 from Existing systems**			$ -
				Software Subtotal:	$ 19,950
2	RPL-SVR-VPS-4URM-001-2	4U Rack Mount: Intel Xeon Quad Core 2.4 Ghz CPU, 12GB Ram DDR3-1333, Hot Swap 500GB 7200 RPM 32MB CACHE RAID 1 X 2, 3 PCI-E and 3 PCI Expansion Slots, Windows Server 2008 R2 64bit, Redundant 800w Hot Swap Power, 1 DVD/RAM Multi-Drive. **Upgrade only**	$ 2,500	$ 2,500	$ 5,000
2	RPL-SVR-VPS-MSSQL08	Microsoft SQL 2008 Server Standard R2 w/ 5 Cal. (OEM)	$ 2,200	$ 2,200	$ 4,400
2	RPL-RLKT	Sliding Rail Kit (excludes HP servers)	$ 140	$ 140	$ 280
3	VPS-Analog-24	24 Port Analog Interface Card.	$ 4,800	$ 3,840	$ 11,520
1	RPL-KVMPKG-8Port	19 inch LCD Monitor with 8 Port KVM Switch and Mouse. Part SMK-980519D	$ 1,800	$ 1,800	$ 1,800
2	RPL-Cable25	25FT 25-Pair Cable	$ 56	$ 56	$ 112
				Hardware Subtotal:	$ 23,112

Hardware / Software Subtotal	$ 43,062
Services	$ 10,260
TOTAL:	**$ 53,322**

Please check the plan you would like to purchase.

☐ $9,474 **Extended Hardware & Software Support year 2**

Level 4: 24/7 phone support, parts, onsite 24/7 365. Amount quoted for budgetary purposes. May be added to total at customer's discretion.

☐ I would not like to purchase an extended maintenance plan.

Customer Signature*: _____
Date: _____
PO Number: _____

Quote is valid for 90 days from date quoted above. Please read and initial the attached "Installation Assumptions". These conditions apply to any purchase. Assured Performance Plan includes one year of warranty, plus two, three, or four additional years of support respectively.

DIGITAL VOICE EXHIBIT C, ATTACHMENT 2

Installation Sites

1) PSB PSAP Broward Sheriff's Office Public Safety Building 2601 West Broward Blvd. Ft. Lauderdale, FL 33311	
2) EOC PSAP Broward County EOC 201 NW 84th Ave. Plantation, FL 33324	7) Margate PSAP Margate Public Safety Dept. 5790 Margate Blvd. Margate, FL 33063
3) Coconut Creek PSAP Coconut Creek Public Safety Complex 4800 West Copans Road Coconut Creek, FL 33063	8) Plantation PSAP Plantation Police Dept. 471 North West 70th Terrace Plantation, FL 33317
4) Pembroke Pines PSAP Pembroke Pines Fire Station #101 6057 SW 198th Terrace Pembroke Pines, FL 33332	9) Pompano Beach PSAP Broward Sheriff's Office District XI 100 SW 3rd Street Pompano Beach, FL 33060
5) Fort Lauderdale PSAP Fort Lauderdale Police Dept. 1300 West Broward Blvd. Fort Lauderdale, FL 33312	10) Sunrise PSAP Sunrise Public Safety Complex 10440 West Oakland Park Blvd. Sunrise, FL 33351
6) Hollywood PSAP Hollywood Fire Station #74 2751 Stirling Road Hollywood, FL 33020	11) Coral Springs PSAP Coral Springs Public Safety Building 2801 Coral Springs Drive Coral Springs, FL 33065

Note: Locations may be modified, added or deleted from this list if approved in advance by the County in writing. A formal amendment to this agreement will be required to modify consideration or any terms and conditions of this agreement document.

DIGITAL VOICE EXHIBIT C, ATTACHMENT 3

Fee Schedule

E911 Voice Recording System Maintenance (24/7)	Total County Cost (Years 2 - 4)	Total County Paid (Years 2 - 4)	Projected Cost (Year 2 Only)
1) PSB PSAP	$60,765	$60,765	$0
2) EOC PSAP	$32,245	$32,245	$0
3) Coconut Creek PSAP	$0	$0	$8,036
4) Pembroke Pines PSAP	$0	$0	$12,921
5) Fort Lauderdale PSAP	$0	$0	$3,617
6) Hollywood PSAP	$24,390	$24,390	$0
7) Margate PSAP	$10,080	$10,080	$1,367
8) Plantation PSAP	$0	$0	$5,135
9) Pompano Beach PSAP	$26,035	$26,035	$0
10) Sunrise PSAP	$22,216	$22,216	$9,474
11) Coral Springs PSAP	$19,831	$19,831	$2,733
Total for Items above (24/7 Maintenance)	**$195,562**	**$195,562**	**$43,283**

The "Total County Paid (Years 2 - 4)" amounts shown above have been fully pre-paid and no additional amount is due for maintenance services under the Digital Voice Agreement at that site until the conclusion of Year 4. The amounts shown above, under the heading "Projected Cost (Year 2 Only)" have been quoted only, but have not been paid.

Site	In-Service Date	1 Year Warranty Begin Date	Year 2-4 Maintenance End Date
1) PSB PSAP	2/8/2012	2/8/2012	2/8/2016
2) EOC PSAP	8/18/2011	8/18/2011	8/18/2015
3) Coconut Creek PSAP	Installation Pending		
4) Pembroke Pines PSAP	Installation Pending		
5) Fort Lauderdale PSAP	Installation Pending		
6) Hollywood PSAP	7/27/2011	7/27/2011	7/27/2015

7) Margate PSAP	4/13/2011	4/13/2011	4/13/2015
8) Plantation PSAP	Installation Pending		
9) Pompano Beach PSAP	2/27/2012	2/27/2012	2/27/2016
10) Sunrise PSAP	4/18/2011	4/18/2011	4/18/2015
11) Coral Springs PSAP	2/1/2011	2/1/2011	2/1/2015

For any site not fully prepaid or that County elects in its sole discretion not to prepay in advance, Replay shall invoice County in advance on an annual basis for the amount equal to 22% of the County cost of the extended discount price for all Hardware and software, which amount shall be fixed against increases through the end of Year 4 for each site. If the County terminates maintenance for any site prior to the end of the then-current maintenance year, Replay will credit County for the pro rata portion of any unused maintenance fees.

Optional Services Fee Schedule

If and to the extent requested by County, the following fee schedule shall apply to the optional additional services as listed below for any Installation Sites with existing maintenance support. Hourly rate charges apply to time on site and do not apply for travel time.

Item	Hourly Rate
Additional Services - Monday-Friday 8:00AM to 5:00PM (EST)	$195
Additional Services - Saturday (EST)	$285
Additional Services Sunday and Holidays (EST)	$385

MAINTENANCE EXHIBIT C

Fee Schedule

E911 Voice Recording System Maintenance (24/7)	Monthly Cost	Total Cost (Annually)
Coconut Creek PSAP	$676.73	$8,120.76
Fort Lauderdale PSAP	$887.10	$10,645.20
Plantation PSAP	$1,039.50	$12,474.00
Sunrise PSAP	$93.75	$1,125.00
Total for Items above (24/7 Maintenance)	**N/A**	**$32,364.96**

Replay shall invoice County in advance on a quarterly basis for the applicable amount due for that site. In the event the applicable equipment at that site is retired prior to the expiration of a quarter, Replay shall provide County with a credit of the unused pro rata portion of the quarterly fee.

Optional Services Fee Schedule

If and to the extent requested by County, the following fee schedule shall apply to the optional additional services as listed below for any Installation Sites with existing maintenance support. Hourly rate charges apply to time on site and do not apply for travel time.

Item	Hourly Rate
Additional Services - Monday-Friday 8:00AM to 5:00PM (EST)	$195
Additional Services - Saturday (EST)	$285
Additional Services Sunday and Holidays (EST)	$385

MAINTENANCE EXHIBIT D

Legacy Product and Equipment List

Site	Qty.	Part Number	Description	Serial Number
Ft. Lauderdale PSAP	3		Recorder Module	0428537
Ft. Lauderdale PSAP	2	01SA000	Telecom Block	
Ft. Lauderdale PSAP	1	03AF010	FT Freedom Chassis, with 2 power supplies	
Coconut Creek PSAP	1	0005911	10 Min Digital	00023625
Coconut Creek PSAP	1	0005911	10 Min Digital	00023627
Coconut Creek PSAP	1	0005911	10 Min Digital	00987450
Coconut Creek PSAP	1	0005911	10 Min Digital	00987454
Coconut Creek PSAP	1	0005917	Digital Call	00073427
Coconut Creek PSAP	4	0183000	Desktop	
Coconut Creek PSAP	1	01GA000-0W	Recorder Block	00658991
Coconut Creek PSAP	1	03FWSNT-02D	NT Workstation	00678015
Coconut Creek PSAP	1	03FWSNT-01D	NT Workstation	00678311
Coconut Creek PSAP	1	03FWSNT-01D	NT Workstation	00677636
Coconut Creek PSAP	3	0330036-0W	17" Monitor	
Coconut Creek PSAP	1	10ARCSYS-0W	Archive System	
Coconut Creek PSAP	3	0SYSMGR-032	System	
Coconut Creek PSAP	1	0428368	Switch Hub	
Ft. Lauderdale PSAP	14	0428357	Analog Coupler	
Ft. Lauderdale PSAP	2	0501703-NOR	Nortel CPLR BD, 4	
Ft. Lauderdale PSAP	16	0428133	Compression	
Ft. Lauderdale PSAP	1	0FREPAK	SW, Freedom	
Ft. Lauderdale PSAP	1	FREPAK2	SW, Freedom	
Ft. Lauderdale PSAP	12	0FRECHK	SW, Freedom	
Ft. Lauderdale PSAP	1	0FE4320	Server, Sys, Stor	DUP005W1032
Ft. Lauderdale PSAP	1	0FE4320	Server, Sys, Stor	DUP005W1042
Ft. Lauderdale PSAP	1	009PW00-0TW	Workstation	00208164
Ft. Lauderdale PSAP	1	01SA000	Telecom	00244863
Ft. Lauderdale PSAP	1	01SA000	Telecom	00244868

Site	Qty.	Part Number	Description	Serial Number
Ft. Lauderdale PSAP	1	03AB010	FT W, 2 POWER	00244497
Ft. Lauderdale PSAP	1	0428537	Recorder, FT	
Ft. Lauderdale PSAP	1	0FW220P-O2D	WS	00242577
Ft. Lauderdale PSAP	1	0FREANI-POS	System, ANI, ALI, PO	00693222
Ft. Lauderdale PSAP	1	0502396	Switch, Fast-	
Ft. Lauderdale PSAP	1	0FE4320	Server, Sys, Stor	005W1042
Ft. Lauderdale PSAP	1	0428373	Time Synch Kit	
Plantation PSAP	1	05FA000	Recorder, Combo	5FA000262509
Plantation PSAP	1	05FA000	Recorder, Combo	5FA000262511
Plantation PSAP	1	0428744	Switch, Hub, 3COM	
Plantation PSAP	8	0428133	Compression	
Plantation PSAP	1	0FWSXPP-01D	WS Plus, WinXP	FWSXPP-01D264115
Plantation PSAP	1	0FWSXPP-01D	WS Plus, WinXP	FWSXPP-01D264117
Plantation PSAP	1	0FRWPAK	SW, HDW, Super	
Plantation PSAP	3	FREPAK2	SW, Freedom	
Plantation PSAP	1	0FE8640	NAS, 400M, 640G, 44	9TAE220025
Plantation PSAP	1	0FRAUTH-001	Kit, PCI, 3.3V	
Plantation PSAP	1	4000004	TOKEN, LUNA 2, 12	
Plantation PSAP	9	OFRECK	Freedom Call Check Software License	

EXHIBIT E – WORK AUTHORIZATION

Contract: **ASSIGNMENT, DELEGATION, AND RELEASE AGREEMENT BETWEEN BROWARD SHERIFF'S OFFICE, REPLAY SYSTEMS, INC. AND COUNTY FOR REPLAY AGREEMENTS**

Work Authorization No. _____

Contract Administrator
Award Authority for Optional Services

This Work Authorization is between Broward County and Replay Systems, Inc. as required pursuant to the Assignment, executed on _____. In the event of any inconsistency between this Work Authorization and the Assignment, the provisions of the Assignment shall govern and control.

Services to be provided: [DESCRIBE IN DETAIL AND INCLUDE STATEMENT OF WORK]

Contract at issue is __ Lump Sum/ __Not-to-Exceed for amount: $_____

The time period for this Work Authorization will consist of ____ (___) calendar days unless otherwise set forth in an attached quotation.

Fee Determination: Payment for services under this Work Authorization is as follows:

Professional Services	$_____
General Services	$_____
Equipment/Hardware	$_____
Total Maximum Cost of this Work Authorization	$_____

County

Project Manager	Date	Contract Administrator	Date
Risk Management	Date	Board and/or Designee	Date

VENDOR

Signed: _____

Attest:

Typed Name: _____

_____

Title: _____

Meeting Date: 04/26/2016 Agenda Item 6

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 SUBMIT A GRANT APPLICATION FOR THE 2016 NATIONAL URBAN AND COMMUNITY FORESTRY GRANT WITH THE STATE OF FLORIDA, DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES, DIVISION OF FORESTRY, AGREEING TO EXECUTE AN AGREEMENT FOR THE GRANT IF THE GRANT IS AWARDED TO THE CITY, AND TO PROVIDE MATCHING FUNDS IN THE AMOUNT OF $20,000; PROVIDING AN EFFECTIVE DATE.**

Summary of Purpose and Why:

The Development Services Department in conjunction with the Public Works Department, is applying for grant funding from the Florida Department of Agriculture 2016 Urban Forestry Grant. The grant will support Phase II of the City Tree Inventory project previously funded in part by the DOA in 2015.

Support from DOA will be used primarily for the implementation of a tree survey and planting plan for City facilities recognized as priority areas. This new tree survey and planting plan will enable the City to further bolster its urban tree canopy, revise the Urban Forestry Division's planting and maintenance program and serve as a guideline in strengthening Pompano Beach's urban forestry program.

Accomplishing this item supports achieving initiative 2.11.3 "Submit grant application to complete a comprehensive tree inventory" as identified in the City's 2013 Strategic Plan.

(1) Origin of request for this action: Development Services Department
(2) Primary staff contact: Robin Bird/Karen Santen Ext. 4926
(3) Expiration of contract, if applicable: NA
(4) Fiscal impact and source of funding: $20,000 from the Tree Canopy Trust Fund #112

DEPARTMENTAL COORDINATION	DATE	DEPARTMENTAL RECOMMENDATION	DEPARTMENTAL HEAD SIGNATURE
Dev. Services	03/29/2016	Approval	Memo #16-144
City Attorney	4-12-16		
Public Works	4/19/16	Approve	
X City Manager			

ACTION TAKEN BY COMMISSION:

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

City Attorney's Communication #2016-700

April 6, 2016

TO: Karen Santen, Development Services, Grants Coordinator

FROM: Mark E. Berman, City Attorney

RE: Resolution – DOA Urban Forestry Grant

As requested in your memorandum of March 29, 2016, Department of Development Services Memorandum No. 16-144, 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 SUBMIT A GRANT APPLICATION FOR THE 2016 NATIONAL URBAN AND COMMUNITY FORESTRY GRANT WITH THE STATE OF FLORIDA, DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES, DIVISION OF FORESTRY, AGREEING TO EXECUTE AN AGREEMENT FOR THE GRANT IF THE GRANT IS AWARDED TO THE CITY, AND TO PROVIDE MATCHING FUNDS IN THE AMOUNT OF $20,000.00; 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/2016-700

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 SUBMIT A GRANT APPLICATION FOR THE 2016 NATIONAL URBAN AND COMMUNITY FORESTRY GRANT WITH THE STATE OF FLORIDA, DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES, DIVISION OF FORESTRY, AGREEING TO EXECUTE AN AGREEMENT FOR THE GRANT IF THE GRANT IS AWARDED TO THE CITY, AND TO PROVIDE MATCHING FUNDS IN THE AMOUNT OF $20,000.00; PROVIDING AN EFFECTIVE DATE.

WHEREAS, trees are an important part of our community; and

WHEREAS, the City of Pompano Beach desires to apply for an Urban and Community Forestry Grant, which would provide monies in which to help enhance the city's Urban Forestry Program; and

WHEREAS, if the grant is awarded to the city, the City of Pompano Beach intends to provide monies for Phase II of the previous DOA grant including surveys and planting plan for city facilities recognized as priority areas; and

WHEREAS, if approved for the grant, the City of Pompano Beach will enter into a Memorandum of Agreement between the City of Pompano Beach, Florida, and the Florida Department of Agriculture and Consumer Services; and

WHEREAS, if approved for the Grant, the City of Pompano Beach will provide matching funds in the amount of $20,000.00 towards the Phase II project; now, therefore,

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

SECTION 1. The City Commission hereby supports the city's urban forestry efforts and approves the application for the Grant submittal with a matching fund amount of $20,000.00, a copy of the which is attached hereto and made a part hereof.

SECTION 2. That the proper city officials are hereby authorized to submit said proposal requesting the grant.

SECTION 3. If awarded the grant, the City of Pompano Beach will enter into a Memorandum of Agreement between the City of Pompano Beach, Florida, and the Florida Department of Agriculture and Consumer Services.

SECTION 4. This resolution shall become effective upon passage.

PASSED AND ADOPTED this _____ day of _____, 2016.

_____
LAMAR FISHER, MAYOR

ATTEST:

_____
ASCELETA HAMMOND, CITY CLERK

MEB/jrm
4/5/16
l:reso/2016-186

pompano beach
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MEMORANDUM

Development Services

MEMORANDUM NO. 16-144

DATE: March 29, 2016

TO: Mark Berman, City Attorney

VIA: Robin M. Bird, Development Services Director

FROM: Karen Santen, Grants Coordinator KS

RE: Request for Resolution - DOA Urban Forestry Grant

The City of Pompano Beach is preparing to submit an application for the Florida Department of Agriculture 2016 Urban and Community Forestry Grant. In conjunction with the City's Public Works Division, our Urban Forestry Department would like to conduct Phase II of the DOA grant received in 2015, focusing on parks and facilities recognized as priorities in in the Phase I tree inventory. A copy of the grant application, is enclosed.

Our department, conjunction with the City's Public Works Division, will be requesting $20,000 in grant funding and will offer a 100% match. This will be provided from City funds, which has been approved by the City Manager's office.

Cities must submit a resolution from the City Commission supporting the application and committing the funds. The resolution gives the proper city officials authorization to sign agreements regarding this specific grant without need of a new resolution. Please prepare the appropriate resolution. For your convenience, we have drafted a sample resolution of support.

If you need additional information or have any questions, please contact me at extension 4926.

Thank you.

Project Description

In 2010, the City received an urban forestry grant to accomplish a Comprehensive Tree Management and Planting Plan. A tree inventory was produced and was used to assess and provide base-line data for evaluating the benefits derived from our public trees. The plan provided a detailed planting and maintenance program to develop a more functional and sustainable urban forest in the future.

Fulfilling item 2.11.5 of the City's Strategic Plan, funding from this new grant will be used for Phase II of the DOA grant received in 2015. This includes detailed surveys and planting plans for parks and facilities that were recognized as priorities in in the Phase I tree inventory. Sand and Spurs Park, which was recently hit by a tornado, will be a focus area.

Description of Community: The City of Pompano Beach is an urban area with a population of 104,000 and approximately 23,000 single family homes and duplexes. Pompano Beach has had an active Urban Forestry Division (UFD) since 2001 with the mission to promote healthy urban forests through leadership, education, awareness and advocacy so as to enhance the beauty and prosperity of the community. In keeping with the growing need for the UFD, the City Commission approved two new Landscape Inspectors in March 2016.

Funding will be used for Phase II of the DOA grant received in 2015. This includes detailed surveys and planting plans for parks and facilities that were recognized as priorities in in the Phase I tree inventory. Sand and Spurs Park, which was recently hit by a tornado, will be a focus area. The park is centrally located near the Goodyear Blimp hangar and Pompano Beach Community Park. The park is home to *U Can Ride*, a non-profit therapeutic, equestrian organization which serves special needs children and adults.

Previous U&CF Grants Received: This is the City's third request for a U&CF Grant. We received funding in 2011 to produce an educational brochure but we were unable to fulfil the requirements of the grant and returned the allocation to the FDA. We received a grant in 2015 to conduct a city-wide urban tree inventory and are currently in the process of fulfilling the grant requirements.

Well-Defined Goals and Objectives: The project's long term goals are to reforest and revive the City's tree canopy. Objectives include 1) Conduct Phase II including in-depth surveys for prioritized areas recognized in the previous grant; 2) Update the Sand and Spurs Park's previous tree inventory in order to locate and evaluate the condition of trees which survived the tornado; and 3) Use this information to develop planting plans based on native fast-growing trees on the Florida-friendly Plant List.

How project will help Urban Forestry Program Development: As indicated in the City's Strategic Plan, maintaining Pompano Beach's urban forest is a top priority. One of the four strategies listed in the strategic plan is to create Great Places. A healthy and robust urban forest is a vital way for the city to create a place that is beautiful, shaded and comfortable, livable, economically viable, and environmentally sustainable for current and future residents and tourists. The strategic plan includes numerous initiatives and objectives to help the City realize its vision for expanded urban forestry services. The Phase II project will help the City's Urban Forestry program continue the work begun in the Phase I tree inventory and to develop and achieve goals to reach a minimum canopy coverage quota which will aid in managing the City's environmental infrastructure.

Demonstrated Need: This project is needed in order to continue the work begun in Phase I. A particular need is Sand and Spurs Park where many of the trees taken down by the tornado provided shade for therapeutic sessions conducted by *U Can Ride*. The trees offered a safe place for program participants who have sensory issues. Even though the City has an Emergency Preparedness Plan for circumstances such as tornadoes, additional funds are needed to supplement the depleted budget. Other issues to be addressed include:

- Lack of a comprehensive tool essential for long term plant planning and management, including identifying hazard trees, invasive trees, areas needing tree plantings, prioritization of maintenance and long and short term maintenance budgeting;
- Need for data that can be used to assist in the aftermath of a natural disaster which can provide the City with additional data regarding tree species to plant or to avoid planting in the future, canopy loss assessments, etc.; and
- Need to educate residents about the benefits of a healthy, well-managed community forest.

Environmental or Educational Value: The benefits of conducting a tree survey and producing a planting plan will be far-reaching and have long-term value for all of Pompano Beach:

- Project information will used in programs such as a City of Pompano Beach Street Tree Program, City of Pompano Beach Private Tree Program, City of Pompano Beach Flowering Tree Corridors and Citizen Outreach and Volunteerism, all of which serve to strengthen the City's sense of community.

- Visitors to Sand and Spurs Park will witness, first hand, the restoration process and become aware of the importance of tree canopies and urban forestry.
- Students participating in Arbor Day and Earth Day celebrations will benefit from the information gathered from the project, exposing them to career paths in Arboriculture.
- Improvements to the Park's tree canopy and reforestation will create shade for both visitors and horses, resulting in an equestrian oasis within our urban environment.

Cost Effectiveness:

1. In order to minimize costs, the UFD will utilize services such as those offered by the USDA Forest Service that provide free community forestry assessment tools.
2. A Planting Plan will be developed to manage the data collected from the tree inventory. Conducting the plan "in-house" will keep costs down and enable the City to develop a cost-efficient budget.
3. A planting plan will be cost effective for the City in streamlining crew scheduling, facilitating long-term budgeting and updating Emergency Preparedness Procedures.

Level of Community Involvement or Support:

1. Recognizing the importance and benefits of maintaining a thriving urban forest, the City incorporated several forestry initiatives into its 5-year Strategic Plan: 2.11. *Expansion of beautification and tree planting efforts*; 2.11.2. *Creation of one (1) neighborhood improvement plan per year*; 2.11.3. *Apply for a grant to complete a comprehensive tree inventory*; and 2.11.4. *Develop master landscaping and maintenance/replacement plan along I-95*.
2. Previous tree canopy and greening projects have been met with positive community response and we anticipate that the new tree inventory will also meet with approval. Documentation of community support is provided in the attached letters.
3. The City of Pompano Beach City Commission will pass a resolution of support for the grant at the April 11, 2016 meeting. We have included the sample resolution and a letter of support from the City Manager. We will forward the signed resolution when it has been approved.

Promotional Value: The Urban Forestry Division staff regularly attends civic organizations' meetings and local events such as the Green Market, Pompano Seafood Festival, Annual Tree Give Away, Plants and People Day and Arbor Day Celebrations. While attending these functions, staff will be available to answer questions regarding the project and distribute information containing helpful hints on planting and maintaining gardens and trees. Promotional activities being considered include notices on the City's web site, social media, and promotions in local publications. Results will be shared with neighboring cities and visitors to the park.

Tree City USA Certification and Tree City Growth Award Recipient: The City of Pompano Beach has proudly held the Tree City USA title for 25 years. The City is not a Tree City Growth Award Recipient.

Involvement of a Certified Arborist or Professional: This project is being conducted by the City Utilities Division in conjunction with UFD. The team will include Wade Collum, Pompano Beach Urban Forester who is an ISA Certified Arborist, a LIAF Certified Landscape Inspector, a Florida Certified Landscape Technician and an FNGLA Certified Horticulture Professional.

New partnerships established for Project: This project will strengthen the City's commitment to its residents, the true beneficiaries of the park. The City's partnership with the non-profit *U Can Ride* will be reinforced. Pompano Beach is a certified National Wildlife Federation Community Wildlife Habitat, dedicated to protecting wildlife and habitat and inspiring the future generation of conservationists. The project will highlight the City's presence as a Community Habitat and strengthen the community's responsibility to the greening of Pompano Beach. Results will be shared with neighboring cities interested in conducting their own urban forestry projects. This exchange of information will strengthen Pompano Beach's relationships with other municipalities with the potential to create new partnerships with local businesses.

Meeting Date: 4/26/2016 Agenda Item 7

REQUESTED COMMISSION ACTION:

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

SHORT TITLE Approval to purchase Microsoft Exchange 2016 software and user licenses from CDW Government LLC in the amount of $51,814.66 from funds in the Information Technologies Department budget, per the Federal General Services Administration (GSA) Contract GS-35F-0195J.

Summary of Purpose and Why:

The Information Technologies Department requests approval to purchase two (2) copies of Microsoft Exchange 2016 for our city-wide email servers and 750 user licenses for Microsoft Exchange 2016 from CDW Government LLC per the Federal GSA contract # GS-35F-0195J, which is effective through January 1, 2019. City Commission approval of this action is requested.

(1) Origin of request for this action: staff
(2) Primary staff contact: Gene Zamoski, I.T. Director 954 786-4537
(3) Expiration of contract, if applicable: see above
(4) Fiscal impact and source of funding: $51,814.66 from account 502-5210-594.52-25, Information Information Technology Systems / Software Purchases.

DEPARTMENTAL COORDINATION	DATE	DEPARTMENTAL RECOMMENDATION	DEPARTMENTAL HEAD SIGNATURE
I.T.	4/7/16	APPROVE	Eugene Zamoski
General Services	4/5/16	APPROVE	[illegible]
Finance	4/7/16	Approval	[illegible]
Budget	4/18/16		

X City Manager [illegible]

ACTION TAKEN BY COMMISSION:

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

MEMORANDUM

Purchasing #16-063
April 4, 2016

To: Dennis W. Beach, City Manager

Through: Otis J. Thomas, General Services Director

From: Cassandra LeMasurier, Purchasing Supervisor

Subject: Approval to Piggyback Federal General Services Administration (GSA) Contract GS-35F-0195J to Purchase Microsoft Exchange 2016 Software and User Licenses

The Information Technologies Department has submitted a request to purchase two (2) copies of Microsoft Exchange 2016 for our city-wide email servers and 750 user licenses for Microsoft Exchange 2016 from CDW Government LLC per the Federal GSA contract # GS-35F-0195J, which is effective through January 1, 2019. Purchasing has verified that the prices, terms and conditions of the quotation are from the GSA contract. The total cost for the Exchange software and user licenses is $51,814.66. The software will be purchased from budget account 502-5210-594.52-25, Information Technologies Fund / Information Technology Systems / Software Purchases.

It is recommended that the Commission approve the purchase of the software and user licenses at a total cost of $51,814.66, from CDW Government LLC per the Federal GSA contract # GS-35F-0195J. Pricing was also obtained from CDW Government LLC per the National Joint Powers Alliance (NJPA) contract 100614 for the software and user licenses. The pricing per the NJPA contract was substantially higher at a cost of $55,370.24. Please see copies of a memorandum from IT, the quotation from CDW Government LLC, and pages from the GSA contract, attached.

enclosures
cc: file

pompano beach
Florida's Warmest Welcome

MEMORANDUM

Information Technologies

I.T. MEMO NO. 16-1

TO: Dennis Beach, City Manager

FROM: Eugene R. Zamoski, Information Technologies Director Eugene R. Zamoski

DATE: April 4, 2016

SUBJECT: Purchase Microsoft Exchange 2016 (Email System)

Our current email system, Exchange 2010, is six years old and has reached its end of mainstream support from Microsoft.

The Information Technologies Department feels it is necessary to upgrade our current email system to Exchange 2016. We would be purchasing the software from CDW-G, thru their participation in the GSA contract GS-35F-0195J.

The total cost of the software is $51,814.66, which would be funded from Information Technologies account 502-5210-594-52-25(Software Purchases).

I would like to place this item on consent, for the next available Commission meeting.

Please let me know if you have any questions.

CDWG.com | 800.594.4239

OE400SPS

SALES QUOTATION

QUOTE NO.	ACCOUNT NO.	DATE
GWGR270	6707885	3/4/2016

BILL TO:
GENE ZAMOSKI
100 W ATLANTIC BLVD STE 170
IT DEPARTMENT

Accounts Payable
POMPANO BEACH , FL 33060-6099

Customer Phone #

SHIP TO:
CITY OF POMPANO BEACH
Attention To: GENE ZAMOSKI
100 W ATLANTIC BLVD STE 170
IT DEPARTMENT

POMPANO BEACH , FL 33060-6099
Contact: GENE
ZAMOSKI 954.786.4537

Customer P.O. # EXCHANGE 2016 QUOTE

ACCOUNT MANAGER	SHIPPING METHOD	TERMS	EXEMPTION CERTIFICATE
JOHN VRABLIK 877.466.6333	ELECTRONIC DISTRIBUTION	MasterCard/Visa Govt	858012621672C6

QTY	ITEM NO.	DESCRIPTION	UNIT PRICE	EXTENDED PRICE
2	3845879	MS GSA EXCH SRV ENT 2016 Mfg#: 395-04563 Contract: CDW-G GSA Schedule GS-35F-0195J Electronic distribution - NO MEDIA	2,837.33	5,674.66
750	3845878	MS GSA EXCH STD 2016 UCAL Mfg#: 381-04439 Contract: CDW-G GSA Schedule GS-35F-0195J Electronic distribution - NO MEDIA	61.52	46,140.00
		SUBTOTAL		51,814.66
		FREIGHT		0.00
		TAX		0.00

US Currency

TOTAL 51,814.66

CDW Government
230 North Milwaukee Ave.
Vernon Hills, IL 60061

Fax: 312.705.9184

Please remit payment to:
CDW Government
75 Remittance Drive
Suite 1515
Chicago, IL 60675-1515

This quote is subject to CDW's Terms and Conditions of Sales and Service Projects at
http://www.cdwg.com/content/terms-conditions/product-sales.aspx
For more information, contact a CDW account manager.

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Contractor Information

(Vendors) How to change your company information

Contract #: GS-35F-0195J
Contractor: CDW GOVERNMENT LLC
Address: 230 N MILWAUKEE AVE
VERNON HILLS, IL 60061-4304
Phone: 7036218241
E-Mail: SMCCURNIN@CDWG.COM
Web Address: http://www.cdwg.com/GSA
DUNS: 026157235
NAICS: 443120

Socio-Economic : Other than small business

EPLS : Contractor not found on the Excluded Parties List System

Govt. Point of Contact:
Warren J. Reddick
Phone: 404-224-2384
E-Mail: warren.reddick@gsa.gov

Contract Clauses/Exceptions:
View the specifics for this contract

Source	Title	Contract Number	Contractor T&Cs /Pricelist	Contract End Date	Category		View Catalog
70	GENERAL PURPOSE COMMERCIAL INFORMATION TECHNOLOGY EQUIPMENT, SOFTWARE, AND SERVICES	GS-35F-0195J		Jan 1, 2019	132 12	COOP PURCH	GSA Advantage!
					132 33	COOP PURCH	GSA Advantage!
					132 52	COOP PURCH	GSA Advantage!
					132 8	COOP PURCH	GSA Advantage!

CDW Government LLC
230 N. Milwaukee Ave. Vernon Hills, IL 60061
1-800-808-4239
www.cdwg.com/gsa

General Services Administration
Federal Acquisition Service
Contract Number: GS-35F-0195J
Period Covered by Contract: January 21, 1999 through January 1, 2019
Through Modification 1020

GSA Advantage!®
www.gsaadvantage.gov

Products and ordering information in this Authorized FSS Information Technology Schedule Pricelist are also available on the GSA Advantage! System. Agencies can browse GSA Advantage! By accessing the Federal Supply Service's Home Page via the Internet at http://www.fss.gsa.gov/

AUTHORIZED
INFORMATION TECHNOLOGY SCHEDULE PRICELIST
GENERAL PURPOSE COMMERCIAL INFORMATION TECHNOLOGY
EQUIPMENT, SOFTWARE AND SERVICES

Special Item No. 132-8 Purchase of Equipment
Special Item No. 132-12 Maintenance, Repair Service and Repair Parts/Spare Parts
Special Item No. 132-33 Perpetual Software Licenses

SIN 132-8 PURCHASE OF EQUIPMENT

FSC CLASS 7010 - SYSTEM CONFIGURATION

End User Computers/Desktop Computers
Professional Workstations
Servers
Laptop/Portable/Notebook Computers
Large Scale Computers
Optical and Imaging Systems
Other Systems Configuration Equipment, Not Elsewhere Classified

FSC CLASS 7025 - INPUT/OUTPUT AND STORAGE DEVICES

Printers
Display
Graphics, including Video Graphics, Light Pens, Digitizers, Scanners, and Touch Screens
Network Equipment
Other Communications Equipment
Optical Recognition Input/Output Devices
Storage Devices including Magnetic Storage, Magnetic Tape Storage and Optical Disk Storage
Other Input/Output and Storage Devices, Not Elsewhere Classified

FSC CLASS 7035 - ADP SUPPORT EQUIPMENT

ADP Support Equipment

FSC Class 7042 - MINI AND MICRO COMPUTER CONTROL DEVICES

Microcomputer Control Devices
Telephone Answering and Voice Messaging Systems

FSC CLASS 7050 - ADP COMPONENTS

ADP Boards

FSC CLASS 5995 - CABLE, CORD, AND WIRE ASSEMBLIES: COMMUNICATIONS EQUIPMENT

Communications Equipment Cables

FSC CLASS 6015 - FIBER OPTIC CABLES

Fiber Optic Cables

FSC CLASS 6020 - FIBER OPTIC CABLE ASSEMBLES AND HARNESSES

Fiber Optic Cable Assemblies and Harnesses

FSC CLASS 6145 - WIRE AND CABLE, ELECTRICAL

Coaxial Cables

FSC Class 5805 - TELEPHONE AND TELEGRAPH EQUIPMENT

Telephone Equipment
Audio and Video Teleconferencing Equipment

FSC CLASS 5810 - COMMUNICATIONS SECURITY EQUIPMENT AND COMPONENTS

Communications Security Equipment

FSC CLASS 5815 - TELETYPE AND FACSIMILE EQUIPMENT

Facsimile Equipment (FAX)

FSC CLASS 5820 - RADIO AND TELEVISION COMMUNICATION EQUIPMENT, EXCEPT AIRBORNE

Two-Way Radio Transmitters/Receivers/Antennas
Broadcast Band Radio Transmitters/Receivers/Antennas
Microwave Radio Equipment/Antennas and Waveguides
Satellite Communications Equipment

FSC CLASS 5821 - RADIO AND TELEVISION COMMUNICATION EQUIPMENT, AIRBORNE

Airborne Radio Transmitters/Receivers

FSC CLASS 5825 - RADIO NAVIGATION EQUIPMENT, EXCEPT AIRBORNE

Radio Navigation Equipment/Antennas

FSC CLASS 5826 - RADIO NAVIGATION EQUIPMENT, AIRBORNE

Airborne Radio Navigation Equipment

FSC CLASS 5830 - INTERCOMMUNICATION AND PUBLIC ADDRESS SYSTEMS, EXCEPT AIRBORNE

Pagers and Public Address Systems (wired and wireless transmissions, including background music systems)

FSC CLASS 5841 - RADAR EQUIPMENT, AIRBORNE

Airborne Radar Equipment

FSC CLASS 5895 - MISCELLANEOUS COMMUNICATION EQUIPMENT

Miscellaneous Communications Equipment

- Special Physical, Visual, Speech, and Hearing Aid Equipment
- Installation (FPDS Code N070) for Equipment Offered

NOTE: Installation must be incidental to, in conjunction with and in direct support of the products sold under SIN 132-8 of this contract and cannot be purchased separately. If the construction, alteration or repair is segregable and exceeds $2,000, then the requirements of the Davis-Bacon Act apply. In applying the Davis-Bacon Act, ordering activies are required to incorporate wage rate determinations into orders, as applicable.

SIN 132-12 - MAINTENANCE OF EQUIPMENT, REPAIR SERVICE, AND REPAIR PARTS/SPARE PARTS (FPDS Code J070 - Maintenance and Repair Service)(Repair Parts/Spare Parts - See FSC Class for basic equipment)

- Maintenance
- Repair Service
- Repair Parts/Spare Parts
- Third Party Maintenance

SIN 132-33 - PERPETUAL SOFTWARE LICENSES

FSC CLASS 7030 - INFORMATION TECHNOLOGY SOFTWARE

Large Scale Computers

Operating System Software
Application Software
Electronic Commerce (EC) Software
Utility Software
Communications Software
Core Financial Management Software
Ancillary Financial Systems Software
Special Physical, Visual, Speech, and Hearing Aid Software

Microcomputers

Operating System Software
Application Software
Electronic Commerce (EC) Software
Utility Software
Communications Software
Core Financial Management Software
Ancillary Financial Systems Software
Special Physical, Visual, Speech, and Hearing Aid Software

INFORMATION FOR ORDERING ACTIVITIES
APPLICABLE TO ALL SPECIAL ITEM NUMBERS

SPECIAL NOTICE TO AGENCIES: Small Business Participation

SBA strongly supports the participation of small business concerns in the Federal Acquisition Service. To enhance Small Business Participation SBA policy allows agencies to include in their procurement base and goals, the dollar value of orders expected to be placed against the Federal Supply Schedules, and to report accomplishments against these goals.

For orders exceeding the micropurchase threshold, FAR 8.404 requires agencies to consider the catalogs/pricelists of at least three schedule contractors or consider reasonably available information by using the GSA Advantage!™ on-line shopping service (www.fss.gsa.gov). The catalogs/pricelists, GSA Advantage!™ and the Federal Acquisition Service Home Page (www.fss.gsa.gov) contain information on a broad array of products and services offered by small business concerns.

This information should be used as a tool to assist ordering activities in meeting or exceeding established small business goals. It should also be used as a tool to assist in including small, small disadvantaged, and women-owned small businesses among those considered when selecting pricelists for a best value determination.

For orders exceeding the micropurchase threshold, customers are to give preference to small business concerns when two or more items at the same delivered price will satisfy their requirement.

1. GEOGRAPHIC SCOPE OF CONTRACT:

Domestic delivery is delivery within the 48 contiguous states, Alaska, Hawaii, Puerto Rico, Washington, DC, and U.S. Territories. Domestic delivery also includes a port or consolidation point, within the aforementioned areas, for orders received from overseas activities.

Overseas delivery is delivery to points outside of the 48 contiguous states, Washington, DC, Alaska, Hawaii, Puerto Rico, and U.S. Territories.

Offerors are requested to check one of the following boxes:

[ ] The Geographic Scope of Contract will be domestic and overseas delivery.
[ ] The Geographic Scope of Contract will be overseas delivery only.
[X] The Geographic Scope of Contract will be domestic delivery only.

2. CONTRACTOR'S ORDERING ADDRESS AND PAYMENT INFORMATION:

Ordering Information	**Payment Information**
CDW Government, Inc.	CDW Government, Inc.
230 N. Milwaukee Ave.	75 Remittance Drive, Suite 1515
Vernon Hills, IL 60061	Chicago, Il 60675-1515

CDW-G to accepts credit cards for payments equal to or less than the micro-purchase threshold for oral or written delivery orders. Credit cards will not be acceptable for payment above the micro-purchase threshold. In addition, bank account information for wire transfer payments will be shown on the invoice.

The following telephone number(s) can be used by ordering activities to obtain technical and/or ordering assistance:

1-800-808-4239

3. LIABILITY FOR INJURY OR DAMAGE

The Contractor shall not be liable for any injury to ordering activity personnel or damage to ordering activity property arising from the use of equipment maintained by the Contractor, unless such injury or damage is due to the fault or negligence of the Contractor.

4. STASTICAL DATA FOR GOVERNMENT ORDERING OFFICE COMPLETION OF STANDARD FORM 279:

Block 9: G. Order/Modification Under Federal Schedule TBD at time of order
Block 16: Data Universal Numbering System (DUNS) Number: 026-15-7235
Block 30: Type of Contractor –C. Large Business
Block 31: Woman-Owned Small Business - No
Block 36: Contractor's Taxpayer Identification Number (TIN): 36-4230110

4a. CAGE Code: 1KH72

4b. Contractor has registered with the Central Contractor Registration Database.

5. FOB DESTINATION

For both Hardware and Software, the F.O.B. point is destination for all locations within the 48 contiguous states and the District of Columbia. (Expedited delivery is F.O.B. origin.)

For overseas locations and Alaska, Hawaii and the U.S. territories and commonwealths, the F.O.B. point is destination to the port of embarkation within the continental U.S. or F.O.B. origin if CDW•G is required to effect shipment direct to locations outside the continental Unites States (OCONUS).

All CONUS shipments shall be made F.O.B. destination. Delivery for all APO/FPO locations shall be made F.O.B. destination to the APO/FPO shipping point or a designated CONUS U.S. Government forwarder. To ensure accurate and timely shipping CDW•G requests an English speaking contact for all APO orders.

Note: When ordering for overseas purchases, be sure to include the following information to speed the delivery process:

1) **Name of individual to contact for order questions/clarifications within the United States**
2) **Customer commercial phone number, with country and city code,**
3) **Customer facsimile number,**
4) **Voltage requirements (110V or 220V),**
5) **Identify host system (manufacturer and model) when ordering software or peripherals.**

6. DELIVERY SCHEDULE

a. Time of Delivery: CDW•G shall deliver to destination 30 days after receipt of order for special item numbers 132-8 and 132-33 utilizing CDW-G's cheapest shipment method regarding order destination at the time of order. For credit approved orders CDW-G ships greater than 90% of all "in-stock" items same day.

b. URGENT REQUIREMENTS: When the Federal Supply Schedule contract delivery period does not meet the bona fide urgent delivery requirements of an ordering activity, ordering activities are encouraged, if time permits, to contact the Contractor for the purpose of obtaining accelerated delivery. The Contractor shall reply to the inquiry within 3 workdays after receipt. (Telephonic replies shall be confirmed by the Contractor in

writing.) If the Contractor offers an accelerated delivery time acceptable to the ordering activity, any order(s) placed pursuant to the agreed upon accelerated delivery time frame shall be delivered within this shorter delivery time and in accordance with all other terms and conditions of the contract.

Urgent/Expedited Delivery Times: Schedule customers may require expedited delivery. This can be negotiated outside the scope of this contract.

- **Priority Overnight (next business morning) This can be negotiated outside the scope of this contract**
- **Standard Overnight (next business afternoon) This can be negotiated outside the scope of this contract**
- **2 Day (second business day) This can be negotiated outside the scope of this contract**
- **3 day (third business day) This can be negotiated outside the scope of this contract**

7. **DISCOUNTS:** Prices shown are NET Prices; Basic Discounts have been deducted.

a. Prompt Payment: 0% - Net 30 days from receipt of invoice or date of acceptance, whichever is later.

b. All prices listed are net after discount. Quantity discounts may be negotiated between the Ordering Activity and CDW-G.

8. **TRADE AGREEMENTS ACT OF 1979, as amended:**

All items are U.S. made end products, designated country end products, Caribbean Basin country end products, Canadian end products, or Mexican end products as defined in the Trade Agreements Act of 1979, as amended.

9. **STATEMENT CONCERNING AVAILABILITY OF EXPORT PACKING:**

Export packaging is available at an extra cost outcide the scope of this contract.

10. **Small Requirements:** The minimum dollar value of orders to be issued is $100.00.

11. **MAXIMUM ORDER (All dollar amounts are exclusive of any discount for prompt payment.)**

a. The Maximum Order value for the following Special Item Numbers (SINs) is $500,000:

Special Item Number 132-8 - Purchase of Equipment
Special Item Number 132-12 – Maintenance of Equipment, Repair Service, and Repair Parts/Spare Parts
Special Item Number 132-33 - Perpetual Software Licenses

12. **ORDERING PROCEEDURES FOR FEDERAL SUPPLY SCHEDULE CONTRACTS**

Ordering activities shall use the ordering procedures of Federal Acquisition Regulation (FAR) 8.405 when placing an order or establishing a BPA for supplies or services. These procedures apply to all schedules.

a. FAR 8.405-1 Ordering procedures for supplies, and services not requiring a statement of work.

b. RESERVED

13. **FEDERAL INFORMATION TECHNOLOGY/TELECOMMUNICATION STANDARDS REQUIREMENTS:** ordering activities acquiring products from this Schedule must comply with the provisions of the Federal Standards Program, as appropriate (reference: NIST Federal Standards Index). Inquiries to determine whether or not specific products listed herein comply with Federal Information Processing Standards (FIPS) or Federal Telecommunication Standards (FED-STDS), which are cited by ordering activities, shall be responded to promptly by the Contractor.

13.1 FEDERAL INFORMATION PROCESSING STANDARDS PUBLICATIONS (FIPS PUBS): Information Technology products under this Schedule that do not conform to Federal Information Processing Standards (FIPS) should not be acquired unless a waiver has been granted in accordance with the applicable "FIPS Publication." Federal Information Processing Standards Publications (FIPS PUBS) are issued by the U.S. Department of Commerce, National Institute of Standards and Technology (NIST), pursuant to National Security Act. Information concerning their availability and applicability should be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161. FIPS PUBS include voluntary standards when these are adopted for Federal use. Individual orders for FIPS PUBS should be referred to the NTIS Sales Office, and orders for subscription service should be referred to the NTIS Subscription Officer, both at the above address, or telephone number (703) 487-4650.

13.2 FEDERAL TELECOMMUNICATION STANDARDS (FED-STDS): Telecommunication products under this Schedule that do not conform to Federal Telecommunication Standards (FED-STDS) should not be acquired unless a waiver has been granted in accordance with the applicable "FED-STD." Federal Telecommunication Standards are issued by the U.S. Department of Commerce, National Institute of Standards and Technology (NIST), pursuant to National Security Act. Ordering information and information concerning the availability of FED-STDS should be obtained from the GSA, Federal Acquisition Service, Specification Section, 470 East L'Enfant Plaza, Suite 8100, SW, Washington, DC 20407, telephone number (202)619-8925. Please include a self-addressed mailing label when requesting information by mail. Information concerning their applicability can be obtained by writing or calling the U.S. Department of Commerce, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone number (301)975-2833.

14. RESERVED

15. CONTRACT ADMINISTRATION FOR ORDERING ACTIVITIES: Any ordering activity, with respect to any one or more delivery orders placed by it under this contract, may exercise the same rights of termination as might the GSA Contracting Officer under provisions of FAR 52.212-4, paragraphs (l) Termination for the ordering activity's convenience, and (m) Termination for Cause (See 52.212-4)

16. GSA ADVANTAGE!

GSA Advantage! is an on-line, interactive electronic information and ordering system that provides on-line access to vendors' schedule prices with ordering information. GSA Advantage! will allow the user to perform various searches across all contracts including, but not limited to:

(1) Manufacturer;
(2) Manufacturer's Part Number; and
(3) Product categories.

Agencies can browse GSA Advantage! by accessing the Internet World Wide Web utilizing a browser (ex.: NetScape). The Internet address is http://www.fss.gsa.gov/.

17. PURCHASE OF OPEN MARKET ITEMS

NOTE: Open Market Items are also known as incidental items, noncontract items, non-Schedule items, and items not on a Federal Supply Schedule contract. ODCs (Other Direct Costs) are not part of this contract and should be treated as open market purchases. Ordering Activities procuring open market items must follow FAR 8.402(f).

For administrative convenience, an ordering activity contracting officer may add items not on the Federal Supply Multiple Award Schedule (MAS) -- referred to as open market items -- to a Federal Supply Schedule blanket purchase agreement (BPA) or an individual task or delivery order, **only if-**

(1) All applicable acquisition regulations pertaining to the purchase of the items not on the Federal Supply Schedule have been followed (e.g., publicizing (Part 5), competition requirements (Part 6), acquisition of commercial items (Part 12), contracting methods (Parts 13, 14, and 15), and small business programs (Part 19));

(2) The ordering activity contracting officer has determined the price for the items not on the Federal Supply Schedule is fair and reasonable;

(3) The items are clearly labeled on the order as items not on the Federal Supply Schedule; and

(4) All clauses applicable to items not on the Federal Supply Schedule are included in the order.

18. CONTRACTOR COMMITMENTS, WARRANTIES AND REPRESENTATIONS

a. For the purpose of this contract, commitments, warranties and representations include, in addition to those agreed to for the entire schedule contract:

(1) Time of delivery/installation quotations for individual orders;

(2) To the extent provided by the manufacturer, technical representations and/or warranties of products concerning performance, total system performance and/or configuration, physical, design and/or functional characteristics and capabilities of a product/equipment/ service/software package submitted in response to requirements which result in orders under this schedule contract. Any of the later comments will take place by CDW-G passing on the manufacturer's experiences or claims.

(3) Any manufacturer's representations and/or warranties concerning the products made in any literature, description, drawings and/or specifications furnished by CDW-G.

b. The above is not intended to encompass items not currently covered by the GSA Schedule contract.

19. OVERSEAS ACTIVITIES

The terms and conditions of this contract shall apply to all orders for installation, maintenance and repair of equipment in areas listed in the pricelist outside the 48 contiguous states and the District of Columbia, except as provided by the manufacturer's commercial pricelist or practice.

Upon request of the CDW-G, the ordering activity may provide the CDW-G with logistics support, as available, in accordance with all applicable ordering activity regulations. Such ordering activity support will be provided on a reimbursable basis, and will only be provided to the CDW-G's technical personnel whose services are exclusively required for the fulfillment of the terms and conditions of this contract.

20. BLANKET PURCHASE AGREEMENTS (BPAs)

The use of BPAs under any schedule contract to fill repetitive needs for supplies or services is allowable. BPAs may be established with one or more schedule contractors. The number of BPAs to be established is within the discretion of the ordering activity establishing the BPA and should be based on a strategy that is expected to maximize the effectiveness of the BPA(s). Ordering activities shall follow FAR 8.405-3 when creating and implementing BPA(s).

21. CONTRACTOR TEAM ARRANGEMENTS

Contractors participating in contractor team arrangements must abide by all terms and conditions of their respective contracts. This includes compliance with Clauses 552.238-74, Industrial Funding Fee and Sales Reporting, i.e., each contractor (team member) must report sales and remit the IFF for all products and services provided under its individual contract.

22. INSTALLATION, DEINSTALLATION, REINSTALLATION

The Davis-Bacon Act (40 U.S.C. 276a-276a-7) provides that contracts in excess of $2,000 to which the United States or the District of Columbia is a party for construction, alteration, or repair (including painting and decorating) of public buildings or public works with the United States, shall contain a clause that no laborer or mechanic employed directly upon the site of the work shall receive less than the prevailing wage rates as determined by the Secretary of

Labor. The requirements of the Davis-Bacon Act do not apply if the construction work is incidental to the furnishing of supplies, equipment, or services. For example, the requirements do not apply to simple installation or alteration of a public building or public work that is incidental to furnishing supplies or equipment under a supply contract. However, if the construction, alteration or repair is segregable and exceeds $2,000, then the requirements of the Davis-Bacon Act applies.

The ordering activity issuing the task order against this contract will be responsible for proper administration and enforcement of the Federal labor standards covered by the Davis-Bacon Act. The proper Davis-Bacon wage determination will be issued by the ordering activity at the time a request for quotations is made for applicable construction classified installation, deinstallation, and reinstallation services under SIN 132-8.

23. SECTION 508 COMPLIANCE.

If applicable, Section 508 compliance information on the supplies and services in this contract are available in Electronic and Information Technology (EIT) at the following:

http://www.cdwg.com/508

The EIT standard can be found at: www.Section508.gov/.

24. PRIME CONTRACTOR ORDERING FROM FEDERAL SUPPLY SCHEDULES.

Prime Contractors placing orders under Federal Supply Schedules, on behalf of an ordering activity, shall follow the terms of the applicable schedule and authorization and include with each order –

(a) A copy of the authorization from the ordering activity with whom the contractor has the prime contract (unless a copy was previously furnished to the Federal Supply Schedule contractor) (a sample of this letter is provided at http://www.gsa.gov/Portal/gsa/ep/contentView.do?programId=15832&channelId=-24735&ooid=8126&contentId=8127&pageTypeId=17112&contentType=GSA_BASIC&programPage=%2Fep%2Fprogram%2FgsaBasic.jsp&P=FX7 Contractor Use of GSA Schedules); and

(b) The following statement:

This order is placed under written authorization from _____ dated _____. In the event of any inconsistency between the terms and conditions of this order and those of your Federal Supply Schedule contract, the latter will govern.

25. INSURANCE—WORK ON A GOVERNMENT INSTALLATION (JAN 1997)(FAR 52.228-5)

(a) The Contractor shall, at its own expense, provide and maintain during the entire performance of this contract, at least the kinds and minimum amounts of insurance required in the Schedule or elsewhere in the contract.

(b) Before commencing work under this contract, the Contractor shall notify the Contracting Officer in writing that the required insurance has been obtained. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting the Government's interest shall not be effective—

(1) For such period as the laws of the State in which this contract is to be performed prescribe; or

(2) Until 30 days after the insurer or the Contractor gives written notice to the Contracting Officer, whichever period is longer.

(c) The Contractor shall insert the substance of this clause, including this paragraph (c), in subcontracts under this contract that require work on a Government installation and shall require subcontractors to provide and maintain the insurance required in the Schedule or elsewhere in the contract. The Contractor shall maintain a copy of all subcontractors' proofs of required insurance, and shall make copies available to the Contracting Officer upon request.

26. SOFTWARE INTEROPERABILITY.

If offered by the manufacturer's licensing program CDW-G will pass on the identification of software items which may offer any component interfaces that support open standard interoperability. An item's interface may be identified as interoperable on the basis of participation in a Government agency-sponsored program or in an independent organization program. Interfaces may be identified by reference to an interface registered in the component registry located at http://www.core.gov.

27. ADVANCE PAYMENTS

A payment under this contract to provide a service or deliver an article for the United States Government may not be more than the value of the service already provided or the article already delivered, unless unforeseen circumstances warrant it. Advance or pre-payment is not authorized or allowed under this contract. (31 U.S.C. 3324). Software Maintenance as a product is not considered a service and payment is authorized in advance.

TERMS AND CONDITIONS APPLICABLE TO PURCHASE OF [illegible] PRODUCTS PURSUANT TO GSA MULTIPLE AWARD SCHEDULE [illegible] SPECIAL ITEM NUMBER 132-8

1. MATERIAL AND WORKMANSHIP

All equipment furnished hereunder must satisfactorily perform the function for which it is intended.

2. ORDER

Written orders, EDI orders (GSA Advantage! and FACNET), credit card orders, and orders placed under blanket purchase agreements (BPA) agreements shall be the basis for purchase in accordance with the provisions of this contract. If time of delivery extends beyond the expiration date of the contract, the Contractor will be obligated to meet the delivery and installation date specified in the original order.

For credit card orders and BPAs, telephone orders are permissible.

3. TRANSPORTATION OF EQUIPMENT

FOB DESTINATION. Prices cover equipment delivery to destination, for any location within the geographic scope of this contract.

4. INSTALLATION AND TECHNICAL SERVICES

a. INSTALLATION. When the equipment provided under this contract is not normally self-installable, the Contractor's technical personnel shall be available to the ordering activity, at the ordering activity's location, to install the equipment and to train ordering activity personnel in the use and maintenance of the equipment. The charges, if any, for such services are listed below, or in the price schedule:

b. **INSTALLATION, DEINSTALLATION, REINSTALLATION.** The Davis-Bacon Act (40 U.S.C. 276a-276a-7) provides that contracts in excess of $2,000 to which the United States or the District of Columbia is a party for construction, alteration, or repair (including painting and decorating) of public buildings or public works with the United States, shall contain a clause that no laborer or mechanic employed directly upon the site of the work shall received less than the prevailing wage rates as determined by the Secretary of Labor. The requirements of the Davis-Bacon Act do not apply if the construction work is incidental to the furnishing of supplies, equipment, or services. For example, the requirements do not apply to simple installation or alteration of a public building or public work that is incidental to furnishing supplies or equipment under a supply contract. However, if the construction, alteration or repair is segregable and exceeds $2,000, then the requirements of the Davis-Bacon Act applies.

The ordering activity issuing the task order against this contract will be responsible for proper administration and enforcement of the Federal labor standards covered by the Davis-Bacon Act. The proper Davis-Bacon wage determination will be issued by the ordering activity at the time a request for quotations is made for applicable construction classified installation, deinstallation, and reinstallation services under SIN 132-8.

c. OPERATING AND MAINTENANCE MANUALS. The Contractor shall furnish the ordering activity with one (1) copy of all operating and maintenance manuals if they are normally provided by the manufacturer with the equipment being purchased.

5. INSPECTION/ACCEPTANCE

The CDW-G shall only tender for acceptance those items that conform to the requirements of this contract. The ordering activity reserves the right to inspect or test any equipment that has been tendered for acceptance. The ordering activity may require repair or replacement of nonconforming equipment at no increase in contract price. The ordering activity must exercise its postacceptance rights (1) within a reasonable time after the defect was discovered or should have been discovered; and (2) before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

6. WARRANTY

a. Unless specified otherwise in this contract, the Manufacturer's standard commercial warranty as stated in the Manufacturer's commercial pricelist will apply to this contract.

b. The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use pursuant to the manufacturer's commercial practice and warranties.

c. Limitation of Liability. CDW-G will not be liable to the ordering activity for consequential damages resulting from any defect or deficiencies in accepted items.

d. If inspection and repair of defective equipment under this warranty will be performed at the Contractor's plant, the address is as follows: 200 N. Milwaukee Ave., Vernon Hills, IL 60061 or 3201 E. Alexander Rd., North Las Vegas, NV 89030.

7. PURCHASE PRICE FOR ORDERED EQUIPMENT

The purchase price that the ordering activity will be charged will be the contract price in effect at the time of order placement, or the ordering activity purchase price in effect on the installation date (or delivery date when installation is not applicable), whichever is less.

8. RESPONSIBILITIES OF CDW-G

CDW-G shall comply with all laws, ordinances, and regulations (Federal, State, City or otherwise) covering work of this character, and shall include all costs, if any, of such compliance in the prices quoted in this offer.

9. TRADE-IN OF INFORMATION TECHNOLOGY EQUIPMENT

When an ordering activity determines that Information Technology equipment will be replaced, the ordering activity shall follow the contracting policies and procedures in the Federal Acquisition Regulation (FAR), the policies and procedures regarding disposition of information technology excess personal property in the Federal Property Management Regulations (FPMR) (41 CFR 101-43.6), and the policies and procedures on exchange/sale contained in the FPMR (41 CFR part 101-46).

[redacted]

CDW-G is not the manufacturer of the products purchased by the ordering activity under this contract and the only warranties or maintenance, repair services and repair parts/spare parts for Government owned equipment offered are those provided by the manufacturer.. Prices for Maintenance are provided in the approved Contract pricelist, and is listed per Manufacturer.

1. SERVICE AREAS

a. The maintenance and repair service rates listed herein are applicable to any ordering activity as determined by the Manufacturer at the time of order.

b. When repair services cannot be performed at the ordering activity installation site, the repair services will be performed at the Manufacturer's facility.

2. MAINTENANCE ORDER

a. Agencies may use written orders, EDI orders, credit card orders, or BPAs, for ordering maintenance under this contract. CDW-G shall confirm orders within fifteen (15) calendar days from the date of receipt, except that confirmation of orders shall be considered automatic for renewals for maintenance (Special Item Number 132-12). Automatic acceptance of order renewals for maintenance service shall apply for machines which may have been discontinued from use for temporary periods of time not longer than 120 calendar days. If the order is not confirmed by CDW-G as prescribed by this paragraph, the order shall be considered to be confirmed by CDW-G.

b. The Contractor shall honor orders for maintenance for the duration of the contract period or a lessor period of time, for the equipment shown in the pricelist. Maintenance service shall commence on a mutually agreed upon date, which will be written into the maintenance order. Maintenance orders shall not be made effective before the expiration of any applicable maintenance and parts guarantee/warranty period associated with the purchase of equipment. .

c. .Maintenance may be discontinued by the ordering activity on thirty (30) calendar days written notice, or shorter notice when agreed to by the Contractor; such notice to become effective thirty (30) calendar days from the date on the notification. However, the ordering activity may extend the original discontinuance date upon written notice to the Contractor, provided that such notice is furnished at least ten (10) calendar days prior to the original discontinuance date.

d. Annual Funding. When annually appropriated funds are cited on a maintenance order, the period of maintenance shall automatically expire on September 30th of the contract period, or at the end of the contract period, whichever occurs first. Renewal of a maintenance order citing the new appropriation shall be required, if maintenance is to continue during any remainder of the contract period.

e. Cross-year Funding Within Contract Period. Where an ordering activity's specific appropriation authority provides for funds in excess of a 12 month, fiscal year period, the ordering activity may place an order under this schedule contract for a period up to the expiration of the contract period, notwithstanding the intervening fiscal years.

f. Ordering activities should notify CDW-G in writing thirty (30) calendar days prior to the expiration of maintenance service, if maintenance is to be terminated at that time. Orders for continued maintenance will be required if maintenance is to be continued during the subsequent period.

3. REPAIR SERVICE AND REPAIR PARTS/SPARE PARTS ORDERS

a. Agencies may use written orders, EDI orders, credit card orders, blanket purchase agreements (BPAs), or small order procedures for ordering repair service and/or repair parts/spare parts under this contract, as provided by the Manufacturer.

b. When repair service is ordered, only one chargeable repairman shall be dispatched to perform repair service, unless the ordering activity agrees, in advance, that additional repair personnel are required to effect repairs.

4. LOSS OR DAMAGE

When CDW-G's service personnel removes equipment to his establishment for repairs, CDW-G shall be responsible for any damage or loss, from the time the equipment is removed from the ordering activity installation, until the equipment is returned to such installation.

5. SCOPE

a. CDW-G shall provide maintenance for Manufacturer equipment listed herein, as requested by the ordering activity during the contract term. Repair service and repair parts/spare parts shall apply exclusively to the equipment types/models within the scope of this Information Technology Schedule.

b. Equipment placed under maintenance service shall be in good operating condition.

1) In order to determine that the equipment is in good operating condition, the equipment shall be subject to inspection by the CDW-G, without charge to the ordering activity.

(2) Costs of any repairs performed for the purpose of placing the equipment in good operating condition shall be borne by the CDW-G, if the equipment was under the Contractor's guarantee/warranty or maintenance responsibility prior to the effective date of the maintenance order.

(3) If the equipment was not under the guarantee/warranty or maintenance coverage, the costs necessary to place the equipment in proper operating condition are to be borne by the ordering activity, in accordance with the provisions of Special Item Number 132-12 (or outside the scope of this contract).

6. RESPONSIBILITIES OF THE ORDERING ACTIVITY

a. Ordering activity personnel shall not perform maintenance or attempt repairs to equipment while such equipment is under the purview of a maintenance order, unless agreed to by CDW-G.

b. Subject to security regulations, the ordering activity shall permit access to the equipment which is to be maintained or repaired.

c. If the Ordering Activity desires a factory authorized/certified service personnel then this should be clearly stated in the task or delivery order.

7. RESPONSIBILITIES OF THE CONTRACTOR

a. For equipment not covered by a maintenance contract or warranty, and upon issuance of a funded order to CDW-G repair service personnel shall complete repairs as soon as possible after notification by the ordering activity that service is required. Within the service areas, this repair service should normally be done within 48 hours after notification.

b. If the Ordering Activity task or delivery order specifies a factory authorized/certified service personnel then the Contractor is obligated to provide such a factory authorized/certified service personnel for the equipment to be repaired or serviced, unless otherwise agreed to in advance between the Agency and the Contractor.

8. MAINTENANCE RATE PROVISIONS

a. CDW-G shall bear all costs of maintenance, including labor, parts, and such other expenses as are necessary to keep the equipment in good operating condition, provided that the required repairs are not occasioned by fault or negligence of the ordering activity.

b. REGULAR HOURS

The basic monthly rate for each make and model of equipment shall entitle the ordering activity to maintenance service during a mutually agreed upon nine (9) hour principal period of maintenance, Monday through Friday, exclusive of holidays observed at the ordering activity location.

c. AFTER HOURS

Should the ordering activity require that maintenance be performed outside of Regular Hours, charges for such maintenance, if any, will be specified in the pricelist. Periods of less than one hour will be prorated to the nearest quarter hour.

d. TRAVEL AND TRANSPORTATION

If any charge is to apply, over and above the regular maintenance rates, because of the distance between the ordering activity location and the Contractor's service area, the charge will be negotiated at the Task Order level.

e. QUANTITY DISCOUNTS

Quantity discounts from listed maintenance service rates for multiple equipment owned and/or leased by a ordering activity shall be determined at the time of order.

9. REPAIR SERVICE RATE PROVISIONS

a. CHARGES. Charges for repair service will include the labor charge, computed at the rates set forth below, for the time during which repairmen are actually engaged in work, and, when applicable, the charge for travel or transportation.

b. MULTIPLE MACHINES. When repairs are ordered by a ordering activity on two or more machines located in one or more buildings within walking distance of each other, the charges will be computed from the time the repairman commences work on the first machine, until the work is completed on the last machine. The time required to go from one machine to another, or from one building to another, will be considered actual work performance, and chargeable to the ordering activity, provided the time consumed in going between machines (or buildings) is reasonable.

c. TRAVEL OR TRANSPORTATION

(1) AT THE CONTRACTOR'S SHOP

(a) When equipment is returned to the Contractor's shop for adjustments or repairs which are not covered by the guarantee/warranty provision, the cost of transportation, packing, etc., from the ordering activity location to the Contractor's plant, and return to the ordering activity location, shall be borne by the ordering activity.

(b) The ordering activity should not return defective equipment to the Contractor for adjustments and repairs or replacement without his prior consultation and instruction.

(2) AT THE ORDERING ACTIVITY LOCATION (Within Established Service Areas)

When equipment is repaired at the ordering activity location, and repair service rates are established for service areas or zones, the listed rates are applicable to any ordering activity location within such service areas or zones. No extra charge, time, or expense will be allowed for travel or transportation of repairmen or machines to or from the ordering activity office; such overhead is included in the repair service rates listed.

(3) AT THE ORDERING ACTIVITY LOCATION (Outside Established Service Areas)

(a) If repairs are to be made at the ordering activity location, and the location is outside the service area as shown in paragraph 1.a, the repair service and mileage rates negotiated per subparagraphs 1.a and 8.d will apply.

(b) When the overall travel charge computed at the above mileage rate is unreasonable (considering the time required for travel, actual and necessary transportation costs, and the allowable ordering activity per diem rate for each night the repairman is required to remain overnight at the ordering activity location), the ordering activity shall have the option of reimbursing the Contractor for actual costs, provided that the actual costs are reasonable and allowable. The Contractor shall furnish the ordering activity with a report of travel performed and related expenses incurred. The report shall include departure and arrival dates, times, and the applicable mode of travel.

d .LABOR RATES

(1) REGULAR HOURS

The Regular Hours repair service rates listed herein shall entitle the ordering activity to repair service during the period 8:00 a.m. to 5:00 p.m., Monday through Friday, exclusive of holidays observed at the ordering activity location. There shall be no additional charge for repair service which was requested during Regular Hours, but performed outside the Regular Hours defined above, at the convenience of the Contractor.

(2) AFTER HOURS

When the ordering activity requires that repair service be performed outside the Regular Hours defined above, except Sundays and Holidays observed at the ordering activity location, the After Hours repair service rates listed herein shall apply. The Regular Hours rates defined above shall apply when repair service is requested during Regular Hours, but performed After Hours at the convenience of the Contractor.

(3) SUNDAYS AND HOLIDAYS

When the ordering activity requires that repair service be performed on Sundays and Holidays observed at the ordering activity location, the Sundays and Holidays repair service rates listed herein shall apply. When repair service is requested to be performed during Regular Hours and/or After Hours, but is performed at the convenience of the Contractor on Sundays or Holidays observed at the ordering activity location, the Regular Hours and/or After Hours repair service rates, as applicable, shall apply.

REPAIR SERVICE RATES

LOCATION	MINIMUM CHARGE*	REGULAR HOURS PER HOUR**	AFTER HOURS PER HOUR**	SUNDAYS AND HOLIDAYS PER HOUR
CONTRACTOR'S SHOP	Not offered	Not offered	Not offered	Not offered
ORDERING ACTIVITY LOCATION (WITHIN ESTABLISHED SERVICE AREAS)	Not offered	Not offered	Not offered	Not offered

ORDERING ACTIVITY LOCATION (OUTSIDE ESTABLISHED SERVICE AREAS)	Not offered	Not offered	Not offered	Not offered

*MINIMUM CHARGES INCLUDE N/A FULL HOURS ON THE JOB.

**FRACTIONAL HOURS, AT THE END OF THE JOB, WILL BE PRORATED TO THE NEAREST QUARTER HOUR.

10. REPAIR PARTS/SPARE PARTS RATE PROVISIONS*

All parts, furnished as spares or as repair parts in connection with the repair of equipment, unless otherwise indicated in this pricelist, shall be new, standard parts manufactured by the equipment manufacturer. All parts shall be furnished at prices indicated in the Contractor's commercial pricelist dated _____, at a discount of _____% from such listed prices.

11. GUARANTEE/WARRANTY—REPAIR SERVICE AND REPAIR PARTS/SPARE PARTS

a. REPAIR SERVICE

All repair work will be guaranteed/warranted for a period of Manufacturer's standard warranty

.

b. REPAIR PARTS/SPARE PARTS

All parts, furnished either as spares or repairs parts will be guaranteed/warranted for a period Manufacturer's standard warranty

12. INVOICES AND PAYMENTS

a. Maintenance Service

(1) Invoices for maintenance shall be submitted by **CDW-G** on a quarterly or monthly basis, after the completion of such period. Maintenance charges must be paid in arrears (31 U.S.C. 3324). PROMPT PAYMENT DISCOUNT, IF APPLICABLE, SHALL BE SHOWN ON THE INVOICE.

(2) Payment for maintenance service of less than one month's duration shall be prorated at 1/30th of the monthly rate for each calendar day

b. Repair Service and Repair Parts/Spare Parts

Invoices for repair service and parts shall be submitted by CDW-G as soon as possible after completion of work. Payment under blanket purchase agreements will be made quarterly or monthly, except where cash payment procedures are used. Invoices shall be submitted separately to each ordering activity office ordering services under the contract. The cost of repair parts shall be shown as a separate item on the invoice, and shall be priced in accordance with paragraph #10, above. PROMPT PAYMENT DISCOUNT, IF APPLICABLE, SHALL BE SHOWN ON THE INVOICE.

LICENSE CONDITIONS APPLICABLE TO PERPETUAL SOFTWARE LICENSES, INCLUDING LIMITED DURATION AND ITS MAINTENANCE, INCLUDING COMMERCIAL INFORMATION TECHNOLOGY SOFTWARE

1. INSPECTION/ACCEPTANCE

CDW-G shall only tender for acceptance those items that conform to the requirements of this contract. The ordering activity reserves the right to inspect or test any software that has been tendered for acceptance. The ordering activity may require repair or replacement of nonconforming software at no increase in contract price. The ordering activity must exercise its postacceptance rights (1) within a reasonable time after the defect was discovered or should have been discovered; and (2) before any substantial change occurs in the condition of the software, unless the change is due to the defect in the software.

2. ENTERPRISE USER LICENSE AGREEMENTS REQUIREMENTS (EULA)

The Contractor shall provide all Enterprise User License Agreements in an editable format.

3. GUARANTEE/WARRANTY

a. Unless specified otherwise in this contract, the Manufacturer's standard commercial guarantee/warranty as stated in the contracts commercial pricelist will apply to this contract.

b. CDW-G warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

c. Limitation of Liability. Except as otherwise provided by an express or implied warranty, the Contractor will not be liable to the ordering activity for the consequential damages resulting from any defect or deficiencies in accepted items.

.

4. TECHNICAL SERVICES

The **CDW-G**, without additional charge to the ordering activity, shall provide a hot line technical support number **1-800-383-4239** for the purpose of providing user assistance and guidance in the implementation of the software. The technical support number is available from **7am – 7pm Central time. CDW-G also offers 24x7 post-sales technical support with various options at http://www.cdwg.com/content/contact-us/technical-support.asp**

5. SOFTWARE MAINTENANCE

a. Software maintenance as it is defined:

a. Software maintenance as it is defined: (select software maintenance type) :

__X_____ 1. Software Maintenance as a Product (SIN 132-32 or SIN 132-33)

Software maintenance as a product includes the publishing of bug/defect fixes via patches and updates/upgrades in function and technology to maintain the operability and usability of the software product. It may also include other no charge support that are included in the purchase price of the product in the commercial marketplace. No charge support includes items such as user blogs, discussion forums, on-line help libraries and FAQs (Frequently Asked Questions), hosted chat rooms, and limited telephone, email and/or web-based general technical support for user's self diagnostics.

Software maintenance as a product does NOT include the creation, design, implementation, integration, etc. of a software package. These examples are considered software maintenance as a service.

Software Maintenance as a product is billed at the time of purchase.

N/A 2. Software Maintenance as a Service (SIN 132-34)

Software maintenance as a service creates, designs, implements, and/or integrates customized changes to software that solve one or more problems and is not included with the price of the software. Software maintenance as a service includes person-to-person communications regardless of the medium used to communicate: telephone support, on-line technical support, customized support, and/or technical expertise which are charged commercially. Software maintenance as a service is billed arrears in accordance with 31 U.S.C. 3324.

Software maintenance as a service is billed in arrears in accordance with 31 U.S.C. 3324.

6. RESERVED

7. RESERVED

8. RESERVED

9. UTILIZATION LIMITATIONS - (132-33)

a. Software acquisition is limited to commercial computer software defined in FAR Part 2.101.

b. When acquired by the ordering activity, commercial computer software and related documentation so legend shall be subject to the following:

(1) Title to and ownership of the software and documentation shall remain with the Manufacturer, unless otherwise specified.

(2) Software licenses are by site and by ordering activity. An ordering activity is defined as a cabinet level or independent ordering activity. The software may be used by any subdivision of the ordering activity (service, bureau, division, command, etc.) that has access to the site the software is placed at, even if the subdivision did not participate in the acquisition of the software. Further, the software may be used on a sharing basis where multiple agencies have joint projects that can be satisfied by the use of the software placed at one ordering activity's site. This would allow other agencies access to one ordering activity's database. For ordering activity public domain databases, user agencies and third parties may use the computer program to enter, retrieve, analyze and present data. The user ordering activity will take appropriate action by instruction, agreement, or otherwise, to protect the Manufacturer's proprietary

property with any third parties that are permitted access to the computer programs and documentation in connection with the user ordering activity's permitted use of the computer programs and documentation. For purposes of this section, all such permitted third parties shall be deemed agents of the user ordering activity.

(3) Except as is provided in paragraph 8.b(2) above, the ordering activity shall not provide or otherwise make available the software or documentation, or any portion thereof, in any form, to any third party without the prior written approval of the CDW-G. Third parties do not include prime Contractors, subcontractors and agents of the ordering activity who have the ordering activity's permission to use the licensed software and documentation at the facility, and who have agreed to use the licensed software and documentation only in accordance with these restrictions. This provision does not limit the right of the ordering activity to use software, documentation, or information therein, which the ordering activity may already have or obtains without restrictions.

(4) The ordering activity shall have the right to use the computer software and documentation with the computer for which it is acquired at any other facility to which that computer may be transferred, or in cases of disaster recovery, the ordering activity has the right to transfer the software to another site if the ordering activity site for which it is acquired is deemed to be unsafe for ordering activity personnel; to use the computer software and documentation with a backup computer when the primary computer is inoperative; to copy computer programs for safekeeping (archives) or backup purposes; to transfer a copy of the software to another site for purposes of benchmarking new hardware and/or software; and to modify the software and documentation or combine it with other software, provided that the unmodified portions shall remain subject to these restrictions.

(5) "Commercial Computer Software" may be marked with the Manufacturer's standard commercial restricted rights legend, but the schedule contract and schedule pricelist, including this clause, "Utilization Limitations" are the only governing terms and conditions, and shall take precedence and supersede any different or additional terms and conditions included in the standard commercial legend.

10. SOFTWARE CONVERSIONS - (132-33)

If offered by and in accordance with the manufacturer's licensing terms and commercial practices, full monetary credit will be allowed to the ordering activity when conversion from one version of the software to another is made as the result of a change in operating system , or from one computer system to another. Under a perpetual license (132-33), the purchase price of the new software shall be reduced by the amount that was paid to purchase the earlier version.

11. DESCRIPTIONS AND EQUIPMENT COMPATIBILITY

The Contractor shall include, in the schedule pricelist, a complete description of each software product and a list of equipment on which the software can be used as may be provided by the manufacturer. Also, included shall be a brief, introductory explanation of the modules and documentation which are offered.

12. RIGHT-TO-COPY PRICING

Pricing for right-to-copy licenses is not offered.

TERMS AND CONDITIONS APPLICABLE TO ELECTRONIC COMMERCE AND SUBSCRIPTION SERVICES (SPECIAL ITEM NUMBER 132-52)

1. SCOPE

The prices, terms and conditions stated under Special Item Number 132-52 Electronic Commerce (EC) Services Subscription Services apply exclusively to EC Services and Subscription Services within the scope of this Information Technology Schedule.

2. ELECTRONIC COMMERCE CAPACITY AND COVERAGE

The Ordering Activity shall specify the capacity and coverage required as part of the initial requirement.

3. INFORMATION ASSURANCE

a. The Ordering Activity is responsible for ensuring to the maximum extent practicable that each requirement issued is in compliance with the Federal Information Security Management Act (FISMA)

b. The Ordering Activity shall assign an impact level (per Federal Information Processing Standards Publication 199 & 200 (FIPS 199, *"Standards for Security Categorization of Federal Information and Information Systems"*) (FIPS 200, "*Minimum Security Requirements for Federal Information and Information Systems*") prior to issuing the initial statement of work. Evaluations shall consider the extent to which each proposed service accommodates the necessary security controls based upon the assigned impact level. The Contractor awarded SIN 132-52 is capable of meeting at least the minimum security requirements assigned against a low-impact information system (per FIPS 200).

c. The Ordering Activity reserves the right to independently evaluate, audit, and verify the FISMA compliance for any proposed or awarded Electronic Commerce services. All FISMA certification, accreditation, and evaluation activities are the responsibility of the ordering activity.

4. DELIVERY SCHEDULE.

The Ordering Activity shall specify the delivery schedule as part of the initial requirement. The Delivery Schedule options are found in *Information for Ordering Activities Applicable to All Special Item Numbers,* paragraph 6. *Delivery Schedule.*

5. INTEROPERABILITY.

When an Ordering Activity requires interoperability, this requirement shall be included as part of the initial requirement. Interfaces may be identified as interoperable on the basis of participation in a sponsored program acceptable to the Ordering Activity. Any such access or interoperability with teleports/gateways and provisioning of enterprise service access will be defined in the individual requirement.

6. ORDER

a. Agencies may use written orders, EDI orders, blanket purchase agreements, individual purchase orders, or task orders for ordering electronic services under this contract. Blanket Purchase Agreements shall not extend beyond the end of the contract period; all electronic services and delivery shall be made and the contract terms and conditions shall continue in effect until the completion of the order. Orders for tasks which extend beyond the fiscal year for which funds are available shall include FAR 52.232-19 (Deviation – May 2003) Availability of Funds for the Next Fiscal Year. The purchase order shall specify the availability of funds and the period for which funds are available.

b. All task orders are subject to the terms and conditions of the contract. In the event of conflict between a task order and the contract, the contract will take precedence.

7. PERFORMANCE OF ELECTRONIC SERVICES

The Contractor shall provide electronic services on the date agreed to by the Contractor and the ordering activity.

8. RESPONSIBILITIES OF THE CONTRACTOR

The Contractor shall comply with all laws, ordinances, and regulations (Federal, State, City, or otherwise) covering work of this character.

9. RIGHTS IN DATA

The Contractor shall comply FAR 52.227-14 RIGHTS IN DATA – GENERAL and with all laws, ordinances, and regulations (Federal, State, City, or otherwise) covering work of this character.

10. ACCEPTANCE TESTING

If requested by the ordering activity the Contractor shall provide acceptance test plans and procedures for ordering activity approval. The Contractor shall perform acceptance testing of the systems for ordering activity approval in accordance with the approved test procedures.

11. WARRANTY

The Contractor shall provide a warranty covering each Contractor-provided electronic commerce service. The minimum duration of the warranty shall be the duration of the manufacturer's commercial warranty for the item listed below:

Commercial warranty is provided by each software publisher, CDW-G as a value added reseller passes on the manufacturer's warranty

The warranty shall commence upon the later of the following:

a. Activation of the user's service
b. Installation/delivery of the equipment

The Contractor, by repair or replacement of the defective item, shall complete all warranty services within five working days of notification of the defect. Warranty service shall be deemed complete when the user has possession of the repaired or replaced item. If the Contractor renders warranty service by replacement, the user shall return the defective item(s) to the Contractor as soon as possible but not later than ten (10) working days after notification.

12. MANAGEMENT AND OPERATIONS PRICING

The Contractor shall provide management and operations pricing on a uniform basis. All management and operations requirements for which pricing elements are not specified shall be provided as part of the basic service.

13. TRAINING

The Contractor shall provide normal commercial installation, operation, maintenance, and engineering interface training on the system. If there is a separate charge, indicate below:

If applicable is provided in the pricelist as a part number offered by the manufacturer

14. MONTHLY REPORTS

In accordance with commercial practices, the Contractor may furnish the ordering activity/user with a monthly summary ordering activity report.

14. ELECTRONIC COMMERCE SERVICE PLAN

(a) Describe the electronic service plan and eligibility requirements.

Eligibility requirements are to be determined based on customers access and the products procured

(b) Describe charges, if any, for additional usage guidelines.

Subscription/Hosted Services must be renewed on or before the expiration of the service for continued use of the software.

(c) Describe corporate volume discounts and eligibility requirements, if any.

TBD at time of order

[redacted]

PREAMBLE

(Name of Company) provides commercial products and services to ordering activities. We are committed to promoting participation of small, small disadvantaged and women-owned small businesses in our contracts. We pledge to provide opportunities to the small business community through reselling opportunities, mentor-protégé programs, joint ventures, teaming arrangements, and subcontracting.

COMMITMENT

To actively seek and partner with small businesses.

To identify, qualify, mentor and develop small, small disadvantaged and women-owned small businesses by purchasing from these businesses whenever practical.

To develop and promote company policy initiatives that demonstrate our support for awarding contracts and subcontracts to small business concerns.

To undertake significant efforts to determine the potential of small, small disadvantaged and women-owned small business to supply products and services to our company.

To insure procurement opportunities are designed to permit the maximum possible participation of small, small disadvantaged, and women-owned small businesses.

To attend business opportunity workshops, minority business enterprise seminars, trade fairs, procurement conferences, etc., to identify and increase small businesses with whom to partner.

To publicize in our marketing publications our interest in meeting small businesses that may be interested in subcontracting opportunities.

We signify our commitment to work in partnership with small, small disadvantaged and women-owned small businesses to promote and increase their participation in ordering activity contracts. To accelerate potential opportunities please contact Sheryl McCurnin at 703-621-8241 or via emal at smccurnin@cdwg.com or via fax at 703-621-8300.

Meeting Date: April 26, 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 approving and authorizing the proper city officials to execute an agreement between the City of Pompano Beach and the School Board of Broward County providing for the use of school buses for city recreational purposes.

Fiscal Impact: None at this Time
Contract Term: May 1, 2016 – April 30, 2017

Summary of Purpose and Why:

The agreement provides for the Parks, Recreation and Cultural Arts Department to contract with the School Board of Broward County to use school buses for city recreational purposes.

(1) Origin of request for this action: Staff initiated
(2) Primary staff contact: Mark Beaudreau, Recreation Programs Administrator Ext. 4191
(3) Expiration of contract, if applicable: May 1, 2016 – April 30, 2017
(4) Fiscal impact and source of funding: The current approved transportation rate is $70/hour and will be paid from 001-3920-572-55-40 when used.

DEPARTMENTAL COORDINATION	DATE	DEPARTMENTAL RECOMMENDATION	DEPARTMENTAL HEAD SIGNATURE
PR&CA Dept.	4-5-16	Approve	Mark A. Beaudreau
City Attorney	4-6-16		
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

MEMORANDUM

Parks, Recreation & Cultural Arts

MEMORANDUM 16-A056

DATE: April 4, 2016

TO: Dennis W. Beach, City Manager

FROM: Mark A. Beaudreau, Recreation Programs Administrator

SUBJECT: Agenda Item - Resolution with School Board of Broward County for Use of School Buses

Please place the attached resolution on the April 26, City Commission Agenda. This resolution is a renewal agreement between the City and the School Board of Broward County providing for the use of school buses for city recreational purposes. The current license agreement expires April 30, 2016. The School Board has informed us the agreement will be on their agenda for May 3, 2016. The new lease agreement will commence on May 1, 2016 and shall continue through April 30, 2017 unless terminated by either party. The School Board's current established posted rate for school bus transportation is $70 per hour.

If you have any questions or need additional information please call me.

afh

cc: Missy Kitts, Recreation Manager
Jonathan Nasser, Recreation Manager
Scott Moore, Recreation Manager

City Attorney's Communication #2016-631
March 23, 2016

TO: Mark A. Beaudreau, Recreation Programs Administrator

FROM: Jill R. Mesojedec, FRP, Paralegal

VIA: Mark E. Berman, City Attorney

RE: Resolution – The School Board of Broward County / Use of School Buses

Pursuant to your memorandum dated March 22, 2016, Memorandum 16-A054, 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 AN AGREEMENT BETWEEN THE CITY OF POMPANO BEACH AND THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA, PROVIDING FOR THE USE OF SCHOOL BUSES FOR CITY RECREATIONAL PURPOSES; PROVIDING AN EFFECTIVE DATE.**

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

JILL R. MESOJEDEC

/jrm
l:cor/recr/2016-674

Attachment

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

3831 NW 10TH AVENUE • OAKLAND PARK, FLORIDA 33309 • TEL 754-321-4400 • FAX 754-321-4515

STUDENT TRANSPORTATION & FLEET SERVICES
Patricia A. Snell, Director
Pat.Snell@browardschools.com

SCHOOL BOARD

Chair DR. ROSALIND OSGOOD
Vice Chair ABBY M. FREEDMAN

Board Members ROBIN BARTLEMAN
HEATHER P. BRINKWORTH
DONNA P. KORN
PATRICIA GOOD
LAURIE RICH LEVINSON
ANN MURRAY
NORA RUPERT

ROBERT W. RUNCIE
Superintendent of Schools

March 21, 2016

City of Pompano Beach
Mr. Mark Beaudreau
Recreation Program Administrator
1801 NE 6th Street
Pompano Beach, FL 33060

Dear Mr. Beaudreau:

Please find attached three copies of the proposed agreement between The School Board of Broward County, Florida, and the City of Pompano Beach, to provide school bus transportation for recreational programs and events for a contract term of one year. This agreement provides reimbursement for the operating cost of regular school buses used by the City of Pompano Beach at the District's approved Reimbursement Rate. Please note this contract also provides for the reimbursement for a school bus attendant at the District's bus attendant approved Reimbursement Rate, should a wheelchair lift equipped bus be required.

The approved reimbursement rates are established annually, based on the District's previous fiscal year operational cost for school bus transportation. Notification of the annual reimbursement rates is mailed to your designated contract administrator each year prior to the effective date. The current approved transportation Reimbursement Rate is $70 per hour. The approved bus attendant Reimbursement Rate is $28 per hour, which is in addition to the approved transportation Reimbursement Rate.

If the City of Pompano Beach desires to continue the utilization of the District's school bus transportation for recreational programs and events, please have all three copies of the agreement executed and returned to my office to the attention of Cyrilla Bradley, no later than Friday, April 8, 2016. We are planning to take this agreement to the May 3, 2016 Regular School Board Meeting.

If you require additional information, or if you have any questions concerning the agreement, please contact Ms. Cyrilla Bradley, Accountant V, at 754 321-4427.

Sincerely,

P.A. Snell

Patricia A. Snell, Director
Student Transportation & Fleet Services

Received
Date 3-22-2016
By: Anne H.

PAS:mt
Attachments

c: Cyrilla Bradley, Accountant V, Student Transportation & Fleet Services

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 AN AGREEMENT BETWEEN THE CITY OF POMPANO BEACH AND THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA, PROVIDING FOR THE USE OF SCHOOL BUSES FOR CITY RECREATIONAL PURPOSES; 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 The School Board of Broward County, Florida, providing for the use of school buses for city recreational purposes, 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 School Board of Broward County, Florida.

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
3/23/16
l:reso/2016-171

AGREEMENT

THIS AGREEMENT is made and entered into as of this ____ day of _____, 2016, by and between

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA
(hereinafter referred to as "SBBC"),
a body corporate and political subdivision of the State of Florida,
whose principal place of business is
600 Southeast Third Avenue, Fort Lauderdale, Florida 33301

and

CITY OF POMPANO BEACH
(hereinafter referred to as "CITY"),
whose principal place of business is
1801 NE 6th Street
Pompano Beach, Florida 33060

WHEREAS, the SBBC owns and operates a fleet of vehicles for the transportation of pupils; and

WHEREAS, the CITY provides recreational programs dependent upon availability of transportation; and

WHEREAS, Florida Statute 1006.261 (1) (c) provides for nonprofit corporations and nonprofit civic associations to use school buses to transport school-age children for their sponsored activities; and

WHEREAS, the CITY, being eligible under this legislation to use school buses, desires to enter into this Agreement with the SBBC to define the relationship between the two parties and set forth the rights and obligations herein;

NOW, THEREFORE, in consideration of the premises and of mutual covenants contained hereafter and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

ARTICLE 1 - RECITALS

1.01 **Recitals.** The Parties agree that the foregoing recitals are true and correct and that such recitals are incorporated herein by reference.

ARTICLE 2 – SPECIAL CONDITIONS

2.01 **Term of Agreement.** Unless terminated earlier pursuant to Section 3.05 of this Agreement, the term of this Agreement shall commence on May 1, 2016 and conclude on April 30, 2017.

2.02 **Transportation Needs.** Prior to the execution of the Agreement, the two parties have discussed the transportation needs of the CITY and the approximate number of school buses that may be made available to the CITY; however, nothing herein contained will obligate the SBBC to provide buses to the CITY, if it is deemed by the SBBC that such action will reduce or delay transportation of pupils. The CITY, through its Contract Administrator, agrees to provide the SBBC with two (2) weeks notice in order to obtain the school vehicles for transportation purposes as described within the Agreement. Said requests for transportation are limited to days that school is not in session, such as employee planning days, summer or holiday breaks and/or weekends. The SBBC agrees to provide the referenced school vehicles to the CITY on an emergency notice basis of between forty-eight (48) hours and two (2) weeks notice time prior to needed services. This emergency notice basis must not exceed four (4) times per Agreement year.

2.03 **Payment of Operation Cost by CITY.** The CITY agrees to fully reimburse the SBBC for the operating cost of school buses used by the CITY during the term of this Agreement. The CITY shall pay the SBBC posted transportation rate for a minimum of four (4) hours per day for each regular school bus provided, which sum shall cover use, operational costs, and reimbursement for driver's hours and all other costs and expenses incurred by the SBBC in supplying the regular buses. Should a wheelchair lift equipped bus be required, the CITY shall pay the SBBC's posted bus attendant rate, for a minimum of four (4) hours per day for each wheelchair lift equipped bus provided, in addition to the posted transportation rate.

2.04 **Lack of Petroleum Products.** It is further agreed that in the event petroleum products required to operate this Agreement, or part of this Agreement, become unavailable, the obligations of each party hereunder may be terminated by the SBBC upon no less than twenty-four (24) hours notice in writing to the CITY. The SBBC shall be the final authority as to the availability of petroleum products.

2.05 **Bus Drivers Assigned by SBBC.** When school vehicles are used by the CITY, under no circumstances will the vehicle be driven by anyone other than bus drivers qualified, trained, certified, and assigned by the SBBC. School buses will be operated under the same rules, regulations, policies, and procedures as those relating to school pupil transportation and governed accordingly. Drivers shall at all times be considered employees or agents of the SBBC.

2.06 **Damage to the Vehicles Paid by CITY.** The CITY agrees to pay for any damage to the school vehicles while such vehicles are under the CITY's use which

damage is attributable directly to that use, and caused by the CITY, its' employees, or its' program participants. All accidents involving a school vehicle will be reported as provided by procedures now existent or required in the daily operation of the SBBC.

2.07 **Reporting of Incidents Involving Non Pupil Passengers.** The CITY agrees to report to the SBBC the nature and extent if any incidents resulting in property damage or personal injury to a passenger while boarding, riding in, or deboarding from such vehicle and indemnify and hold harmless the SBBC from any and all claims arising out of such incidents, to the fullest extent allowed by the Constitution and the laws of the state of Florida, if such injury or damage is caused by any act of omission of an employee of the CITY.

2.08 **Method of Reimbursement.** Unless otherwise agreed upon by the parties in writing, the costs borne by the SBBC on behalf of the CITY under this Agreement will be reimbursed as invoiced; and in a reimbursement period not to exceed thirty (30) days from presentment or receipt of the referenced invoice to the CITY's Contract Administrator. Past due invoices will be sent for all invoices not paid within thirty days.

2.09 **Geographic Limitations on the Use of School Vehicles.** The CITY will limit its use of school vehicles to and within the confines of the Tri-County Area. Under no circumstances should the vehicle be taken outside of the geographical limits set forth in this paragraph.

2.10 **Passenger Load Limit.** When the CITY's use of the school vehicle (s) is made, the passenger capacity transported shall not exceed the rated capacity of the said vehicle(s). Standees shall not be permitted at any time. The CITY shall not use school vehicles for any purpose whatsoever outside of the use covered by this Agreement.

2.11 **Cancellation.** The CITY reserves the right to cancel any trips it deems necessary with a minimum of twenty-four (24) hours notice prior to the scheduled trip at no charge. Otherwise, cancellations not meeting the minimum notice will result in a four hour charge at the posted transportation rate.

2.12 **Contract Administrator and Contract Representative.** The CITY's Contract Administrator for this Agreement is Mark Beaudreau, Recreation Programs Administrator, or designee. The Contract Representative for the SBBC is the Director of Student Transportation and Fleet Services, 3895 Northwest 10th Avenue, Oakland Park, Florida 33309, or designee.

2.13 **Insurance**. CITY agrees to maintain the following insurance coverage:
Comprehensive General Liability coverage with bodily injury limits of not less than $1,000,000 per occurrence with combined single limit for bodily injury and property damage. The SBBC shall be named as an additional insured under the General Liability policy.

2.14 **Inspection of CITY's Records by SBBC.** The CITY shall establish and maintain books, records and documents (including electronic storage media) sufficient to reflect all income and expenditures of funds provided by SBBC under this Agreement. All CITY's Records, regardless of the form in which they are kept, shall be open to inspection and subject to audit, inspection, examination, evaluation and/or reproduction, during normal working hours, by SBBC's agent or its authorized representative to permit SBBC to evaluate, analyze and verify the satisfactory performance of the terms and conditions of this Agreement and to evaluate, analyze and verify any and all invoices, billings, payments and/or claims submitted by the CITY or any of the CITY's payees pursuant to this Agreement. CITY's Records subject to examination shall include, without limitation, those records necessary to evaluate and verify direct and indirect costs (including overhead allocations) as they may apply to costs associated with this Agreement. CITY's Records subject to this section shall include any and all documents pertinent to the evaluation, analysis, verification and reconciliation of any and all expenditures under this Agreement without regard to funding sources.

(a) CITY's Records Defined. For the purposes of this Agreement, the term "CITY's Records" shall include, without limitation, accounting records, payroll time sheets, cancelled payroll checks, W-2 forms, written policies and procedures, computer records, disks and software, videos, photographs, executed subcontracts, subcontract files (including proposals of successful and unsuccessful bidders), original estimates, estimating worksheets, correspondence, change order files (including sufficient supporting documentation and documentation covering negotiated settlements), and any other supporting documents that would substantiate, reconcile or refute any charges and/or expenditures related to this Agreement.

(b) Duration of Right to Inspect. For the purpose of such audits, inspections, examinations, evaluations and/or reproductions, SBBC's agent or authorized representative shall have access to the CITY's Records from the effective date of this Agreement, for the duration of the term of this Agreement, and until the later of five (5) years after the termination of this Agreement or five (5) years after the date of final payment by SBBC to the CITY pursuant to this Agreement.

(c) Notice of Inspection. SBBC's agent or its authorized representative shall provide the City reasonable advance notice (not to exceed two (2) weeks) of any intended audit, inspection, examination, evaluation and or reproduction.

(d) Audit Site Conditions. SBBC's agent or its authorized representative shall have access to the CITY's facilities and to any and all records related to this Agreement, and shall be provided adequate and appropriate work space in order to exercise the rights permitted under this section.

(e) Failure to Permit Inspection. Failure by the CITY to permit audit, inspection, examination, evaluation and/or reproduction as permitted under this Section

shall constitute grounds for termination of this Agreement by SBBC for cause and shall be grounds for the denial of some or all of any the CITY's claims for payment by SBBC.

(f) Overcharges and Unauthorized Charges. If an audit conducted in accordance with this Section discloses overcharges or unauthorized charges to SBBC by CITY in excess of two percent (2%) of the total billings under this Agreement, the actual cost of SBBC's audit shall be paid by the CITY. If the audit discloses billings or charges to which the CITY is not contractually entitled, the CITY shall pay said sum to SBBC within twenty (20) days of receipt of written demand under otherwise agreed to in writing by both parties.

(g) Inspection of Subcontractor's Records. The CITY shall require any and all subcontractors, insurance agents and material suppliers (hereafter referred to as "Payees") providing services or goods with regard to this Agreement to comply with the requirements of this section by insertion of such requirements in any written subcontract. Failure by the CITY to include such requirements in any subcontract shall constitute grounds for termination of this Agreement by SBBC for cause and shall be grounds for the exclusion of some or all of any Payee's costs from amounts payable by SBBC to the CITY pursuant to this Agreement and such excluded costs shall become the liability of the CITY.

(h) Inspector General Audits. The CITY shall comply and cooperate immediately with any inspections, reviews, investigations, or audits deemed necessary by the Florida Office of the Inspector General or by any other state or federal officials.

2.15 **Notice.** When any of the parties desire to give notice to the other, such notice must be in writing, sent by US Mail, postage prepaid, addressed to the party for whom it is intended at the place last specified; the place for giving notice shall remain such until it is changed by written notice in compliance with the provisions of the paragraph. For the present, the parties designate the following as the respective places for giving notice:

To SBBC:	Superintendent of Schools The School Board of Broward County, FL 600 Southeast Third Avenue Fort Lauderdale, FL 33301
With a Copy to:	Director of Student Transportation & Fleet Services The School Board of Broward County, FL 3895 NW 10 Avenue Fort Lauderdale, FL 33309
To CITY:	City of Pompano Beach Mark Beaudreau, Recreation Program Admin. 1801 NE 6th Street Pompano, FL 33060

2.16 **Background Screening**. The CITY agrees to comply with all requirements of Sections 1012.32 and 1012.465, Florida Statutes, and all of its personnel who (1) are permitted access to school grounds when students are present, (2) will have direct contact with students, or (3) have access or control of school funds will successfully complete the background screening required by the referenced statutes and meet the standards established by the statutes. This background screening will be conducted by SBBC in advance of the CITY or its personnel providing any services under the conditions described in the previous sentence. The CITY will bear the cost of acquiring the background screening required by Section 1012.32, Florida Statutes, and any fee imposed by the Florida Department of Law Enforcement to maintain the fingerprints provided with respect to the CITY and its personnel. The Parties agree that the failure of the CITY to perform any of the duties described in this section shall constitute a material breach of this Agreement entitling SBBC to terminate immediately with no further responsibilities or duties to perform under this Agreement. To the extent permitted by law, the CITY agrees to indemnify and hold harmless SBBC, its officers and employees from any liability in the form of physical or mental injury, death or property damage resulting in the CITY's failure to comply with the requirements of this section or Sections 1012.32 and 1012.465, Florida Statutes. Nothing herein shall be construed as a waiver by SBBC or the City of sovereign immunity or of any rights or limits to liability existing under Section 768.28, Florida Statutes.

ARTICLE 3 – GENERAL CONDITIONS

3.01 **No Waiver of Sovereign Immunity**. Nothing herein is intended to serve as a waiver of sovereign immunity by any agency or political subdivision to which sovereign immunity may be applicable or of any rights or limits to liability existing under Section 768.28, Florida Statutes. This section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.

3.02 **No Third Party Beneficiaries**. The parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Agreement. None of the parties intend to directly or substantially benefit a third party by this Agreement. 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 any of the parties based upon this Agreement. Nothing herein shall be construed as consent by an agency or political subdivision of the State of Florida to be sued by third parties in any matter arising out of any contract.

3.03 **Independent Contractor**. The parties to this agreement shall at all times be acting in the capacity of independent contractors and not as an officer, employee or agent of one another. Neither party or its respective agents, employees, subcontractors or assignees shall represent to others that it has the authority to bind the other party unless specifically authorized in writing to do so. No right to SBBC retirement, leave benefits or any other benefits of SBBC employees shall exist as a result of the performance of any duties or responsibilities under this Agreement. SBBC shall not be responsible for social

security, withholding taxes, contributions to unemployment compensation funds or insurance for the other party or the other party's officers, employees, agents, subcontractors or assignees.

3.04 **Equal Opportunity Provision**. The parties agree that no person shall be subjected to discrimination because of age, race, color, disability, gender identity, gender expression marital status, national origin, religion, sex or sexual orientation in the performance of the parties' respective duties, responsibilities and obligations under this Agreement.

3.05 **Termination**. This Agreement may be canceled with or without cause by SBBC during the term hereof upon thirty (30) days written notice to the other parties of its desire to terminate this Agreement. SBBC shall have no liability for any property left on SBBC's property by any party to this Agreement after the termination of this Agreement. Any party contracting with SBBC under this Agreement agrees that any of it's property placed upon SBBC's facilities pursuant to the Agreement shall be removed with ten (10) business days following the termination, conclusion or cancellation of this Agreement and that any such property remaining upon SBBC's facilities after that time shall be deemed to be abandoned, title to such property shall pass to SBBC, and SBBC may use or dispose of such property as SBBC deems fit and appropriate.

3.06 **Default**. The parties agree that, in the event that either party is in default of its obligations under this Agreement, the non-defaulting party shall provide to the defaulting party (30) days written notice to cure the default. However, in the event said default cannot be cured within said thirty (30) day period and the defaulting party is diligently attempting in good faith to cure same, the time period shall be reasonably extended to allow the defaulting party additional cure time. Upon the occurrence of a default that is not cured during the applicable cure period, this Agreement may be terminated by the non-defaulting party upon thirty (30) days notice. This remedy is not intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or future exercise thereof. Nothing in this section shall be construed to preclude termination for convenience pursuant to Section 3.05.

3.07 **Annual Appropriation.** The performance and obligations of SBBC under this Agreement shall be contingent upon an annual budgetary appropriation by its governing body. If SBBC does not allocate funds for the payment of services or products to be provided under this Agreement, this Agreement may be terminated by SBBC at the end of the period for which funds have been allocated. SBBC shall notify the other party at the earliest possible time before such termination. No penalty shall accrue to SBBC in the event this provision is exercised, and SBBC shall not be obligated or liable for any future payments due or any damages as a result of termination under this section.

3.08 **Excess Funds**. Any party receiving funds paid by SBBC under this Agreement agrees to promptly notify SBBC of any funds erroneously received from SBBC upon the discovery of such erroneous payment or overpayment. Any such excess

funds shall be refunded to SBBC with interest calculated from the date of the erroneous payment or overpayment. Interest shall be calculated using the interest rate for judgments under Section 55.03, Florida Statutes, applicable at the time the erroneous payment or overpayment was made by SBBC.

3.09 **Public Records**. Pursuant to Section 119.0701, Florida Statutes, any party contracting with SBBC is required to (a) keep and maintain available for public inspection any records that pertain to services rendered under this Agreement; (b) provide the public with access to public records on the same terms and conditions that SBBC would provide such records and at a cost that does exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law; (c) ensure that public records that are exempt or confidential and exempt from public records disclose requirements are not disclosed except as authorized by law; and (d) meet all requirements for retaining public records and transfer, at no cost, to SBBC all public records in that party's possession upon termination of its agreement with SBBC and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All of such party's records stored electronically must be provided to SBBC in a format that is compatible with SBBC's information technology systems. Each party shall maintain its own respective records and documents associated with this Agreement in accordance with the records retention requirements applicable to public records. Each party shall be responsible for compliance with any public documents request served upon it pursuant to Section 119.07, Florida Statutes, and any resultant award of attorney's fees for non-compliance with that law. Each party acknowledges that this Agreement and all attachments thereto are public records and do not constitute trade secrets

3.10 **Student Records**. Notwithstanding any provision to the contrary within this Agreement, any party contracting with SBBC under this Agreement shall fully comply with the requirements of Sections 1002.22 and 1002.221, Florida Statutes; FERPA, and any other state or federal law or regulation regarding the confidentiality of student information and records. Each such party agrees, for itself, its officers, employees, agents, representatives, contractors or subcontractors, to fully indemnify and hold harmless SBBC and its officers and employees for any violation of this section, including, without limitation, to the extent permitted by law that the party or an officer, employee, agent, representative, contractor, or sub-contractor of the party shall either intentionally or negligently violate the provisions of this section or of Sections 1002.22 and/or 1002.221, Florida Statutes.

3.11 **Compliance with Laws**. Each party shall comply with all applicable federal, state and local laws, SBBC policies, codes, rules and regulations in performing its duties, responsibilities and obligations pursuant to this Agreement.

3.12 **Place of Performance**. All obligations of SBBC under the terms of this Agreement are reasonably susceptible of being performed in Broward County, Florida and shall be payable and performable in Broward County, Florida.

3.13 **Governing Law and Venue**. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida.

3.14 **Entirety of Agreement**. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained herein 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, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

3.15 **Binding Effect**. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

3.16 **Assignment**. Neither this Agreement nor any interest herein may be assigned, transferred or encumbered by any party without the prior written consent of the other party. There shall be no partial assignments of this Agreement including, without limitation, the partial assignment of any right to receive payments from SBBC.

3.17 **Incorporation by Reference**. Exhibits attached hereto and referenced herein shall be deemed to be incorporated into this Agreement by reference.

3.18 **Captions**. The captions, section designations, section numbers, article numbers, titles and headings appearing in this Agreement are inserted only as a matter of convenience, have no substantive meaning, and in no way define, limit, construe or describe the scope or intent of such articles or sections of this Agreement, nor in any way effect this Agreement and shall not be construed to create a conflict with the provisions of this Agreement.

3.19 **Severability**. In the event that any one or more of the sections, paragraphs, sentences, clauses or provisions contained in this Agreement is held by a court of competent jurisdiction to be invalid, illegal, unlawful, unenforceable or void in any respect, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect as if such invalid, illegal, unlawful, unenforceable or void sections, paragraphs, sentences, clauses or provisions had never been included herein.

3.20 **Preparation of Agreement**. The parties acknowledge that they have sought and obtained whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to herein expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

3.21 **Amendments**. No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written

document prepared with the same or similar formality as this Agreement and executed by each party hereto.

3.22 **Waiver**. The parties 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. Any party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement unless the waiver is in writing and signed by the party waiving such provision. A written waiver shall only be effective as to the specific instance for which it is obtained and shall not be deemed a continuing or future waiver.

3.23 **Force Majeure**. Neither party shall be obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, wars, sabotage, accident, flood, acts of God, strikes, or other labor disputes, riot or civil commotions, or by reason of any other matter or condition beyond the control of either party, and which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall a lack of funds on the part of either party be deemed Force Majeure.

3.24 **Survival**. All representations and warranties made herein, indemnification obligations, obligations to reimburse SBBC, obligations to maintain and allow inspection and audit of records and property, obligations to maintain the confidentiality of records, reporting requirements, and obligations to return public funds shall survive the termination of this Agreement.

3.25 **Contract Administration.** SBBC has delegated authority to the Superintendent of Schools or his/her designee to take any actions necessary to implement and administer this Agreement.

3.26 **Indemnification.** Each party agrees to be fully responsible for its acts of negligence, or its employees' acts of negligence when acting within the scope of their employment and agrees to be liable for any damages resulting from said negligence. This section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.

3.27 **Authority**. Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

IN **WITNESS WHEREOF**, the Parties hereto have made and executed this Agreement on the date first above written.

FOR SBBC

(Corporate Seal)

THE SCHOOL BOARD OF
BROWARD COUNTY, FLORIDA

ATTEST:

By _____
Dr. Rosalind Osgood, Chair

_____
Robert W. Runcie, Superintendent of Schools

Approved as to Form and Legal Content:

_____
Office of the General Counsel

"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

Meeting Date: April 26, 2016 Agenda Item 9

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 grant amendment request form to the agreement between the City of Pompano Beach and the State of Florida, Department of State, Division of Cultural Affairs to obtain an extension of the grant completion deadline, modify the attended scope of services and re-allocate grant funds for the Library/Cultural Center Project.

Fiscal Impact: $500,000 Grant Funds – State of Florida, Division of Cultural Affairs
Term: The Grant Agreement Specified a completion deadline of June 1, 2016

Summary of Purpose and Why:

The attached grant amendment request form is to extend the grant completion deadline of June 1, 2016 to September 29, 2016, modify the scope of services and re-allocate the appropriated budget funds for the Library/Cultural Center Phase I Project 15-9-300-599. The City was awarded $500,000 to assist with the construction for the Library/Cultural Center from the State of Florida, Division of Cultural Affairs in January 2015. Due to project delays it has been recommended an amendment request form be filed with the State of Florida.

This item relates to the Strategic Plan:
Great Places: Goal 2.0, Initiative 2.8 – Develop and promote cultural/heritage tourism opportunities. Great Places: Goal 7.0, Initiative 7.3 – Complete Library/Cultural Arts Center Project

(1) Origin of request for this action: Staff initiated
(2) Primary staff contact: Mark Beaudreau, Recreation Programs Adm. Ext. 4191
(3) Expiration of contract, if applicable: Extend grant deadline to September 29, 2016
(4) Fiscal impact and source of funding: None

DEPARTMENTAL COORDINATION	DATE	DEPARTMENTAL RECOMMENDATION	DEPARTMENTAL HEAD SIGNATURE
Parks & Recreation	4-19-16	Approve	Mark A. Beaudreau
Finance	4-19-16	Approval	S. Ribble
Budget	4-19-16		
City Attorney	4-19-16		
X City Manager			

ACTION TAKEN BY COMMISSION:

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

pompano beach
Florida's Warmest Welcome

PARKS, RECREATION & CULTURAL ARTS
Mark A. Beaudreau, Recreation Programs Administrator
E: mark.beaudreau@copbfl.com | P: 954.786.4191 | F: 954.786.4113

MEMORANDUM 16-065

Date: April 18, 2016

To: Dennis Beach, City Manager

From: Mark Beaudreau, Recreation Programs Administrator

Subject: Agenda Item- Grant Amendment Request to State of Florida, Division of Cultural Affairs Phase 1 project # 15.9.300.599

Please place the attached grant amendment request form on the April 26, 2016 City Commission Agenda, to extend the grant completion deadline of June 1, 2016 to September 29, 2016, modify the scope of services and re-allocate the appropriated budget funds for the Cultural Center Phase 1 project # 15.9.300.599.

On January 13, 2015, an agreement between the City of Pompano Beach and the State of Florida, Division of Cultural Affairs was executed for a $500,000 grant award to assist in the construction of the Cultural Center. The terms of the grant were to have a certain amount of work completed by June 1, 2016, however, this project has been complicated with the tri-agency involvement which has resulted in design specs changes (major change order) and a bout of bad weather (heavy rains and tornadoes) occurrences. In order to avoid not being able to meet the deadline, it has been recommended that the amendment request form be filed with the State of Florida.

If you require any additional information, please contact me at 954-786-4191.

MB/CK/afh

City Attorney's Communication #2016-736
April 15, 2016

TO: Mark A. Beaudreau, Recreation Programs Administrator

FROM: Fawn Powers, Assistant City Attorney

RE: Resolution – Cultural Facilities Grant Amendment Request Form

As requested, the above-referenced Resolution has been prepared and is attached at this time as follows:

> **A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A GRANT AMENDMENT REQUEST FORM TO THE AGREEMENT BETWEEN THE CITY OF POMPANO BEACH AND THE STATE OF FLORIDA, DEPARTMENT OF STATE, DIVISION OF CULTURAL AFFAIRS TO OBTAIN AN EXTENSION OF THE GRANT COMPLETION DEADLINE, MODIFY THE ATTENDANT SCOPE OF SERVICES AND RE-ALLOCATE GRANT FUNDS FOR THE LIBRARY CULTURAL CENTER PROJECT; PROVIDING AN EFFECTIVE DATE.**

Fawn Powers

FAWN POWERS

l:cor/recr/2016-736f
Attachments

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 GRANT AMENDMENT REQUEST FORM TO THE AGREEMENT BETWEEN THE CITY OF POMPANO BEACH AND THE STATE OF FLORIDA, DEPARTMENT OF STATE, DIVISION OF CULTURAL AFFAIRS TO OBTAIN AN EXTENSION OF THE GRANT COMPLETION DEADLINE, MODIFY THE ATTENDANT SCOPE OF SERVICES AND RE-ALLOCATE GRANT FUNDS FOR THE LIBRARY CULTURAL CENTER PROJECT; PROVIDING AN EFFECTIVE DATE.

WHEREAS, pursuant to Resolution 2015-138 dated January 13, 2015, the City Commission authorized the proper City officials to execute an Agreement between the City of Pompano Beach and the State of Florida, Department of State, Division of Cultural Affairs (the "Agreement" attached hereto and made a part hereof as Exhibit 1), which awards the City a $500,000.00 grant to help fund construction of the Library Cultural Center Project subject to the City's satisfactory completion of its obligations thereunder; and

WHEREAS, the Agreement expires on June 1, 2016 (the "grant completion deadline") and the City needs additional time to provide the deliverables and meet the performance measures required to receive the balance of the grant funds awarded thereunder;

WHEREAS, the Agreement provides the City may request a modification of its provisions by timely submitting the Grant Amendment Request Form attached hereto and incorporated herein as Exhibit 2;

WHEREAS, pursuant to submittal of the Grant Amendment Request Form, the City intends to seek Division approval to extend the grant completion deadline, modify the attendant scope of services and re-allocate appropriated grant funds;

WHEREAS, the City Commission has determined that the best interests of the public will be served by seeking the aforesaid modifications pursuant to submittal of the subject Grant Amendment Request Form; now, therefore,

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

SECTION 1. That the Grant Amendment Request Form (Exhibit 2) for the Agreement between the City of Pompano Beach and the State of Florida, Department of State, Division of Cultural Affairs (Exhibit 1), is hereby approved.

SECTION 2. That the proper City officials are hereby authorized to execute said Grant Amendment Request Form and timely submit same to the State of Florida, Department of State, Division of Cultural Affairs.

SECTION 4. This Resolution shall become effective upon passage.

PASSED AND ADOPTED this _____ day of _____, 2016.

_____
LAMAR FISHER, MAYOR

ATTEST:

_____
ASCELETA HAMMOND, CITY CLERK

04/15/16
l:reso/2016-191f

"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

Exhibit 1
Resolution 2015-138
Grant Agreement The State of Florida, Department of State, Division of Cultural Affairs

RESOLUTION NO. 2015- 138

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 THE STATE OF FLORIDA, DEPARTMENT OF STATE, DIVISION OF CULTURAL AFFAIRS ACCEPTING A GRANT IN THE AMOUNT OF $500,000.00 FOR THE LIBRARY CULTURAL CENTER PROJECT; 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 the State of Florida, Department of State, Division of Cultural Affairs, a copy of which 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 State, Division of Cultural Affairs.

SECTION 4. This Resolution shall become effective upon passage.

PASSED AND ADOPTED this 13th day of January, 2015.

LAMAR FISHER, MAYOR

ATTEST:

for MARY L. CHAMBERS, CITY CLERK

GBL/jm
12/23/14
l:reso/2015-146

`AGREEMENT BETWEEN
THE STATE OF FLORIDA, DEPARTMENT OF STATE
AND
CITY OF POMPANO BEACH

This Agreement is by and between the State of Florida, Department of State, Division of Cultural Affairs hereinafter referred to as the "Division," and the City of Pompano Beach hereinafter referred to as the "Grantee."

The Grantee has been awarded a Cultural Facilities Grant (CSFA 45.014) by the Division, grant number 15.9.300.599 for the project "Pompano Beach Cultural Center: Phase 1," in the amount of $500,000. Funds for this grant have been appropriated in the FY 2014-2015 General Appropriations Act on line 3146A. The Division has the authority to administer this grant in accordance with Section 265.701, *Florida Statutes.*

In consideration of the mutual covenants and promises contained herein, the parties agree as follows:

1. **Grant Purpose.** This grant shall be used exclusively for the "Pompano Beach Cultural Center: Phase 1" project, the public purpose for which these funds were appropriated.

The Grantee shall perform the following **Scope of Work**: The City of Pompano Beach shall build a state-of-the-art, 21,980 square foot Cultural Center including performance and event space, digital media center, visual arts gallery and public/support spaces. All tasks associated with the renovation, as outlined in the Project Description (See Attachment A), will be performed by June 1, 2016. All project work will be completed under the supervision of a licensed architect or licensed contractor.

a) The Grantee agrees to provide the following **Deliverables** and **Performance Measures** related to the Scope of Work for payments to be awarded.

Payment 1:

- The first payment will be a fixed price advance in the amount of 25% of the grant award. The items in Section 4 of the Agreement ("Required Information Needed with Return of Signed Agreement") must be submitted prior to release of this payment.

Payment 2, Deliverable/ Task 1:

- Payment 2 will be cost reimbursement. The Grantee will have completed at least 30 percent of the project prior to this payment. The performance measure documenting satisfactory completion of Deliverables will be a completed Application and Certificate for Payment (AIA Document G702) and Schedule of Contract Values (AIA Document G703), or its equivalent (See Appendix 1), showing at least 30 percent of the project completed.

Payment 3, Deliverable/ Task 2:

- Payment 3 will be cost reimbursement. The Grantee will have completed at least 60 percent of the project prior to this payment. The performance measure documenting satisfactory completion of Deliverables will be a completed Application and Certificate for Payment

(AIA Document G702) and Schedule of Contract Values (AIA Document G703), or its equivalent (See Appendix 1), showing at least 60 percent of the project completed.

Payment 4, Deliverable/ Task 3:

- Payment 4 will be cost reimbursement. The Grantee will have completed 100 percent of the project prior to this payment. The performance measure documenting satisfactory completion of Deliverables will be a completed Application and Certificate for Payment (AIA Document G702), Schedule of Contract Values (AIA Document G703), and a Certificate of Substantial Completion (AIA Document G704), or its equivalent (See Appendix 1), showing 100 percent of the project completed, including all retainage amounts paid. The performance measure documenting satisfactory completion of Deliverables will be submission and acceptance of a Final Cultural Facilities Report form (See Section 11) that certifies that all project funds have been expended and the project has been closed out.

b) The Grantee has provided an Estimated Project Budget (which is incorporated as part of this Agreement and entitled Attachment C). All expenditures for this agreement shall be in accordance with this budget (Attachment C).

c) **Change Orders.** Should grant expenditures exceed the budgeted grant amount for any work item by more than 20%, the Grantee shall be required to submit a proposal for revision of the Project Budget with a written explanation for the reason(s) for deviation(s) from the original Project Budget to the Division for review and written approval.

2. **Length of Agreement.** This Agreement shall begin on **July 1, 2014**, and shall end **June 1, 2016**, unless terminated in accordance with the provisions of Section 37 of this Agreement. Contract extensions will not be granted unless Grantee is able to provide substantial written justification and the Division approves such extension. The Grantee's written request for such extension must be submitted to the Division no later than thirty (30) days prior to the termination date of this Agreement.

3. **Contract Administration.** The parties are legally bound by the requirements of this agreement. Each party's contract manager, named below, will be responsible for monitoring its performance under this Agreement, and will be the official contact for each party. Any notice(s) or other communications in regard to this agreement shall be directed to or delivered to the other party's contract manager by utilizing the information below. Any change in the contact information below should be submitted in writing to the contract manager within 10 days of the change.

For the Division of Cultural Affairs:
Elsie Rogers, Grant Manager
Florida Department of State
R.A. Gray Building
500 South Bronough Street
Tallahassee, FL 32399
Phone: 850.245.6483
Facsimile: 850.245.6454
Email: elsie.rogers@dos.myflorida.com

For the Grantee:
Ernesto Reyes
City of Pompano Beach
Office of the City Manager
100 West Atlantic Blvd., 4th Floor
Pompano Beach, Florida 33060
Phone: 954.786.4049
Fax: 954.786.4504
Ernesto.Reyes@copbfl.com

4. **Required Information Needed with Return of Signed Agreement.** Prior to the disbursement of the advance payment, the Grantee must provide the following with the return of the signed Agreement.

   a) Signed Grant Award Agreement which details the Scope of Work and Deliverables.

   b) Legal Description of the Property. The Grantee has provided and attached the legal description of the property on which the cultural facility is or will be located, (which is incorporated as part of this Agreement and entitled Attachment B).

   c) Choose to Record a Restrictive Covenant or Purchase a Surety Bond. The Grantee has provided documentation that the Restrictive Covenant has been recorded with the Clerk of the Circuit Court of the county where the property is located, or provided a Surety Bond. (See Section 20 and 21)

   d) Corporate Nonprofit Status. The Grantee must provide a copy of the corporations' not-for-profit status and continue to maintain its not-for-profit eligibility, as a public entity or a tax-exempt Florida corporation, for the duration of the Restrictive Covenant or Surety Bond.

   e) Historic Preservation Review. The Grantee must submit the confirmation received from the Bureau of Historic Preservation regarding the historical significance of the property. Applies if structures are 50 years or older. (See Section 22)

   f) Submit a copy of the Grantee's Florida Substitute Form W-9. (See Section 7)

5. **Grant Payments.** All grant payments are requested by submitting Application and Certificate for Payment (AIA Document G702) and Schedule of Contract Values (AIA Document G703), or its equivalent (See Appendix 1).The total grant award shall not exceed $500,000 which shall be paid by the Division in consideration for the Grantee's minimum performance as set forth by the terms and conditions of this Agreement. The grant payment schedule is outlined below:

   a) The first payment will be 25% advance of the grant award.

   b) The second payment will be cost reimbursement. Payment will be made in accordance with the completion of Deliverable 1.

c) The third payment will be cost reimbursement. Payment will be made in accordance with the completion of Deliverable 2.

d) The fourth payment will be cost reimbursement. Payment will be made in accordance with the completion of the Deliverable 3.

6. **Electronic Payments**. The Grantee can choose to use electronic funds transfer (EFT) to receive grant payments. All grantees wishing to receive their award through electronic funds transfer must submit a Direct Deposit Authorization form to the Florida Department of Financial Services. If EFT has already been set up for your organization, you do not need to submit another authorization form unless you have changed bank accounts. To download this form visit http://www.myfloridacfo.com/Division/AA/Forms/DFS-A1-26E.pdf. This page also includes tools and information that allow you to check on payments.

7. **Florida Substitute Form W-9.** A completed Substitute Form W-9 is required from any entity that receives a payment from the State of Florida that may be subject to 1099 reporting. The Department of Financial Services (DFS) must have the correct Taxpayer Identification Number (TIN) and other related information in order to report accurate tax information to the Internal Revenue Service (IRS). To register or access a Florida Substitute Form W-9 visit https://flvendor.myfloridacfo.com/. **A copy of the Grantee's Florida Substitute Form W-9 must be submitted with the executed Agreement.**

8. **Amendment to Contract.** Either party may request modification of the provisions of this Agreement by submitting a Cultural Facilities Grant Amendment Request form to the Division. Changes which are agreed upon shall be valid only when in writing, signed by each of the parties, and attached to the original of this Agreement. If changes are implemented without the Division's written approval, the organization is subject to noncompliance, and the grant award is subject to reduction, partial, or complete refund to the State of Florida and termination of this agreement. The Cultural Facilities Grant Amendment Request form is available on the Division's online grant system.

9. **Financial Consequences**. The Department shall apply the following financial consequences for failure to perform the minimum level of services required by this Agreement in accordance with Sections 215.971 and 287.058, *Florida Statutes*.

   a) The full amount of the first payment (fixed price advance in the amount of 25% of the grant award) will be returned to the State of Florida if Deliverable 1 is not satisfactorily completed.

   b) Second payment will be withheld if Deliverables are not satisfactorily completed.

   c) Third payment will be withheld if Deliverables are not satisfactorily completed.

   d) Fourth payment will be withheld if Deliverables are not satisfactorily completed.

10. **Encumbrance of Funds.** Encumbrance Period is between July 1, 2014 and June 30, 2015, during which state dollars must be obligated to pay for project expenses. To encumber means to have a signed contract with an architect or contractor for the expenditure of all grant and matching funds.

All grant funds must be encumbered under the terms of a binding contractual agreement by **June 30, 2015,** except as allowed below.

a) Extension of Encumbrance Deadline: The encumbrance deadline indicated above may be extended by written approval of the Division. To be eligible for this extension, the Grantee must demonstrate to the Division that full encumbrance of grant funding and the required match by binding contract(s) is achievable by the end of the requested extended encumbrance period. The Grantee's written request for extension of the encumbrance deadline must be submitted to the Department no later than fifteen (15) days prior to the encumbrance deadline indicated above. The maximum extension of the encumbrance period shall be thirty (30) days.

11. Grant Reporting Requirements. The Grantee must submit the following reports to the Division, using the Cultural Facilities Progress Report form. The Cultural Facilities Progress Report form is available on the Division's website at http://dos.myflorida.com/media/31252/culturalfacilitiesreportform.pdf

a) **First Project Progress Report** is due by January 31, 2015, for the period ending December 31, 2014.

b) **Second Project Progress Report** is due by July 31, 2015, for the period ending June 30, 2015.

c) **Third Project Progress Report** is due by January 31, 2016, for the period ending December 31, 2015.

d) **Final Report.** The Grantee must submit a Final Report with photos of the completed project to the Division by July 15, 2016.

12. Matching Funds. Matching funds must meet the following requirements:

a) Be directly related to the specific construction or renovation work described in the Project Description and detailed in the Estimated Project Budget.
b) May not consist of general operating expenses as described in Section 10 of this agreement.
c) Be clearly accounted for by documentation maintained at the Grantee's office.
d) May not consist of state dollars from any source.
e) May not consist of matching funds claimed for any other state grant.
f) May have been expended prior to July 1, 2014, as long as the expenditures are clearly a part of this grant project, as described in the Project Description and detailed in the Estimated Project Budget.
g) If the Grantee's total support and revenue for the last completed fiscal year is $500,000 or more, the Grantee must provide not less than $2.00 in matching funds for every $1.00 of state funds received under this Agreement.

h) If the Grantee's total support and revenue for the last completed fiscal year is less than $500,000, the Grantee must provide not less than $1.00 in matching funds for every $1.00 of state funds received under this Agreement.

i) Documentation of in-kind contributions must substantiate fair market value.

j) The matching requirement for grants for Rural Economic Development Initiative (REDI) counties or communities designated in accordance with Section 288.0656, *Florida Statutes*, and approved for reduction in accordance with Section 288.06561, *Florida Statutes*, by the application deadline is $1.00 in matching funds for every $1.00 of state funds received under this Agreement.

13. **Grant Completion Deadline.** The grant completion deadline is **June 1, 2016**. The Grant Completion Deadline is the date when the project is 100% complete and all grant and matching funds have been paid out in accordance with the work described in the Scope of Work, detailed in the Estimated Project Budget. If the Grantee finds it necessary to request an extension of the Grant Completion Deadline, the extension may not exceed 120 days, unless the Grantee can demonstrate extenuating circumstances as described in Section 14 of this Agreement.

14. **Extension of the Grant Completion Deadline.** An extension of the completion date must be requested at least thirty (30) days prior to the end of the grant period and may not exceed 120 days, unless the Grantee can clearly demonstrate extenuating circumstances. An extenuating circumstance is one that is beyond the control of the Grantee, and one that prevents timely completion of the project such as a natural disaster, death or serious illness of the individual responsible for the completion of the project, litigation related to the project, or failure of the contractor or architect to provide the services for which they were contracted to provide. An extenuating circumstance does not include failure to read or understand the administrative requirements of a grant or failure to raise sufficient matching funds. Prior written approval is required for extensions.

15. **Credit Line(s) to Acknowledge Grant Funding**. All construction projects shall display a project identification sign in a prominent location at the Project site and shall maintain said sign while work is in progress. The sign must be a minimum of eight (8) square feet in area, be constructed of plywood or other durable material, and shall contain the following acknowledgment of grant assistance:

a) "This project is sponsored in part by the Department of State, Division of Cultural Affairs, the Florida Council of Arts and Culture and the State of Florida" (Section 286.25, Florida Statutes).

b) Any variation in the above specifications must receive prior approval in writing by the Department. The cost of preparation and erection of the project identification sign are allowable project costs. Routine maintenance costs of project signs are not allowable project costs.

16. **Non-allowable Grant Expenditures.** The Grantee agrees to expend all grant funds received under this agreement solely for the purposes for which they were authorized and appropriated. Expenditures shall be in compliance with the state guidelines for allowable project costs as outlined in the Department of Financial Services' Reference Guide for State Expenditures, which are incorporated by reference and are available online at http://www.myfloridacfo.com/aadir/reference_guide/. In addition, the following are not allowed as grant or matching expenditures:

a) General operating expenses (including but not limited to salaries, travel, personnel, office supplies, mortgage, rent, operating overhead, indirect costs, etc.).
b) Costs incurred in writing or submitting this grant application.
c) Costs for lobbying or attempting to influence federal, state or local legislation, the judicial branch, or any state agency.
d) Costs for planning, which include those for preliminary and schematic drawings, and design development documents necessary to carry out the project.
e) Costs for bad debts, contingencies, fines and penalties, interest, and other financial costs.
f) Costs for travel, private entertainment, food, beverages, plaques, awards, or scholarships.
g) Projects which are restricted to private or exclusive participation, including restriction of access to programs on the basis of sex, race, religion, creed, national origin, disability, age, or marital status.
h) Re-granting, contributions, and donations.
i) Costs that are paid prior to the execution of the Grant Award Agreement and for which reimbursement is requested, or after June 1, 2016.

17. **Unobligated and Unearned Funds and Allowable Costs.** In accordance with Section 215.971, *Florida Statutes*, the Grantee shall refund to the State of Florida any balance of unobligated funds which has been advanced or paid to the Grantee. In addition, funds paid in excess of the amount to which the recipient is entitled under the terms and conditions of the agreement must be refunded to the state agency. Further, the recipient may expend funds only for allowable costs resulting from obligations incurred during the specified agreement period. Expenditures of state financial assistance must be in compliance with the laws, rules, and regulations applicable to expenditures of State funds, including, but not limited to, the *Reference Guide for State Expenditures.*

18. **Repayment.** All refunds or repayments to be made to the Department under this agreement are to be made payable to the order of the "Department of State" and mailed directly to the following address: Florida Department of State, Attention: Elsie Rogers, Division of Cultural Affairs, 500 South Bronough Street Tallahassee, FL 32399. In accordance with Section 215.34(2), *Florida Statutes*, if a check or other draft is returned to the Department for collection, Recipient shall pay to the Department a service fee of $15.00 or five percent (5%) of the face amount of the returned check or draft, whichever is greater.

19. **Unrestricted Use and Access.** The Grantee must maintain Unrestricted Use of the land and buildings associated with the Cultural Facility for a minimum of 10 years following the Grant Award (Grant Award means the date on which the Grant Award Agreement is fully executed).

    a) **Lease of Land and Buildings.** If the land and buildings are leased, the Division may, from time to time, require certification from the Grantee or the property owner that the lease is in full force and effect, that it has not been modified or terminated, and that the Grantee is not in default of the lease (or in the case of an owner, documentation of ownership is required). Failure to provide such certification will constitute a default hereunder, which will give the Division the

right to terminate this Agreement and demand the return of all or a part of any funds already delivered, and/or to withhold funds from subsequent grants.

b) **Retaining Ownership of Land and Buildings.** The owner of land and building(s) must retain ownership of the land and buildings, along with improvements made to the land and building(s), for at least 10 years following the Grant Award. Exception: Land and buildings owned by the State of Florida and leased to an eligible applicant. For the purposes of this program, the applicant must not be a political subdivision of the state.

20. **Restrictive Covenant.** If the Grantee chooses to record a Restrictive Covenant and the facility ceases to be used as a "Cultural Facility" during the ten (10) years following the Grant Award, the grant funds must be repaid to the Division according to the Restrictive Covenant Amortization Schedule (incorporated into this Agreement and attached as Attachment D).

21. **Surety Bond instead of a Restrictive Covenant.** If a Surety Bond is selected by the Grantee and the facility ceases to be used as a "Cultural Facility" during the ten (10) years following the Grant Award, the grant funds must be repaid to the Division according to the Surety Bond Amortization Schedule (incorporated into this Agreement and attached as Attachment E).

22. **Historic Preservation Review**. If the facility that is being renovated with state funds is fifty (50) years old or older, then in accordance with Section 267.061(2)(a) and (b), *Florida Statutes*, the Grantee must submit information about the grant project to the Division of Historical Resources, Bureau of Historic Preservation ("Bureau"), so that it may determine whether the project has historic significance. Should the Bureau deem the facility to have historic significance, grant funds may only be released after the Bureau notifies the Division, in writing, that the Grantee has satisfied the Bureau's requirements. If the facility is not deemed to be of historic significance, grant funds will be released to Grantee in accordance with Section 5 of this Agreement.

23. **Single Audit Act.** Each grantee, other than a grantee that is a State agency, shall submit to an audit pursuant to Section 215.97, *Florida Statutes*. See Attachment F for additional information regarding this requirement.

24. **Retention of Accounting Records.** Financial records, supporting documents, statistical records, and all other records including electronic storage media pertinent to the Project shall be retained for a period of five (5) years after the close out of the grant. If any litigation or audit is initiated, or claim made, before the expiration of the five-year period, the records shall be retained until the litigation, audit, or claim has been resolved.

25. **Obligation to Provide State Access to Grant Records.** The Grantee must make all grant records of expenditures, copies of reports, books, and related documentation available to the Division or a duly authorized representative of the State of Florida for inspection at reasonable times for the purpose of making audits, examinations, excerpts, and transcripts.

26. **Obligation to Provide Public Access to Grant Records.** The Division reserves the right to unilaterally cancel this Agreement in the event that the Grantee refuses public access to all documents or other materials made or received by the Grantee that are subject to the provisions of

Chapter 119, *Florida Statutes*, known as the *Florida Public Records Act.* The Grantee must immediately contact the Division's Contract Manager for assistance if it receives a public records request related to this Agreement.

27. **Investment of Funds Received But Not Paid Out.** The Grantee may temporarily invest any or all grant funds received but not expended, in an interest bearing account pursuant to Section 216.181(16)(b), *Florida Statutes*. Interest earned on such investments should be returned to the Division quarterly, except that interest accrued less than $100 within any quarter may be held until the next quarter when the accrued interest totals more than $100. All interest accrued and not paid to the Division, regardless of amount, must be submitted with the Grantee's Final Cultural Facilities Report at the end of the Grant Period.

28. **Noncompliance with Grant Requirements.** Any applicant that has not submitted required reports or satisfied other administrative requirements for other Division of Cultural Affairs grants or grants from any other Office of Cultural, Historical, and Information Programs (OCHIP) Division will be in noncompliance status and subject to the OCHIP Grants Compliance Procedure. (OCHIP) Divisions include the Division of Cultural Affairs, the Division of Historical Resources, and the Division of Library and Information Services.) Grant compliance issues must be resolved before a grant award agreement may be executed, and before grant payments for any OCHIP grant may be released.

29. **Accounting Requirements.** The Grantee must maintain an accounting system that provides a complete record of the use of all grant funds as follows:

    a) The accounting system must be able to specifically identify and provide audit trails that trace the receipt, maintenance, and expenditure of state funds;

    b) Accounting records must adequately identify the sources and application of funds for all grant activities and must classify and identify grant funds by using the same budget categories that were approved in the grant application. If Grantee's accounting system accumulates data in a different format than the one in the grant application, subsidiary records must document and reconcile the amounts shown in the Grantee's accounting records to those amounts reported to the Division.

    c) An interest-bearing checking account or accounts in a state or federally chartered institution may be used for revenues and expenses described in the Scope of Work and detailed in the Estimated Project Budget.

    d) The name of the account(s) must include the grant award number;

    e) The Grantee's accounting records must have effective control over and accountability for all funds, property, and other assets; and

    f) Accounting records must be supported by source documentation and be in sufficient detail to allow for a proper pre-audit and post-audit (such as invoices, bills, and canceled checks).

30. **Availability of State Funds.** The State of Florida's performance and obligation to pay under this Agreement are contingent upon an annual appropriation by the Florida Legislature. In the event that the state funds upon which this Agreement is dependent are withdrawn, this Agreement will be automatically terminated and the Division shall have no further liability to the Grantee, beyond those amounts already expended prior to the termination date. Such termination will not affect the responsibility of the Grantee under this Agreement as to those funds previously distributed. In the event of a state revenue shortfall, the total grant may be reduced accordingly.

31. **Independent Contractor Status of Grantee.** The Grantee, if not a state agency, agrees that its officers, agents and employees, in performance of this Agreement, shall act in the capacity of independent contractors and not as officers, agents, or employees of the state. The Grantee is not entitled to accrue any benefits of state employment, including retirement benefits and any other rights or privileges connected with employment by the State of Florida.

32. **Grantee's Subcontractors.** The Grantee shall be responsible for all work performed and all expenses incurred in connection with this Agreement. The Grantee may subcontract, as necessary, to perform the services and to provide commodities required by this Agreement. The Division shall not be liable to any subcontractor(s) for any expenses or liabilities incurred under the Grantee's subcontract(s), and the Grantee shall be solely liable to its subcontractor(s) for all expenses and liabilities incurred under its subcontract(s). The Grantee must take the necessary steps to ensure that each of its subcontractors will be deemed to be "independent contractors" and will not be considered or permitted to be an agents, servants, joint venturers, or partners of the Division.

33. **Liability.** The Division will not assume any liability for the acts, omissions to act, or negligence of, the Grantee, its agents, servants, or employees; nor may the Grantee exclude liability for its own acts, omissions to act, or negligence, to the Division.

    a) The Grantee shall be responsible for claims of any nature, including but not limited to injury, death, and property damage arising out of activities related to this Agreement by the Grantee, its agents, servants, employees, and subcontractors. The Grantee shall indemnify and hold the Division harmless from any and all claims of any nature and shall investigate all such claims at its own expense. If the Grantee is governed by Section 768.28, *Florida Statutes*, it shall only be obligated in accordance with this Section.

    b) Neither the state nor any agency or subdivision of the state waives any defense of sovereign immunity, or increases the limits of its liability, by entering into this Agreement.

    c) The Division shall not be liable for attorney fees, interest, late charges or service fees, or cost of collection related to this Agreement.

    d) The Grantee shall be responsible for all work performed and all expenses incurred in connection with the project. The Grantee may subcontract as necessary to perform the services set forth in this Agreement, including entering into subcontracts with vendors for services and commodities; provided that such subcontract has been approved in writing by the Department prior to its execution; and provided that it is understood by the Grantee that the Department shall not be liable to the subcontractor for any expenses or liabilities incurred under the subcontract and that

the Grantee shall be solely liable to the subcontractor for all expenses and liabilities incurred under the subcontract.

34. **Strict Compliance with Laws.** The Grantee shall perform all acts required by this Agreement in strict conformity with all applicable laws and regulations of the local, state and federal law.

35. **No Discrimination.** The Grantee may not discriminate against any employee employed under this Agreement, or against any applicant for employment because of race, religion, gender, national origin, age, handicap or marital status. The Grantee shall insert a similar provision in all of its subcontracts for services under this Agreement.

36. **Breach of Agreement.** The Division will demand the return of grant funds already received, will withhold subsequent payments, and/or will terminate this agreement if the Grantee improperly expends and manages grant funds, fails to prepare, preserve or surrender records required by this Agreement, or otherwise violates this Agreement.

37. **Termination of Agreement.** The Division will terminate or end this Agreement if the Grantee fails to fulfill its obligations herein. In such event, the Division will provide the Grantee a notice of its violation by letter, and shall give the Grantee fifteen (15) calendar days from the date of receipt to cure its violation. If the violation is not cured within the stated period, the Division will terminate this Agreement. The notice of violation letter shall be delivered to the Grantee's Contract Manager, personally, or mailed to his/her specified address by a method that provides proof of receipt. In the event that the Division terminates this Agreement, the Grantee will be compensated for any work completed in accordance with this Agreement, prior to the notification of termination, if the Division deems this reasonable under the circumstances. Grant funds previously advanced and not expended on work completed in accordance with this Agreement shall be returned to the Division, with interest, within thirty (30) days after termination of this Agreement. The Division does not waive any of its rights to additional damages, if grant funds are returned under this Section.

38. **Preservation of Remedies.** No delay or omission to exercise any right, power, or remedy accruing to either party upon breach or violation by either party under this Agreement, shall impair any such right, power or remedy of either party; nor shall such delay or omission be construed as a waiver of any such breach or default, or any similar breach or default.

39. **Non-Assignment of Agreement.** The Grantee may not assign, sublicense nor otherwise transfer its rights, duties or obligations under this Agreement without the prior written consent of the Division, which consent shall not unreasonably be withheld. The agreement transferee must demonstrate compliance with the requirements of the project. If the Division approves a transfer of the Grantee's obligations, the Grantee shall remain liable for all work performed and all expenses incurred in connection with this Agreement. In the event the Legislature transfers the rights, duties, and obligations of the Division to another governmental entity pursuant to Section 20.06, *Florida Statutes*, or otherwise, the rights, duties, and obligations under this Agreement shall be transferred to the successor governmental agency as if it was the original party to this Agreement.

40. **Required Procurement Procedures for Obtaining Goods and Services.** The Grantee shall provide maximum open competition when procuring goods and services related to the grant-assisted project in accordance with Section 287.057, *Florida Statutes*.

41. **Conflicts of Interest.** The Grantee hereby certifies that it is cognizant of the prohibition of conflicts of interest described in Sections 112.311 through 112.326, *Florida Statutes*, and affirms that it will not enter into or maintain a business or other relationship with any employee of the Department of State that would violate those provisions. The Grantee further agrees to seek authorization from the General Counsel for the Department of State prior to entering into any business or other relationship with a Department of State Employee to avoid a potential violation of those statutes.

42. **Binding of Successors.** This Agreement shall bind the successors, assigns and legal representatives of the Grantee and of any legal entity that succeeds to the obligations of the Division of Cultural Affairs.

43. **No Employment of Unauthorized Aliens.** The employment of unauthorized aliens by the Grantee is considered a violation of Section 274A (a) of the Immigration and Nationality Act. If the Grantee knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of this Agreement.

44. **Severability.** If any term or provision of the Agreement is found to be illegal and unenforceable, the remainder will remain in full force and effect, and such term or provision shall be deemed stricken.

45. **Americans with Disabilities Act.** All programs and facilities related to this Agreement must meet the standards of Sections 553.501-553.513, *Florida Statutes*, and the Americans with Disabilities Act of 1990.

46. **Governing Law.** This Agreement shall be construed, performed, and enforced in all respects in accordance with the laws and rules of Florida. Venue or location for any legal action arising under this Agreement will be in Leon County, Florida.

47. **Entire Agreement.** The entire Agreement of the parties consists of the following documents:

a) This Agreement
b) Project Description (Attachment A)
c) Legal Description of the Property (Attachment B)
d) Estimated Project Budget (Attachment C)
e) Recorded Restrictive Covenant and Amortization Schedule (Attachment D) or Issued Surety Bond and Amortization Schedule (Attachment E)
f) Single Audit Act Requirements and Exhibit I (Attachment F)
g) Schedule of Contract Values form (Appendix 1)

In acknowledgment of Grant Number 15.9.300.599 provided for from funds appropriated in the FY 2014-2015 General Appropriation Act in the amount of $500,000, I hereby certify that I have read this entire Agreement, and will comply with all of its requirements.

Department of State:	Grantee:
By: _____	By: _____
Sandy Shaughnessy, Division Director	Authorizing Official for the Grantee*

	Lamar Fisher, Mayor
Print name and title	Print name and title
Elsie J Rogers	Christine Kendel
Witness	Witness
2/11/2015	1/16/15
Date	Date

***If the authorizing official signing above on behalf of the grantee organization is not the chief executive officer, then another authorized official must sign below.**

On behalf of the governing body of the Grantee organization, I hereby acknowledge awareness of, and agree to comply with all of the requirements of this Grant Agreement.

See City Signature Page Attached	
Signature	Typed name and title
Witness	Date

"CITY":

Witnesses:

Sally S. Fischer

Shelley R. Bartholomew

CITY OF POMPANO BEACH

By: _____
LAMAR FISHER
MAYOR

By: _____
DENNIS W. BEACH
CITY MANAGER

Attest:

for _____
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 21st day of January, 2015 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

ATTACHMENT A

Project Description
(The project description below was extracted from the original application submitted June 2013.)

The Project
The new Pompano Beach Cultural Center will be the focal point of the "Downtown Pompano Creative Arts District" and will bring much-needed arts programming, including theater, dance, music, film and the visual arts to the north Broward County area.

The Cultural Center will be constructed in conjunction with a new Broward County Public Library on the site of the City's Civic Campus, creating a synergy of education and the arts. The Center's Digital Media components will encourage youth participation in the Cultural Arts and target younger audiences for the Cultural Center's programs.

The Cultural Arts in Pompano Beach
Centrally located on Florida's famous Gold Coast, Pompano Beach covers more than 25 square miles in northern Broward County. The City has just over 100,000 residents. Pompano Beach is located on the southeast coast of Florida, midway between Miami and West Palm Beach. Pompano Beach is the sixth largest of Broward County's 31 municipalities.

The City's economy is based on tourism, light manufacturing, retail, and high technology with 3,000 acres set aside for industrial/commercial development. Located near two international airports, several international seaports, railways and highways, Pompano Beach provides access to the global marketplace.

Currently, Cultural Arts activities in the City are programmed and coordinated through the City's Parks, Recreation, and Cultural Arts Department. Arts activities take place in community centers and recreational spaces that are generally heavily used for community programs as well as rentals such as private events, nonprofit meetings, fundraisers and celebrations.

Realizing the Vision – The Downtown Pompano Creative Arts District
In April 2010, the Pompano Beach Community Redevelopment Agency (CRA) began to identify strategies for creating a future mixed-use "Downtown Pompano" in the areas near the intersection of Dixie Highway and Atlantic Boulevard, including landscape/streetscape, public street and sidewalk improvements throughout the historic Old Pompano area/FEC Corridor, along Dr. Martin Luther King, Jr. Boulevard, and within a new "Civic Campus" proposed for the area south of Atlantic Boulevard, including City Hall.

In November 2010, the CRA Board approved the Downtown Pompano Connectivity Plan. During discussion and review, the Board expressed interest in development of new cultural components within the area. As a result, the Downtown Pompano Creative Arts District was created, and the City/CRA moved forward plans to develop a triumvirate of new art spaces– all within a one-mile area of Downtown Pompano:

- The new Pompano Beach Cultural Center/Library on the Civic Campus

• Renovation of the historic Hotel Bailey, in historic Old Pompano, as a Visual Arts Center
• Renovation of the historic Ali Building, on Dr. Martin Luther King, Jr. Boulevard, as a History and Cultural Arts Center

The City's Vision:
Pompano Beach will be a Cultural Arts destination in north Broward County, featuring innovative arts programming that includes the visual arts, music, film, theater, dance, public art, history, and historic preservation. The unique character of the Pompano Beach program will be enhanced through digital media support of and cultural education opportunities in all art disciplines.

Cultural Arts programming will be created and presented in state-of-the-art facilities for the enjoyment and enrichment of residents of and visitors to Pompano Beach, Broward County, and the greater South Florida area.

Pompano Beach Cultural Center Building Program
The recommended Pompano Beach Cultural Center Program was developed as a split-level facility of 15,967 net assignable square feet, with a total gross square footage of 21,980 sf, in response to the following:
• Information gathered from the 2011 Needs Assessment for Facilities + Cultural Program completed by Webb Management Services, Inc.
• Information gathered from the 2012 Business Plan for a Cultural Center at the Broward County Library by Webb Management Services, Inc.
• Program spaces based on List of Spaces (Scenario A) generated by Theatre Consultants Collaborative included in the Webb Management Business Plan and approved by the Pompano Beach City Commission.
• Recommendations based on site and budget considerations, opportunities, and constraints

The new Cultural Center, in conjunction with the Library, will serve as a significant catalyst for the redevelopment of a new Civic Campus, and the inclusion of the Cultural Center within the Public Library setting is an important element to compliment the programmatic needs of the Library as well as to offer a truly unique and vibrant place within Pompano Beach. Goals set forth in the Downtown Pompano Connectivity Plan will be achieved by bringing together cultural, educational and community programs that are aligned in a singular and significant setting at the heart of the community.

The "heart" of the facility is the Multi-Purpose Performance & Event Space. This space shall have the highest capacity, highest level of flexibility, and highest degree of theatrical functionality possible. This includes a flexible performance space with retractable raked seating that can be withdrawn to allow for flat floor cultural uses, seated dinner configurations, and other event uses.

A Digital Media Center will build upon and create synergy with the Library's offerings will be provided, allowing the Cultural Center to provide unique programs and a cultural destination for people of all ages and interests.

The facility's Visual Arts Gallery adjacent to the entrance to the Performance & Event space will provide for arts and other exhibitions within a featured location of the Cultural Center.

The facility will provide a high quality space exceeding those of other local venues and facilities. The technical features (including lighting, sound, and other technology) will exceed those housed in other existing local spaces. The facility shall provide a higher quality of audience amenities and experience, including arts-specific ticketing, concessions, and reserved seating.

Activities and events will also expand outside the building. In the large public plaza in front of the building, there can be, for example, concerts and street theatre held during the summertime. These will create a vibrant environment within and without the building, and will support the ambition of bringing the community together in a productive and engaging environment open to all.

ATTACHMENT B

ATTACH LEGAL DESCRIPTION OF PROPERTY

SUNYLAN UNIT 2-BUCKS RESUB OF BLK 39 37-39 B,LOTS 1 THRU 10 & TOGETHER WITH LOTS 1 THRU 22 BLK 38 OF SUNYLAN UNIT 2 10-45 B, & TOGETHER WITH VACATED PORTIONS OF SW 1ST ST,SW 1ST CT & SW 1ST TER,PER OR 43852/827, & VAC POR CYPRESS RD DESC AS BEG NE COR OF LOT 18 BLK 38,N 160.04,E 78.56,S 18.62,SW 14.34,SWLY 310,SW 10.97 W 9,NELY 22.94,N 160.61 TO POB

ATTACHMENT C

Estimated Project Budget

Budget Category	Total Cost	Match	State
Land Acquisition			$ -
Building Acquisition			$ -
Architectural Services	$ 100,000		$ -
Fees for design work, including schematic design, design development, construction documents, bidding & negotiation, and construction oversight.		$ 100,000	$ -
General Requirements	$ 265,000		
Field engineering, shop drawings, allowances, construction photographs, quality control, LEED administration, temporary facilities, and waste management.		$ 215,000	$ 50,000
Site Construction	$ 336,000		$ -
Site clearing, water & sewer work, underground utilities & building services, paving & drainage work, irrigation systems, earthwork, & landscaping.		$ 336,000	$ -
Concrete	$ 200,000		$ -
Structural cast-in-place concrete for footings & miscellaneous beams, architectural site & pre-cast panels, & special concrete toppings & finishes.		$ 200,000	$ -
Masonry	$ 90,000		$ -
Concrete unit masonry and reinforced concrete unit masonry construction.		$ 90,000	$ -
Metals	$ 250,000		
Structural steel, metal fabrication, steel joists and decks, metal framing, metal stairs, pipe and tube railings, gratings, and ornamental metalwork.		$ 250,000	$ -
Wood and Plastic	$ 37,000		
Finish carpentry, interior architectural casework, and floor finish at Multi-Purpose Room.		$ 7,000	$ 30,000
Thermal and Moisture Protection	$ 100,000		$ -
Waterproofing, fireproofing, modified bituminous built-up roofing, metal roofing, and sealants.		$ 100,000	$ -
Doors and Windows	$ 150,000		$ -
Impact resistant aluminum storefront/curtain wall systems, hollow metal doors and frames, interior aluminum storefronts, wood doors, & door hardware.		$ 150,000	$ -
Finishes	$ 500,000		
Stucco, drywall, VCT & linoleum flooring, ceramic & quarry tile, & carpet finishes throughout. Also includes acoustical wall & ceiling insulation.		$ 400,000	$ 100,000
Specialties	$ 32,000		

Project signage, lockers, metal storage shelving, toilet accessories, and fire extinguishers.		$ 2,000	$ 30,000
Equipment	$ 715,000		
Project passenger elevators and freight elevator.		$ 500,000	$ 215,000
Furnishings			$ -
Special Construction			$ -
Conveying Systems (Elevator)			$ -
Mechanical	$ 425,000		
Pumps, motors, sprinkler systems, plumbing fixtures, water heaters, HVAC controls, boilers, furnaces, air-conditioning units, chiller plant, fans, etc.		$ 400,000	$ 25,000
Electrical	$ 300,000		
Wires & cables, transformers/switchgear, panel boards, fuses, disconnect switches, lighting, fire alarm & public address systems, & lighting control.		$ 250,000	$ 50,000
TOTAL EXPENSES	$3,500,000	$3,000,000	$500,000

ATTACHMENT D

Restrictive Covenant Provisions and Amortization Schedule

1. If the Grantee chooses to record a Restrictive Covenant, the Grantee, and the property owner(s) (if the land or buildings or both are leased by the grantee), shall execute and file a Restrictive Covenant with the Clerk of the Circuit Court in the county where the property is located, prior to the date that the agreement is executed.

2. The Restrictive Covenant shall include the following provisions:

   a) That the Restrictive Covenant shall run with title to the building(s) and the associated land and improvements funded by the grant, shall encumber them, and shall be binding upon the Grantee (and the owner(s), if different person(s), and the successors in interest), for (10) ten years from the Grant Award.

   b) The owner(s) of the improvements made to the building(s) and associated land, funded in whole or in part by grant funds, must also execute the Restrictive Covenant. Exception: Land or buildings or both owned by the State of Florida and leased to an eligible applicant. For the purposes of this program, the applicant must not be a political subdivision of the state.

   c) The Grantee (and owners, if different persons) shall permit the Division to inspect the Cultural Facility and associated land at all reasonable times to determine whether the Grantee is in compliance with the Grant Award Agreement and the Restrictive Covenant.

   d) The Grantee must maintain the building(s) as a "Cultural Facility." For the purposes of this program, a "Cultural Facility" is defined as a building which shall be used primarily for the programming, production, presentation, exhibition or any combination of the foregoing for any of the cultural disciplines listed in Section 265.283(7), *Florida Statutes*. These disciplines include, but are not limited to music, dance, theatre, creative writing, literature, architecture, painting, sculpture, folk arts, photography, crafts, media arts, visual arts, programs of museums, and other such allied, major art forms.

   e) The Restrictive Covenant shall also contain the following amortization schedule for repayment of grant funds, should the Grantee or owners or their successors in interest violate the Restrictive Covenant.
      a. If the violation occurs within five (5) years following the Grant Award, 100% of the grant amount;

b. If the violation occurs more than five (5) but less than six (6) years following the Grant Award, 80% of the grant amount;
c. If the violation occurs more than six (6) but less than seven (7) years following the Grant Award, 65% of the grant amount;
d. If the violation occurs more than seven (7) but less than eight (8) years following the Grant Award, 50% of the grant amount;
e. If the violation occurs more than eight (8) but less than nine (9) years following the Grant Award, 35% of the grant amount; and
f. If the violation occurs more than nine (9) but less than ten (10) years following the Grant Award, 20% of the grant amount.

g) Other provisions as agreed upon by the Division and the Grantee.

ATTACHMENT E

Surety Bond and Amortization Schedule

1. Any Grantee entering into a Grant Award Agreement with the Division for the acquisition, renovation, or construction of a Cultural Facility that chooses not to record a Restrictive Covenant must purchase a 10-year Surety Bond.

2. A certified copy of the Bond Agreement must be provided to the Division prior to the execution of the Grant Award Agreement.

3. The Bond Agreement must:

   a) Provide that the facility described in Attachment A: Scope of Work, incorporated by reference in the Grant Award Agreement, will be used as a "Cultural Facility" for (10) ten years following the Grant Award; A Cultural Facility means a building which shall be used primarily for the programming, production, presentation, exhibition or any combination of the above functions of any of the arts and cultural disciplines defined in s. 265.283(7), F.S. These disciplines include, but are not limited to music, dance, theatre, creative writing, literature, architecture, painting, sculpture, folk arts, photography, crafts, media arts, visual arts, programs of museums, and other such allied, major art forms.

   b) Be purchased from a surety insurer authorized to do business in the Florida as a Surety;

   c) Provide that there will be a violation of the Bond Agreement if the facility ceases to be used as a "Cultural Facility" as required by Section 265.701(4), *Florida Statutes*, within 10 years following the Grant Award, and that the surety insurer must immediately repay funds to the Division, pursuant to the following amortization schedule:

      1. If the violation occurs within three (3) years following the Grant Award, 100% of the grant amount;
      2. If the violation occurs more than three (3) but less than four (4) years following the Grant Award, 80% of the grant amount;
      3. If the violation occurs more than four (4) but less than five (5) years following the Grant Award, 70% of the grant amount;
      4. If the violation occurs more than five (5) but less than six (6) years following the Grant Award, 60% of the grant amount;
      5. If the violation occurs more than six (6) but less than seven (7) years following the Grant Award, 50% of the grant amount;

6. If the violation occurs more than seven (7) but less than eight (8) years following the Grant Award, 40% of the grant amount;
7. If the violation occurs more than eight (8) but less than nine (9) years following the Grant Award, 30% of the grant amount;
8. If the violation occurs more than nine (9) but less than ten (10) years following the Grant Award, 20% of the grant amount.

ATTACHMENT F

FEDERAL AND STATE OF FLORIDA SINGLE AUDIT ACT REQUIREMENTS

AUDIT REQUIREMENTS

The administration of resources awarded by the Department of State to the Grantee may be subject to audits and/or monitoring by the Department of State as described in this Addendum to the Grant Award Agreement.

MONITORING

In addition to reviews of audits conducted in accordance with 2 CFR 2 Subpart F -- Audit Requirements, and Section 215.97, *Florida Statutes*, monitoring procedures may include, but not be limited to, on-site visits by Department of State staff, limited scope audits as defined by 2 CFR 2 §200.328, and/or other procedures. By entering into this agreement, the recipient agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by the Department of State. In the event the Department of State determines that a limited scope audit of the recipient is appropriate, the recipient agrees to comply with any additional instructions provided by the Department of State staff to the recipient regarding such audit. The recipient further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the Chief Financial Officer or Auditor General.

AUDITS

PART I: FEDERALLY FUNDED

This part is applicable if the recipient is a State or local government or a non-profit organization that has received federal funds awarded through the Department of State. EXHIBIT 1 to this attachment indicates whether federal resources have been awarded through the Department of State by this agreement.

2 CFR 2 §200.501 Audit Requirements

(a) *Audit required.* A non-Federal entity that expends $750,000 or more during the non-Federal entity's fiscal year in Federal awards must have a single or program-specific audit conducted for that year in accordance with the provisions of this part.

(b) *Single audit.* A non-Federal entity that expends $750,000 or more during the non-Federal entity's fiscal year in Federal awards must have a single audit conducted in accordance with 2 CFR §200.514 Scope of audit except when it elects to have a program-specific audit conducted in accordance with paragraph (c) of this section.

(c) *Program-specific audit election.* When an auditee expends Federal awards under only one Federal program (excluding R&D) and the Federal program's statutes, regulations, or the terms and conditions of the Federal award do not require a financial statement audit of the auditee, the auditee

may elect to have a program-specific audit conducted in accordance with 2 CFR §200.507 Program-specific audits. A program-specific audit may not be elected for R&D unless all of the Federal awards expended were received from the same Federal agency, or the same Federal agency and the same pass-through entity, and that Federal agency, or pass-through entity in the case of a subrecipient, approves in advance a program-specific audit.

(d) *Exemption when Federal awards expended are less than $750,000.* A non-Federal entity that expends less than $750,000 during the non-Federal entity's fiscal year in Federal awards is exempt from Federal audit requirements for that year, except as noted in 2 CFR §200.503 Relation to other audit requirements, but records must be available for review or audit by appropriate officials of the Federal agency, pass-through entity, and Government Accountability Office (GAO).

(e) *Federally Funded Research and Development Centers (FFRDC).* Management of an auditee that owns or operates a FFRDC may elect to treat the FFRDC as a separate entity for purposes of this part.

(f) *Subrecipients and Contractors.* An auditee may simultaneously be a recipient, a subrecipient, and a contractor. Federal awards expended as a recipient or a subrecipient are subject to audit under this part. The payments received for goods or services provided as a contractor are not Federal awards. Section §200.330 Subrecipient and contractor determinations should be considered in determining whether payments constitute a Federal award or a payment for goods or services provided as a contractor.

(g) *Compliance responsibility for contractors.* In most cases, the auditee's compliance responsibility for contractors is only to ensure that the procurement, receipt, and payment for goods and services comply with Federal statutes, regulations, and the terms and conditions of Federal awards. Federal award compliance requirements normally do not pass through to contractors. However, the auditee is responsible for ensuring compliance for procurement transactions which are structured such that the contractor is responsible for program compliance or the contractor's records must be reviewed to determine program compliance. Also, when these procurement transactions relate to a major program, the scope of the audit must include determining whether these transactions are in compliance with Federal statutes, regulations, and the terms and conditions of Federal awards.

(h) *For-profit subrecipient.* Since this part does not apply to for-profit subrecipients, the pass-through entity is responsible for establishing requirements, as necessary, to ensure compliance by for-profit subrecipients. The agreement with the for-profit subrecipient should describe applicable compliance requirements and the for-profit subrecipient's compliance responsibility. Methods to ensure compliance for Federal awards made to for-profit subrecipients may include pre-award audits, monitoring during the agreement, and post-award audits. See also §200.331 Requirements for pass-through entities.

The Internet web addresses listed below will assist recipients in locating documents referenced in the text of this agreement and the interpretation of compliance issues.

U.S. Government Printing Office *www.ecfr.gov*

PART II: STATE FUNDED

This part is applicable if the recipient is a nonstate entity as defined by Section 215.97(2) (l), *Florida Statutes* and had received state funds awarded by the Department of State. EXHIBIT 1 to this attachment indicates whether state resources have been awarded by the Department of State by this agreement.
Section 215.97 *Florida Statutes* Single Audit Requirements

1. In the event that the recipient expends a total amount of state financial assistance equal to or in excess of $500,000 in any fiscal year of such recipient, the recipient must have a State single or project-specific audit for such fiscal year in accordance with Section 215.97, *Florida Statutes*; applicable rules of the Executive Office of the Governor and the Chief Financial Officer; and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. EXHIBIT 1 to this agreement indicates state financial assistance awarded through the Department of State by this agreement. In determining the state financial assistance expended in its fiscal year, the recipient shall consider all sources of state financial assistance, including state financial assistance received from the Department of State, other state agencies, and other nonstate entities. State financial assistance does not include Federal direct or pass-through awards and resources received by a nonstate entity for Federal program matching requirements.

2. In connection with the audit requirements addressed in Part II, paragraph 1, the recipient shall ensure that the audit complies with the requirements of Section 215.97(7), *Florida Statutes*. This includes submission of a financial reporting package as defined by Section 215.97(2) (d), *Florida Statutes*, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General.

3. If the recipient expends less than $500,000 in state financial assistance in its fiscal year, an audit conducted in accordance with the provisions of Section 215.97, *Florida Statutes*, is not required. In the event that the recipient expends less than $500,000 in state financial assistance in its fiscal year and elects to have an audit conducted in accordance with the provisions of Section 215.97, *Florida Statutes*, the cost of the audit must be paid from the nonstate entity's resources (i.e., the cost of such an audit must be paid from the recipient's resources obtained from other than State entities).

The Internet web addresses listed below will assist recipients in locating documents referenced in the text of this agreement and the interpretation of compliance issues.

State of Florida Department Financial Services (Chief Financial Officer)
http://www.fldfs.com/

State of Florida Legislature (Statutes, Legislation relating to the Florida Single Audit Act)
http://www.leg.state.fl.us/

PART III: REPORT SUBMISSION

1. Copies of reporting packages for audits conducted in accordance with 2 CFR 2 §200.512 , and required by PART I of this attachment shall be submitted, when required by 2 CFR 2 §200.512, by or on behalf of the recipient directly to each of the following:

   A. The Department of State at the following address:

   Office of Inspector General
   Florida Department of State
   R. A. Gray Building, Room 114A
   500 South Bronough St.
   Tallahassee, FL 32399-0250

   B. The Federal Audit Clearinghouse electronically at *harvester.census.gov/sac/* as designated in 2 CFR 2 §200.512.

   C. Other Federal agencies and pass-through entities in accordance with 2 CFR 2 §200.513.

2. In the event that a copy of the reporting package for an audit required by PART I of this attachment and conducted in accordance with 2 CFR 2 §200.501 Audit Requirements, is not required to be submitted to the Department of State for the reasons pursuant to 2 CFR 2 §200.501, the recipient shall submit the required written notification pursuant to 2 CFR 2 §200.501 (d) and a copy of the recipient's audited schedule of expenditures of Federal awards directly to the following:

   Office of Inspector General
   Florida Department of State
   R. A. Gray Building, Room 114A
   500 South Bronough St.
   Tallahassee, FL 32399-0250

   A non-Federal entity that expends less than $750,000 during the non-Federal entity's fiscal year in Federal awards is exempt from Federal audit requirements for that year, except as noted in 2 CFR §200.503 Relation to other audit requirements, but records must be available for review or audit by appropriate officials of the Federal agency, pass-through entity, and Government Accountability Office (GAO).

3. Copies of financial reporting packages required by PART II of this attachment ~~agreement~~ shall be submitted by or on behalf of the recipient directly to the following:

   A. The Department of State at the following address:

   Office of Inspector General
   Florida Department of State

R. A. Gray Building, Room 114A
500 South Bronough St.
Tallahassee, FL 32399-0250

B. The Auditor General's Office at the following address:

Auditor General's Office
Room 401, Pepper Building
111 West Madison Street
Tallahassee, Florida 32399-1450

4. Any reports, management letter, or other information required to be submitted to the Department of State pursuant to this agreement shall be submitted timely in accordance with 2 CFR 2 Subpart F—Audit Requirements, Section 215.97, *Florida Statutes*, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), *Rules of the Auditor General*, as applicable.
5. Recipients, when submitting financial reporting packages to the Department of State for audits done in accordance with 2 CFR 2 Subpart F or Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), *Rules of the Auditor General*, should indicate the date that the reporting package was delivered to the recipient in correspondence accompanying the reporting package.

PART IV: RECORD RETENTION

1. The recipient shall retain sufficient records demonstrating its compliance with the terms of this agreement for a period of five years from the date the audit report is issued, and shall allow the Department of State, or its designee, Chief Financial Officer, or Auditor General access to such records upon request. The recipient shall ensure that audit working papers are made available to the Department of State, or its designee, Chief Financial Officer, or Auditor General upon request for a period of three years from the date the audit report is issued, unless extended in writing by the Department of State.

EXHIBIT 1

FEDERAL RESOURCES AWARDED TO THE RECIPIENT PURSUANT TO THIS AGREEMENT CONSIST OF THE FOLLOWING:

Not Applicable.

COMPLIANCE REQUIREMENTS APPLICABLE TO THE FEDERAL RESOURCES AWARDED PURSUANT TO THIS AGREEMENT ARE AS FOLLOWS:

Not Applicable.

STATE RESOURCES AWARDED TO THE RECIPIENT PURSUANT TO THIS AGREEMENT CONSIST OF THE FOLLOWING:

MATCHING RESOURCES FOR FEDERAL PROGRAMS:

Not Applicable.

SUBJECT TO SECTION 215.97, FLORIDA STATUTES:

Florida Department of State Cultural Facilities Grants, CSFA Number 45.014
Award Amount: $500,000

COMPLIANCE REQUIREMENTS APPLICABLE TO STATE RESOURCES AWARDED PURSUANT TO THIS AGREEMENT ARE AS FOLLOWS:

As contained in the Compliance Supplement to CSFA Number 45.014.

APPENDIX 1

Schedule of Contract Values

(This form must be completed by the Contractor for the Project.)

PROJECT NAME:
PROJECT #:
CONTRACTOR:

APPLICATION NO:
APPLICATION DATE:
PERIOD TO:
PERCENT COMPLETE TO DATE:

A	B	C	D	E	F	G	H	I	J
ITEM	DESCRIPTION OF WORK	SCHEDULED	WORK COMPLETED		MATERIALS	TOTAL	%	BALANCE	RETAINAGE
NO.		VALUE	FROM PREVIOUS APPLICATION (D + E)	THIS PERIOD	PRESENTLY STORED (NOT IN D OR E)	COMPLETED AND STORED TO DATE (D+E+F)	(G ÷ C)	TO FINISH (C - G)	(IF VARIABLE RATE)
	(Fill in & break down contract values)								
	(Add any change order(s) descriptions)								
	GRAND TOTALS	**$0.00**	**$0.00**	**$0.00**	**$0.00**	**$0.00**	**0%**	**$0.00**	**$0.00**

Contract Manager: Minimum performance requirements successfully completed and approved by: _____ Date: _____

Division of Cultural Affairs –
Cultural Facilities Program
Grant Amendment Request Form

DIVISION OF CULTURAL AFFAIRS - CULTURAL FACILITIES PROGRAM
GRANT AMENDMENT REQUEST FORM

GRANT NUMBER: 15.9.300.599

Applicant: City of Pompano Beach

Project Title: Pompano Beach Cultural Center: Phase 1

Contact Person: Karen Santen

Address: 100 West Atlantic Blvd., Room 369

City: Pompano Beach State: FL Zip Code: 33060

Telephone: (954) 786-4926 Date: 4-14-2016

Permission is hereby requested to make the following change(s) in the grant referenced above:

I. PROJECT DOLLARS

** Please complete the following, citing change in actual award amount. If this amount is reduced from the amount originally granted, matching dollars should be adjusted as follows. Total confirmed matching funds must satisfy the requirements for the Grant Amount received (see program guidelines). The total cost of work must equal the total of Line A plus Line B.

A.	Total Amount of Cultural Facilities Award	$500,000
B.	Confirmed Matching Funds to Amount Awarded (see Guidelines)	$3,000,000
C.	TOTAL Project Cost	$3,500,000

II. PROJECT NARRATIVE

(Use specific wording as stated in original Exhibit A description or a previously approved amendment request.)

Change From: The City of Pompano Beach shall build a state-of-the-art, 21,980 square foot Cultural Center including performance and event space, digital media center, visual arts gallery and public/support spaces. All tasks associated with the renovation, as outlined in the Project Description (see attachment A), will be performed by June 1, 2016.

Change To:

In Phase 1, the City of Pompano Beach shall complete the shell of a state-of-the-art, 21,980 square foot Cultural Center, including structural steel work, concrete, rough electrical plumbing, mechanical systems, roof decking, and site work infrastructure.

Effect on Project:

This change more clearly defines what will be accomplished by the City of Pompano Beach during Phase 1.

III. PROJECT BUDGET

A. INCOME

CHANGE FROM		CHANGE TO
	Cultural Facilities Program (this grant)	
	Matching Funds:	
	Total Private Support	
	Total In-kind Private Support	
	Total Corporate Support	
	Total In-kind Corporate Support	
	Total Local Government Support	
	Total In-kind Local Government Support	
	Applicant Cash	
	TOTAL PROJECT INCOME	

B. EXPENSES

CHANGE FROM MATCH	CHANGE FROM STATE		CHANGE TO MATCH	CHANGE TO STATE
		Land Acquisition		
		Building Acquisition		
$100,000		Architectural Services		
$215,000	$50,000	General Requirements		
$336,000		Site Construction		
$200,000		Concrete		
$90,000		Masonry		
$250,000		Metals		
$7,000	$30,000	Wood and Plastic		
$100,000		Thermal and Moisture Protection		
$150,000		Doors and Windows		
$400,000	$100,000	Finishes		
$2,000	$30,000	Specialties		
$500,000	$215,000	Equipment		
		Furnishings		
		Special Construction		
		Conveying Systems		
$400,000	$25,000	Mechanical		
$250,000	$50,000	Electrical		
$3,000,000	$500,000	TOTAL PROJECT EXPENDITURES (Should equal Total Project Income)	$3,000,000	$500,000

IV. OTHER CHANGES (i.e., Project dates [ex: encumbrance & expenditure dates], Grant Extension Requests.)

CHANGE FROM:

The grant completion deadline is June 1, 2016.

CHANGE TO:

In accordance to Section 14, the City is requesting a 120-day extension, the new grant completion deadline will be September 29, 2016.

REASON(S) FOR CHANGE:

This project has been complicated with the tri-agency involvements which has resulted in design specs changes (major change orders) in addition to a bout of bad weather (heavy rains and tornadoes) occurrences.

Lamar Fisher - 4-26-2016

Signature of Authorized Official **Typed Name and Date**

Mayor

Title

****

FOR DIVISION OF CULTURAL AFFAIRS USE ONLY

Change No. _____

Approved: Yes _____ No _____ Approved: Yes _____ No _____

Date: _____ Date: _____

Grants Officer Director, DCA

Meeting Date: 04-26-16 Agenda Item 10

REQUESTED COMMISSION ACTION:

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

SHORT TITLE A RESOLUTION APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A CONTRACT FOR SALE AND PURCHASE BETWEEN ZP PROPERTIES, INC. AND THE CITY OF POMPANO BEACH FOR THE PURCHASE OF PROPERTY LOCATED AT 1305 NE 3RD AVENUE; PROVIDING AN EFFECTIVE DATE.

(Fiscal Impact: $250,000)

Summary of Purpose and Why:

This property acquisition is linked in the Strategic Plan to the "Great Places Strategy - Initiative 2.13", Improve aesthetic appearance of City facilities, which was initially submitted in the CIP – November 2014. In December 2015, the attached project description, justification and impact was prepared in planning for the General Obligation Bond Issue which has been postponed indefinitely.

(1) Origin of request for this action: Strategic Plan
(2) Primary staff contact:: Greg Harrison, Assistant City Manager 954 786-4606
(3) Expiration of contract, if applicable:
(4) Fiscal impact and source of funding: $250,000 from Utilities Retained Earnings

DEPARTMENTAL COORDINATION	DATE	DEPARTMENTAL RECOMMENDATION	DEPARTMENTAL HEAD SIGNATURE
CITY ENGINEER	4/20/16	APPROVE	
PUBLIC WORKS	4-20-16	APPROVE	
CITY ATTORNEY	4-20-16	✓	
FINANCE	4-20-16	approval	
BUDGET	4/20/16		

X City Manager

ACTION TAKEN BY COMMISSION:

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

December, 2015

Public Works/Utilities Complex

(Municipal Services Complex)

Scope of project:

The development of a Masterplan for the complex, land purchase, design, demolition, and construction. The Municipal Services complex will be a cluster of multiple buildings: a Municipal Services Administration Building, a vehicle service garage with fueling island and car wash, equipment/material storage warehouse with covered storage area, Maintenance Trade Shop Building(s) and vehicle compound.

Justification:

The municipal services necessary to ensure the City of Pompano Beach adequately supports both its residents and other city employees emanate from these facilities. Currently there is not adequate land or facility space to house the larger work force the City now employs nor the materials and equipment necessary to support these employees. Significant funding has been spent on essential equipment (e.g. mobile generators) that must be stored outside in South Florida's harsh weather reducing its expected life and reliability. The existing facilities are outdated with several structural deficiencies that impede the ability of the employees to provide efficient service. The most critical time these services will be required is during recovery of the City from a natural disaster and there is genuine concern some of these facilities may not survive the disaster.

Impact If Not Provided.

The inadequate facilities will hamper the work force's ability to perform their jobs in an efficient more cost effective manner. A more significant concern is that the workforce will not be able to accomplish their assigned duties during emergency response to a natural disaster as the facilities may not survive the disaster.

Estimated Cost $14M

City Attorney's Communication #2016-698
April 6, 2016

TO: Greg Harrison, Assistant City Manager

FROM: Jill R. Mesojedec, FRP, Paralegal

VIA: Mark E. Berman, City Attorney

RE: Resolution – Contract for Sale and Purchase of Property Located at 1305 NE 3rd Avenue

As requested in your memorandum dated April 4, 2016, I have prepared and attached the following form of Resolution captioned as follows:

> **A RESOLUTION APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A CONTRACT FOR SALE AND PURCHASE BETWEEN ZP PROPERTIES, INC. AND THE CITY OF POMPANO BEACH FOR THE PURCHASE OF PROPERTY LOCATED AT 1305 NE 3RD AVENUE; PROVIDING AN EFFECTIVE DATE.**

Prior to presenting the resolution to the City Commission, please insert a new page one of the contract leaving the date of the contract (effective date) blank.

JILL R. MESOJEDEC

/jrm
L:cor/mgr/asstmgr/2016-698

Attachment

RESOLUTION NO. 2016-_____

CITY OF POMPANO BEACH
Broward County, Florida

A RESOLUTION APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A CONTRACT FOR SALE AND PURCHASE BETWEEN ZP PROPERTIES, INC. AND THE CITY OF POMPANO BEACH FOR THE PURCHASE OF PROPERTY LOCATED AT 1305 NE 3RD AVENUE; PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That a Contract for Sale and Purchase between ZP Properties, Inc. and the City of Pompano Beach for the purchase by the City of property located at 1305 NE 3rd Avenue, 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 City officials are hereby authorized to execute said Contract for Sale and Purchase thereto between ZP Properties, Inc. and the City of Pompano Beach.

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
4/6/16
I:reso/2016-187

GREG HARRISON, Assistant City Manager

100 W. Atlantic Boulevard
Pompano Beach, FL 33060
Phone: (954) 786-4606
Fax: (954) 786-4504

pompano beach
Florida's Warmest Welcome

MEMORANDUM

OFFICE OF THE CITY ATTY
CITY OF POMPANO BEACH
2016 APR -5 AM 8:11

DATE: April 4, 2016

TO: Mark E. Berman, City Attorney

FROM: Greg Harrison, Assistant City Manager

SUBJECT: Review of Purchase and Sale Agreement of property located on NE 3rd Avenue, Pompano Beach, Florida, between the City of Pompano Beach, as Purchaser and ZP Properties, Inc., as Seller

---

Action Requested: Please review the contract executed by John Lytle and prepare item for the next available City of Pompano Beach City Commission meeting. I will be attending the City Commission meeting, as well as Chris Brown and Vincent Wooten (RMA) who acted as the procurer of the property.

Background: The Public Works/Utilities/General Services Administration Departments situated north of NE 10th Street between Dixie Highway and the Airport is in need of more land to expand its operations and storage of materials. The department met with Greg Harrison and Chris Brown approximately one month ago to identify properties that may be candidates for a campus expansion. Shortly thereafter, Mr. Brown and his associate, Vincent Wooten of RMA, placed the subject property under contract.

The land acquisition team has ordered a survey (update), an environmental Phase I (update) and an appraisal. These items will be included with the Commission agenda and will be sent to the legal department as soon as received.

Other Information: Please note that the closing is 45 days from acceptance from the City Commission. Time is of the essence. Thank you for your assistance.

cc: Dennis W. Beach, City Manager
Robert McCaughan, Public Works Director
Randy Brown, Utilities Director
Otis Thomas, Purchasing Director
Brian Donovan, Deputy City Manager
Suzette Sibble, Finance Director
Chris Brown, CRA

REAL ESTATE TRANSACTION INFORMATION SHEET

REQUEST BY GREG HARRISON

File No./Reference: _____

Buyer [X] City of Pompano Beach
[ ] Pompano Beach Community Redevelopment Agency

Seller(s) ZP Properties, Inc.
Address: 1330 SE 7th Avenue
Pompano Beach, Florida 33060
E-Mail Address: John@zcorpfl.com
Telephone Numbers: (954) 709-1898

Purchase Price $250,000

Marital Status of Seller(s) Single

Social Security Number(s) of Seller(s) 138-78-0176

Location of Property
Address: 1305 NE 3rd Avenue Pompano Beach, Florida
Zip Code: 33060
(Please provide zip code)

Legal Description 35-48-42 BEG 468.61 S & 793 W OF NE COR OF NE1/4 FOR POB,S 40,E 125, N 40,W 125 TO POB

Folio No. _____

Type of Property
Check ALL that apply

Residential	[ ]
Commercial	[ ]
Industrial	[X]
Agricultural	[ ]
Government	[ ]
Vacant	[ ]
Acreage	[ ]

Is property improved with building(s)? yes [X] no [ ]

Current Status of Property
Leased Month-to-Month Tenant (no lease in place).
Occupied by Seller _____
Vacant _____

REAL ESTATE TRANSACTION INFORMATION SHEET
Page Two

Other Party's Attorney: Grant Kehres
2000 Glades Road, Suite 302
phone no. Boca Raton, Florida 33431
fax no. 561-392-5200

Realtors: N/A

phone no.
fax no.

PRIOR OWNER'S POLICY? yes ☒ PLEASE PROVIDE COPY TO CITY ATTORNEY no ☐

Survey Ordered? yes ☐ PLEASE PROVIDE COPY TO CITY ATTORNEY no ☒

Surveyor

Date ordered

Expected delivery date

Phase One Environmental ordered? yes ☐ no ☒

Date ordered Seller to provided Buyer completed Environmental Phase I

Expected delivery date

Responsible for Costs	Seller	Buyer
Title Search/Exam	☐	☒
Commitment	☐	☒
Survey	☐	☒
Environmental Assessment	☐	☒

WAS A PRESUIT NOTIFICATION PURSUANT TO §73.015, F. S. SENT TO SELLER?
yes ☐ no ☒ ...IF YES, PLEASE ATTACH A COPY

CONTRACT FOR SALE AND PURCHASE

THIS CONTRACT FOR SALE AND PURCHASE ("Contract") is made as of this _____ day of _____ 20___, by and between

ZP PROPERTIES INC., of 1330 SE 7 AVE POMPANO BEACH FL 33060, hereinafter collectively referred to as "SELLER,"

and

CITY OF POMPANO BEACH of 100 West Atlantic Boulevard, Pompano Beach, Florida 33060, hereinafter referred to as the "CITY,"

collectively referred to as the Parties.

SELLER and CITY hereby agree that SELLER shall sell and CITY shall purchase the following described property, situate, lying and being in Broward County, Florida, and more particularly described as follows:

Property

Address: 1305 NE 3rd Avenue
Pompano Beach, FL 33060

ID Numbers: 4842 35 00 0042

LEGAL DESCRIPTION

Real property as described in Exhibit "A" attached hereto and made a part of this Contract (the "Real Property"), together with all tenements, hereditaments, privileges, rights of reverter, servitudes, and other rights appurtenant to Real Property, all buildings, fixtures, and other improvements existing thereon, all fill and top soil thereon, all oil, gas, and mineral rights possessed by SELLER, all right, title and interest of SELLER in and to any and all streets, roads, highways, easements, drainage rights, or rights of way, appurtenant to the Real Property and all right, title and interest of SELLER in and to any and all covenants, restrictions, agreements and riparian rights benefiting the Real Property (all of the foregoing being referred to as the "Property").

ARTICLE 1
TERMS, DEFINITIONS AND IDENTIFICATIONS

For the purposes of this Contract and the various covenants, conditions, terms and provisions which follow, the definitions and identifications set forth below are assumed to be true and correct and are, therefore, agreed upon by the Parties.

1.1 DIRECTOR: Whenever the term Director is used herein, it is intended to mean the CITY Director or his appointee. In the administration of this Contract, as contrasted with matters of policy, all Parties may rely upon instructions or determinations made by the Director or the Director's deputy or designee.

1.2 COMMISSIONERS: The Pompano Beach City Commissioners, serve as the governing body of the City of Pompano Beach.

1.3 CONVEYANCE: Whenever the term Conveyance is used herein, it shall mean a warranty deed in statutory form properly executed, witnessed and acknowledged.

1.4 EFFECTIVE DATE: The date upon which this Contract is last executed by the Parties hereto.

1.5 PUBLIC RECORDS: Whenever the term Public Records is used herein, it shall mean the Public Records of Broward County, Florida.

1.6 SELLER: Whenever the term Seller is used herein, it shall mean the person or entity which at the time of closing shall own fee simple title to the Real Property and any agent or designee to whom SELLER has delegated authority to negotiate or administer the terms and conditions of this Agreement.

1.7 SPECIAL ASSESSMENT LIENS: Whenever the term Special Assessment Liens is used herein, it shall mean all liens on the property which is the subject matter of this Contract arising out of a special improvement or service by any city, town, municipal corporation, CITY or other governmental entity pursuant to any general or special act of the legislature providing a special benefit to land abutting, adjoining or contiguous to the special improvement. Said special improvement shall include, but is not limited to, paving, repaving, hard surfacing, rehard surfacing, widening, guttering, and draining of streets, boulevards, alleys and sidewalks; construction or reconstruction of sanitary sewers, storm sewers, drains, water mains, water laterals, water distribution facilities and all appurtenances thereto.

For the purpose of closing or settlement of this purchase, such special assessment liens shall be designated as either "certified" or "pending."

A "certified" lien is hereby defined as a lien which has been certified, confirmed or ratified pursuant to the statute, special act, ordinance, or resolution creating same and for which the exact amount of same has been determined.

A "pending" lien is a lien which has been created or authorized by an enabling resolution adopted by the appropriate governmental entity, causing said lien to attach to and become an encumbrance upon the subject Real Property but for which there has been no determination of the final amount of same.

1.8 SURVEY: Whenever the term Survey is used herein, it shall mean a survey certified to "City of Pompano Beach" by a professional land surveyor registered in and licensed by the State of Florida.

1.9 TITLE: Whenever the term Title is used herein, it shall mean fee simple title, free and clear of all liens, charges and encumbrances, other than matters specified in Section 4.1 of this Contract, if any.

1.10 TITLE BASE: Either an existing prior Owner's or First Mortgagee Title Insurance Policy, qualified for use as a title base for reissue of coverage on the Real Property at the Purchase Price, from a reputable title company acceptable to CITY. If a prior policy is unavailable as a title base, then any alternate title base that is acceptable to CITY's title insurance underwriter.

1.11 TITLE COMMITMENT: A commitment or binder for an owner's policy of title insurance written on a company acceptable to CITY, in the amount of the purchase price, covering the Real Property and having an effective date subsequent to the full execution of this Contract, listing and attaching copies of all instruments of record affecting title to the Real Property and listing the requirements, as of the date of the commitment, for conveyance of marketable fee simple title to the Real Property.

1.12 TITLE INSURANCE: An owner's policy of title insurance issued on the Title Commitment, having an effective date as of the recording of the conveyance insuring title in accordance with standards set forth in Section 4.1.

ARTICLE 2
TERMS AND CONDITIONS OF PURCHASE AND SALE

2.1 PURCHASE PRICE:

CITY, as purchaser, agrees to pay as and for the total purchase price for the Property in the manner and at the times hereinafter specified the total sum of **Two Hundred Fifty Thousand Dollars ($250,000.00),** subject to the prorations, credits, and adjustments hereinafter specified.

2.2 PROCEEDS OF SALE; SATISFACTION OF ENCUMBRANCES:

2.2.1 The proceeds of sale, adjusted for prorations, credits or other closing related charges, if any, shall be disbursed by the closing agent at closing in the form of a

trust or escrow account check drawn locally from a bank in Broward County and payable to SELLER.

2.2.2 Any and all mortgages, liens and encumbrances or claims or any other debts, affecting the title to the Property ("Encumbrances"), which are outstanding on the date of closing shall be discharged and satisfied from the proceeds of the sale at closing and such additional amounts paid by SELLER as may be necessary. The CITY or CITY's designated closing agent or attorney shall cause to be issued separate checks payable to the respective mortgagors, lienees, lienors or encumbrancers, the aggregate of which shall not exceed the purchase price less proration or other credits. The closing agent or attorney shall arrange to exchange such checks for the instruments necessary to satisfy such Encumbrances.

2.2.3 The SELLER hereby acknowledges and agrees that any payments due as provided in this Section 2.2 shall not be paid from ad valorem taxes nor shall such taxes be pledged or committed for any payment due SELLER. Further, there shall be no pledge of CITY property or otherwise to secure said payments to SELLER nor any mortgage or right to foreclose on the Property to be conveyed by SELLER to CITY or on any property owned by CITY.

2.3 ADDITIONAL OBLIGATIONS OF SELLER

2.3.1 SELLER agrees to deliver possession of the Property to CITY on the date of closing. The Property is being purchased in its current condition with all existing structures and edifices.

2.3.2 SELLER hereby grants to CITY the right to enter on the Property to perform, or have performed, such inspections, surveys and studies of the Property as CITY may elect including, without limitation, an environmental audit of the Property, and SELLER agrees to provide CITY with such information as may reasonably be requested which is in the possession of SELLER in connection with such investigations. CITY shall have ninety (90) days from the Effective Date of this Contract ("Inspection Period") within which to have such inspections and studies of the Property performed as CITY shall desire and utilities shall be made available by SELLER during the Inspection Period. In the event that the results of such investigations reveal conditions affecting the Property which are not acceptable to CITY, in its sole and absolute discretion, CITY may terminate this Contract by giving written notice to SELLER within thirty (30) days of the expiration of the Inspection Period.

2.3.3 Between the Effective Date and the date of closing, SELLER covenants and warrants to keep and maintain the Property in the same condition as it exists on the Effective Date, normal wear and tear excepted, and agrees that SELLER shall not enter into any contract for the Property, including without limitation any lease or tenancy thereof, without the prior written consent of Director, which consent

may be granted or withheld by CITY in its sole discretion. Moreover, in the event any remedial measures related to the property need to be taken during the period following the effective date and the closing, BUYER agrees to undertake all responsibility to effectuate such required measures and acts at its sole cost and expense.

2.3.4 BUYER shall have the right after closing to move SELLER's underground telephone line which is located on the Real Property as well as CITY's adjacent property to the east of the Real Property onto a dedicated underground utility easement as depicted on Exhibit "E," attached hereto and made a part hereof, at CITY's expense..

2.4 REPRESENTATIONS AND WARRANTIES OF SELLER: In addition to the representations and warranties contained elsewhere in this Contract, SELLER hereby represents and warrants to CITY, as of the date SELLER executes this Contract and as of the closing date, as follows:

2.4.1 SELLER warrants and represents to CITY that SELLER, at the time of closing, shall be the owner of fee simple title to the Property, and that no consents of any third party are required in order for SELLER to convey title to the Property to CITY as provided herein.

2.4.2 SELLER warrants and represents to CITY that there are no contracts or agreements, whether written or oral, regarding the use, development, maintenance, or operation of the Property which will survive the closing, other than the contracts or agreements listed in Exhibit "B" hereto, and further that SELLER has provided CITY with true and correct copies of each such written contract or agreement, and any modifications and amendments thereof, or with written summaries of any such oral agreements. If CITY, in its sole and absolute discretion, determines that said contracts or agreements are unsatisfactory, CITY may at its option: (1) terminate this Contract by written notice to the SELLER within thirty (30) days of the delivery of such contracts or agreements to CITY; (2) request that the SELLER modify the terms and conditions of the existing contracts or agreements to a form and content acceptable to CITY; or, (3) proceed to close accepting the contracts or agreements as they are.

2.4.3 SELLER covenants and warrants that there is ingress and egress to the Property over public roads, and title to the Property is insurable in accordance with Section 3.2 without exception for lack of legal right of access.

2.4.4 SELLER warrants that there are no facts known to SELLER materially affecting the value of the Property that are not readily observable by CITY or that have not been disclosed to CITY.

ARTICLE 3
EVIDENCE OF TITLE AND TITLE INSURANCE

3.1 EVIDENCE OF TITLE:

3.1.1 SELLER shall, at SELLER's expense, on or before fifteen (15) days from the Effective Date, deliver an existing prior Owner's or First Mortgagee Title Insurance Policy qualified for use as a title base for reissue of coverage on the Real Property at the Purchase Price of the Real Property ("Prior Policy") together with copies of all exceptions thereto, if requested. SELLER shall, at SELLER's option, pay for either: (1) an abstract continuation or; (2) a computer title search, from the effective date of the prior Owner's Policy or in the case of a First Mortgagee Title Insurance Policy from the date of recording the deed into the mortgagor. The abstract continuation or title search shall be ordered or performed by CITY's closing agent; or

3.1.2 If a prior policy described in Paragraph 3.1.1 above is not available, then SELLER shall, at SELLER's option, provide and pay for either: (1) an alternative title evidence which is acceptable to CITY's title insurance underwriter; or (2) a title insurance commitment issued by a Florida licensed title insurer agreeing to issue to CITY, upon recording of the deed to CITY, an Owner's Policy of Title Insurance in the amount of the Purchase Price, insuring CITY's title to the Real Property, subject only to liens, encumbrances, exceptions or qualifications provided in this Contract and those to be discharged by SELLER at or before Closing.

3.2 INSURANCE OF TITLE: CITY may obtain, at CITY's expense and in reliance on the Evidence of Title referred to in Paragraph 3.1.1 of Section 3.1, a Title Commitment from a title agent selected by CITY, pursuant to which the title insurer agrees to issue to CITY, upon the recordation of the deed hereafter mentioned, an owner's policy of title insurance in the amount of the purchase price, insuring CITY's marketable title to the Property, subject only to matters contained in Section 4.1 and those to be discharged by SELLER at or before closing.

3.3 CITY shall have thirty (30) days from the date of receiving the Evidence of Title to examine the Title Base, the computer title search update, or the Title Commitment. If title is found to be defective, CITY shall within said period notify the SELLER in writing, specifying the defects. If the said defects render the title unmarketable, SELLER shall have a period of thirty (30) days from the receipt of such notice to cure or remove such defects, and SELLER agrees to use diligent efforts to cure or remove same. If, at the end of said period, SELLER has been unable to cure or remove the defects, CITY shall deliver written notice to SELLER either:

(1) accepting the title as it then is; or

(2) extending the time for a reasonable period not to exceed 120 days within which SELLER shall use diligent effort to cure or remove the defects; or

(3) terminating this Contract, whereupon the CITY and SELLER shall be released of all further obligations under this Contract.

3.3.1 If CITY elects to proceed pursuant to Section 3.3(2), then SELLER shall use diligent effort to correct defect(s) within the extended time provided. If SELLER is unable to timely correct the defect(s), CITY shall, within 5 days after expiration of the extended time provided, deliver written notice to seller either:

(1) accepting the title as it then is; or

(2) terminating this Contract, whereupon the CITY and SELLER shall be released of all further obligations under this Contract.

3.4 SELLER shall convey marketable title subject only to liens, encumbrances, exceptions, or qualifications as contained in Section 4.1. Marketable title shall be determined according to applicable Title Standards adopted by authority of the Florida Bar and in accordance with law.

ARTICLE 4
CONVEYANCES

4.1 SELLER shall convey marketable title to the Property by statutory warranty, trustee's, personal representative's or guardian's deed, as appropriate to the status of SELLER, subject only to the following matters ("Acceptable Exceptions") and those otherwise accepted by CITY:

(1) Comprehensive land use plans, zoning, restrictions, prohibitions and other requirements imposed by governmental authority;

(2) Restrictions and matters appearing on the plat or otherwise common to the subdivision;

(3) Outstanding oil, gas and mineral rights of record without right of entry;

(4) Unplatted public utility easements of record;

(5) Real property taxes for the year of Closing and subsequent years; and,

(6) Provided, that there exists at Closing no violation of the foregoing and none prevent use of the Property.

4.2 At closing SELLER shall also deliver to CITY the following documents:

(1) Mechanic's Lien Affidavit and Foreign Investment in Real Property Tax Act ("FIRPTA") Affidavit;

(2) Such other documents as shall be reasonably requested by CITY (including, but not limited to, bill of sale, certificate of title, construction lien affidavit, owner's possession affidavit, assignment of leases, tenant and mortgagee estoppel letters, and corrective instruments) in order for SELLER to convey marketable title to CITY and properly transfer all of the rights being sold in accordance with this Contract;

(3) Evidence of authority to Convey the Property satisfactory to CITY; and,

(4) The public disclosure certificate required by Section 13.1 hereof.

ARTICLE 5
PRORATION AND ADJUSTMENT

5.1 PRORATION OF TAXES:

5.1.1 Real estate and personal property taxes applicable to the Property shall be prorated based on the official tax bill(s) for the current year. If not paid, SELLER shall pay or provide for payment of all real estate and personal property taxes applicable to the Property for the calendar years preceding the year of closing by or at closing.

5.1.2 In the event the date of closing shall occur between January 1 and November 1, SELLER shall, in accordance with Florida Statute Section 196.295, place in escrow with the Broward County Revenue Collection Division an amount equal to current taxes prorated to the date of transfer of title, based upon the current assessment and millage rates on the Property.

5.1.3 All governmental assessments, other than those of the City of Pompano Beach, certified prior to the closing date, general or special, shall be paid by SELLER prior to or at closing, and CITY shall not be obligated to pay such assessments.

5.2 GENERAL PRORATIONS:

Any rents, revenues, and liens, or other charges to be prorated, shall be prorated as of the date of closing, provided that in the event of an extension of the date of closing, at the request of or through the fault of either party, such date of proration shall be the date upon which the other party indicated its readiness to close.

ARTICLE 6
EXISTING MORTGAGES, LEASES AND CONTRACTS

6.1 MORTGAGES: SELLER shall obtain and furnish at SELLER's expense, not less than fifteen (15) days prior to closing, a statement or letter of estoppel from the holder of any mortgage, lien, or encumbrance affecting the title to the Property. Any estoppel letter or statement shall set forth the amount of principal, interest, and/or penalties necessary to be paid to fully discharge such mortgage, lien, or encumbrance, or to release the Property from the lien of such mortgage.

6.2 LEASES, OPTIONS, CONTRACTS AND OTHER INTERESTS:

6.2.1 SELLER represents and warrants to CITY that there are no party(ies) in possession other than SELLER, leases (written or oral), options to purchase or contracts for sale covering all or any part of the Property, no party(ies) having ownership of any improvements located on the Property and no party(ies) having any interest in the Property or any part hereof except as set forth on Exhibit "B." If there are none, then Exhibit "B" shall state "NONE." SELLER represents and warrants that SELLER has previously furnished to CITY copies of all written leases, options and contracts for sale, estoppel letters from each tenant specifying the nature and duration of said tenant's occupancy, rental rate, advance rents, or security deposits paid by tenant and estoppel letters from each optionee, contract vendors and all others listed on Exhibit "B" (if any) describing in such detail as requested by CITY the nature of their respective interests. In the event SELLER is unable to obtain said estoppel letters, SELLER represents and warrants that SELLER has furnished the same information, true and correct, to CITY in the form of a SELLER's affidavit.

6.2.2 From the date of SELLER's execution hereof, SELLER represents and warrants to CITY that SELLER shall not enter into any lease (oral or written), option to purchase, contract for sale or grant to any person(s) (natural or artificial) any interest in the Property or any part thereof or any improvement thereon or encumber or suffer the Property or any part thereof to be encumbered by any mortgage or other lien, without the prior written consent of CITY which consent may be granted or withheld by CITY in its sole discretion.

6.2.3 SELLER agrees that it will take all necessary action, including the expenditure of all reasonable sums of money, to terminate any and all leases, rights of occupancy, options to purchase, contracts for sale and interest(s) of any other person(s) (natural or artificial) in and to the Property, so that at closing the SELLER will convey the Property to the CITY free and clear of any such items and furnish to the CITY written evidence of such termination, and provide to CITY at closing an affidavit in the form attached hereto as Exhibit "C." Further, SELLER's obligation hereunder shall be a condition precedent to the closing of this transaction.

ARTICLE 7
TIME AND PLACE OF CLOSING

7.1 It is agreed that this transaction shall be closed and the CITY shall pay the purchase price, as adjusted as provided herein, and execute all papers or documents necessary to be executed by CITY, and SELLER shall execute all papers or documents necessary to be executed by SELLER under the terms of this Contract, on or before the 45th day after the Effective Date, at the Pompano Beach City Attorney's Office, located at 100 West Atlantic Blvd., Pompano Beach, Florida 33060, or at such earlier time or other place as CITY may designate. However, nothing contained in this Article shall act or be construed as a limitation of any sort upon CITY's rights under this Contract, including without limitation its rights under paragraph 7.2 hereof, it's right to examine the Title Base and computer title search update, Title Commitment, and Survey, or as a limitation of other time established herein for CITY's benefit.

7.2 CITY shall have no obligation to close this transaction unless the following conditions hereinafter have been satisfied or have been waived in writing by CITY:

(1) All representations, warranties and covenants of the SELLER herein shall be true and correct as of the closing date.

(2) SELLER shall have obtained any consents, special exceptions, variances, etc. that may be required as a matter of law to permit CITY to own and occupy the Property for its intended purposes, and the same shall be final, binding, not subject to appeal, and in all other respects satisfactory to CITY.

(3) There shall be no environmental hazards on the Property which would require CITY to treat, remove, or otherwise incur any expense relative to meeting current environmental standards as of date of closing.

(4) The status of title to the Property shall not have changed in a manner which adversely affects the use of the Property for CITY's intended use or renders the title unmarketable from date of approval of same by title agent and/or CITY's counsel in accordance with this Contract.

(5) An affidavit of SELLER regarding environmental matters in the form attached as Exhibit "D" hereto is delivered at closing.

(6) All security codes and keys, if any, are turned over to CITY at closing.

7.3 In the event that at the time of closing any of SELLER's representations and warranties hereunder shall not be true or any condition exists which would allow CITY to terminate this Contract, CITY may deliver to SELLER written notice thereof, and SELLER, using reasonable diligence, shall have thirty (30) days from receipt of such notice to cure such

defects. The closing shall, if necessary, be adjourned for a period of thirty (30) days to provide SELLER time within which to render such warranties and representations true and/or cure and remove such other matters so affecting the Premises, as the case may be. If such warranties and representations shall not be rendered true and/or such other matters shall not be cured and removed, CITY may, by notice to SELLER, elect to (a) cancel and terminate this Contract, or (b) accept title to the Property as is.

ARTICLE 8
DOCUMENTARY STAMPS, TANGIBLE TAXES AND OTHER COSTS

8.1 SELLER shall cause to be placed upon the warranty deed conveying the Property state surtax and documentary stamps as required by law. SELLER shall further pay all tangible personal property taxes and the cost of recording any corrective instruments which CITY deems necessary to assure good and marketable title. CITY shall pay for the cost of recording the warranty deed.

8.2 Except as specifically provided in Section 8.1 hereof, all state, county and municipal transfer taxes, documentary stamps taxes, recording charges, taxes, and all other impositions on the conveyance, shall be paid in full by the SELLER. CITY is in no manner responsible for any state, federal or other income, excise, or sales tax liabilities of SELLER.

8.3 Unless otherwise provided by law or rider to this Contract, charges for the following related title services, namely title examination, and closing fee (including preparation of closing statement), shall be paid by the party responsible for furnishing Insurance of Title in accordance with Section 3.2.

ARTICLE 9
SPECIAL ASSESSMENT LIENS

9.1 Liens for Special Assessment shall be paid by SELLER prior to closing or credited to CITY, as hereinafter provided.

The amount of certified, confirmed, and ratified special assessment liens imposed by public bodies as of Closing shall be discharged by SELLER prior to closing, and SELLER shall exhibit appropriate receipts, satisfactions, or releases proving such payment, or in the alternative SELLER shall cause said lien(s) to be satisfied out of the proceeds of sale received by SELLER at closing.

Pending liens as of Closing shall be assumed by CITY with an appropriate credit given to CITY against the purchase price. At such time as the final amount of said lien is determined or certified and said amount is less than the amount of the pending lien, the difference in amounts shall be refunded to SELLER; if the final amount is greater than

the amount of the pending lien, SELLER shall upon demand pay to CITY the difference in amounts.

ARTICLE 10
SURVEY

10.1 CITY, at CITY's expense, within the time allowed to deliver Title Base and review same, may have the Property surveyed and certified by a registered Florida surveyor. If the survey discloses encroachments on the Property or that improvements located thereon encroach on setback lines, easements, or lands of others, or violate any restrictions, Contract covenants, or applicable governmental regulations, the same shall constitute a title defect.

ARTICLE 11
MECHANICS' LIENS

11.1 SELLER hereby represents and warrants to CITY that as of the date hereof and as of closing, there are no claims or potential claims for mechanics' liens, either statutory or at common law, and that neither SELLER nor SELLER's agent has caused to be made on the Property within ninety (90) days immediately preceding the date of this Contract any improvement which could give rise to any Mechanics' Lien. In addition, SELLER represents and warrants to CITY that neither SELLER nor SELLER's agent shall cause any improvement to be made on the Property between the date of full execution of this Contract and closing which could give rise to any Mechanic's Lien for which any bills shall remain unpaid at closing. SELLER shall furnish to CITY at time of closing an affidavit, in the form attached as Exhibit "C," attesting to the absence, unless otherwise provided for herein, of any financing statement, claim of lien, or potential lienors known to seller, and further attesting that there have been no improvements or repairs to the Property for 90 days immediately preceding date of Closing.

11.2 If any improvements have been made within said ninety (90) day period, SELLER shall deliver releases or waiver of all mechanics' liens executed by all general contractors, subcontractors, suppliers and material persons in addition to SELLER's mechanic lien affidavit setting forth the names of all such general contractors, subcontractors, suppliers and material persons, further affirming that all charges for improvements or repairs, which could serve as a basis for a construction lien or a claim for damages, have been paid or will be paid at the Closing on this Contract.

ARTICLE 12
TIME IS OF THE ESSENCE

12.1 Time is of the essence throughout this Contract. In computing time periods of less than six (6) days, Saturdays, Sundays, and state or national legal holidays shall be excluded. Any time periods provided for herein that end on a Saturday, Sunday, or a legal holiday shall extend to 5 p.m. of the next business day.

ARTICLE 13
PUBLIC DISCLOSURE

13.1 SELLER hereby represents and warrants the names and addresses of every person or firm having a beneficial interest in the Property is as follows:

Name: John H Lytle
Title: Owner
ZP PROPERTIES, INC.
Attn: John H Lytle
1330 SE 7 AVE
POMPANO BEACH FL 33060

SELLER further agrees that at least ten (10) days prior to closing, in accordance with Section 286.23, Florida Statutes, SELLER shall make a public disclosure in writing, under oath and subject to the penalties prescribed for perjury, which shall state the name and address of SELLER and the name and address of every person having any beneficial interest in the Property.

ARTICLE 14
BROKER'S COMMISSION

14.1 No Brokers

ARTICLE 15
ASSIGNMENT

15.1 This Contract, or any interest herein, shall not be assigned, transferred or otherwise encumbered under any circumstances by SELLER or CITY without the prior written consent of the other and only by a document of equal dignity herewith.

ARTICLE 16
DEFAULT

16.1 If SELLER refuses to carry out the terms and conditions of this Contract, then this Contract may be terminated at CITY's election, upon written notice, or the CITY shall have the right to seek specific performance against SELLER. In the event the CITY refuses to carry out the terms and conditions of this Contract, SELLER shall have the right to terminate this Contract or to seek specific performance against CITY.

ARTICLE 17
PERSONS BOUND

17.1 The benefits and obligations of the covenants herein shall inure to and bind the respective heirs, personal representatives, successors and assigns (where assignment is permitted) of

the Parties hereto. Whenever used, the singular number shall include the plural, the plural, the singular, and the use of any gender shall include all genders.

ARTICLE 18
SURVIVAL OF COVENANTS AND SPECIAL COVENANTS

18.1 The covenants and representations in this Contract shall survive delivery of deed and possession.

ARTICLE 19
WAIVER, GOVERNING LAW AND VENUE AND ATTORNEY'S FEES

19.1 Failure of either party to insist upon strict performance of any covenant or condition of this Contract, or to exercise any right herein contained, shall not be construed as a waiver or relinquishment for the future of any such covenant, condition or right; but the same shall remain in full force and effect. None of the conditions, covenants or provisions of this Contract shall be waived or modified except by the Parties hereto in writing.

19.2 This Contract shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Venue for litigation concerning this Contract shall be in Broward County, Florida. SELLER and CITY hereby waive their right to a trial by jury.

19.3 In any litigation, including breach, enforcement, or interpretation, arising out of this Contract, the prevailing party in such litigation, which, for purposes of this Section, shall include SELLER, CITY, and any brokers acting in agency or non-agency relationships authorized by Chapter 475, Florida Statutes, as amended, shall be entitled to recover from the non-prevailing party reasonable attorney's fees, costs, and expenses. This section shall survive delivery of deed and possession.

ARTICLE 20
MODIFICATION

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

20.2 It is further agreed that 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.

ARTICLE 21
CONTRACT EFFECTIVE

21.1 This Contract or any modification, amendment or alteration thereto, shall not be effective or binding upon any of the Parties hereto until it is approved by the CITY Commissioners and executed by the Chairman or Secretary of said Board.

ARTICLE 22
ENVIRONMENTAL CONTAMINATION

22.1 In the event that the environmental audit provided for in Section 2.3.2 hereof results in a finding that environmental contamination of the Property is present or suspected or a recommendation that a Phase 2 audit be conducted, or if there has been environmental contamination of the Property between the Effective Date and the closing, the CITY, at its sole option, may: (1) elect to terminate this Contract without further liability; or, (2) obtain a cost estimate from a reputable licensed environmental consultant as to the cost of cleanup of any environmental contamination and notify SELLER of the cost estimate in writing, in which event the SELLER shall have the option of:

(1) cleaning up the environmental contamination itself; or

(2) reducing the purchase price of the Property by the amount of the cost estimate; or

(3) terminating the contract with no further liability on the part of either party.

22.2 In the event that SELLER undertakes any environmental remediation pursuant to Sections 22.1 or 22.2, all such remediation shall be done in a manner consistent with all applicable laws, rules, regulations and ordinances and at SELLER's sole cost and expense, and SELLER shall indemnify and save harmless and defend CITY, its officers, servants, agents and employees from and against any and all claims, suits, actions, damages, liabilities, expenditures or causes of action of whatsoever kind arising from the environmental contamination. SELLER shall defend, at its sole cost and expense, any legal action, claim or proceeding instituted by any person against the CITY as a result of any claim, suit, or cause of action for injuries to body, life, limb or property for which the environmental contamination is alleged to be a contributing legal cause. SELLER shall save the CITY harmless from and against all judgments, orders, decrees, attorney's fees, costs, expenses and liabilities in and about any such claim, suit, investigation, or defense thereof, which may be entered, incurred or assessed as a result of the foregoing.

22.3 SELLER represents and warrants to CITY that as of the Effective Date and as of closing that neither SELLER, nor to the best of SELLER's knowledge any third party, has used, produced, manufactured, stored, disposed of, or discharged any hazardous wastes or toxic substances in, under, or about the Property.

ARTICLE 23
RADON GAS

23.1 Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risk to persons who are exposed to it over time. Levels of radon that exceed Federal and State Guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your County public health unit.

ARTICLE 24
FURTHER UNDERTAKING

24.1 The Parties agree that each shall cooperate with the other in good faith and shall correct any mathematical errors, execute such further documents and perform such further acts as may be reasonably necessary or appropriate to carry out the purpose and intent of this Contract.

ARTICLE 25
NOTICES

25.1 Whenever either party desires to give notice unto the other, it must be given by written notice, sent by certified United States mail, with return receipt requested, addressed to the party for whom it is intended, at the place last specified, as the place for giving of notice in compliance with the provisions of this paragraph. The party(ies) may change the addresses at which notice is to be given by notice given as provided in this Article. Notices shall be deemed given when mailed properly addressed with postage prepaid.

FOR CITY Before and After Closing:

Dennis W. Beach, City Manager
City of Pompano Beach
100 W. Atlantic Blvd, Ste. 430
Pompano Beach, FL 33360
954-786-4601
dennis.beach@copbfl.com

With a copy to:
Mark E. Berman, City Attorney
City of Pompano Beach
100 W. Atlantic Blvd, Ste. 467
Pompano Beach, FL 33060
954-786-4614
mark.berman@copbfl.com

FOR SELLER Before and After Closing:

John H. Lytle
ZP PROPERTIES, INC.
3031 NE 43rd Street
Lighthouse Point, Florida, 33064

ARTICLE 26
EXECUTION

26.1 This document, consisting of twenty-seven (27) pages plus Exhibits "A," "B," "C," "D," and "E" shall be executed in one (1) original to be retained by the CITY, and a copy provided to the SELLER.

IN WITNESS WHEREOF, the Parties have made and executed this Agreement on the respective dates under each signature: Seller is duly authorized to execute same, and CITY, through its Commissioners, signing by and through its Mayor or Secretary, authorized to execute same by Board action on the 30 day of March, 2016

SELLER

WITNESSES:

Signature Witness 1

Kelly Taylor
Print/Type Name Witness 1

Signature Witness 2

Renee Jones
Print/Type Name Witness 2

ZP PROPERTIES, INC.

JOHN H LYTLE

Print Name: John Lytle

Title: President

"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

EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

Legal: 35-48-42 BEG 468.61 S & 793 W OF NE COR OF NE1/4 FOR POB,S 40,E 125, N 40,W 125 TO POB

AKA: 1305 NE 3rd Avenue, Pompano Beach, FL 33060

Folio: 4842 35 00 0042

Source: Deed Transfer of Real Property dated March 02, 2007 as recorded in Broward County Official Record Book 43687 on Page 1373.

EXHIBIT "B"

LEASES, OPTIONS, CONTRACTS AND OTHER INTERESTS

NONE

EXHIBIT "C"

NO LIEN AFFIDAVIT AND INDEMNITY

STATE OF FLORIDA)
) SS.
COUNTY OF BROWARD)

BEFORE ME, the undersigned authority, personally appeared John H. Lytle / 22 Properties, who, being by me first duly sworn on oath, depose(s) and say(s), collectively as the "Affiant":

1. That Affiant is the owner of and has fee simple title to the following described property (the "Property") situate, lying and being in the County of Broward, State of Florida, to-wit:

   SEE ATTACHED EXHIBIT "A"

2. That the Affiant has not sold, transferred, assigned or conveyed title to the Property prior to the transfer to the CITY, a body corporate and politic ("CITY").

3. That the Property and all improvements thereon are free and clear of all mortgages, liens, taxes, waste, water and sewer charges, encumbrances, judgments and claims of every nature whatsoever except for real estate taxes for 20___.

4. That no legal actions, Internal Revenue Service claims or State tax claims are pending or threatened that could ripen into a lien or encumbrance on the Property or the improvements thereon.

5. This Affidavit is made for the purpose of inducing CITY to part with valuable consideration and consummate the purchase of the Property, and CITY is materially relying on the veracity of the contents hereof. The title insurance company selected by CITY is relying upon the representations herein made in issuing title insurance. In this regard, the Affiant represents and warrants that the statements contained herein are true and correct in all respects.

6. That for at least ninety (90) days prior to the date hereof, no material, labor or services have been furnished, performed or supplied in connection with the Property, including the improvements located thereon, for which payment has not been made in full; no material, labor or services have been contracted to be furnished, performed or supplied at a future date in connection with the Property, including the improvements located thereon, for which payment has not been made in full; and there are no unpaid mechanic's, material person's or other liens affecting the Property or actual or potential claims on account of any such material, labor or services.

EXHIBIT "C"
(Continued)

NO LIEN AFFIDAVIT AND INDEMNITY

7. That to the best of Affiant's knowledge, violations of municipal ordinances and other laws, statutes, rules, or regulations pertaining to the Property exist and will be satisfied according to what was heretofore agreed.

8. That Affiant alone and no other person(s), firm(s), corporation(s) or individual(s) are in control and possession of the Property.

9. Affiant represents and warrants that between the date of the title commitment dated _____, 20____, at _____, prepared by Attorneys' Title Insurance Fund, Inc., and the date on which the deed to the Property is placed of record, Affiant has not and will not execute any instruments or take any actions that could adversely affect the title or interest to be acquired by CITY and insured by the Title Company. Affiant further represents and warrants that Affiant is not aware of any matter that could adversely affect the title or interest to be acquired by CITY and insured by the Title Company.

10. Affiant represents and warrants the truth and accuracy of all matters hereinabove set forth and agree to and shall defend, indemnify and hold harmless CITY and its heirs, successors and assigns from all causes, claims, demands, actions, losses, liabilities, settlements, judgments, damages, costs, expenses and fees (including without limitation reasonable attorney's and appellate attorney's fees) that arise as a result of or in connection with the falsity or inaccuracy of any statement made in the above Affidavit or the breach of any representation or warranty herein made.

FURTHER AFFIANT SAYETH NAUGHT.

Signed, sealed and delivered
in the presence of:

_____ By _____
WITNESS

_____ 30 day of March, 2016.
WITNESS

EXHIBIT "C"
(Continued)

NO LIEN AFFIDAVIT AND INDEMNITY

STATE OF FLORIDA)
) SS.
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me this 30 day of March, 2016, by John Lytle who is personally known to me or who has produced DL as identification and who did/did not take an oath.

WITNESS my hand and official seal, this 30 day of March, 2016.

(SEAL)

(Signature of person taking acknowledgment)

KELLY TAYLOR
MY COMMISSION # FF 072387
EXPIRES: November 21, 2017
Bonded Thru Budget Notary Services

(Name of officer taking acknowledgment)
typed, printed or stamped

Notary
(Title or rank)

My Commission Expires: 11.21.17

EXHIBIT D

ENVIRONMENTAL AFFIDAVIT

STATE OF FLORIDA)
) SS.
COUNTY OF BROWARD)

BEFORE ME, the undersigned authority, personally appeared John Lytle / ZP Properties, who, being by me first duly sworn on oath, depose(s) and say(s):

This Affidavit is made this 30 day of March 2016 pursuant to a Contract for Sale and Purchase ("Contract") made as of _____, by and between ZP Properties, hereinafter called SELLER and CITY OF POMPANO BEACH, acting by and through its CITY Commissioners, hereinafter called CITY, pertaining to property known as 805 NE 3rd Avenue and being in Broward County, Florida (the "Property").

In order to induce CITY to purchase the Property, SELLER hereby represents and warrants to CITY to the best of SELLER'S knowledge as follows:

1. There are no environmental hazards on the Property which would require CITY to treat, remove, or otherwise incur any expense relative to meeting current environmental standards as of date of closing.

2. SELLER is not aware of any event of environmental contamination of the Property occurring between the Effective Date of the Contract and the Closing.

3. SELLER represents and warrants to CITY that as of the effective date of the Contract and as of closing that neither SELLER, nor to the best of SELLER's knowledge any third party, has used, produced, manufactured, stored, disposed of or discharged any hazardous wastes or toxic substances in, under or about the Property during the time in which SELLER owned the Property.

4. SELLER represents and warrants the truth and accuracy of all matters hereinabove set forth and agrees to and shall defend, indemnify and hold harmless CITY and its successors and assigns from all causes, claims, demands, actions, losses, liabilities, settlements, judgments, damages, costs, expenses and fees (including without limitation reasonable attorney's and appellate attorney's fees) that arise as a result of or in connection with the falsity or inaccuracy of any statement made in the above Affidavit or the breach of any representation or warranty herein made.

Exhibit D Environmental Affidavit Continued

FURTHER AFFIANT SAYETH NAUGHT.

WITNESSES: SELLER

Signature Witness 1 Seller

Print/Type Name Witness 1

Signature Witness 2

Print/Type Name Witness 2

Signature Witness 1 Seller

Print/Type Name Witness 1

Signature Witness 2

Print/Type Name Witness 2

_____ day of _____, 20___.

Properties Adjacent to City Utility/Public Works Complex

Property	Parcel ID Numbers	Addresss	Business Name
1	484235000030	221 NE 13 St Pompano Beach	MCWINSIM LLC
2	484235000042	1305 NE 3 Ave Pompano Beach	ZP PROPERTIES INC
3	484235000041	223 NE 13 St Pompano Beach	MATHEWS,FREDERICK LE
4	484235000040	220 NE 13 St Pompano Beach	7TH AVENUE HOLDINGS L L C

Meeting Date: April 26, 2016

Agenda Item 11

REQUESTED COMMISSION ACTION:

Consent	Ordinance	x Resolution	Consideration/ Discussion	Presentation

SHORT TITLE **A RESOLUTION OF THE CITY OF POMPANO BEACH AMENDING POMPANO BEACH RESOLUTION NO. 95-112 BY AMENDING SECTION 3 TO PROVIDE FOR ALTERNATE MEMBERS OF THE EDUCATION ADVISORY COMMITTEE; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING AN EFFECTIVE DATE**

Summary of Purpose and Why:

The Education Advisory Committee recommends having two alternate board members added to the committee.

(1) Origin of request for this action: Mayor Lamar Fisher
(2) Primary staff contact: Mark E. Berman, City Attorney Ext. 4614
(3) Expiration of contract, if applicable:
(4) Fiscal impact and source of funding:

DEPARTMENTAL COORDINATION	DATE	DEPARTMENTAL RECOMMENDATION	DEPARTMENTAL HEAD SIGNATURE
City Attorney	4/18/16		See City Attorney's Comm. #2016-727

X City Manager

ACTION TAKEN BY COMMISSION:

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

l:comsn/2016-728

City Attorney's Communication #2016-727
April 18, 2016

TO: Dennis W. Beach, City Manager

FROM: Mark E. Berman, City Attorney

RE: Resolution Amending the Education Advisory Committee

Attached please find the following captioned Resolution addressing the above-referenced matter:

> **A RESOLUTION OF THE CITY OF POMPANO BEACH AMENDING POMPANO BEACH RESOLUTION NO. 95-112 BY AMENDING SECTION 3 TO PROVIDE FOR ALTERNATE MEMBERS OF THE EDUCATION ADVISORY COMMITTEE; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING AN EFFECTIVE DATE**

Please place this matter on the April 26, 2016 City Commission Agenda. I have attached a Commission Agenda Cover Sheet for your convenience.

Should you have any questions regarding this matter, please feel free to contact me.

Gracy A. Lyons (for)
MARK E. BERMAN

MEB/jrm
l:cor/manager/2016-727

Attachments

RESOLUTION NO. 2016-_____

CITY OF POMPANO BEACH
Broward County, Florida

A RESOLUTION OF THE CITY OF POMPANO BEACH AMENDING POMPANO BEACH RESOLUTION NO. 95-112 BY AMENDING SECTION 3 TO PROVIDE FOR ALTERNATE MEMBERS OF THE EDUCATION ADVISORY COMMITTEE; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING AN EFFECTIVE DATE

WHEREAS, the City Commission established the Education Advisory Committee without the provision for alternate members; and

WHEREAS, the City Commission now wishes to add alternate membership to the Education Advisory Committee; and

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

SECTION 1. That Section 3 of City of Pompano Beach Resolution No. 95-112 is hereby amended to read as follows:

SECTION 3. Membership.

The membership of the Education Advisory Committee, which previously consisted of eleven (11) members, shall eventually consist of six (6) members who are residents of the City of Pompano Beach. Upon the occurrence of the first vacancy, the Mayor shall nominate for appointment a member whose term shall coincide with the remaining term of the Mayor. Thereafter, as a vacancy occurs the vacant position shall not be filled until the committee only has six (6) members unless the vacancy is that of a member appointed by the Mayor or is the only remaining appointee of a Commissioner.

The City Commission shall appoint two (2) alternate members of the Education Advisory Committee, 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 Education Advisory Committee occur, the

Chairman of the Committee 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 Resolution or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Resolution that can be given effect without the invalid provision or application, and to this end the provisions of this Resolution are declared to be severable.

SECTION 3. All Resolutions or parts of Resolutions in conflict herewith be and the same are hereby revoked.

SECTION 4. This Resolution shall become effective upon passage.

PASSED AND ADOPTED this _____ day of _____, 2016.

_____
LAMAR FISHER, MAYOR

ATTEST:

_____
ASCELETA HAMMOND, CITY CLERK

MEB/jrm
4/18/16
l:reso/2016-190

Meeting Date: 4-26-16

Agenda Item 12

REQUESTED COMMISSION ACTION:

Consent	Ordinance	Resolution	Consideration/ Discussion	X Presentation

SHORT TITLE PRESENTATION OF THE ACTUARIAL VALUATION OF THE POMPANO BEACH POLICE AND FIREFIGHTERS' RETIREMENT SYSTEM AS OF OCTOBER 1, 2015 BY BOARD ACTUARY DAVID D. HARRIS OF THE NYHART COMPANY, INC.

Summary of Purpose and Why:

This is an annual presentation to update the Commission on the pension activities.

(1) Origin of request for this action: Debra Tocarchick, Executive Director

(2) Primary staff contact: Dennis W. Beach, City Manager 786-4601

(3) Expiration of contract, if applicable:

(4) Fiscal impact and source of funding:

DEPARTMENTAL COORDINATION	DATE	DEPARTMENTAL RECOMMENDATION	DEPARTMENTAL HEAD SIGNATURE
Finance	4/19/16	approval	S. Sabbele
Budget	4/20/16		

X City Manager

ACTION TAKEN BY COMMISSION:

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

nyhart

City of Pompano Beach Police & Firefighters' Retirement Plan

October 1, 2015

Actuarial Valuation Report

Actuarial Certification 3

Executive Summary 5

Summary Results 5

Changes Since Prior Valuation and Key Notes 6

Assets and Liabilities 7

Present Value of Future Benefits 7

Funding Liabilities 8

Asset Information 9

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Development of Recommended Contribution 12

Demographic Information 13

Participant Reconciliation 15

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Appendix 27

Reconciliation of Unfunded Actuarial Liability 28

Asset Information 29

Schedule of Amortizations 31

Florida State Requirements 37

Reserve Account under 99-1/SB172 50

At the request of the plan sponsor, this report summarizes the Police and Firefighters' Retirement System for the City of Pompano Beach as of October 1, 2015. The purpose of this report is to communicate the following results of the valuation:

- Determine Funded Status; and
- Determine Actuarial Contribution for the fiscal year October 1, 2016 through September 30, 2017

This report has been prepared in accordance with the laws and accounting standards indicated above and their applicable regulations. Consequently, it may not be appropriate for other purposes. Please contact Nyhart prior to disclosing this report to any other party or relying on its content for any purpose other than that explained above. Failure to do so may result in misrepresentation or misinterpretation of this report.

The results in this report were prepared using information provided to us by other parties. The census information has been provided to us by the employer. Asset information has been provided to us by the trustee. We have reviewed the provided data for reasonableness when compared to prior information provided, but have not audited the data. Where relevant data may be missing, we have made assumptions we believe to be reasonable. We are not aware of any significant issues with and have relied on the data provided. Any errors in the data provided may result in a different result than those provided in this report. A summary of the data used in the valuation is included in this report.

The actuarial assumptions and methods were chosen by the Board. In our opinion, all actuarial assumptions and methods are individually reasonable and in combination represent our best estimate of anticipated experience of the plan. Future actuarial measurements may differ significantly from the current measurements presented in this report due to such factors as the following:

- plan experience differing from that anticipated by the economic or demographic assumptions;
- changes in economic or demographic assumptions;
- increases or decreases expected as part of the natural operation of the methodology used for these measurements (such as the end of an amortization period) and;
- changes in plan provisions or applicable law. We did not perform an analysis of the potential range of future measurements due to the limited scope of our engagement. This report has been prepared in accordance with generally accepted actuarial principles and practice.

This actuarial valuation and/or cost determination was prepared and completed by me or under my direct supervision, and I acknowledge responsibility for the results. To the best of my knowledge, the results are complete and accurate, and in my opinion, the techniques and assumptions used are reasonable and meet the requirements and intent of Part VII, Chapter 112, Florida Statutes. There is no benefit or expense to be provided by the plan and/or paid from the plan's assets for which liabilities or current costs have not been established or otherwise taken into account in the valuation. All known events or trends which may require a material increase in plan costs or required contribution rates have been taken into account in the valuation.

With respect to reporting standards for defined benefit retirement plans or systems contained in Section 112.664(1), F.S., the actuarial disclosures required under this section were prepared and completed by me or under my direct supervision, and I acknowledge responsibility for the results. To the best of my knowledge, the results are complete and accurate, and in my opinion, meet the requirements of Section 112.664 (1), Florida Statutes, and Rule 60T-1.0035, Florida Administrative Code.

Neither Nyhart nor any of its employees have any relationship with the plan or its sponsor which could impair or appear to impair the objectivity of this report. To the extent that this report or any attachment concerns tax matters, it is not intended to be used and cannot be used by a taxpayer for the purpose of avoiding penalties that may be imposed by law.

The undersigned are compliant with the continuing education requirements of the Qualification Standards for Actuaries Issuing Statements of Actuarial Opinion in the United States and are available for any questions.

Nyhart

David D. Harris

David D. Harris, ASA, EA
Enrolled Actuary No. 14-5609

Heath W Merlak

Heath Merlak, FSA, EA
Enrolled Actuary No. 14-5967

February 16, 2016
Date

Copies of this Report are to be furnished to the Division of Retirement within 60 days of receipt from the actuary at the following addresses:

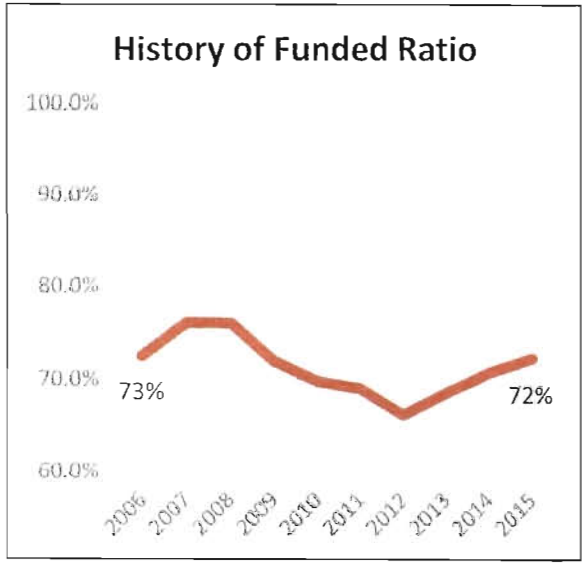
Ms. Sarah Carr
Benefits Administrator
Municipal Police Officers' &
Firefighters' Trust Funds
Division of Retirement
Post Office Box 3010
Tallahassee, FL 32315-3010

Mr. Keith Brinkman
Bureau & Chief
Local Retirement Systems
Division of Retirement
Department of Management Services
P. O. Box 9000
Tallahassee, FL 32315-9000

Summary Results

The actuarial valuation's primary purpose is to produce a scorecard measure displaying the funding progress of the plan toward the ultimate goal of paying benefits at retirement. The accrued liability is based on an entry age level percentage of pay.

	October 1, 2014	October 1, 2015
Funded Status Measures		
Accrued Liability	$279,277,722	$283,802,820
Actuarial Value of Assets	197,436,713	$204,931,915
Unfunded Accrued Liability	$81,841,009	$78,870,905
Funded Percentage (AVA)	71%	72%
Funded percentage (MVA)	76%	71%
Cost Measures		
Recommended Contribution	$8,062,921	$8,093,069
Recommended Contribution (as a percentage of payroll)	60.6%	60.9%
Asset Performance		
Market Value of Assets	212,436,735	200,181,169
Actuarial Value of Assets	197,436,713	204,931,915
Actuarial Value/Market Value	92.9%	102.4%
Member Information		
Active Members	163	160
Terminated Vested Members	2	3
Retirees, Beneficiaries, and Disabled Members	349	354
DROP Participants	44	43
Total	558	560
Expected Payroll	$13,065,752	$13,061,612



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Changes Since Prior Valuation and Key Notes

There have been no changes to the plan provisions since the last valuation.

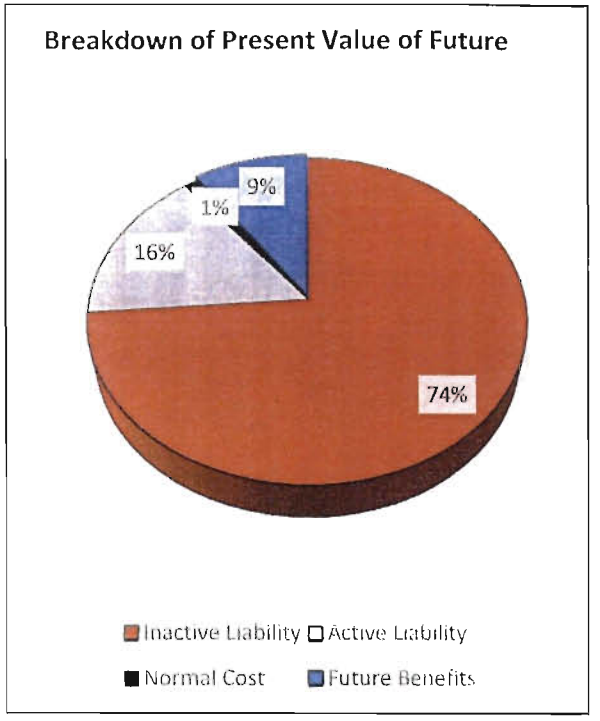
There have been no changes to the assumptions since the last valuation.

The Police State Premium Tax Revenues Accumulated Reserve as of October 1, 2015 has been allocated based on the default method under SB 172. This impacted the unfunded liability and the Actuarial Value of Assets.

Present Value of Future Benefits

The Present Value of Future Benefits represents the discounted value of all future benefits expected to be payable to current members, considering future service and compensation not yet earned.

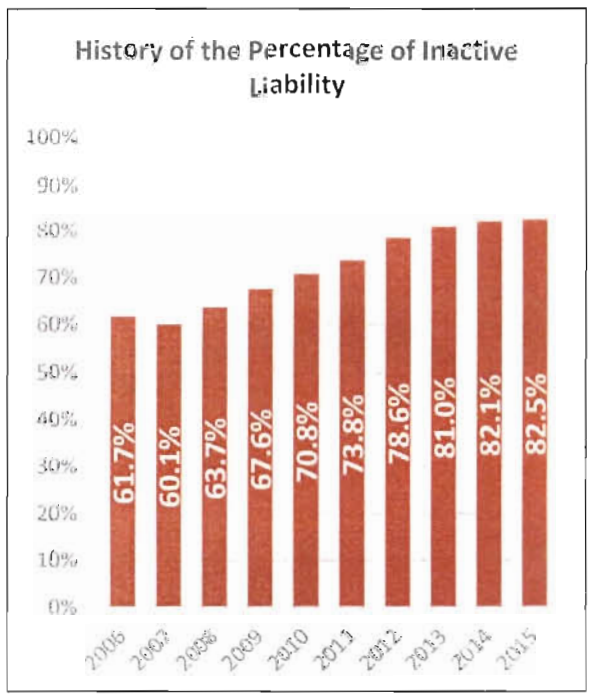
Present Value of Future Benefits	October 1, 2015
Active members	
Retirement	$74,588,795
Disability	5,432,560
Death	2,075,201
Termination	1,274,379
Return of contributions	190,933
Total active	$83,561,868
Inactive members	
Retired members	$205,555,139
Beneficiaries	7,611,389
Disableds	19,314,840
Terminated vested members	1,738,940
Total inactive	$234,220,308
Total	$317,782,176
Present value of future payrolls	$121,064,716



Accrued Liability

The Accrued Liability measures the present value of benefits earned as of the valuation date, using a specified set of actuarial assumptions. It is not a long-term snapshot of the liabilities.

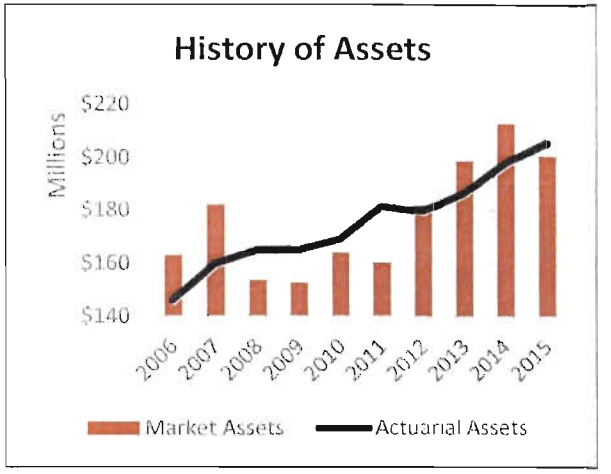
	October 1, 2015
Accrued Liabilities	
Active members	
Retirement	$46,653,904
Disability	1,781,284
Death	544,354
Termination	575,062
Refund of contributions	27,908
Total Active	$49,582,512
Inactive members	
Retired members	$205,555,139
Beneficiaries	7,611,389
Disableds	19,314,840
Terminated vested members	1,738,940
Total Inactive	$234,220,308
Total	$283,802,820
Normal Cost	$3,703,208



Asset Information

The amount of assets backing the pension promise is the most significant driver of volatility and future costs within a pension plan. The investment performance of the assets directly offsets the ultimate cost.

	October 1, 2015
Market Value Reconciliation	
Market value of assets, beginning of prior year	$233,037,612
Employer contributions (incl. discounted accrued items)	8,129,211
Member contributions	1,453,342
Non-employer contributing entity	2,255,095
Investment income	(2,388,886)
Investment expenses	(1,497,351)
Benefit payments	(21,144,686)
Administrative expenses	(588,036)
Other expenses	0
Market value of asset, beginning of current year	$219,256,301
Return on Market Value	-1.71%
Reserve assets	$541,039
DROP account	$18,534,093
Market value of assets available for pension benefits	$200,181,169
Actuarial value of plan assets	
Value at beginning of current year	$204,931,915



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Asset Information (continued)

Plan Assets are used to develop funded percentages and contribution requirements.

	October 1, 2015
1. Expected actuarial value of assets	
(a) Actuarial value of assets, beginning of prior year	$218,037,590
(b) Contributions	11,837,648
(c) Benefit payments	(21,144,686)
(d) Expenses	(588,036)
(e) Expected return	15,988,462
(f) Expected actuarial value of assets, beginning of current year	$224,130,978
2. Market value of assets, beginning of current year	$219,256,301
3. Actual return on market value	$(3,886,237)
4. Amount subject to phase in [(3)-(1e)]	$(19,874,699)
5. Phase in of asset gain/(loss)	
(a) Current year (20% x ($19,874,699))	$(3,974,940)
(b) First prior year (20% x $6,982,137)	1,396,427
(c) Second prior year (20% x $10,627,316)	2,125,463
(d) Third prior year (20% x $13,543,992)	2,708,798
(e) Fourth prior year (20% x ($11,898,395))	(2,379,679)
(f) Total phase-in	($123,931)
6. Preliminary actuarial value of assets, beginning of current year [(1f)+(5f)]	$224,007,047
7. 80% Market value of assets	$175,405,041
8. 120% Market value of assets	$263,107,561
9. Adjusted actuarial value of assets	$224,007,047
10. Reserved Assets	($19,075,132)
11. Final actuarial value of assets [(9+10)]	$204,931,915
12. Return on actuarial value of assets	7.46%

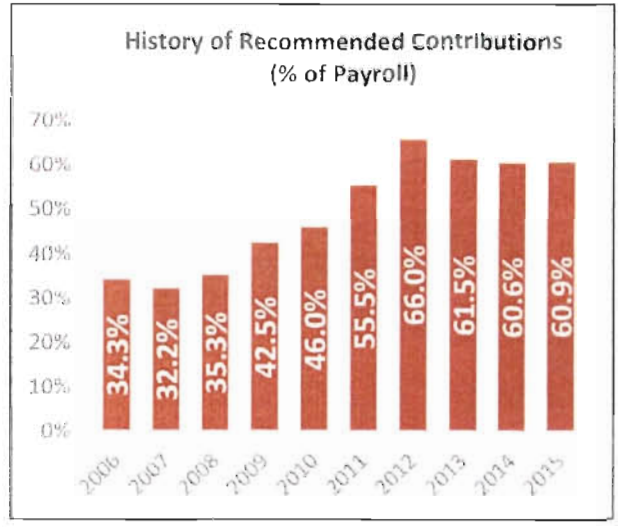
Reconciliation of Gain/Loss

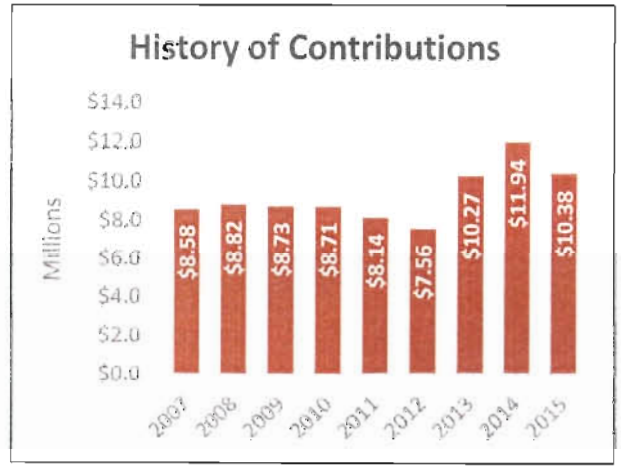
	October 1, 2015
Liability (gain)/loss	
Actuarial liability, beginning of prior year	$279,277,722
Normal cost	3,700,832
Benefit payments	(21,144,686)
Interest	20,444,800
1-year lag adjustment	897,564
Expected actuarial liability, beginning of current year	$283,176,232
Actual actuarial liability	$283,802,820
Liability (gain)/loss	$(626,588)
Asset (gain)/loss	
Actuarial value of assets, beginning of prior year	$197,436,713
Contributions	11,837,648
Benefit payments and expenses	(21,732,722)
Investment return	14,443,397
Expected actuarial value of assets, beginning of current year	$201,985,036
Actual actuarial value of assets, beginning of current year (before accumulated reserve adjustment)	$204,824,333
Asset (gain)/loss	$(2,839,297)
Total (gain)/loss	$(2,212,709)

Development of Recommended Contribution

The minimum recommended contribution is the annual amount necessary to fund the plan according to funding policies and/or applicable laws. The recommended contribution is composed of the normal cost, administrative expenses, plus an amortization charge.

	October 1, 2015
Funded Position	
1. Entry age accrued liability	$283,802,820
2. Actuarial value of assets	204,931,915
3. Unfunded actuarial accrued liability (UAAL)	$78,870,905
Employer Contributions	
1. Normal Cost	
(a) Total normal cost	$3,703,208
(b) Expected participant contributions	(1,558,927)
(c) Net normal cost	$2,144,281
2. Administrative expenses	$584,902
3. Amortization of UAAL	6,301,542
4. Applicable interest	677,304
5. Total required contribution	$9,708,029
6. Expected non-employer contributions	1,759,478
7. Total recommended contribution	$7,948,551
As a percentage of expected payroll	60.85%
8. Recommended contributions to be paid on 12/31/2016	$8,093,069

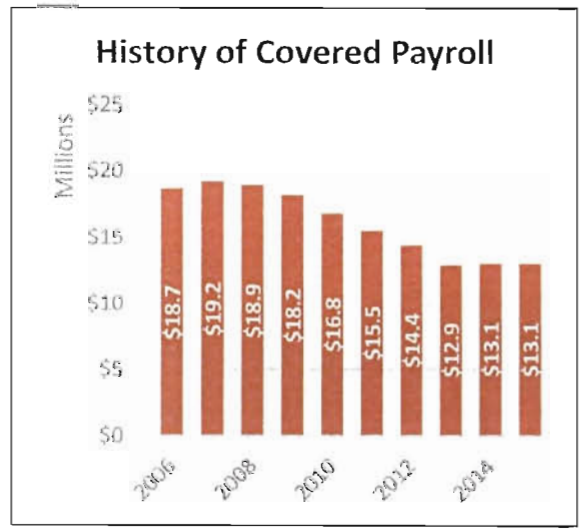




Demographic Information

The foundation of a reliable actuarial report is the participant information provided by the plan sponsor. Monitoring trends in demographic information is crucial for long-term pension planning.

	October 1, 2015
Participant Counts	
Active Participants	160
Retired Participants	291
Beneficiaries	31
Disabled Participants	32
Terminated Vested Participants	3
DROP Participants	43
Total Participants	560
Active Participant Demographics	
Average Age	39.14
Average Service	11.02
Average Compensation	$81,635
Covered Payroll	$13,061,612



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Demographic Information (continued)

	October 1, 2015
Retiree Statistics	
Average Age	63.27
Average Monthly Benefit	$4,175
Beneficiary Statistics	
Average Age	71.92
Average Monthly Benefit	$2,392
Disabled Participants Statistics	
Average Age	56.89
Average Monthly Benefit	$4,540
Terminated Participants Statistics	
Average Age	40.84
Average Monthly Benefit	$4,234
DROP Participants Statistics	
Average Age	54.40
Average Monthly Benefit	$5,563

Participant Reconciliation

	Active	Terminated Vested	Disabled	Retired	Beneficiaries	DROP	Totals
Prior Year	163	2	30	288	31	44	558
Active							
To Terminated Vested	(2)	2	0	0	0	0	0
To Disabled	(1)	0	1	0	0	0	0
To Retired	(1)	0	0	1	0	0	0
To DROP	(5)	0	0	0	0	5	0
To Terminated Non-Vested	(2)	0	0	0	0	0	(2)
Terminated Vested							
To Retired	0	(1)	0	1	0	0	0
Retired							
To Disabled	0	0	1	(1)	0	0	0
To Death	0	0	0	(4)	0	0	(4)
Survivor							
To Death	0	0	0	0	(1)	0	(1)
DROP							
To Retired	0	0	0	6	0	(6)	0
Additions	8	0	0	0	1	0	9
Departures	0	0	0	0	0	0	0
Current Year	160	3	32	291	31	43	560

Active Participant Schedule

Active participant information grouped based on age and service.

	Years of Service											
Age Group	Under 1	1 to 4	5 to 9	10 to 14	15 to 19	20 to 24	25 to 29	30 to 34	35 to 39	40 & Up	Total	Average Pay
Under 25	1	2									3	59,291
25 to 29	3	10	6								19	66,026
30 to 34		10	9	10	1						30	75,506
35 to 39	3	3	6	18	4						34	79,639
40 to 44			4	18	14	6					42	87,838
45 to 49				7	7	4	1				19	90,903
50 to 54	1		1	1	4	4					11	95,794
55 to 59					1						1	75,317
60 to 64			1								1	110,931
65 to 69												
70 & up												
Total	8	25	27	54	31	14	1				160	81,635

Plan Status

Plan established under the Code of Ordinances for the City of Pompano Beach, Florida, Sections 34.045-34.073 and was most recently amended under Ordinance No. 2015-45, passed and adopted on April 14, 2015. The Plan is also governed by certain provisions of Chapters 175 and 185, Florida Statutes, Part VII, Chapter 112, Florida Statutes and the Internal Revenue Code.

Eligibility for Participation

(1) All Police Officers and Dispatchers who were participants of the prior Employees' Pension Plan and
(2) Police Officers and Dispatchers who elected to remain in the Plan prior to the takeover of the police department by the Broward Sheriff's Office on 8/1/99.
(3) All Firefighters who were participants in the prior Employees' Pension Plan; and
(4) All regular, full time Firefighters (20 hours per week and 5 months per year) from age 18, upon date of employment.

Benefits

Normal Retirement

Eligibility	A member hired before May 27, 2014 may retire on the first day of the month coincident with or next following the earlier of: (1) age 47 with 20 years of Continuous Service, or (2) age 55 with 10 years of Continuous Service. A Firefighter member hired on or after May 27, 2014 may retire on the first day of the month coincident with or next following the earlier of: (1) age 50 with 20 years of Continuous Service, or (2) age 55 with 10 years of Continuous Service.
Police Benefit:	3.0% of Average Monthly Earnings (AME) multiplied by years of Continuous Service up to a maximum of 25 years, plus 2.0% of AME multiplied by years of Continuous Service in excess of 37.5.
Firefighter Benefit:	3.0% of AME multiplied by the first 10 years Continuous Service, plus 4.0% of AME multiplied by the next 10 years, plus 2.0% of AME multiplied by the next 5 years with a maximum benefit equal to 80% of AME; plus 2% of AME multiplied by each year of service in excess of 40.
Normal Form of Benefit	10 Years Certain and Life; other options are also available.
COLA	Beginning five years after benefit payments begin, retirees receive an automatic annual increase of 2% on each October 1. An additional annual increase of up to 1% is payable if certain conditions are met

Early Retirement

Eligibility	A member may elect to retire earlier than the Normal Retirement Eligibility upon the completion of 20 years of Continuous Service or the attainment of age 50 with 10 years of Continuous Service.
Benefit	The member's accrued Normal Retirement Benefit based upon the member's AME and Continuous Service as of the date of termination. Benefit is actuarially reduced for each year by which the Early Retirement date precedes the member's Normal Retirement date. The Early Retirement reduction is 3% per year if early retirement occurs after age 50.
Normal Form of Benefit	10 Years Certain and Life; other options are also available.
COLA	Beginning five years after benefit payments begin, retirees receive an automatic annual increase of 2% on each October 1 . An additional annual increase of up to 1% is payable if certain conditions are met.

Late Retirement

Eligibility	Same as Normal Retirement taking into account compensation earned and service credited until the date of actual retirement.
Benefit	Accrued Benefit
Normal Form of Benefit	10 Years Certain and Life; other options are also available.
COLA	Beginning five years after benefit payments begin, retirees receive an automatic annual increase of 2% on each October 1. An additional annual increase of up to 1% is payable if certain conditions are met.

Ordinary Death before Retirement

Eligibility

Any member with 1 or more years of Continuous Service who dies while employed by the City is eligible for survivor benefits.

Benefit

(A) For members with less than 1 year of Continuous Service, no survivor benefits are payable.

(B) For members with 1 year, but less than 5 years, of Continuous Service, the designated beneficiary will be paid a $5,000 lump sum.

(C) For members with 5 years, but less than 10 years, of Continuous Service:

(1) $5,000 lump sum paid to the member's designated beneficiary; plus
(2) Member's spouse will receive 65% of member's accrued pension as of the date of death subject to a minimum of 20% of AME; plus
(3) Each unmarried child under age 18 (22 if full-time student) will receive 7 ½% of member's Earnings. If there is no spouse, benefits increase to 15% of member's Earnings per child.

Maximum benefit to spouse and children is 50% of earnings.

(D) For members with 10 or more years of Continuous Service, the designated beneficiary can elect to receive benefits described under subsection (C) above or the member's accrued benefit as of the date of death. Benefits are payable at the member's Normal or Early Retirement date and will be reduced for Early Retirement, when applicable.

Normal Form of Benefit

Spouse's benefits are paid until death or remarriage; children's benefits are paid until the earlier of age 18 (22 if full-time student), marriage or death.

COLA

Beginning five years after benefit payments begin, beneficiaries receive an automatic annual increase of 2% on each October 1. An additional annual increase of up to 1% is payable if certain conditions are met.

Accidental Death before Retirement

Eligibility

Any member who dies as a direct result of an occurrence arising in the performance of service for the City is eligible for survivor benefits.

Benefit

(1) $5,000 lump sum paid to the member's designated beneficiary; plus
(2) Member's spouse will receive 75% of member's Earnings; plus
(3) Each unmarried child under age 18 (22 if full-time student) will receive 7 ½% of member's Earnings. If there is no spouse, benefits increase to 15% per child.

Maximum benefit to spouse and children is 90% of earnings; if no spouse, maximum for children is 50% of Earnings.

Normal Form of Benefit

Spouse's benefits are paid until death or remarriage; children's benefits are paid until the earlier of age 18 (22 if full-time student), marriage or death.

COLA

Beginning five years after benefit payments begin, beneficiaries receive an automatic annual increase of 2% on each October 1. An additional annual increase of up to 1% is payable if certain conditions are met.

Termination Benefit

Eligibility

A member has earned a non-forfeitable right to Plan benefits after the completion of 10 years of Credited Service (See vesting table below).

Years of Credited Service	% of Normal Retirement Benefits
Less Than 10	0%
10 or more	100%

Benefit

The member's accrued Normal Retirement Benefit as of the date of termination. Benefit begins on the member's Normal Retirement date. Alternatively, members may elect to receive an actuarially reduced Early Retirement Benefit.

Normal Form of Benefit

10 Years Certain and Life thereafter; other options are also available.

COLA

Beginning five years after benefit payments begin, beneficiaries receive an automatic annual increase of 2% on each October 1. An additional annual increase of up to 1% is payable if certain conditions are met.

Plan members with less than 10 years of Credited Service will receive a refund of accumulated contributions with interest

Ordinary Disability Benefit

Eligibility	Any member who becomes totally and permanently disabled and unable to perform regular duties or any other duties available in the Department from an act occurring in the performance of duty for the City is eligible for a disability benefit.
Benefit	75% of rate of Earnings in effect on the date of disability (for Firefighters, not to be less than the accrued benefit).
Normal Form of Benefit	Benefits begin on the first day of the month following the date the Board approves the disability and are payable until death or recovery from disability. If the member dies before receiving payments for 10 years, the member's designated beneficiary will receive the same monthly benefit for the remainder of the 10 year period. Other options are also available.
COLA	Beginning five years after benefit payments begin, retirees receive an automatic annual increase of 2% on each October 1 . An additional annual increase of up to 1% is payable if certain conditions are met.

Accidental Disability Benefit

Eligibility	Any active member with 10 or more years of Continuous Service who becomes totally and permanently disabled and unable to perform regular duties or any other duties available in the Department from an act not directly caused by the performance of duty for the City is eligible for a disability benefit.
Benefit	3.0% of AME multiplied by years of Continuous Service subject to a maximum of 60% of the rate of Earnings on the date of disability, plus 2.0% of AME multiplied by years of Continuous Service in excess of 25. Disability benefit is guaranteed to be no less than 25% of AME.
Normal Form of Benefit	Benefits begin on the first day of the month following the date the Board approves the disability and are payable until death or recovery from disability. If the member dies before receiving payments for 10 years, the member's designated beneficiary will receive the same monthly benefit for the remainder of the 10 year period. Other options are also available.
COLA	Beginning five years after benefit payments begin, retirees receive an automatic annual increase of 2% on each October 1 . An additional annual increase of up to 1% is payable if certain conditions are met.

Compensation

Earnable Compensation

Police Officers: Basic compensation and regular longevity pay, increased for temporary upgrade pay. Also includes up to 25 hours per year of overtime pay.
Firefighters: Basic compensation and regular longevity pay, increased for temporary upgrade pay.

Average Monthly Earnings (AME)

For members hired before May 27, 2014:

The average of Earnings during the highest 3 years preceding termination; not including lump sum payments of unused leave

For members hired after May 27, 2014:

The average of Earnings during the highest 5 years preceding termination; not including lump sum payments of unused leave

Continuous Service

For Vesting and Benefit Accrual, total number of years and completed months from date of employment to date of termination or retirement
No service is credited for any periods of employment for which a member received a refund of contributions.

Employee Contributions

Police: 8.6% of Earnings, paid by BSO.

Firefighters: 11.6% of Earnings "picked up" by the City, reduced to 0.5% after 25 years of service and reaching maximum benefit of 80%, reverting back to 11.6% if member does not enter DROP.

DROP

Eligibility	Plan members hired before May 27, 2014 are eligible for the DROP on the first day of the month coincident with or next following the earlier of: (1) age 47 with 20 years of Continuous Service, or (2) age 55 with 10 years of Continuous Service. Plan members hired after May 27, 2014 are eligible for DROP on the first day of the month coincident with or next following the earlier of: (1) age 50 with 20 years of Continuous Service, or (2) age 55 with 10 years of Continuous Service. Members who meet eligibility must submit a written election to participate in the DROP.
Benefit	The member's Credited Service and AME are frozen upon entry into the DROP. The monthly retirement benefit as described under Normal Retirement is calculated based upon the frozen Credited Service and AME. In addition, the members accumulated sick and annual leave pay will be paid in 5 equal annual installments on the member's DROP participation anniversary dates.
Maximum Period	60 months (police) & 96 months (firefighters)
Interest Credited	The member's DROP account is credited or debited quarterly at a rate equal to one of the following elected by the member: (1) the actual net rate of investment return realized by the Plan for that quarter, or (2) a rate set quarterly by the Board of Trustees, or (3) the actual net rate of investment return realized by a separate investment account made available by the Board of Trustees but the investment proportions designated by the member.
Normal Form of Benefit	The member's DROP account is paid out under one of the following options as elected by the member: (1) a full single lump sum payment, or (2) annual installments in amounts as requested by the member by June 30th of each year, or (3) equal monthly installments as requested by the member by June 30th of each year, or (4) a single lump sum of the remaining balance after any annual or monthly installments have been made under options (2) or (3) above.
COLA	Beginning five years after benefit payments begin, retirees receive an automatic annual increase of 2% on each October 1. An additional increase of up to 1% is payable if certain conditions are met. For Firefighters, if participant leaves the DROP after five years, the COLA begins when participant leaves the DROP.

Payment Forms

Normal Form:	10 Years Certain and Life Annuity
Optional Forms:	Single Life Annuity Joint and 100% Contingent Survivor Annuity Joint and 75% Contingent Survivor Annuity Joint and 66 2/3% Contingent Survivor Annuity Joint and 50% Contingent Survivor Annuity Any Board-approved, actuarially equivalent benefit

Plan Provisions Not Included

We are not aware of any plan provisions not included in the valuation.

Adjustments Made for Subsequent Events

We are not aware of any event following the measurement date and prior to the date of this report that would materially impact the results.

Changes Since Prior Report

None

Cost Method

Individual Entry Age Normal Cost Method; Closed Group; All new bases are to be amortized over 30 years from the date established using a level dollar for police and a level percent of pay for firefighters.

Asset Valuation Method

20% Phase-In Method: Actuarial value of assets is equal to expected value phase in the difference between the expected investment earnings and actual investment earnings at the rate of 20% per year. The result cannot be greater than 120% of market value or less than 80% of market value.

Interest Rates

7.5%, compounded annually, net of investment expenses.

Annual Pay Increases

2.5%, compounded annually for inflation plus a seniority/merit scale using the following representative rates:

Years of Service	Merit and Seniority
1	8.5%
2	7.5%
3	7.0%
4	6.0%
5	4.5%
6	4.5%
7	3.5%
8-20	1.5%
21 and Higher	0.5%

Expense and/or Contingency Loading

One year term cost method; average of prior two years' expenses

Mortality Rates

Healthy

RP-2000 Combined Mortality table for males and females set forward 5 years, with fully generational Scale AA mortality improvements:

Disabled

RP-2000 Disabled Mortality table for males and females, set forward 5 years, with fully generational Scale AA mortality improvements.

Retirement Rates

If eligible for Retirement, the following decrements apply, based on service.

After First Eligibility for Normal Retirement	Police %	Fire %
0	80	35
1	50	30
2	75	30
3	100	30
4		30
5+		100

Disability Rates

Specimen rates for all groups are shown below:

Sample Ages	% Becoming Disabled Within Next Year
25	0.15%
30	0.18
35	0.23
40	0.30
45	0.51
50	1.00
55	1.59

Type of Disability or Death:

75% of disabilities and deaths are assumed to be service-related

Workers' Compensation Offsets

Current offsets are assumed to continue.

Withdrawal Rates

Decreasing rates from 1 to 10 years of service, then 0.5% thereafter.

Withdrawal of Employee Contributions

It is assumed that employees withdraw their contribution balances upon employment termination, if not vested. If vested, employees are assumed to not withdraw contributions, with monthly benefit deferred to age 52.

Marital Status and Ages

100% of employees are assumed to be married. Females are assumed to be 3 years younger than males

State Contributions

Assumed to be the same as in the prior year

Changes Since Prior Report

None

The actuarial report also shows the necessary items required for plan reporting and the any state requirements.

- ✓ Reconciliation of unfunded actuarial liability
- ✓ Statement of changes on value of assets
- ✓ Distribution Assets
- ✓ Schedule of amortizations
- ✓ Florida State requirements
    - Corporative Summary of Principal Valuation Results
    - Separation for Police & Fire
    - Comparison of payroll growth, salary increases and investment returns
    - Requirements under Florida Statute 112.664 and F.A.C. 60T – 1.0035
    - Reserve account for benefit improvements under 99-1 and SB 172

Reconciliation of Unfunded Actuarial Liability

	October 1, 2015
1. Unfunded Actuarial Accrued Liability beginning of prior year	$81,841,009
2. Normal Cost	$3,700,832
3. Expenses	$588,036
4. Employer Contributions	$(8,129,211)
5. Non-Employer Contributions	$(3,708,437)
6. Interest	$6,001,403
7. 1-year lag adjustment	$897,564
8. Expected Unfunded Actuarial Accrued Liability, beginning of current year	$81,191,196
9. Accumulated Reserve Adjustment	$(107,582)
10. Liability changes due to:	
(a) Amendments	$0
(b) Assumptions	0
(c) Funding Methods	0
(d) (Gain)/Loss	$(2,212,709)
(e) Total	$(2,320,291)
11. Unfunded Actuarial Liability beginning of current year	$78,870,905

Statement of Changes on Value of Assets	September 30, 2014	September 30, 2015
Additions		
Contributions:		
Employer	$9,722,948	$8,129,211
Member	1,422,685	1,453,342
Nonemployer contributing entity	2,219,537	2,255,095
Total contributions	$13,365,170	$11,837,648
Investment income		
Net increase in fair value of investments	$19,073,035	$(7,098,065)
Interest and dividends	4,424,956	4,665,224
Less investment expense, other than from securities lending	(1,348,254)	(1,497,351)
Net income other than from securities lending	$22,149,737	$(3,930,192)
Securities lending income	$0	$0
Less securities lending expense	0	0
Net income from securities lending	$0	$0
Net investment income	$22,149,737	$(3,930,192)
Other	17,738	43,955
Total additions	$35,532,645	$7,951,411
Deductions		
Benefit payments, including refunds of member contributions	$20,678,837	$21,144,686
Administrative expense	581,767	588,036
Other	0	0
Total deductions	$21,260,604	$21,732,722
Net increase in market value	$14,272,041	$(13,781,311)
Market Value as of		
Beginning of year	218,765,571	233,037,612
End of year	$233,037,612	$219,256,301

Distribution of Assets	September 30, 2014	September 30, 2015
Cash and deposits	$61,375	$74,968
Securities lending cash collateral	0	0
Total cash	$61,375	$74,968
Receivables:		
Contributions	$0	$0
Due from broker for investments sold	5,773,280	867,248
Investment income	408,610	402,819
Other	291,195	365,776
Total receivables	$6,473,085	$1,635,843
Investments:		
Equity	$131,551,881	$113,146,938
Fixed Income	52,186,379	51,732,925
Real Estate	2,693,367	3,035,000
Hedge Funds & Private Equity	39,152,051	42,647,461
Short Term Investments	11,668,781	9,575,447
Total investments	$237,252,459	$220,137,771
Sub-total	$243,786,919	$221,848,582
Payables:		
Investment management fees	$290,609	$254,945
Due to broker for investments purchased	10,458,698	2,337,336
Collateral payable for securities lending	0	0
Other	0	0
Total liabilities	$10,749,307	$2,592,281
Total	$233,037,612	$219,256,301
Reserved Assets		
State Reserve Account	(687,269)	(541,039)
Drop Account	(19,913,608)	(18,534,093)
Assets available for benefits	**$212,436,735**	**$200,181,169**

Schedule of Amortizations - Police

				October 1, 2015	
			Total	$46,891,364	$3,950,672
Date Established	Description	Original Amount	Remaining Period Years	Remaining Balance	Annual Payment
10/1/1986	Assumption Change	$378,260	1	$37,839	$37,839
10/1/1986	Actuarial Loss (Gain)	(1,104,307)	1	(123,182)	(123,182)
10/1/1987	Method Change	670,685	2	127,274	65,937
10/1/1987	Actuarial Loss (Gain)	(592,770)	2	(125,432)	(64,983)
10/1/1988	Actuarial Loss (Gain)	260,282	3	70,856	25,346
10/1/1989	Actuarial Loss (Gain)	67,725	4	22,976	6,381
10/1/1990	Actuarial Loss (Gain)	(173,266)	5	(77,436)	(17,804)
10/1/1991	Assumption Change	(4,082)	6	(2,189)	(434)
10/1/1991	Actuarial Loss (Gain)	(298,306)	6	(159,958)	(31,701)
10/1/1992	Assumption Change	(3,250)	7	(1,923)	(338)
10/1/1992	Actuarial Loss (Gain)	(721,063)	7	(426,505)	(74,906)
10/1/1993	Assumption Change	(53,335)	8	(34,599)	(5,495)
10/1/1993	Actuarial Loss (Gain)	(301,531)	8	(195,596)	(31,064)
10/1/1994	Assumption Change	768,410	9	489,062	71,320
10/1/1994	Actuarial Loss (Gain)	422,754	9	269,063	39,237
10/1/1995	Assumption Change	(311,136)	10	(238,484)	(32,320)
10/1/1995	Actuarial Loss (Gain)	(271,042)	10	(207,750)	(28,155)
10/1/1996	Assumption Change	(374,561)	11	(314,425)	(39,982)
10/1/1996	Actuarial Loss (Gain)	(276,460)	11	(232,074)	(29,511)
10/1/1997	Assumption Change	1,345,971	12	1,186,697	142,710
10/1/1997	Actuarial Loss (Gain)	(3,074,778)	12	(3,022,866)	(363,525)
10/1/1998	Plan Amendment	(337,295)	13	(337,516)	(38,638)

Schedule of Amortizations - Police

October 1, 2015

Date Established	Description	Original Amount	Remaining Period Years	Remaining Balance	Annual Payment
10/1/1998	Actuarial Loss (Gain)	$(3,155,507)	13	$(3,157,569)	$(361,473)
10/1/1999	Actuarial Loss (Gain)	(2,565,536)	14	(2,608,086)	(285,791)
10/1/2000	Assumption Change	(18,775,480)	15	(18,608,991)	(1,961,080)
10/1/2000	Plan Amendment	11,651,128	15	11,547,814	1,216,949
10/1/2000	Actuarial Loss (Gain)	3,153,187	15	3,125,227	329,347
10/1/2001	Variable COLA	484,615	16	486,367	49,492
10/1/2001	Plan Amendment	377,521	16	378,885	38,555
10/1/2001	Actuarial Loss (Gain)	5,917,320	16	5,938,700	604,317
10/1/2002	Actuarial Loss (Gain)	13,547,635	17	14,689,795	1,448,482
10/1/2003	Actuarial Loss (Gain)	8,453,577	18	8,140,111	780,155
10/1/2004	Actuarial Loss (Gain)	7,733,735	19	7,244,700	676,695
10/1/2005	Plan Amendment	528,766	20	408,515	37,276
10/1/2005	Actuarial Loss (Gain)	1,811,918	20	1,678,592	153,169
10/1/2006	Actuarial Loss (Gain)	(2,245,390)	21	(2,098,504)	(187,459)
10/1/2007	Actuarial Loss (Gain)	(3,930,059)	22	(3,749,017)	(328,473)
10/1/2008	Assumption Change	(2,460,748)	23	(2,418,496)	(208,183)
10/1/2008	Actuarial Loss (Gain)	4,312,669	23	4,238,617	364,857
10/1/2009	Assumption Change	2,211,808	24	2,192,182	185,673
10/1/2009	Actuarial Loss (Gain)	4,953,816	24	4,909,860	415,854
10/1/2010	Assumption Change	2,351,731	25	2,315,411	193,225
10/1/2010	Actuarial Loss (Gain)	4,329,632	25	4,262,767	355,736

Schedule of Amortizations - Police

October 1, 2015

Date Established	Description	Original Amount	Remaining Period Years	Remaining Balance	Annual Payment
10/1/2011	Assumption Change	$2,628,245	26	$2,511,497	$206,760
10/1/2011	Actuarial Loss (Gain)	2,882,428	26	2,754,390	226,756
10/1/2012	Valuation Software	(955,577)	27	(923,949)	(75,121)
10/1/2012	Assumption Change	2,734,348	27	2,643,843	214,956
10/1/2012	Actuarial Loss (Gain)	7,401,751	27	7,156,757	581,875
10/1/2013	Assumption Change	(2,014,446)	28	(1,969,552)	(158,307)
10/1/2013	Actuarial Loss (Gain)	1,279,029	28	1,250,526	100,513
10/1/2014	Actuarial Loss (Gain)	(1,640,207)	29	(1,620,667)	(128,897)
10/1/2015	Actuarial Loss (Gain)	(532,193)	30	(532,193)	(41,918)

Schedule of Amortizations - Fire

					October 1, 2015
			Total	$31,979,541	$2,350,870
Date Established	Description	Original Amount	Remaining Period Years	Remaining Balance	Annual Payment
10/1/1986	Assumption Change	$300,679	1	$25,022	$25,022
10/1/1986	Actuarial Loss (Gain)	(877,812)	1	(81,454)	(81,454)
10/1/1987	Method Change	533,126	2	86,839	44,400
10/1/1987	Actuarial Loss (Gain)	(471,191)	2	(85,581)	(43,757)
10/1/1988	Actuarial Loss (Gain)	206,898	3	49,641	17,300
10/1/1989	Actuarial Loss (Gain)	53,834	4	16,471	4,401
10/1/1990	Actuarial Loss (Gain)	(137,729)	5	(56,634)	(12,373)
10/1/1991	Assumption Change	(3,244)	6	(1,629)	(303)
10/1/1991	Actuarial Loss (Gain)	(237,123)	6	(119,089)	(22,156)
10/1/1992	Assumption Change	(2,583)	7	(1,453)	(237)
10/1/1992	Actuarial Loss (Gain)	(573,171)	7	(322,659)	(52,572)
10/1/1993	Assumption Change	(42,396)	8	(26,553)	(3,867)
10/1/1993	Actuarial Loss (Gain)	(239,687)	8	(150,128)	(21,864)
10/1/1994	Assumption Change	610,808	9	380,372	50,294
10/1/1994	Actuarial Loss (Gain)	336,046	9	209,263	27,670
10/1/1995	Assumption Change	(247,322)	10	(187,743)	(22,816)
10/1/1995	Actuarial Loss (Gain)	(215,450)	10	(163,549)	(19,875)
10/1/1996	Assumption Change	(297,737)	11	(250,320)	(28,236)
10/1/1996	Actuarial Loss (Gain)	(219,757)	11	(184,759)	(20,841)
10/1/1997	Assumption Change	1,069,910	12	954,617	100,768
10/1/1997	Actuarial Loss (Gain)	(2,444,135)	12	(2,431,688)	(256,685)
10/1/1998	Plan Amendment	(268,116)	13	(274,150)	(27,266)

Schedule of Amortizations - Fire

October 1, 2015

Date Established	Description	Original Amount	Remaining Period Years	Remaining Balance	Annual Payment
10/1/1998	Actuarial Loss (Gain)	$(2,508,306)	13	$(2,564,766)	$(255,078)
10/1/1999	Plan Amendment	114,009	14	119,510	11,263
10/1/1999	Actuarial Loss (Gain)	(2,039,340)	14	(2,137,705)	(201,470)
10/1/2000	Assumption Change	(13,798,204)	15	(14,027,078)	(1,258,971)
10/1/2000	Plan Amendment	8,646,272	15	8,789,690	788,900
10/1/2000	Actuarial Loss (Gain)	676,828	15	688,055	61,755
10/1/2000	Plan Amendment	299,541	15	304,512	27,331
10/1/2001	Actuarial Loss (Gain)	7,539,001	16	7,724,831	663,110
10/1/2002	Actuarial Loss (Gain)	9,466,755	17	12,451,162	1,026,083
10/1/2003	Actuarial Loss (Gain)	7,616,087	18	9,191,646	729,584
10/1/2004	Actuarial Loss (Gain)	6,692,396	19	7,818,390	599,487
10/1/2005	Plan Amendment	4,413,733	20	5,042,954	374,508
10/1/2005	Actuarial Loss (Gain)	2,591,529	20	2,960,971	219,893
10/1/2006	Actuarial Loss (Gain)	(2,040,207)	21	(2,301,319)	(165,914)
10/1/2007	Actuarial Loss (Gain)	(868,128)	22	(976,717)	(68,505)
10/1/2008	Assumption Change	(2,812,893)	23	(3,146,548)	(215,109)
10/1/2008	Actuarial Loss (Gain)	3,519,341	23	3,936,794	269,133
10/1/2009	Assumption Change	2,293,100	24	2,537,785	169,397
10/1/2009	Plan Amendment	23,114	24	25,582	1,708
10/1/2009	Actuarial Loss (Gain)	3,014,143	24	3,335,767	222,662
10/1/2010	Assumption Change	2,377,230	25	2,583,417	168,637

Schedule of Amortizations - Fire

October 1, 2015

Date Established	Description	Original Amount	Remaining Period Years	Remaining Balance	Annual Payment
10/1/2010	Actuarial Loss (Gain)	$(904,732)	25	$(983,203)	$(64,180)
10/1/2011	Actuarial Loss (Gain)	(1,874,268)	26	(1,964,551)	(125,591)
10/1/2011	Assumption Change	2,629,741	26	2,756,417	176,214
10/1/2012	Valuation Software	(2,713,381)	27	(2,808,034)	(176,038)
10/1/2012	Assumption Change	2,714,228	27	2,808,912	176,093
10/1/2012	Actuarial Loss (Gain)	1,168,034	27	1,208,781	75,780
10/1/2013	Assumption Change	(3,541,424)	28	(3,616,064)	(222,576)
10/1/2013	Actuarial Loss (Gain)	(1,830,796)	28	(1,869,384)	(115,064)
10/1/2014	Actuarial Loss (Gain)	(1,597,600)	29	(1,615,182)	(97,720)
10/1/2014	Plan Amendment	589	29	596	36
10/1/2015	Actuarial Loss (Gain)	(1,680,516)	30	(1,680,516)	(100,041)

Information to Comply with Florida 60T-1.003(4)(i)

Comparative Summary Of Principal Valuation Results

	10/1/2015 7.50% (current methods & assumptions)	10/1/2015 7.50% (prior methods & assumptions)	10/1/2014 7.50%
Participant Data			
Active members	160	160	163
Total annual payroll	$13,061,612	$13,061,612	$13,065,752
Members in DROP	43	43	44
Total annualized benefit	$2,870,347	$2,870,347	$2,913,871
Retired members and beneficiaries	322	322	319
Total annualized benefit	$15,440,532	$15,440,532	$14,995,316
Disabled members receiving benefits	32	32	30
Total annualized benefit	$1,743,264	$1,743,264	$1,596,533
Terminated vested members	3	3	2
Total annualized benefit	$152,429	$152,429	$93,260
Assets			
Actuarial value of assets	$204,931,915	$204,824,333	$197,436,713
Market value of assets	$200,181,169	$200,073,587	$212,436,735

Information to Comply with Florida 60T-1.003(4)(i)

Comparative Summary Of Principal Valuation Results (continued)

	10/1/2015 7.50% (current methods & assumptions)	10/1/2015 7.50% (prior methods & assumptions)	10/1/2014 7.50%
Liabilities, present value of all future expected benefit payments			
Active members			
Retirement benefits	$74,588,795	$74,588,795	$74,530,414
Vesting benefits	$540,624	$540,624	$555,165
Disability benefits	$5,432,560	$5,432,560	$5,328,515
Death benefits	$2,075,201	$2,075,201	$2,055,206
Return of contribution	924,688	924,688	891,770
Total	$83,561,868	$83,561,868	$83,361,070
Terminated vested members	$1,738,940	$1,738,940	$962,431
Retired members and beneficiaries	$213,166,528	$213,166,528	$210,879,956
Disabled members	$19,314,840	$19,314,840	$18,094,938
Total	$317,782,176	$317,782,176	$313,298,395
Liabilities due and unpaid	$0	$0	$0
Actuarial accrued liability	$283,802,820	$283,802,820	$279,277,722
Unfunded actuarial accrued liability	$78,870,905	$78,978,487	$81,841,009

Information to Comply with Florida 60T-1.003(4)(i)

Comparative Summary Of Principal Valuation Results (continued)

	10/1/2015 7.50% (current methods & assumptions)	10/1/2015 7.50% (prior methods & assumptions)	10/1/2014 7.50%
Actuarial present value of accrued benefits			
Statement of actuarial present value of all accrued benefits			
Vested accrued benefits			
Inactive members and beneficiaries	$234,220,308	$234,220,308	$229,937,325
Active members	32,250,183	32,250,183	32,484,545
Total value of all vested accrued benefits	$266,470,491	$266,470,491	$262,421,870
Non-vested accrued benefits	6,406,896	6,406,896	6,118,154
Total actuarial present value of all accrued benefits	$272,877,387	$272,877,387	$268,540,024
Statement of changes in total actuarial present value of all accrued benefits (ASC 960)			
Actuarial present value of accrued benefits, beginning of year	$268,540,024	$268,540,024	$262,386,839
Increase (decrease) during year			
Benefits accumulated	$6,120,138	$6,120,138	$7,924,812
Plan amendment	0	0	3,653
Changes in actuarial assumptions	0	0	0
Interest	19,361,911	19,361,911	18,903,557
Benefits paid	(21,144,686)	(21,144,686)	(20,678,837)
Other changes	0	0	0
Net increase (decrease)	$4,337,363	$4,337,363	$6,153,185
Actuarial present value of accrued benefits, end of year	$272,877,387	$272,877,387	$268,540,024

Information to Comply with Florida 60T-1.003(4)(i)

Comparative Summary Of Principal Valuation Results (continued)

	10/1/2015 7.50% (current methods & assumptions)	10/1/2015 7.50% (prior methods & assumptions)	10/1/2014 7.50%
Pension cost			
Normal Cost	$3,703,208	$3,703,208	$3,700,832
Member contributions	$1,558,927	$1,558,927	$1,532,219
Expected plan sponsor contribution	$8,093,069	$8,102,988	$8,062,921
As % of payroll	60.85%	60.92%	60.64%
Member Contributions as % of payroll	11.94%	11.94%	11.73%
Past contributions	9/30/2015		9/30/2014
Required plan sponsor contribution	$9,950,848		$11,470,379
Required member contribution	$1,453,242		$1,422,685
Actual contributions made by:			
Plan's sponsor	$9,950,848		$11,470,379
Members	$1,453,242		$1,422,685
Other	$0		$0
Net actuarial gain (loss) (if applicable)	$2,212,709	$2,212,709	$3,237,807
Other disclosures (where applicable)			
Present value of active member			
Future salaries at attained age	$121,064,716	$121,064,716	$121,259,135
Future contributions at attained age	$12,496,426	$12,496,426	$12,483,634

Information to Comply with Florida 60T-1.003(4)(i)

Hypothetical City Contribution Requirement for 2015/2016 Fiscal Year

	Police	Fire	Total
Unfunded actuarial accrued liability	$46,882,049	$31,968,275	$78,850,324
Liabilities, present value of all future expected benefit payments			
Active members			
Retirement benefits	$5,202,204	$69,386,591	$74,588,795
Vesting benefits	39,997	1,234,382	1,274,379
Disability benefits	160,896	5,271,664	5,432,560
Death benefits	50,161	2,025,040	2,075,202
Return of contribution	0	190,933	190,933
Total	$5,453,258	$78,108,610	$83,561,868
Terminated vested members	$1,626,718	$112,222	$1,738,940
Retired members and beneficiaries	$126,120,479	$87,046,049	$213,166,528
Disabled members	$9,720,993	$9,593,847	$19,314,840
Total	$142,921,448	$174,860,728	$317,782,176
Entry age reserve			
Active	$4,676,001	$44,906,511	$49,582,512
Inactive	137,468,190	96,752,118	234,220,308
Total	$142,144,191	$141,658,629	$283,802,820
Accumulated Employee Contributions	$1,035,194	$13,523,923	$14,559,117
Present Value of Active Member			
Future salaries at attained age	$2,877,529	$118,187,187	$121,064,716
Future contributions at attained age	$190,112	$12,306,314	$12,496,426
Annual Inactive benefits	$11,409,976	$8,796,597	$20,206,573

Information to Comply with Florida 60T-1.003(4)(i)

Hypothetical City Contribution Requirement for 2015/2016 Fiscal Year

	Police	Fire	Total
Actuarial Value at 10/1/14	$99,826,154	$118,211,436	$218,037,590
Contribution by			
- Members	$80,017	$1,373,325	$1,453,342
- City	0	3,979,817	3,979,817
- BSO	4,149,394	0	4,149,394
- State	1,000,407	1,254,688	2,255,095
- Total	$5,229,818	$6,607,830	$11,837,648
Net Earnings Recognized[1]	$7,179,555	$8,684,976	$15,864,531
Disbursements			
- Benefit Payment	$11,746,541	$9,325,085	$21,071,626
- Refunds	0	73,060	73,060
- Administrative Expenses[2]	266,118	321,918	588,036
- Total	$12,012,659	$9,720,063	$21,732,722
Actuarial Value at 10/1/15	$100,222,868	$123,784,179	$224,007,047
DROP Account Balance	$4,862,460	$13,671,633	$18,534,093
State Contribution Reserve	$0	$433,458	$433,458
Member Plan	$107,581	$0	$107,581
Adjusted Actuarial Value at 10/1/15	$95,252,827	$109,679,088	$204,931,915
Market Value of Assets[3]	$93,044,669	$107,136,500	$200,181,169

[1]Allocated based on Return of Actuarial Value of Assets
[2]Allocated based on Net Earnings Recognized
[3]Allocation based on Adjusted Actuarial Value as of 10/1/2015

Information to Comply with Florida 60T-1.003(4)(i)

Hypothetical City Contribution Requirement for 2015/2016 Fiscal Year

Employer Contributions	Police	Fire	Total
Normal Cost	$182,332	$3,520,876	$3,703,208
Expected Member Contributions	(70,517)	(1,488,410)	(1,558,927)
Net Normal Cost	$111,815	$2,032,466	$2,144,281
Administrative expense[2]	$267,233	$317,669	$584,902
Amortization of UAAL	$3,950,672	$2,350,870	$6,301,542
Applicable Interest	324,729	352,575	677,304
Total Recommended Contribution	$4,654,449	$5,053,580	$9,708,029
Expected Non-Employer Contributions	(938,248)	(821,230)	(1,759,478)
Total Recommended Contribution	$3,716,201	$4,232,350	$7,948,551
As a percentage of payroll	545.48%	34.19%	60.85%
Hypothetical Total			7,948,551
Total Recommended Contribution (paid in Lump Sum)	$3,783,767	$4,309,302	$8,093,069
Total Recommended Contribution (paid in Quarterly Installments)	$3,887,235	$4,427,139	$8,314,374

[1]Allocated based on Return of Actuarial Value of Assets
[2]Allocated based on Net Earnings Recognized

Information to Comply with Florida 60T-1.003(3)(f)

September 30, 2015

Historical Salary Increases and Asset Performance

Year Ending	Payroll Growth	Salary Growth	Expected Salary Growth	Asset Return (Market)	Asset Return (Actuarial)	Asset Return (Expected)
9/30/2015	(0.03%)	4.84%	5.41%	(1.71%)	7.46%	7.50%
9/30/2014	0.90%	5.50%	5.20%	10.00%	9.60%	7.50%
9/30/2013	(9.00%)	1.40%	7.00%	13.70%	8.00%	7.70%
9/30/2012	(7.00%)	1.60%	6.90%	16.80%	2.80%	7.90%
9/30/2011	(7.70%)	(1.50%)	6.40%	1.70%	1.20%	8.10%
9/30/2010	(7.60%)	5.00%	6.50%	10.40%	5.60%	8.30%
9/30/2009	(4.00%)	3.00%	7.00%	1.80%	2.30%	8.50%
9/30/2008	(1.40%)	7.40%	7.00%	(14.30%)	3.60%	8.50%
9/30/2007	2.80%	6.20%	6.00%	12.80%	10.00%	8.50%
9/30/2006	0.20%	4.30%	6.00%	6.20%	10.50%	8.50%
Averages						
3-year				7.12%	8.35%	
5-year				7.87%	5.76%	
10-year				5.36%	6.05%	
20-year				6.56%	5.71%	

Amortization of Unfunded Actuarial Accrued Liability

	UAAL	Amortization
10/1/2015	$78,870,905	$6,301,542
10/1/2016	$78,012,066	$6,509,524
10/1/2017	$76,865,228	$6,575,903
10/1/2018	$75,561,027	$6,601,667
10/1/2044	($261,628)	($261,628)

Information to Comply with Florida Statute 112.664 and Florida Administrative Code 60T-1.0035

October 1, 2015

	Valuation	- 200 bp[2]	Funding Rate[2]	+ 200 bp[2]
	7.50%	5.50%	7.50%	9.50%
Total pension liability				
Service Cost	$3,645,948	$3,645,948	$3,645,948	$3,645,948
Interest	21,555,235	21,555,235	21,555,235	21,555,235
Benefit changes	(6,900)	(6,900)	(6,900)	(6,900)
Difference between expected and actual experience	2,419,307	2,419,307	2,419,307	2,419,307
Changes in assumptions	0	110,464,757	29,679,241	(26,232,851)
Benefit payments	(21,071,626)	(21,071,626)	(21,071,626)	(21,071,626)
Contribution refunds	(73,060)	(73,060)	(73,060)	(73,060)
Net change in pension liability	$6,468,904	$116,933,661	$36,148,145	($19,763,947)
Total pension liability, beginning of year	$294,329,522	$294,329,522	$294,329,522	$294,329,522
Total pension liability, end of year	$300,798,426	$411,263,183	$330,477,667	$274,565,575
Plan fiduciary net position				
Contributions - Employer	$8,129,211	$8,129,211	$8,129,211	$8,129,211
Contributions - State	2,255,095	2,255,095	2,255,095	2,255,095
Contributions - Member	1,453,342	1,453,342	1,453,342	1,453,342
Net investment income	(3,930,192)	(3,930,192)	(3,930,192)	(3,930,192)
Benefit payments	(21,071,626)	(21,071,626)	(21,071,626)	(21,071,626)
Contribution refunds	(73,060)	(73,060)	(73,060)	(73,060)
Administrative expense	(588,036)	(588,036)	(588,036)	(588,036)
Other	43,955	43,955	43,955	43,955
Net change in plan fiduciary net position	($13,781,311)	($13,781,311)	($13,781,311)	($13,781,311)
Plan fiduciary net position, beginning of year	$233,037,612	$233,037,612	$233,037,612	$233,037,612
Plan fiduciary net position, end of year	$219,256,301	$219,256,301	$219,256,301	$219,256,301
Net pension liability/(asset)	($81,542,125)	($192,006,882)	($111,221,366)	($55,309,274)
Funded ratio	72.89%	53.31%	66.35%	79.86%
Years that Assets support expected benefit payments	13	11	13	16
Estimated city contribution				
Annual dollar value	$8,093,069	$13,497,791	$9,424,096	$6,267,813
Percentage of payroll	60.85%	101.49%	70.86%	47.13%

[1]Includes DROP assets and liabilities

[2]Based on valuation assumption with the following changes

-interest rate (as noted)

-mortality table of RP 2000 with generational projection using Scale AA

Information to Comply with Florida Statute 112.664 and Florida Administrative Code 60T-1.0035

October 1, 2015

Sustainment of Expected Benefit Payments

Mortality Valuation
Interest 7.50%

Year	Market Value of Assets	Investment Return	Benefit Payments
1	$219,256,301	$14,968,555	$40,075,620[1]
2	194,149,236	13,803,575	20,575,098
3	187,377,713	13,274,970	21,138,363
4	179,514,320	12,671,888	21,500,313
5	170,685,895	12,000,783	21,744,012
6	160,942,666	11,247,658	22,351,878
7	149,838,446	10,394,660	22,899,935
8	137,333,171	9,434,248	23,511,442
9	123,255,977	8,359,999	24,012,743
10	107,603,233	7,162,754	24,645,231
11	90,120,756	5,825,649	25,349,137
12	70,597,268	4,342,920	25,850,676
13	49,089,512	2,712,814	26,313,020
14	25,489,306		26,747,008

[1]Benefit payments include the DROP Balance at 9/30/2015

Information to Comply with Florida Statute 112.664 and Florida Administrative Code 60T-1.0035[1]

October 1, 2015

Sustainment of Expected Benefit Payments

Mortality RP-2000 Generational with Scale AA
Interest 5.50%

Year	Market Value of Assets	Investment Return	Benefit Payments
1	$219,256,301	$10,970,618	$40,118,008[1]
2	190,108,911	9,907,806	20,204,400
3	179,812,317	9,327,431	20,722,674
4	168,417,074	8,682,159	21,405,770
5	155,693,463	7,968,930	21,900,786
6	141,761,607	7,192,169	22,288,126
7	126,665,650	6,341,219	23,050,047
8	109,956,822	5,402,835	23,764,982
9	91,594,675	4,371,439	24,556,616
10	71,409,498	3,242,514	25,247,311
11	49,404,701	2,009,716	26,077,860
12	25,336,557		26,996,233

[1]Benefit payments include the DROP balance at 9/30/2015

Information to Comply with Florida Statute 112.664 and Florida Administrative Code 60T-1.0035[1]

October 1, 2015

Sustainment of Expected Benefit Payments

Mortality RP-2000 Generational with Scale AA
Interest 7.50%

Year	Market Value of Assets	Investment Return	Benefit Payments
1	$219,256,301	$14,966,995	$40,118,008[1]
2	194,105,288	13,813,929	20,204,400
3	187,714,817	13,315,560	20,722,674
4	180,307,703	12,734,873	21,405,770
5	171,636,806	12,066,328	21,900,786
6	161,802,348	11,314,481	22,288,126
7	150,828,703	10,463,402	23,050,047
8	138,242,058	9,493,079	23,764,982
9	123,970,155	8,393,536	24,556,616
10	107,807,075	7,155,872	25,247,311
11	89,715,636	5,768,432	26,077,860
12	69,406,208	4,211,408	26,996,233
13	46,621,383	2,475,777	27,723,228
14	21,373,932		28,422,446

[1]Benefit payments include the DROP balance at 9/30/2015

Information to Comply with Florida Statute 112.664 and Florida Administrative Code 60T-1.0035[1]

October 1, 2015

Sustainment of Expected Benefit Payments

Mortality RP-2000 Generational with Scale AA
Interest 9.50%

Year	Market Value of Assets	Investment Return	Benefit Payments
1	$219,256,301	$18,966,971	$40,118,008[1]
2	198,105,264	17,882,062	20,204,400
3	195,782,926	17,637,380	20,722,674
4	192,697,632	17,312,566	21,405,770
5	188,604,428	16,900,732	21,900,786
6	183,604,374	16,407,746	22,288,126
7	177,723,994	15,813,739	23,050,047
8	170,487,686	15,093,101	23,764,982
9	161,815,805	14,232,523	24,556,616
10	151,491,712	13,219,670	25,247,311
11	139,464,071	12,038,488	26,077,860
12	125,424,699	10,662,114	26,996,233
13	109,090,580	9,076,624	27,723,228
14	90,443,976	7,272,737	28,422,446
15	69,294,267	5,232,276	29,095,374
16	45,431,169	2,934,696	29,754,235
17	18,611,630		30,293,632

[1]Benefit payments include the DROP balance at 9/30/2015

Reserve Account For Future Benefit Improvements Under F.L. 99-1/SB172

1. Adjusted Base Amount at 10/1/2015

Year Established	Description	Ch. 185 Police -$-	Ch. 175 Fire -$-	Suppl. Fire -$-	Total -$-
	Adjusted Base Amount as of 10/1/10	798,463	704,031	28,723	1,531,217
2012	Ordinances 2012-30/31	0	88,476	0	88,476
	Adjusted Base Amount	798,463	792,507	28,723	1,619,693

2. Reserve Account for 2014/2015

		Ch. 185 Police -$-	Ch. 175 Fire -$-	Suppl. Fire -$-	Total -$-
(a)	Reserve Account at September 30, 2014	215,163	297,213	174,893	687,269
(b)	Share Plan Allocation paid out	0	(297,213)	(174,893)	(472,106)
(c)	Share Plan Allocation for Reserve	0	393,538	39,920	433,458
(d)	Reserve Account at September 30, 2015 (a + b + c)	215,163	393,538	39,920	648,621
(e)	City Contribution Receivable for State Premium Shortfall				
i.	Premium Tax Distribution for 2014	1,000,407	1,186,045	68,643	2,255,095
ii.	Adjusted Base Amount	798,463	792,507	28,723	1,619,693
iii.	Shortfall of State Premium Tax Distribution	0	0	0	0

3. Allocation of Accumulated Reserve Under SB 172

		Ch. 185 Police -$-	Ch. 175 Fire -$-	Suppl. Fire -$-	Total -$-
(a)	Amount Allocated to Unfunded Liability	(107,582)	0	0	(107,582)
(b)	Amount Allocated to Member Plan	(107,581)	0	0	(107,581)
(c)	Total	(215,163)	0	0	(215,163)
(d)	Final Reserve Account at September 30, 2015	0	393,538	39,920	433,458

Meeting Date: April 26, 2016 Agenda Item 13

REQUESTED COMMISSION ACTION: **QUASI-JUDICIAL**

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

SHORT TITLE

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, AMENDING CITY RESOLUTION NO. 2016-72, WHICH ALLOCATED A MAXIMUM OF ONE HUNDRED FORTY FIVE (145) FLEX UNITS FOR A PROPOSED MIXED USE REDEVELOPMENT PROJECT TO BE LOCATED ON THE NORTHWEST CORNER OF NORTH FEDERAL HIGHWAY AND NE 2ND STREET; PROVIDING AN EFFECTIVE DATE.

Summary of Purpose and Why:

The proposed Resolution amends Section 8 of Resolution 2016-72, which was adopted at the December 8, 2015 City Commission hearing. Resolution 2016-72 allocated 145 flex units for a mixed use redevelopment project located at 225 N. Federal Highway. Section 8 of the Resolution required a Unity of Title. In the interim the applicant has advised that they are not able to comply this requirement and in lieu of a Unity of Title, the applicant has requested the City accept a Declaration of Restrictive Covenants. Staff has reviewed the proposed Declaration (attached as Exhibit D) and determined it satisfies the unified development and control of the site. No other changes are requested and the effective date of the flex allocation will remain as December 8, 2015.

(1) Origin of request for this action: 225 North Federal Highway, LLC
(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: None

DEPARTMENTAL COORDINATION	DATE	DEPARTMENTAL RECOMMENDATION	DEPARTMENTAL HEAD SIGNATURE
Dev. Services	03/24/2016	Approval	Memo #16-137 for RB
City Attorney	4/14/16		
X City Manager			

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

City Attorney's Communication #2016-694

March 29, 2016

TO: Karen Friedman, AICP, Principal Planner

FROM: Mark E. Berman, City Attorney

RE: Resolution Amending Resolution No. 2016-72 – Flex Unit Allocation Request
225 N. Federal Highway

As requested in your memorandum of March 24, 2016, Department of Development Services Memorandum #16-137, 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, AMENDING CITY RESOLUTION NO. 2016-72, WHICH ALLOCATED A MAXIMUM OF ONE HUNDRED FORTY FIVE (145) FLEX UNITS FOR A PROPOSED MIXED USE REDEVELOPMENT PROJECT TO BE LOCATED ON THE NORTHWEST CORNER OF NORTH FEDERAL HIGHWAY AND NE 2ND STREET; 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/2016-694

Attachment

RESOLUTION NO. 2016- _____

CITY OF POMPANO BEACH
Broward County, Florida

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, AMENDING CITY RESOLUTION NO. 2016-72, WHICH ALLOCATED A MAXIMUM OF ONE HUNDRED FORTY FIVE (145) FLEX UNITS FOR A PROPOSED MIXED USE REDEVELOPMENT PROJECT TO BE LOCATED ON THE NORTHWEST CORNER OF NORTH FEDERAL HIGHWAY AND NE 2ND STREET; PROVIDING AN EFFECTIVE DATE.

WHEREAS, 225 North Federal Highway, LLC ("Applicant") requested an allocation of a maximum of one hundred forty five (145) flex units for a proposed mixed use redevelopment project to be located on the northwest corner of North Federal Highway and NE 2nd Street, legally described in Exhibit "A"; and

WHEREAS, the City of Pompano Beach has passed City Resolution No. 2016-72, which granted that application for the requested flex units with conditions; and

WHEREAS, the City desires to modify Section 8 of Resolution No. 2016-72 to delete the requirement for unity of title and require Applicant to provide a Declaration of Restrictive Covenants; now, therefore,

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

SECTION 1. That City Resolution No. 2016-72 is hereby amended as follows:

SECTION 8. ~~Failure of the Applicant to provide an executed and recorded unity of title document prior to commencement of construction on the residential building shall render the allocation of flex units null and void.~~ Failure

of the Applicant to execute and record the attached Declaration of Restrictive Covenants (Exhibit "D") prior to Building Permit approval, and failure to comply with any of the conditions contained therein at any time, shall render the allocation of the flex units null and void.

SECTION 2. This Resolution shall become effective upon passage.

PASSED AND ADOPTED this _____ day of _____, 2016.

_____
LAMAR FISHER, MAYOR

ATTEST:

_____
ASCELETA HAMMOND, CITY CLERK

/jrm
4/13/16
L:reso/2016-183

Exhibit D

Return recorded copy to:
Greenspoon Marder, PA
200 E. Broward Blvd. Suite 1800
Fort Lauderdale, Florida 33301

Document prepared by:
Mark J. Lynn, Esq.
Greenspoon Marder, PA
200 E. Broward Blvd. Suite 1800
Fort Lauderdale, Florida 33301

DECLARATION OF RESTRICTIVE COVENANTS

THIS DECLARATION OF RESTRICTIVE COVENANTS ("Declaration") dated this _____ day of _____, 2016, by **225 NORTH FEDERAL HIGHWAY LLC, a Delaware limited liability company** ("Owner").

W I T N E S S E T H:

WHEREAS, the Owner is the owner of certain property on the northwest corner of North Federal Highway and NE 2nd Street as more particularly described **Exhibit "A"** attached hereto and made a part hereof (the "Property);, which Property is located in the City of Pompano Beach ("City") in Broward County, Florida;

WHEREAS, the Property is currently designated Commercial on the City's Future Land Use Plan Map and is zoned B-3/AOD;

WHEREAS, the B-3/AOD zoning district allows residential units of up to 46 dwelling units per acre;

WHEREAS, for the purposes of calculating allowable density, Article 9, Part 4, Section 155.9401 A. of the City's Zoning Code (the "Code") requires that the lot area excludes all area

within existing or proposed public street right-of-way or private street easements which is commonly referred to as net acreage;

WHEREAS, the Property consists of 3.2 net acres and the maximum allowable density on the Property, based on the net acreage without an amendment to the City's Future Land Use Plan Map and the current zoning, is 147 dwelling units;

WHEREAS, Owner has submitted certain applications to the City for (i) a development permit for the allocation of 145 flex units in order to construct a mixed use redevelopment project known as 225 N. Federal Highway (the "Flex Approval") and (ii) site plan approval for the Property;

WHERAS, the site plan attached to hereto as **Exhibit "B"** and made a part hereof (the "Site Plan"), has been approved by City pursuant to Development Order Planning and Zoning No. 15-12000014;

WHEREAS, in accordance with the City Commission's action in Resolution No. 2016-72, the Flex Approval limited the Property to 145 flex units, which flex units shall be constructed solely on that portion of the Property described in **Exhibit "C"** attached hereto and made a part hereof (the "Residential Parcel");

WHEREAS, no more than 145 dwelling units can be constructed on the Property without further action by the City Commission;

WHEREAS, Pursuant to Article 2, Part 4, Section 155.2401 C. of the Code, when City deems it necessary for compliance with standards in the Code, the owner of adjacent parcels can be required to execute and record a document whereby such parcels are considered an undivided parcel for zoning purposes;

WHEREAS, City has requested that Owner submit this Declaration for the purpose of acknowledgment by Owner, for itself and its successors and assigns, that it is required to abide by all applicable Code provisions with respect to the development of the Property in conformance with both the Flex Approval and Site Plan; and

WHEREAS, Owner, its successor and assigns, intent to accede to the City's request.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is hereby agreed as follows:

1. The foregoing recitations are true and correct and are incorporated herein by this reference.

2. Owner hereby acknowledges, agrees and covenants as follows:

(i) Owner, its successor and assigns, shall abide by all applicable provisions of the Site Plan approved by the City and Flex Approval in connection with the development of the Property;

(ii) the Property shall not be developed in any other way except in substantial accord with the Site Plan and the Flex Approval;

(iii) Owner, its designees, successors and assigns shall (a) maintain all common Site Plan elements as depicted on the approved Site Plan, such as access drives, cross access easements, parking, landscaping, irrigation, lighting, shared drainage facilities, utilities, and any other elements deemed reasonably necessary by the City to be so maintained in (collectively, the "Elements"), and (b) provide sufficient access to the Elements, such maintenance and access to be sufficient for the Elements to be reasonably available for all uses developed on the Property;

(iv) all future owners of the Property, their successor and assigns, shall be required to sign any applications submitted to the City for amendment to the approved Site Plan and any development approvals or demolition permits that would modify or change the Elements in the approved Site Plan, as defined herein, regardless of whether such approvals trigger a formal amendment to the Site Plan; and

(v) no more than 145 dwelling units shall be constructed on the Property and such dwelling units shall be constructed only within the Residential Parcel.

3. This Declaration is created for the sole purpose of confirming that the Property shall be developed in conformance with the restrictions set forth in Section 2 above. Nothing herein shall restrict, prohibit or limit the right of Owner, its successors and/or assigns to sell and/or convey all or any portion of the Property to third party grantees in any manner and under terms and conditions that are acceptable to Owner, its successors and/or assigns, in their sole discretion, provided that such grantees and their successors and assigns shall be bound by the provisions of this Declaration.

4. This Declaration shall not be modified, amended, or released as to any portion of the Property except by written instrument, executed by the Owner or the then owner(s) of the portion of the Property affected by such modification, amendment, or release and approved in writing by the City. The City shall execute a written instrument effectuating and acknowledging such modification, amendment or release. Any amendment, modification or release of this Declaration shall be recorded in the Public Records of Broward County, Florida.

5. If any court of competent jurisdiction shall declare any section, paragraph or part of this Declaration invalid or unenforceable, then such judgment or decree shall have no effect on the

enforcement or validity of any other section, paragraph or part hereof, and the same shall remain in full force and effect.

6. This Declaration shall be governed by and construed in accordance with the laws of the State of Florida and venue for any litigation arising hereunder shall be Broward County, Florida.

7. This Declaration shall be a restriction which runs with the land and shall bind the Owner, its heirs, successors and assigns.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Acknowledgment as of the day and year set forth below their respective signatures.

Signed, sealed and delivered

225 NORTH FEDERAL HIGHWAY LLC, a Delaware limited liability company

By: ATLANTIC TOWER REALTY HOLDINGS, LLC, a Delaware limited liability company, its Manager

By:_____
Scott F. Brenner, Manager

Dated:_____

_____
Printed Name:_____

_____
Print Name:_____

STATE OF FLORIDA)
) SS:
COUNTY OF BROWARD)

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, the foregoing instrument was acknowledged before me by Scott F. Brenner, as Manager of **ATLANTIC TOWER REALTY HOLDINGS, LLC, a Delaware limited liability company,** as Manager of **225 NORTH FEDERAL HIGHWAY LLC, a Florida limited liability company, on behalf of such companies**. He is personally known to me or has produced _____ as identification.

WITNESS my hand and official seal in the County and State last aforesaid this ____ day of _____, 2016.

_____
Notary Public

_____
Typed, printed or stamped name of Notary Public

My Commission Expires:

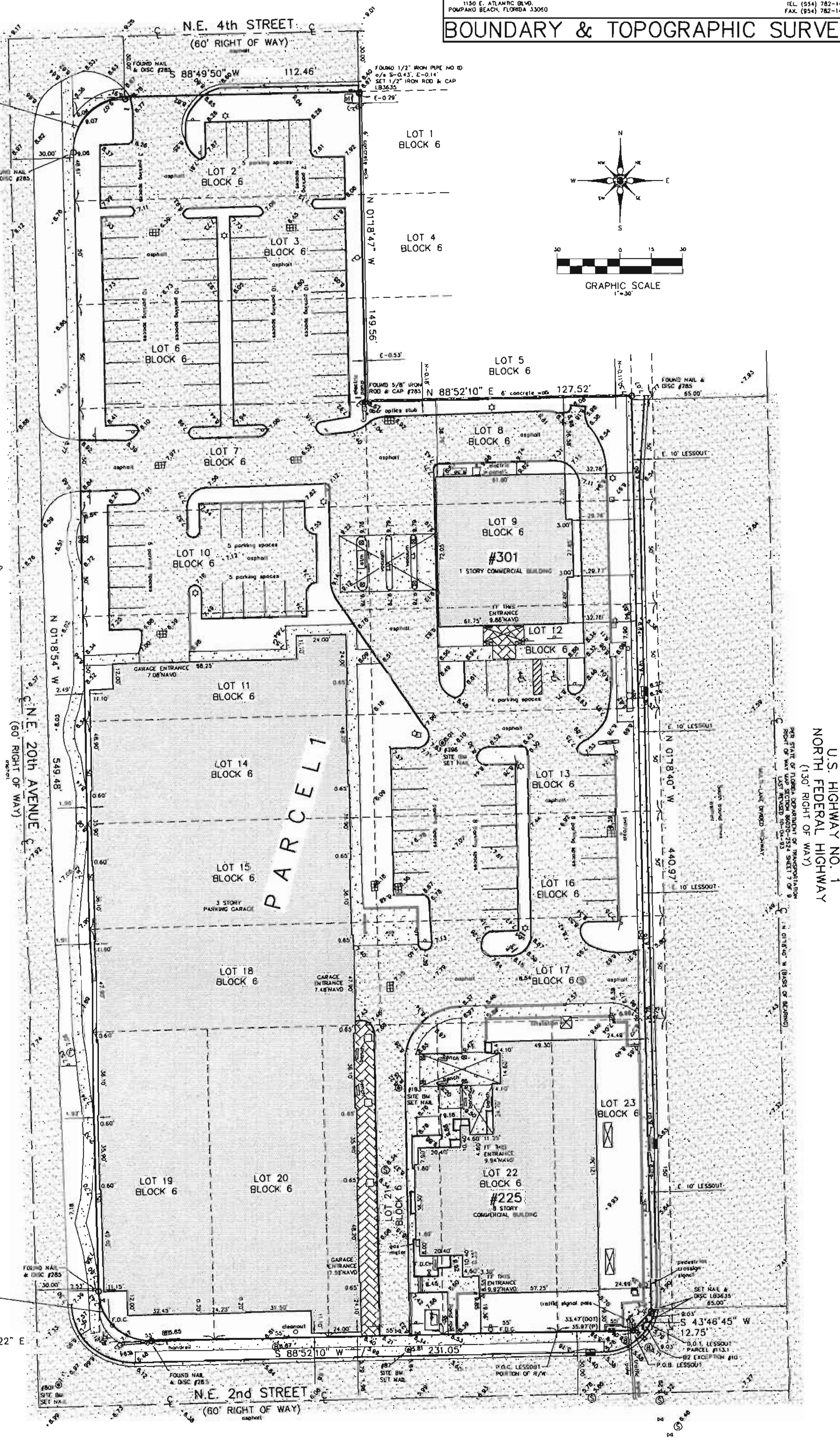
Exhibit "A"

ACCURATE LAND SURVEYORS, INC.
L.B. #3635

1150 E. ATLANTIC BLVD.
POMPANO BEACH, FLORIDA 33060

TEL. (954) 782-1441
FAX (954) 782-1442

BOUNDARY & TOPOGRAPHIC SURVEY



LEGEND OF ABBREVIATIONS:					
Δ	=	CENTRAL ANGLE	+7.00	=	ELEVATIONS BASED ON N.A.V.D.
A	=	ARC LENGTH	SQ. FT.	=	SQUARE FEET
CB	=	CHORD BEARING	P.C.P.	=	PERMANENT CONTROL POINT
R	=	RADIUS	P.B.C.R.	=	PALM BEACH COUNTY RECORDS
R/W	=	RIGHT OF WAY	P	=	PLAT
P.C.	=	POINT OF CURVATURE	N&D	=	NAIL & DISC
P.T.	=	POINT OF TANGENCY	P.O.C.	=	POINT OF COMMENCEMENT
WM	=	WATER METER	P.O.B.	=	POINT OF BEGINNING
OH	=	OVERHANG	A/C	=	AIR CONDITIONER
N	=	NORTH	FND.	=	FOUND
S	=	SOUTH	CHATT.	=	CHATTAHOOCHEE
E	=	EAST	F.P.L.	=	FLORIDA POWER & LIGHT
W	=	WEST	N.T.S.	=	NOT TO SCALE
CONC.	=	CONCRETE	B.C.R.	=	BROWARD COUNTY RECORDS
D.B.	=	DEED BOOK	D.C.R.	=	DADE COUNTY RECORDS
CLF	=	CHAIN LINK FENCE	P.B.	=	PLAT BOOK
BLVD.	=	BOULEVARD	O.R.B.	=	OFFICIAL RECORDS BOOK
ENCH.	=	ENCH.	F.F.	=	FINISHED FLOOR
I.P.	=	IRON PIPE	GAR.	=	GARAGE
P.R.M.	=	PERMANENT REFERENCE MONUMENT	CL	=	CENTERLINE
N.A.V.D.	=	NORTH AMERICAN VERTICAL DATUM	MH	=	MANHOLE
B.R.	=	BENCHMARK	(M)	=	MEASURED
			LP	=	LIGHT POLE

SCHEDULE B2 EXCEPTIONS:

1. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date but prior to the date the proposed Insured acquires for value of record the estate or interest or mortgage thereon covered by this Commitment. (This item is not a matter of survey)

2. Any rights, interests, or claims of parties in possession of the land not shown by the public records. (This item is not certifiable.)

3. Any encroachment, encumbrance, violation, variation or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the land. (After upon review of survey to be determined by title examiner.)

4. Any lien, for services, labor, or materials in connection with improvements, repairs or renovations provided before, on, or after Date of Policy, not shown by the public records. (This item is not a matter of survey.)

5. Any dispute as to the boundaries caused by a change in the location of any water body within or adjacent to the land prior to Date of Policy, and any adverse claim to all or part of the land that is, at Date of Policy, or was previously under water. (As of date of survey the subject property was not submerged.)

6. Taxes or special assessments not shown as liens in the public records or in the records of the local tax collecting authority, at Date of Policy. (This item is not a matter of survey.)

7. Any minerals or mineral rights leased, granted or retained by current or prior owners. (This item is not a matter of survey.)

8. Taxes and assessments for the year 2015 and subsequent years, which are not yet due and payable. (This item is not a matter of survey.)

9. Restrictions, dedications, conditions, reservations, easements and other matters shown on the plat of PINEHURST, as recorded in Plat Book 5, Page(s) 13 , but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c). (No platted easements.)

10. Right-of-Way Easement granted to Southern Bell Telephone and Telegraph Company recorded in Book 10191, Page 149. (This item affects the subject property and is shown hereon.)

11. Parking Easement granted to 225 North Federal Highway, LLC, a Delaware limited liability company recorded in Book 37071, Page 385. (Offsite parking easement is in benefit of the subject property.)

12. Declaration of Easements, Covenants, and Restrictions for 225 North Federal Highway, recorded in Book 38018, Page 1307, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c). (Blanket easements affect the subject property but are not a plottable matter of survey.)

13. Terms and provisions set forth and contained in that certain Lease between 225 North Federal Highway, LLC, Lessor, and SouthTrust Bank, Lessee, predecessor-in-interest to Wachovia Bank, N.A., a Memorandum of which is recorded in Book 37844, Page 1382; as modified by that certain Subordination, Non-Disturbance and Adornment Agreement recorded in Book 39002, Page 101. (This item is not a matter of survey.)

14. Terms and provisions set forth and contained in that certain Lease between Home Savings of America, Lessor, and Sprint Spectrum, L.P., Lessee, a Memorandum of which is recorded in Book 25734, Page 569; as affected by that Memorandum of Second Amendment to PCS Site Agreement recorded in Book 44972, Page 418. (This item is not a matter of survey.)

15. Terms and provisions set forth and contained in that certain Lease between SouthTrust Bank, N.A., Lessor, and AT&T Wireless Services of Florida, Inc., d/b/a AT&T Wireless Services, Lessee, a Memorandum of which is recorded in Book 32154, Page 1173. (This item is not a matter of survey.)

16. Terms and provisions set forth and contained in that certain Lease between 225 North Federal Highway, LLC, Lessor, and MetroPCS California/Florida, Inc., Lessee, a Memorandum of which is recorded in Book 31876, Page 77, as modified by that certain Subordination, Non-Disturbance and Adomment Agreement recorded Book 39002, Page 110. (This item is not a matter of survey.)

17. Terms and provisions set forth and contained in that certain Lease by and between 225 North Federal Highway, LLC, a Delaware limited liability company ("Owner"), and T-Mobile South, LLC, a Delaware limited liability company, as successor in interest to Omnipoint Holdings, Inc. ("Tenant") recorded in Book 47299, Page 116; as affected by the Lease Assignment Agreement recorded in Book 47299, Page 120; as further affected by that certain Site Lease Amendment recorded in Book 47299, Page 126. (This item is not a matter of survey.)

18. Terms and conditions of that certain Occupancy Agreement (Record Copy) recorded in Book 48191, Page 177. (This item is not a matter of survey.)

19. Terms and conditions of any existing unrecorded lease(s), and all rights of lessee(s) and any parties claiming through the lessee(s) under the lease(s). (This item is not a matter of survey.)

20. Matters as shown on that certain survey prepared by McLaughlin Engineering Company dated January 4, 2005, as revised January 7, 2005, under Job Order No. T-0441, T-3056, T-3689, T7468, T-8620, T-8579, U-300, which discloses, among other matters, the following: (This item was not furnished for review.)

Encroachments by electric box, fire hydrant, and traffic signal pole into Southern Bell Easement located at the Southeasterly corner of Parcel 1; and

STREET ADDRESS:

225 & 301 North Federal Highway Pompano Beach Florida 33062

LEGAL DESCRIPTION:

Parcel 1:
Lots 13, 16 and 17, all LESS the East 10 feet thereof for road right-of-way; and Lots 18, 19, 20, 21, 22 and 23, LESS the East 10 feet of Lot 23 for road right-of-way, all in Block 6, of PINEHURST, according to the plat thereof, as recorded in Plat Book 5, Page 13, of the Public Records of Broward County, Florida;

Together with Lots 8, 9 and 12, LESS the East 10 feet thereof, and Lots 2, 3, 6, 7, 10, 11, 14 and 15, all in Block 6, of PINEHURST, according to the plat thereof, as recorded in Plat Book 5, Page 13, of the Public Records of Broward County, Florida.

Parcel 2:
This parcel was not included in this survey.

Parcel 3:
This parcel was not included in this survey.

Parcel 4:
Easement as created by "Declaration of Easements, Covenants and Restrictions" dated August 11, 2004 and recorded August 13, 2004 in Official Records Book 38018, Page 1307, of the Public Records of Broward County, Florida. (See Item No. 13 in Schedule B2 exceptions.)

NOTES:

1. Unless otherwise noted field measurements are in agreement with record measurements.
2. Bearings shown hereon are based on a bearing of North 01°18'40" West along the centerline of North Federal Highway per State of Florida Department of Transportation right of way map section 86020-2524 sheet 7 of 9, last revised 10-04-93.
3. The lands shown hereon were not abstracted for ownership, rights of way, easements, or other matters of records by Accurate Land Surveyors, Inc.
4. Ownership of fences and walls if any are not determined.
5. This survey is the property of Accurate Land Surveyors, Inc. and shall not be used or reproduced in whole or in part without written authorization.
6. This survey is made for the exclusive use of the certified hereon, to be valid one year from the date of survey as shown hereon.
7. This survey reflects all legible, obtainable, plottable, recorded matters of survey per Schedule B2 of First American Title Insurance Company CommitmentCustomer Reference Number: 05862.0015 First American File number: 1062-3259825, Effective Date: February 12, 2015 @ 8:00 A.M.

FLOOD INFORMATION:

Community name and number: Pompano Beach 120055
Map and panel number: 12011C0376H
Panel date: 08-18-14
Index date: 08-18-14
Flood zone: "AH"
Base flood elevation: 8'NAVD

BENCHMARK INFORMATION:

City of Pompano Beach Benchmark 0017/2011
Elevation = 6.621'NAVD1988

CERTIFY TO:

225 North Federal Highway LLC
Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.
First American Title Insurance Company
BankUnited, N.A., its successors and assigns.

DATE OF FIELD SURVEY: 02-10-15 — DRAWN BY: MLW
FIELD BOOK: ALS-SU-15-0254 — CHECKED BY: MLW

REVISIONS	DATE	BY

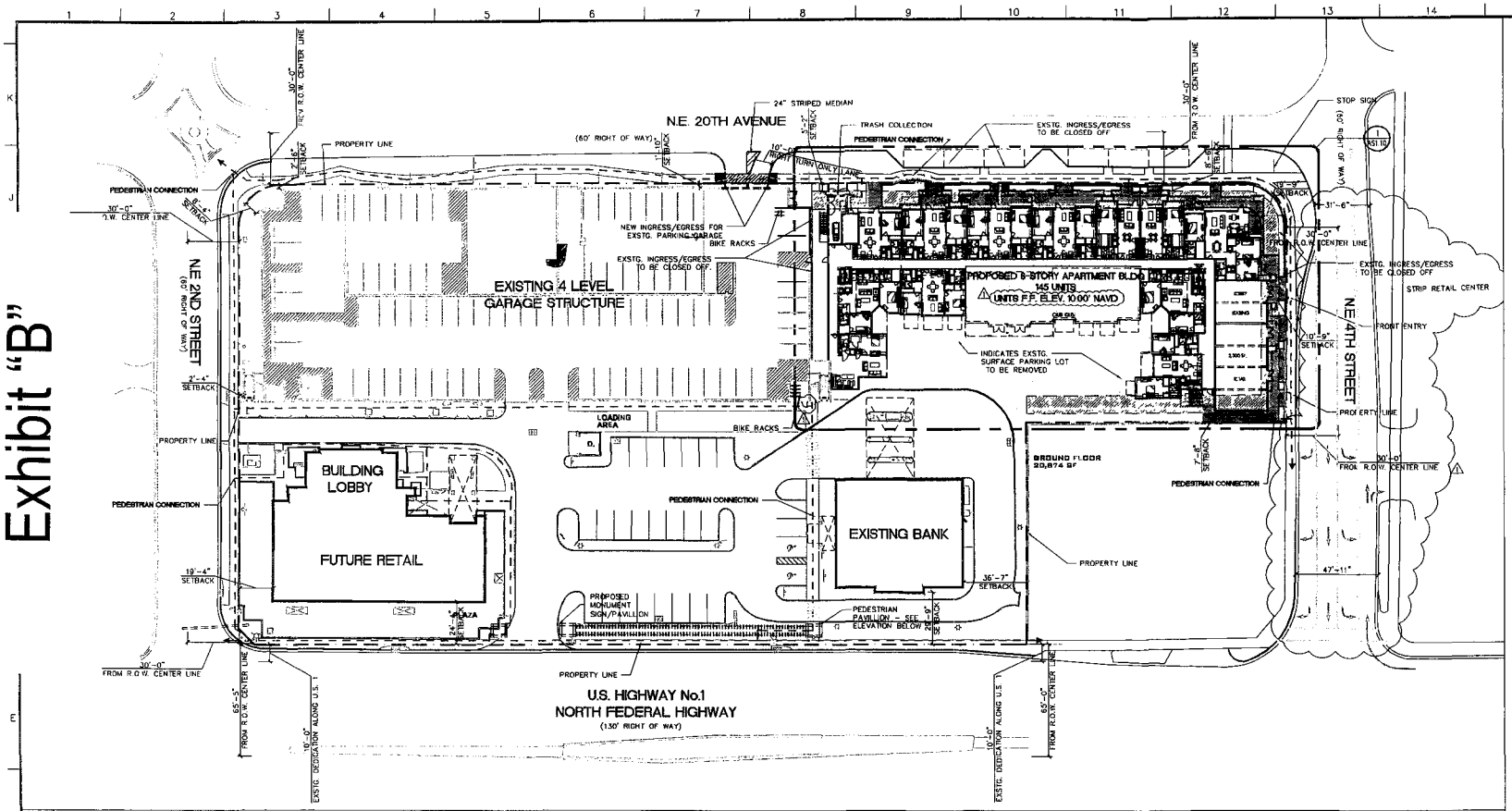
CERTIFICATION:
This is to certify that I have recently surveyed the property described in the foregoing caption and have set or found monuments as indicated on this sketch and that all above ground survey and sketch are accurate and correct to the best of my knowledge and belief. I further certify that this survey meets Minimum Technical Standards under Rule 5J-17.052 adopted by the Florida Board of Land Surveyors, January 11, 2010.

SEAL — Not valid without the signature and the original raised seal of a Florida Licensed Surveyor and Mapper.

ROBERT L. THOMPSON (PRESIDENT)
PROFESSIONAL SURVEYOR AND MAPPER No.3869 - STATE OF FLORIDA

SHEET 1 OF 1 | SCALE 1"=30' | SKETCH NUMBER SU-15-0254

Exhibit "B"

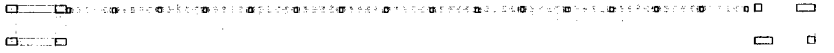


3 OVERALL MASTER PLAN / SITE PLAN

AS1.00 SCALE: 1"=30'-0"

2 TRELLIS RENDERED ELEVATIONS

AS1.00 SCALE: N.T.S.



1 TRELLIS PLAN

AS1.00 SCALE: N.T.S.

Juan Caycedo

Digitally signed by Juan Caycedo
DN: cn=Juan Caycedo, o=RLC Architects PA, ou, email=juan@rlcarchitects.com, c=US
Date: 2015.12.21 17:37:19 -05'00'

TRUE NORTH

P&Z
PZ15-12000014
JAN 27 2016

RLC Architects

JUAN C. CAYCEDO, A.I.A.

ATLANTIC TOWER
POMPANO BEACH, FLORIDA

BRENNER REALTY

REVISIONS
1 01.04.16 DRC COMMENTS REVISIONS

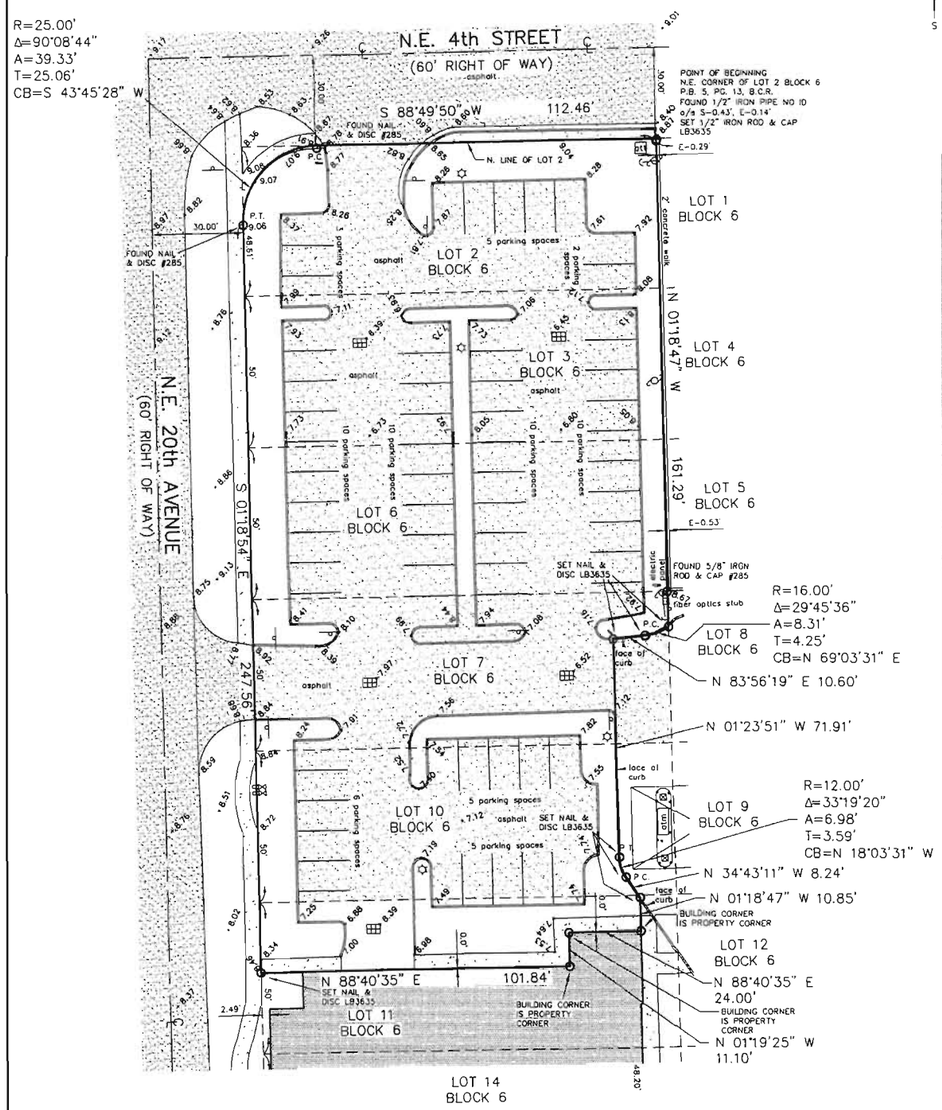
Drawing Title
OVERALL MASTER PLAN / SITE PLAN

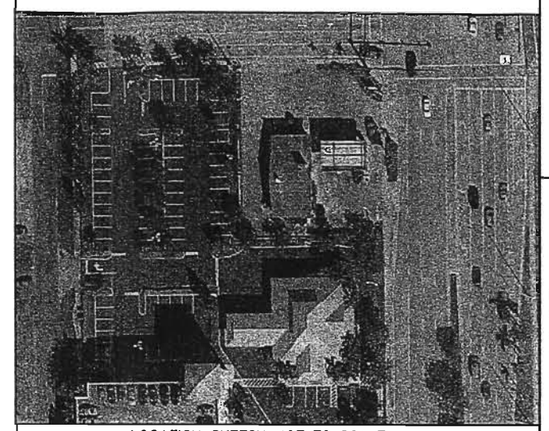
Scale AS NOTED
Project No. 14078.00
Date

Principal: JCC
Project Director:
Project Manager: CGB
Drafted by: SMN
Checked by:

Sht. No. AS1.00

Exhibit "C"





LOCATION SKETCH NOT TO SCALE

STREET ADDRESS:

Vacant property on N.E. 20th Avenue Pompano Beach, Florida 33062

NOTES:

1. Unless otherwise noted field measurements are in agreement with record measurements.
2. Bearings shown hereon are based on a bearing of South 88°49'50" West along the North line of Lot 2, Block 6, Plat Book 5, Page 13, of the Public Records of Broward County, Florida.
3. The lands shown hereon were not abstracted for ownership, rights of way, easements, or other matters of records by Accurate Land Surveyors, Inc.
4. Ownership of fences and walls if any are not determined.
5. This survey is the property of Accurate Land Surveyors, Inc. and shall not be used or reproduced in whole or in part without written authorization.
6. This survey is made for the exclusive use of the certified hereon, to be valid one year from the date of survey as shown hereon.

FLOOD INFORMATION:

Community name and number: Pompano Beach 120055
Map and panel number: 12011C0376H
Panel date: 08-18-14
Index date: 08-18-14
Flood zone: "AH"
Base flood elevation: 8'NAVD

BENCHMARK INFORMATION:

City of Pompano Beach Benchmark 0017/2011
Elevation = 6.621'NAVD1988

CERTIFY TO:

Scott Brenner, Esq.

ACCURATE LAND SURVEYORS, INC.
L.B. #3635

1150 E. ATLANTIC BLVD.
POMPANO BEACH, FLORIDA 33060

TEL. (954) 782-1441
FAX. (954) 782-1442

BOUNDARY & TOPOGRAPHIC SURVEY

LEGEND OF ABBREVIATIONS:

Δ	=	CENTRAL ANGLE	+7.00'	=	ELEVATIONS BASED ON N.A.V.D.
A	=	ARC LENGTH	SQ. FT.	=	SQUARE FEET
CB	=	CHORD BEARING	P.C.P.	=	PERMANENT CONTROL POINT
R	=	RADIUS	P.B.C.R.	=	PALM BEACH COUNTY RECORDS
R/W	=	RIGHT OF WAY	P	=	PLAT
P.C.	=	POINT OF CURVATURE	N&D	=	NAIL & DISC
P.T.	=	POINT OF TANGENCY	P.O.C.	=	POINT OF COMMENCEMENT
WM	=	WATER METER	P.O.B.	=	POINT OF BEGINNING
OH	=	OVERHANG	A/C	=	AIR CONDITIONER
N	=	NORTH	FND.	=	FOUND
S	=	SOUTH	CHATT.	=	CHATTAHOOCHEE
E	=	EAST	F.P.L.	=	FLORIDA POWER & LIGHT
W	=	WEST	N.T.S.	=	NOT TO SCALE
CONC.	=	CONCRETE	B.C.R.	=	BROWARD COUNTY RECORDS
D.B.	=	DEED BOOK	D.C.R.	=	DADE COUNTY RECORDS
CLF	=	CHAIN LINK FENCE	P.B.	=	PLAT BOOK
BLVD.	=	BOULEVARD	O.R.B.	=	OFFICIAL RECORDS BOOK
ENCH.	=	ENCH.	F.F.	=	FINISHED FLOOR
I.P.	=	IRON PIPE	GAR.	=	GARAGE
I.R.	=	IRON ROD	C/L	=	CENTERLINE
P.R.M.	=	PERMANENT REFERENCE MONUMENT	MH	=	MANHOLE
N.A.V.D.	=	NORTH AMERICAN VERTICAL DATUM	(M)	=	MEASURED
U.E.	=	UTILITY EASEMENT	LP	=	LIGHT POLE
D.E.	=	DRAINAGE EASEMENT	—X—X—X—	=	CHAIN LINK FENCE
A.E.	=	ANCHOR EASEMENT	—/—/—/—	=	WOOD FENCE
MAINT.	=	MAINTENANCE	—— ——	=	METAL FENCE
ESMT.	=	EASEMENT	—o—o—o—	=	PVC FENCE
ELEV	=	ELEVATION	—‖—‖—‖—	=	CONCRETE FENCE
B.M.	=	BENCHMARK	——	-	CONCRETE WALL
			—^—^—^—	-	WIRE FENCE

LEGAL DESCRIPTION:

A portion of Lots 2, 3, 6, 7, 10 and 11, Block 6, of PINEHURST, according to the plat thereof, as recorded in Plat Book 5, Page 13, of the Public Records of Broward County, Florida, being more particularly described as follows;

Beginning at the Northeast corner of the aforementioned Lot 2, thence South 88°49'50" West (basis of bearing) along the North line of the aforementioned Lot 2, a distance of 112.46 feet to the Point of Curvature of a 25.00 foot radius curve to the left concave Southeasterly, thence along the arc of said curve through a central angle of 90°08'44", for an arc distance of 39.33 feet to the Point of Tangency; thence South 01°18'54" East along the West line of the aforementioned Block 6, a distance of 247.56 feet; thence North 88°40'35" East, along the Westerly projection of and the North face of an existing building, a distance of 101.84 feet; thence North 01°19'25" West along the West face of building, a distance of 11.10 feet; thence North 88°40'35" East, along the North face on an existing building, a distance of 24.00 feet to the Northeast corner on the aforementioned building; thence North 01°18'47" West, a distance of 10.85 feet to a point on the face of an existing curb; thence North 34°43'11" West along the aforementioned face of curb, a distance of 8.24 feet to the Point of Curvature of a 12.00 foot radius curve to the right concave Northeasterly; thence along the arc of said curve through a central angle of 33°19'20", for an arc distance of 6.98 feet to the Point of Tangency; thence North 01°23'51" West, a distance of 71.91 feet to a point on the face of an existing curb; thence North 83°56'19" East along the face of the aforementioned curb, a distance of 10.60 feet to the Point of Curvature of a 16.00 foot radius curve to the left concave Northwesterly; thence along the arc of said curve through a central angle of 29°45'36", for an arc distance of 8.31 feet; thence North 01°18'47" West, along the East line of the aforementioned Lots 3 and 6, a distance of 161.29 feet to the Point of Beginning. Said described parcel of land containing 35,264 square feet, or 0.8096 acres, more or less.

DATE OF FIELD SURVEY: 11-02-15	DRAWN BY: MLW	
FIELD BOOK: ALS-SU-15-4006	CHECKED BY: MLW	
REVISIONS	DATE	BY
REVISE LOCATION SKETCH	12-15-15	MLW
SEE 15-0254 FOR ORIGINAL COMBINED SURVEY.		

CERTIFICATION:
This is to certify that I have recently surveyed the property described in the foregoing title caption and have set or found monuments as indicated on this sketch and that said above ground survey and sketch are accurate and correct to the best of my knowledge and belief. I further certify that this survey meets Minimum Technical Standards under Rule 5J-17.052 adopted by the Florida Board of Land Surveyors, January 11, 2010.

SEAL
Not valid without the signature and the original raised seal of a Florida Licensed Surveyor and Mapper.

12-15-15
ROBERT L. THOMPSON (PRESIDENT)
PROFESSIONAL SURVEYOR AND MAPPER No.3869 – STATE OF FLORIDA

SHEET 1 OF 1	SCALE 1"=20'	SKETCH NUMBER SU-15-4006

pompano beach
Florida's Warmest Welcome

MEMORANDUM

Development Services

MEMORANDUM NO. 16-137

DATE: March 24, 2016

TO: Mark E. Berman, City Attorney

VIA: Robin M. Bird, Development Services Director

FROM: Karen Friedman, AICP, Principal Planner

SUBJECT: Request for Resolution, Amend Resolution 2016-72
Flex Unit Allocation Request / 225 N. Federal Highway
City Commission Hearing April 26, 2016

Resolution 2016-72 allocated 145 flexible to 225 North Federal Highway, LLC. The applicant has advised that they are not able to comply with Section 8's specific requirement for a Unity of Title. Rather, in lieu of a Unity of Title, the applicant has prepared a Declaration of Restrictive Covenants which addresses the unified development and control of the site. The Development Services Department has reviewed the Declaration of Restrictive Covenants and has determined they are satisfactory.

Therefore Staff is requesting your office prepare a resolution to amend Section 8 of Resolution 2016-72 as follows:

> ***Section 8.*** *Failure of the Applicant to execute and record the attached Declaration of Restrictive Covenants (Exhibit A) prior to Building Permit approval shall render the allocation of the flex units null and void.*

However, Staff is further requesting that the effective date of the flex unit allocation continue to be associated with the effective date of Resolution 2016-72 (December 8, 2015) and therefore that this newly requested resolution not reallocate the flex units.

Therefore staff is also seeking a determination from your office if the new Resolution must be noticed per Code of Ordinances §154.61(C)(4)a.

Staff is requesting this resolution be prepared for the April 26, 2016 City Commission hearing.

Reso 2016-72

RESOLUTION NO. 2016-72

CITY OF POMPANO BEACH
Broward County, Florida

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, ALLOCATING A MAXIMUM OF ONE HUNDRED FORTY FIVE (145) FLEX UNITS FOR A PROPOSED MIXED USE REDEVELOPMENT PROJECT TO BE LOCATED ON THE NORTHWEST CORNER OF NORTH FEDERAL HIGHWAY AND NE 2ND STREET; PROVIDING AN EFFECTIVE DATE.

WHEREAS, 225 North Federal Highway, LLC ("Applicant") requests an allocation of a maximum of one hundred forty five (145) flex units in order to construct a mixed use redevelopment project on property known as 225 N. Federal Highway, legally described in Exhibit "A"; and

WHEREAS, the City's Comprehensive Plan provides for the utilization of flexibility units ("Flex Units") to facilitate proposed mixed use developments in urban infill areas provided that the proposed developments are compatible with the community character; and

WHEREAS, the City's Comprehensive Plan further provides that the City shall use Flex Units to increase residential densities within flex receiving areas when consistent with the community character and adjacent land uses; and

WHEREAS, the applicant has demonstrated support for a Land Use Plan amendment for the subject property as well as adjacent property; and

WHEREAS, pursuant to Section 154.61(C)(3) the Development Services Department has obtained a recommendation of approval from the Planning and Zoning Board on July 22, 2015; and

WHEREAS, the City is willing to transfer a maximum of 145 Flex Units to Applicant pursuant to the terms of this Resolution; now, therefore,

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

SECTION 1. That the City Commission of the City of Pompano Beach finds that the requirements in Section 154.61(D) have been met and hereby allocates a maximum of 145 flex units, all of which will come from the unified flex zone for the proposed mixed use project to be constructed on the property which is legally described in Exhibit "A."

SECTION 2. The number of flex units in the unified flex zone shall be reduced by however many units are necessary for the project, not to exceed 145 units.

SECTION 3. Failure of the applicant to submit proof that the Voluntary Declaration of Restrictive Covenants which restricts the redevelopment of the first floor of the existing Evert University to retail, office, and similar uses as shown in Exhibit "B" has been recorded with the Broward County Records Division within two (2) months of the date of this resolution shall render the allocation of the flex units null and void.

SECTION 4. The proposed project must be built in substantial conformity with the attached conceptual site plan and drawings which demonstrate the location of the parking area trellis, pedestrian paths, and street entrances fronting NE 20th Avenue, and the qualitative principles as shown in Exhibit "C," a copy of which is attached hereto and made a part hereof. Any approved Site Plan must include provisions to limit the vehicular traffic exiting the parking areas to right-turns only, in order to ensure traffic heads north on NE 20th Avenue and east on NE 4th Street.

SECTION 5. Failure of the applicant to obtain apply for a Major Site Plan for the proposed building and related site features as shown in Exhibit "C" within twelve (12) months of the date of this resolution shall render the allocation of the flex units null and void.

SECTION 6. Failure of the applicant to obtain a principal building permit for the proposed building and related site features as shown in Exhibit "C" within twenty four (24) months of the date of this resolution shall render the allocation of the flex units null and void.

SECTION 7. Failure of the applicant to obtain a principal building permit for the proposed building and related site features as shown in Exhibit "C" within twenty four (24) months of the date of this resolution shall render the allocation of the flex units null and void.

SECTION 8. Failure of the Applicant to provide an executed and recorded unity of title document prior to commencement of construction on the residential building shall render the allocation of flex units null and void.

SECTION 9. This Resolution shall become effective upon passage.

PASSED AND ADOPTED this 8th day of December, 2015.

LAMAR FISHER, MAYOR

ATTEST:

ASCELETA HAMMOND, CITY CLERK

CLS/jrm
12/11/15
l:reso/2016-39

Exhibit A

LEGAL DESCRIPTION:

Parcel 1:

Lots 13, 16 and 17, all LESS the East 10 feet thereof for road right-of-way; and Lots 18, 19, 20, 21, 22 and 23, LESS the East 10 feet of Lot 23 for road right-of-way, all in Block 6, of PINEHURST, according to the plat thereof, as recorded in Plat Book 5, Page 13, of the Public Records of Broward County, Florida;

Together with Lots 8, 9 and 12, LESS the East 10 feet thereof, and Lots 2, 3, 6, 7, 10, 11, 14 and 15, all in Block 6, of PINEHURST, according to the plat thereof, as recorded in Plat Book 5, Page 13, of the Public Records of Broward County, Florida.

Exhibit B

This instrument prepared by,
and when recorded return to:

George A. Pincus, Esq.
STEARNS WEAVER MILLER WEISSLER
ALHADEFF & SITTERSON, P.A.
New River Center, Suite 2100
200 East Las Olas Boulevard
Ft. Lauderdale, FL 33301

----------[SPACE ABOVE THIS LINE FOR RECORDING INFORMATION]----------

AMENDED AND RESTATED DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS

FOR

225 NORTH FEDERAL HIGHWAY

FORT LAUDERDALE, FLORIDA

Dated: _____, 2015

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[NEEDS TO BE UPDATED]

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5. Reciprocal Easements 6

6. Temporary Construction Easements and Construction on Residential Parcel**Error! Bookmark not def**

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EXHIBITS

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Exhibit B – Office Parcel

Exhibit B-1 – Office Ingress/Egress Area

Exhibit C – Residential Parcel

Exhibit C-1 – Residential Ingress/Egress Area

Exhibit D –Bank Parcel

Exhibit D-1 – Bank Ingress/Egress Area

Exhibit E – The Current Site Plan

Exhibit F – Parking Garage

AMENDED AND RESTATED DELCARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS

THIS AMENDED AND RESTATED DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS (this "Declaration") is made this ___ day of _____, 2015 (the "Effective Date"), by **225 NORTH FEDERAL HIGHWAY, LLC,** a Florida limited liability company ("Declarant") which declares that the real property hereinafter described is, and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens (sometimes collectively hereinafter referred to as "Covenants and Restrictions)" hereinafter set forth. This Declaration amends, restates and supersedes in its entirely that certain Declaration Of Easements, Covenants And Restrictions , dated August 11, 2004 (the "Original Declaration"), which was recorded August 13, 2004, in Official Records Book 38018, Page 1307 of the Public Records of Broward County, Florida. From and after the Effective Date of this Declaration the Covenants and Restrictions set forth in the Original Declaration shall be null, void and of no further force or effect and the Covenants and Restrictions set forth in this Declaration shall control with respect to the Entire Property.

RECITALS:

A. Declarant is the owner of fee simple title to certain real property, and the improvements thereon, located in Broward County, Florida, legally described in Exhibit "A" attached hereto and incorporated herein by this reference (the "Entire Property").

B. The Entire Property made up of three (3) different purposes as follows: (i) the "Office Parcel" legally described in Exhibit "B" attached hereto and incorporated herein by this reference; (ii) the "Residential Parcel", legally described on Exhibit "C" attached hereto and made a part hereof and (iii) the "Bank Parcel", more legally described on Exhibit "D" attached hereto. Each of the Office Parcel, the Residential Parcel and the Bank Parcel are sometimes collectively and generically referred to as the "Parcels" and individually and generically as a "Parcel".

C. At some time in the future, Declarant may transfer fees simple title of one (1) or more of the Parcels to other owners and, from and after the transfer of any Parcel, such owner shall be referred to as the "Office Owner", the "Residential Owner" and the "Bank Owner" as applicable to such party's ownership of its respective Parcel. Each of the Office Owner, the Residential Owner and the Bank Owner are sometimes collectively and generically referred to as the "Owners" and individually and generically as an "Owner".

D. A site plan of the Entire Property, depicting the Parcels and either the existing or proposed improvements on each Parcel (the "Current Site Plan") is attached to this Declaration as Exhibit "E".

E. In connection with the future development of the Residential Parcel by Residential Owner and the harmonious operation of each of all of the Parcels, Declarant is

recording this Declaration in order to put of record the Covenants and Restrictions in order provide for the harmonious development and operation of the Entire Property among the various Owners.

NOW, THEREFORE, Declaration, for itself and its grantees, successors and assigns, hereby declares as follows with respect to the Entire Property.

1. Recitals. The foregoing Recitals are incorporated herein by reference.

2. Definitions. As used herein, the following terms shall have the following meanings:

"Bank Ingress/Egress Area" shall have the meaning ascribed to said term in Section 4 (c).

"Drainage System" shall have the meaning ascribed to said term in Section 5 (b).

"Legal Requirements" shall mean any federal, state or local law, common law, statute, ordinance, executive order, rule, regulation, order, judgment, administrative order, decree, directive, administrative or judicial decision and any other executive, legislative, regulatory or administrative proclamation applicable to the Parcels.

"Maintenance Costs" shall collectively mean and include any and all costs and expenses incurred by any Owner in maintaining any portions or components of any shared Drainage System or Utility Facilities pursuant to this Declaration, and including, without limitation, management fees to the Office Owner, costs for routine maintenance and repair, as well as such capital improvements and related improvements as may be reasonably necessary from time to time, in order to maintain such areas and improvements in the condition required hereby, utility charges directly serving, and insurance costs directly allocable to each of the subject areas and improvements. The Owners acknowledge and agree that the Maintenance Costs may be based on an allocation of the costs and expenses incurred with respect to the maintenance of a Parcel and/or building as a whole, which allocation shall be done on a fair and reasonable basis. The Maintenance Costs shall specifically exclude any and all costs in connection with the Parking Garage (defined below).

"Office Ingress/Egress Area" shall have the meaning ascribed to such term in Section 4 (a).

"Office Owner" shall have the meaning ascribed to such term in the preamble to this Agreement.

"Parcel Parties" are collectively, the Bank Parties, the Office Parties and the Residential Parties.

"Parking Garage" shall mean that certain parking garage depicted on Exhibit "F" for the exclusive use of the Office Parcel and the Residential Parcel. The Bank Owner and its employees, agents, business invitees and other visitors (collectively, the "Bank Parties") shall have no right to use the Parking Garage as the Bank Parties shall have the exclusive right to use the parking lot located on the Bank Parcel.

"Parking Garage Pro Rata Share" As of the Effective Date, the number of parking spaces located in the Parking Garage is allocated as follows (i) the Office Owner, its employees, agents, tenants, subtenants, licensees, business invitees and other visitors (collectively, the "Office Parties") are entitled to the use of two hundred thirty-one (231) parking spaces (the "Office Parking Spaces"); and (ii) the Residential Owner, its employees, agents, condominium owners, business invitees and other visitors (collectively, the "Residential Parties") are entitled to the use of two hundred thirty-one (231) parking spaces ("Residential Parking Spaces"). The Office Parking Spaces and the Residential Parking Spaces shall each be for the exclusive use and benefit of the Office Parcel and the Residential Parcel, as applicable, and depicted on Exhibit "F" attached hereto. Notwithstanding the foregoing, six (6) of the Residential Parking Spaces and six (6) of the Office Parking Spaces shall each be located on the first (1st) floor of the Parking Garage for each Parties' respective visitors and guests. Additionally, Office Owner and Residential Owner shall be responsible, pursuant to Legal Requirements, for allocating a portion of the Residential Parking Spaces and the Office Parking Spaces, respectively, for handicapped use.

"Parking Garage Costs" shall collectively mean and include any and all actual, verifiable, out-of-pocket costs and expenses incurred by Office Owner in maintaining the Parking Garage or any portions or thereof, and including, without limitation, costs for routine maintenance and repair, as well as such capital improvements and related improvements as may be reasonably necessary from time to time, in order to maintain the Parking Garage in the condition required hereby.

"Pro Rata Share of Garage Costs" shall mean a fraction, expressed as a percentage, the numerator of which shall be the square footage of the Residential Parcel and the Office Parcel, respectively, and the denominator of which shall be the total square footage of the Entire Property. As of the Effective Date, the Pro Rata Share of Garage Costs for: (i) the Residential Parcel is _____%; and (ii) the Office Building is _____%.

"Pro Rata Share of Maintenance Costs" shall mean a fraction, expressed as a percentage, the numerator of which shall be the square footage of each Parcel and the denominator of which shall be the total square footage of the Entire Property. As of the Effective Date, the Pro Rata Share of Maintenance Costs for: (i) the Residential Parcel is _____%; (ii) the Office Building is _____%; and (iii) the Bank Parcel is ____%

"Reciprocal Drainage Easement" shall have the meaning ascribed to such term in Section 5 (b).

"Reciprocal Encroachment Easement" shall have the meaning ascribed to such term in Section 5 (d).

"Reciprocal Support Easement" shall have the meaning ascribed to such term in Section 5 (e).

"Reciprocal Utility Easement" shall have the meaning ascribed to such term in Section 5 (a).

"Residential Ingress/Egress Area" shall have the meaning ascribed to such term in Section 4 (b).

"Utility Facilities" shall have the meaning ascribed to said term in Section 5 (a).

3. Development of the Residential Parcel.

(a) Subsequent Amendments to this Declaration and/or the Covenant and Restrictions. Each Owner agrees and acknowledges that due to the proposed future development of the Residential Parcel there may need to be subsequent amendments to this Declaration and/or the Covenants and Restrictions to modify and amend (i) the descriptions of the real property encumbered by this Declaration and/or the Covenant and Restrictions, (ii) the nature and location of certain of the easements created under this Declaration and/or the Covenant and Restrictions, (iii) the various obligations for maintaining the improvements which exist within particular easement areas, (iv) the actual use of, and improvements to the Residential Parcel, (v) the establishment of a condominium, or other shared ownership regime in connection with the Residential Parcel, and (vi) various other matters and third party requirements both contemplated and currently not contemplated by this Declaration and/or the Covenant and Restrictions. Each Owner agrees that it shall work reasonably and in good faith with the other Owners to negotiate and enter into such subsequent amendments to this Declaration and/or the Covenant and Restrictions as may be reasonable and necessary to accomplish the foregoing on a timely and reasonable basis. The foregoing covenant of good faith is a specific inducement to each of Owner entering into this Declaration and the Covenant and Restrictions. No Owner shall be voluntarily required to enter into any amendment of this Declaration and/or the Covenant and Restrictions if such amendment would have a material adverse effect on the Owner or its Parcel or if such amendment materially and adversely interferes with or affects the development or maintenance of such Owner's Parcel or the operation of business(es) being conducted at such Parcel. Further, to the extent then required by applicable Legal Requirements any such amendments shall be subject to the written approval of applicable governmental agencies. Alternatively, if any such amendment of this Declaration or of the Covenant and Restrictions is reasonably required by an Owner, and such amendment does not have a material adverse effect on an Owner or its Parcel, or on the development or maintenance of such Owner, or on the operation of the business(es) conducted on such Parcel, and to the extent required by applicable Legal Requirements, the amendment has been approved by the applicable governmental agencies, the other Owners shall not unreasonably withhold, condition or delay their consent to and execution of the requested amendment.

(b) To the extent that an amendment to this Declaration and/or the Covenant and Restrictions is subsequently requested by an Owner, the requesting Owner shall provide a copy of such proposed amendment of this Declaration or of the Covenant and Restrictions to the other Owners. If so notified, the other Owners of whom the request is made must notify the requesting Owner in writing within ten (10) calendar days whether such Owner has any objections thereto. The reviewing Owners shall have a period of ten (10) consecutive business days to review the proposed amendment of this Declaration or of the Covenant and Restrictions and either (i) provide written approval of same or (ii) provide written objections, specifying why the reviewing Owner cannot approve the proposed amendment of this Declaration or of the Covenant and Restrictions, and to the extent practicable, any and all suggested revisions that

would, upon completion of such revisions, cause the proposed amendment of this Declaration or of the Covenant and Restrictions to be approved by the reviewing Owner.

4. Access Easements.

(a) The Office Access Easement. Office Owner does hereby grant for the benefit of the other Owners and appurtenant to the other Parcels, for the use and benefit of the other Owners, and all Parcel Parties a perpetual and non-exclusive access easement on, over, under, through and across any driveways, walkways, access ways, curb cuts, entrance magazines and parking areas (for access purposes only and not for parking of vehicles) within that portion of the Office Parcel, as described in Exhibit "B-1" attached hereto and made a part hereof (collectively, the "Office Ingress/Egress Area") for the purpose of: (i) adequate and unobstructed pedestrian and vehicular traffic as appropriate, (ii) pedestrian and vehicular access and ingress and egress to and from the other Parcels to publicly dedicated rights-of-way contiguous to and serving the other Parcels and the Office Parcel, and (iii) similar uses for which any such driveways, walkways, access ways, curb cuts, and entrance magazines from time to time existing on the Office Parcel are (or may be) intended by Office Owner (the "Office Access Easement"). Office Owner agrees and acknowledges that it shall use its good faith, reasonable efforts and due diligence to keep the Office Ingress/Egress Area free from obstructions at all times, and to the extent a condition exists within the Office Ingress/Egress Area that prevents normal use of the Office Access Easement, Office Owner shall promptly take reasonable and necessary actions to remedy such situation.

(b) The Residential Access Easement. Residential Owner does hereby grant for the benefit of the other Owners and appurtenant to the other Parcels, for the use and benefit of the other Owners, and all Parcel Parties a perpetual and non-exclusive access easement on, over, under, through and across any driveways, walkways, access ways, curb cuts, entrance magazines and parking areas (for access purposes only and not for parking of vehicles) within that portion of the Residential Parcel, as described in Exhibit "C-1" attached hereto and made a part hereof (collectively, the "Residential Ingress/Egress Area") for the purpose of: (i) adequate and unobstructed pedestrian and vehicular traffic as appropriate, (ii) pedestrian and vehicular access and ingress and egress to and from the other Parcels to publicly dedicated rights-of-way contiguous to and serving the other Parcels and the Residential Parcel, and (iii) similar uses for which any such driveways, walkways, access ways, curb cuts, and entrance magazines from time to time existing on the Residential Parcel are (or may be) intended by Residential Owner (the "Residential Access Easement"). Residential Owner agrees and acknowledges that it shall use its good faith, reasonable efforts and due diligence to keep the Residential Ingress/Egress Area free from obstructions at all times, and to the extent a condition exists within the Residential Ingress/Egress Area that prevents normal use of the Residential Access Easement, Residential Owner shall promptly take reasonable and necessary actions to remedy such situation.

(c) The Bank Access Easement. Bank Owner does hereby grant for the benefit of other Owners and appurtenant to the other Parcels, for the use and benefit of other Owners, and Parcel Parties a perpetual and non-exclusive access easement on, over, under, through and across any driveways, walkways, access ways, curb cuts, entrance magazines and parking areas (for access purposes only and not for parking of vehicles) within that portion of the Bank Parcel, as described in Exhibit "D-1" attached hereto and made a part hereof (collectively, the "Bank Ingress/Egress Area") for the purpose of: (i) adequate and unobstructed pedestrian and

vehicular traffic as appropriate, (ii) pedestrian and vehicular access and ingress and egress to and from the other Parcels to publically dedicated rights-of-way contiguous to and serving the other Parcels and the Bank Parcel, and (iii) similar uses for which any such driveways, walkways, access ways, curb cuts, and entrance magazines from time to time existing on the Bank Parcel are (or may be) intended by the Bank Owner (the "Bank Access Easement"). Bank Owner agrees and acknowledges that it shall use its good faith, reasonable efforts and due diligence to keep the Bank Ingress/Egress Area free from obstructions at all times, and to the extent a condition exists within the Bank Ingress/Egress Area that prevents normal use of the Bank Access Easement, Bank Owner shall promptly take reasonable and necessary actions to remedy such situation.

(d) Reciprocal Maintenance Easements. Bank Owner, Office Owner and Residential Owner hereby each grant to the other, over each of the Bank Parcel, the Residential Parcel and the Office Parcel, as applicable, a non-exclusive reciprocal easement appurtenant to and for the benefit of the Bank Parcel, the Office Parcel and the Residential Parcel, to the extent reasonably necessary to perform ordinary maintenance and repair of their respective Parcels and improvements thereon, or their respective obligations under this Agreement; provided such Owner (i) uses good faith, best efforts and due diligence to ensure that any such activities do not block vehicular or pedestrian traffic on or to the other Owner's Parcel or block or interfere with any of the easements established in or pursuant to this Agreement, (ii) provide reasonable advance written notice of the proposed maintenance to the other Owners, the intended use of the other Owner's parcel or improvements, and the timing thereof, (iii) comply will all applicable Legal Requirements in the performance of such maintenance, and (iv) indemnify and hold harmless the other Owner(s)for any and all loss, cost, damage, expense, claim, charge or other liability to the other Owner(s) or its tenants proximately caused by the maintaining Owner's use of the foregoing easement, use and occupancy of the other Owner's Parcel, or the maintenance or repair performed.

5. Reciprocal Easements. Bank Owner, Office Owner and Residential Owner hereby each grant to the other, over each of the Bank Parcel, Residential Parcel and the Office Parcel, as applicable, the following reciprocal easements appurtenant to and for the benefit of and appurtenant to the Bank Parcel, Office Parcel and the Residential Parcel, all for use by Bank Owner, Office Owner and Residential Owner, as applicable, and the Parcel Parties (all of the following being collectively referred to as the "Reciprocal Easements"):

(a) Reciprocal Utility Easement. A non-exclusive reciprocal utility easement (the "Reciprocal Utility Easement") on, over, under, through and across each of the Bank Parcel, Residential Parcel and the Office Parcel where there is not or will not be a building footprint (whether built or planned) on such area (which Bank Owner, Office Owner and Residential Owner agree shall be evolving in nature and may be amended and relocated and other portions of Parcels may be affected by, all on the terms and conditions set forth in this Declaration or subsequently mutually agreed upon or designated), for the purpose of installation, use, operation, maintenance, repair, replacement, relocation, and removal of utility facilities, lines, conduit, pipes and equipment and other utility facilities which are appropriate and necessary to service and otherwise benefit each of the Bank Parcel, Residential Parcel and the Office Parcel (collectively, "Utility Facilities"). All such Utility Facilities shall be installed and maintained below the ground level or surface of such easements except for ground mounted electrical

transformers, water or gas meters and such other facilities as are reasonably required to be above ground by the utility providing such service (including temporary service required during the construction, maintenance, repair, replacement, alteration or expansion of any buildings or improvements located at the Parcels). The installation, operation, maintenance, repair and replacement of such Utility Facilities shall not unreasonably interfere with the use, maintenance and normal business operations at any of the Parcels, and the location of any above ground Utility Facilities shall not materially adversely affect or detract from the aesthetics of the improvements on or proposed for the Parcels. Prior to the installation of any Utility Facilities in any easement area, the Owner undertaking such work shall provide plans and specifications of such work to each Owner whose Parcel is affected by the installation of such Utility Facilities for such Owner's review and approval, which approval shall not be unreasonably withheld, conditioned or delayed. Any such plans and specifications shall include detailed descriptions of the work being performed, location sketches showing the location of the easement area and the location of the subject Utility Facilities in the subject easement area and shall otherwise be in format reasonably expected to be approved by the governmental authority having jurisdiction over the Bank Parcel, the Office Parcel and/or Residential Parcel (as applicable) for issuance of a building permit. The reviewing Owner shall have a period of ten (10) consecutive business days to review the submitted plans and specifications and either (i) provide written approval of same or (ii) provide written objections, specifying why the reviewing Owner cannot approve the subject plans and specifications, and to the extent practicable, any and all suggested revisions that would, upon completion of such revisions, cause the plans and specifications to be approved by the reviewing Owner. The Owner of the Parcel to be benefitted by any such easement shall (i) bear all costs necessary for the installation, operation, maintenance, repair and replacement of such Utility Facilities, (ii) repair to the condition immediately preceding the time of the damage, any damage to the subject Parcel resulting from such use and (iii) provide as-built plans for all such Utility Facilities to the Owner of the other Parcel upon which such utility lines and facilities are located within thirty (30) days after the date of completion of construction of same. Notwithstanding any provision of this Declaration to the contrary, no Owner shall take any action that would interrupt, diminish or in any way adversely affect utility services to the other Parcels by damaging, or otherwise adversely affecting any Utility Facilities. Any such interruption of services shall be immediately remedied by the Owner causing same and failure to promptly remedy such event shall be a Non-Monetary Default as provided in this Agreement, provided that the thirty (30) day notice and opportunity to cure period shall be reduced to a period of forty-eight (48) hours within which to commence any and all necessary repairs, and a period of not more than five (5) business days within which to complete such repairs.

(b) Reciprocal Drainage Easement. A non-exclusive easement on, over, through and across the Bank Office Ingress/Egress Area, the Office Ingress/Egress Area and the Residential Ingress/Egress Area for the purposes of (i) permitting storm water run-off over and across each of the Bank Office Ingress/Egress Area, the Office Ingress/Egress Area and the Residential Ingress/Egress Area from the Bank Parcel, the Office Parcel and or the Residential Parcel, as applicable to **[WHERE IS IT RUNNING OFF TO?]**, as applicable (the drainage system benefitting each Parcel shall be referred to herein as the respective Parcel's "Drainage System") including without limitation, the right to install, use, operate, maintain, repair, replace, relocate and remove all infiltration trenches, exfiltration pipes, conduits, catch basins, sloughs, injection wells, and similar components of the respective Drainage Systems, or any components thereof (the "Reciprocal Drainage Easement"). If the Bank Parcel Drainage System or the Office

Parcel Drainage System currently affects any portion of the Residential Parcel other than the Residential Ingress/Egress Area, the Bank Owner or the Office Owner, as applicable, shall relocate all components of such system not located within the Residential Ingress/Egress Area and replace such components within the Residential Ingress/Egress Area at such Owner's sole cost and expenses and within a reasonable period time after the date requested by Residential Owner to complete such relocation so as not to unreasonably interfere with the construction of improvements on the Residential Parcel. Each Owner shall work in good faith to determine which party shall complete the required work for such drainage equipment and, if it is determined that it is more practical for Residential Owner to do such work as part of its construction, then the Owners shall agree upon the cost thereof, whereupon Residential Owner shall undertake the subject work as part of construction. Bank Owner or Office Owner, as applicable, shall reimburse Residential Owner for the agreed upon costs of such work within ten (10) business days of receipt of an invoice and reasonable backup for such costs.

(c) Relocation of Reciprocal Drainage Easement and Reciprocal Utility Easement. Each Owner, at such Owner's sole cost and expense, may elect to relocate any portion of the Drainage System and/or Utility Facilities located on such Owner's Parcel to any other location on such Owner's Parcel or, with the prior written consent of other Owners (which consent may be withheld in such Owner's reasonable discretion), to any other location within other Owner's Parcel, provided that (a) such new location shall not unreasonably interfere with the construction, use or maintenance of the affected Owner's Parcel, specifically including (without limitation) the location or intended location of improvements on the affected portion of the subject Parcel; and (b) the new location complies with all Legal Requirements. Notwithstanding the above, any portion of an Owner's Drainage System located on the other Owner's Parcel can only be relocated to either the Owner's own Parcel or within that portion of the Bank Ingress/Egress Area, the Office Ingress/Egress Area and/or the Residential Ingress/Egress Area located on the such Owner's Parcel.

(d) Reciprocal Encroachment Easements. A non-exclusive reciprocal encroachment easement (the "Reciprocal Encroachment Easement") for any existing building overhangs, other overhangs, any existing or future building footers, foundations, and similar underground structures, and projections or parts of existing improvements, light poles, parking monuments and/or parking lines that now encroach upon any of the Parcels from the other Parcels, but only if and to the extent that any such building or other overhangs, building footers and foundations, and projections and parts of existing or future improvements and other items specified above do not unreasonably, materially and adversely affect construction, use and maintenance of the Parcel which is subject to the encroachment.

(e) Reciprocal Support Easement. A non-exclusive perpetual reciprocal easement of support (the "Reciprocal Support Easement") such that each Owner shall maintain its respective Parcel in such a manner as to provide lateral support of the ground along the contiguous borders of the Parcel(s) in order to provide reasonable support to the ground on the opposite side of such border. To that end, each Owner agrees that it shall not permanently excavate, grade or otherwise modify the ground along such contiguous border in a manner that would materially and adversely affect the ground on the opposite side of such border and not provide reasonable support for such ground and any improvements thereon. Any damage sustained by a Owner due to the other Owner excavating, grading or otherwise modifying the

ground support on its Parcel so as to breach the covenants of this Section shall be a Non-Monetary Default under this Agreement, provided that the thirty (30) day notice and opportunity to cure period shall be reduced to a period of forty-eight (48) hours to commence any necessary repairs and a period of ten (10) business days within which to complete curative actions.

6. Reservations for Future Utility or Access Easements; Covenant Against Obstruction.

(a) Reservations for Future Utility Easements. It is the express intention of this Declaration to reserve to each Owner the right to (i) grant easements to utility companies providing utilities necessary for the benefit and enjoyment of each of the Parcels and (ii) make and/or grant road right-of-way and curb-cut dedications and/or easements to the appropriate governmental authority, so as to benefit their respective Parcels and otherwise comply with applicable governmental requirements. Each of Bank Owner, Office Owner and Residential Owner shall use their respective good faith, commercially reasonable efforts and reasonable diligence to cooperate and enter into any necessary utility, roadway or right-of-way and curb cut easements and/or dedications that are required by a governmental authority having jurisdiction or are otherwise necessary to benefit any of the Parcels in the future. Prior to the installation of any improvements, Utility Facilities or other installations in any easement area that would materially and adversely affect the other Parcel, the Owner initiating such installations shall provide plans and specifications of such work to the other Owners for such Owners review and approval, such approval not to be unreasonably withheld, delayed or conditioned.

(b) Covenant Against Obstruction. Each of Bank Owner, Office Owner and Residential Owner agrees and covenants that it shall not construct any improvement or modify any existing improvement once constructed, or otherwise use its Parcel in any manner which would obstruct or otherwise materially and adversely interfere with any of the easements granted in this Agreement, or which may be granted or dedicated in the future pursuant to the terms of this Agreement. In the event of any such interference or obstruction of any of the easements, such interference or obstruction shall be a Non-Monetary Default and the affected Owner shall be entitled to exercise the remedies provided for in Section 12 below.

7. Parking Controls. Office Owner (as to the Parking Garage) and Bank Owner (as to the parking lot located on the Bank Parcel) shall use reasonable parking control systems to provide access to their respective parking facilities, such as access cards, bar code scanners and similar devices used to track and control access. Office Owner and Bank Owner shall each promulgate reasonable rules and regulations for use of their respective parking areas which shall be provided to the other Owners for distribution to their respective Owner Parties. To the extent that any Owner Party uses a parking facility in violation of this Declaration or any of the rules and regulations promulgated by an Owner and/or Bank Owner, such Owner Party shall be subject to having its car towed from such parking facility.

8. Maintenance of Certain Shared Facilities.

(a) Ingress/Egress Areas. Each of Bank Owner, Office Owner and Residential Owner shall maintain the Bank Ingress/Egress Area, Office Ingress/Egress Area, and the Residential Ingress/Egress Area, and any Drainage Systems, located on their respective Parcels at their respective sole cost and expense (subject to reimbursement, if any, as set forth

below), and otherwise in compliance with all Legal Requirements and all applicable land use, building, zoning, life safety and environmental laws applicable to such property, and shall not move, relocate or block the subject Ingress/Egress Area, as applicable (except if required to do so under any applicable Legal Requirements or in the case of emergencies or temporarily during repair, maintenance and reconstruction or as otherwise provided herein).

(b) Timing for Payment of Maintenance Costs. Each of Bank Owner, Office Owner and Residential Owner agree that Maintenance Costs and Parking Garage Costs, to the extent applicable, shall be paid pursuant to the then the procedure for sharing of Maintenance Costs and Parking Garage Costs, to the extent applicable, as provided for in Section 9(c) and 9 (d) below shall apply.

(c) Bank, Owner, Office Owner and Residential Owner's Pro Rata Share. Commencing on the Effective Date, and thereafter, each Owner shall reimburse (a "Reimbursing Party") the Office Owner (the "Maintaining Party") for the Reimbursing Party's Pro Rata Share of any Maintenance Costs incurred by the Maintaining Party. The Pro Rata Share of Maintenance Costs may be collected in either of the following manners, or any combination thereof, at the Maintaining Party's election:

(i) prior to the beginning of each calendar year during the term of this Agreement, advise Reimbursing Party in writing of Maintaining Party's reasonable estimate of the Maintenance Costs for such calendar year (each, a "Budget"), in which event (A) Reimbursing Party shall pay to Maintaining Party, on the first (1st) day of each calendar month, one-twelfth ($1/12^{th}$) of the estimated Pro Rata Share of the Maintenance Costs, and (B) within ninety (90) days after the close of each calendar year, Maintaining Party shall deliver to Reimbursing Party an itemized statement prepared by Maintaining Party's property management company or chief operating officer showing in reasonable detail the (1) actual or allocated Maintenance Costs for the previous year; (2) Reimbursing Party's Pro Rata Share of such amounts; (3) the amount paid by Reimbursing Party during the prior year towards Maintenance Costs; and (4) either the amount Reimbursing Party owes to Maintaining Party, or the amount of the refund Maintaining Party owes to Reimbursing Party on account of any underpayment or overpayment by Reimbursing Party. Any such amount due from Reimbursing Party to Maintaining Party shall be paid within thirty (30) days after receipt of the most recent statement. Any such refund due from Maintaining Party to Reimbursing Party shall be credited against each upcoming payment of the estimated of Pro Rata Share of the Maintenance Costs until the amount of the overpayment has been reduced to zero ($0.00) or, at Maintaining Party's election, refunded to Reimbursing Party within ten (10) days.

(ii) From time to time during each calendar year, Maintaining Party shall provide Reimbursing Party with a monthly or quarterly statement of the Maintenance Costs incurred (and allocated, if applicable) by Maintaining Party in the immediately preceding calendar month or quarter, together with reasonable supporting information and documentation relating to said statement. Reimbursing Party shall pay its Pro Rata Share of the Maintenance Costs described in such statement within thirty (30) days after receipt of the monthly or quarterly statement.

(iii) A Reimbursing Party shall have the right, upon reasonable advance notice and from time to time, to review a Maintaining Party's books and records relating to the Maintenance Costs at the Reimbursing Party's cost and expense.

(d) Parking Garage Costs. Commencing on the Effective Date and thereafter for so long as the Parking Garage exists Residential Owner shall reimburse Office Owner for Residential Owner's Pro Rata Share of any Parking Garage Costs incurred by Office Owner. The Pro Rata Share of Parking Garage Costs may be collected in either of the following manners, or any combination thereof, at the Office's Owner's election:

(i) prior to the beginning of each calendar year during the term of this Agreement, advise Residential Owner in writing of Office Owner 's reasonable estimate of the Parking Garage Costs for such calendar year (each, a "Parking Garage Budget"), in which event (A) Residential Owner shall pay to Office Owner, on the first (1st) day of each calendar month, one-twelfth ($1/12^{th}$) of the estimated Pro Rata Share of the Parking Garage Costs, and (B) within ninety (90) days after the close of each calendar year, Office Owner shall deliver to Residential Owner an itemized statement prepared by Office Owner's property management company or chief operating officer showing in reasonable detail the (1) actual or allocated Parking Garage Costs for the previous year; (2) Residential Owner's Pro Rata Share of such amounts; (3) the amount paid by Residential Owner during the prior year towards Parking Garage Costs; and (4) either the amount Residential Owner owes to Office Owner, or the amount of the refund Office Owner owes to Residential Owner on account of any underpayment or overpayment by Residential Owner. Any such amount due from Residential Owner to Office Owner shall be paid within thirty (30) days after receipt of the most recent statement. Any such refund due from Office Owner to Residential Owner shall be credited against each upcoming payment of the estimated of Pro Rata Share of the Parking Garage Costs until the amount of the overpayment has been reduced to zero ($0.00) or, at Office Owner's election, refunded to Residential Owner within ten (10) days.

(ii) From time to time during each calendar year, Office Owner shall provide Residential Owner with a monthly or quarterly statement of the Parking Garage Costs incurred (and allocated, if applicable) by Office Party in the immediately preceding calendar month or quarter, together with reasonable supporting information and documentation relating to said statement. Residential Owner shall pay its Pro Rata Share of the Parking Garage Costs described in such statement within thirty (30) days after receipt of the monthly or quarterly statement.

(iii) Residential Owner shall have the right, upon reasonable advance notice and from time to time, to review a Office Owner's books and records relating to the Parking Garage Costs at the Residential Owner cost and expense.

(e) Drainage System and Utility Facilities. Each Owner shall be responsible, at its sole cost and expense, without contribution from the other Owners, to maintain those portions and components of the Drainage System and Utilities Facilities which exclusively serve or benefit its Parcel and improvements thereon, regardless of where the same are located, in good repair, free from defects and in a manner that does not adversely affect other portions or components of the Drainage System or Utility Facilities. To the extent that any portions and components of the Drainage System and/or Utilities Facilities benefit or serve all the Parcels,

then each Owner shall be responsible, at its sole cost and expense (subject to reimbursement as a Maintenance Cost pursuant to Article 8 above), to maintain those portions and components of the Drainage System and Utilities Facilities located on such Owner's Parcel in good repair, free from defects and in a manner that does not adversely affect other portions or components of the Drainage System or Utility Facilities. Any Owner's failure to maintain those portions and components of the Drainage System or Utility Facilities as required by this Section shall be a Non-Monetary Default and the affected Owner shall be entitled to exercise the remedies provided for in Section 12 below.

(f) Each Parcel. Each of Bank Owner, Office Owner and Residential Owner, at their individual respective cost and expense, shall maintain their respective Parcels in a clean and sightly condition, with reasonable landscaping and otherwise in compliance with all applicable building, zoning, land use and life saftey laws imposed by governmental authorities having jurisdiciton over the Parcels and all other Legal Requirements.

9. Insurance and Indemnity.

(a) Insurance Requirements.

(i) Commercial General Liability Insurance. Each Owner shall, commencing on the Effective Date of this Agreement, carry commercial general liability insurance against claims for bodily injury, death or property damage occurring upon, in or about the easement areas, with limits of Three Million Dollars ($3,000,000) per occurrence and Five Million Dollars ($5,000,000) in the aggregate, which may be arranged through a combination of primary and excess policies. Such insurance shall be primary and non-contributory, shall be written on an occurrence form (*i.e.*, not a claims-made form). Each liability policy shall (i) be obtained from insurers of recognized responsibility, rated at least Class "A" – with a financial class of VIII by the A. M. Best Company, Inc. or an equivalent rating by another national rating organization, authorized to do business in the State of Florida; (ii) provide that the insurers will endeavor to provide at least thirty (30) days' prior written notice to the other Owners named as additional insureds on such policy prior to canceling such policies; and (iii) name as additional insureds the other Owners as may be actually known to the insuring Owner. At least ten (10) business days before utilizing the easements granted herein, each Owner shall deliver to all of the other Owners to this Declaration of which the insuring Owner has actual knowledge a copy of each and every insurance policy required hereunder, or certificates thereof, with evidence of the payment of the premiums therefor. At least ten (10) days prior to expiration of any such policy or policies, each Owner shall deliver to the other Owners evidence of the renewal or replacement thereof, which evidence may include certification by the insuring Owner that such insurance will be in place as of the expiration date, including the names of the possible insurers. Endorsements to such commercial general liabity insurance policies naming each Owner as an additional insured shall be delivered to the other Owners each time such policy is renewed. The Owners agree to review the amount of commercial liability coverage carried by both parties on the fifth (5th) anniversary of the Effective Date and on the aniversary date of the Effective Date every five (5) years thereafter to determine whether the type and amount of such commercial liability coverage is reasonable and appropriate given the types and amounts of coverages then carried on other comparably developed properties in the general geographic area and to jointly increase such coverages as reasonably necessary to be consistent with that carried on such other comparable properties.

(ii) Builder's Risk Insurance; General Contractor's Commercial General Liability Insurance. At all times where Residential Owner is using either of the Construction Easements, Residential Owner shall obtain and maintain such policies of builder's risk insurance which are reasonably required by any construction lender providing financing for the construction of the Residential Building. Residential Owner shall, to the extent permitted under such policies of builder's risk insurance, cause Bank Owner and Office Owner to be named as an additional insured thereunder. Further, any commercial general liability insurance policies maintained by the general contractor for the Residential Building under which Residential Owner is named as an additional insured shall also name Bank Owner and Office Owner as an additional insured. An endorsement to such policy of builder's risk insurance, naming Bank Owner Office Owner as an additional insured shall be provide to Bank Owner and Office Owner prior to the commencement of any use of the Construction Easements.

(b) Reciprocal Indemnity. To the extent not covered by insurance, each Owner (for the purposes of this Section 9(b) an "Indemnitor") hereby covenants and agrees to protect, defend, indemnify and hold harmless each Owner to this Agreement, and such entity's respective officers, directors, shareholders, managers, members, agents, representatives, employees, successors and assigns (for the purposes of this Section 9(b) all of the foregoing being the "Indemnified Parties"), and each will defend and hold the Indemnified Parties harmless (except for loss or damage resulting from the grossly negligent or willful acts or omissions of an Indemnified Party, its tenants, subtenants, licensees, invitees, agents, contractors or employees) from and against any and all liability, claim, damage, cost or expense (including reasonable attorneys' fees and costs) in connection with any loss of life, personal injury and/or damage to property arising from or out of any occurrence in or upon such Indemnifying Party's Parcel, or proximately caused by any negligent act or omission by such Indemnitor, its tenants, subtenants, licensees, invitees, agents, contractors or employees, successors or assigns.

10. Construction Liens. In the event any construction lien is filed against (i) any Parcel as a result of services performed or materials furnished to an Owner which is not the owner or a lessee of the Parcel encumbered by the construction lien (that is the construction lien is caused by a Owner that does not own the affected Parcel) or (ii) a Parcel where any of the easements granted under this Declaration are located, which construction lien is a result of services performed or materials furnished to the Owner which is the owner or lessee of the Parcel affected by the construction lien, then the Owner against whom such construction lien is claimed shall cause such construction lien to be discharged of record by payment, bonding or otherwise within ten (10) days after the later of: (i) the recording of such claim of lien or (ii) the receipt of notice of the recording of such claim of lien by the party against whom it is claimed, and further agrees to indemnify, defend, and hold harmless all of the other Owners to this Declaration against any loss, cost, damage, expense, claim, charge or liability (including reasonable attorneys' fees and costs) on account of such construction lien.

11. Default; Remedies. If any Owner (a "Defaulting Party") shall default in the performance of any of its obligations under this Declaration and such default shall continue for a period of ten (10) days in the case of a failure or refusal to pay any sum or amount of money as and when required hereunder (a "Monetary Default") and thirty (30) days in the case of a non-monetary default (provided, however, if such default is of the nature that it cannot reasonably be cured within such thirty (30) day period after the exercise of commercially reasonable efforts,

then if the Defaulting Party fails to commence such cure within such thirty (30) day period or thereafter fails to complete such cure within an additional sixty (60) days following such thirty (30) day period) (a "Non-Monetary Default") after receipt of written notice of either a Monetary Default or a Non-Monetary Default, from any Owner who is not then in default (the "Non-Defaulting Party(s)"), then any Non-Defaulting Party(s) shall have the following remedies:

(a) Monetary Default. In the event of a Monetary Default, after providing written notice of such default and payment not being made within the ten (10) day period provided for in this Section 11 for the cure of a Monetary Default, then the Non-Defaulting Party shall be entitled to file a claim of lien against the Defaulting Party's Parcel for any amounts due as a result of the Monetary Default and thereafter, to foreclose such lien pursuant to applicable Florida law and collect attorneys' fees and costs for such enforcement and foreclosure. Any claim of lien filed pursuant to this Section 11(a) shall contain, at a minimum, the following information: (1) an itemized statement of all amounts due and payable, (2) a description sufficient to identify the Parcel affected by the lien, (3) the name of the owner of the Property, and (4) the name and address of the Owner filing the claim of lien. The Owners agree that any such claim of lien shall automatically be subordinate to any lien of an institutional mortgagee that holds a mortgage on the affected Parcel.

(b) Non-Monetary Default. In the event of a Non-Monetary Default, and after the expiration of the thirty (30) day period provided for in this Section 11(b) for the cure of a Non-Monetary Default, then any Non-Defaulting Party shall be entitled to obtain injunctive relief, either specifically enforcing the performance of such obligation or enjoining any action that gave rise to the Non-Monetary Default. The Owners each acknowledge (i) the inadequacy of legal and other equitable remedies besides specific performance or injunctive relief and (ii) the irreparable harm which would be caused by any such breach.

12. Casualty to or Condemnation of Existing Improvements. Subject to the prior rights of any mortgagees on any of the Parcels, in the event of (i) a casualty to any improvements on any of the Parcels or (ii) condemnation by a governmental authority having jurisdiction over such Parcels which casualty or condemnation renders such improvement untenantable and/or would require the razing of such improvement and the construction of a new replacement improvement, each Owner agrees that it shall use its best efforts to tear down the untenantable improvement incapable of repair or restoration and, if reconstruction is not commenced within a reasonable time, pave over such affected portions of the subject Parcel so as to maintain such Parcel in a safe, debris and dust free condition, all in accordance with all Legal Requirements. Further, each Owner shall promptly take any and all actions as commercially reasonable and necessary to ensure that any portion of a Parcel which is encumbered by any of the easements established by or pursuant to this Declaration shall promptly be restored to a reasonable condition so that the affected easement will be usable for its intended purpose by the other Owners to this Agreement.

13. Third Party Beneficiary Rights. This Declaration is not intended to create, nor shall it be in any way interpreted or construed to create, any third party beneficiary rights in any person not a party hereto unless otherwise expressly provided herein.

14. Covenant to Run with the Land; Binding Effect; Term. It is the express intention of all of the Owners that this Declaration be a covenant to run with the land, encumbering each

of the Parcel and it shall bind and inure to the benefit of all of the Owners, their respective successors, assigns, and/or grantees as their interests may appear, for a term of ninety-nine (99) years from the Effective Date and shall thereafter automatically extend for successive periods of ten (10) years each, unless terminated, in writing, by all of the Owners. Any Owner transferring all or any part of its interest in any Parcel shall give notice to all other Owners of such transfer and shall include therein at least the name and address of the successor in interest to the transferring Owner. Any transfer of fee simple title to any Parcel or portion thereof shall be subject to and at all times bound by the terms, conditions and covenants of this Agreement.

15. Bankruptcy. Each of the Owners acknowledges that the covenants and agreements set forth in this Declaration are "executed" rather than "executory." The Owners agree that in the event of a bankruptcy filing by any Owner (a "Bankruptcy Filing") , it is the express intention of the Parties not to have this Agreement, or any individual provision hereof treated as an executory Declaration which would be potentially subject to a rejection in a Bankruptcy Filing. Rather, the Owners agree and acknowledge that as this Declaration is a covenant running with the land, as provided for in Section 14 above, the covenants and agreements hereunder are ongoing and executed obligations, and this Declaration shall not be affected by any Bankruptcy Filing.

16. Development of Residential Parcel. The Owners acknowledge and agree that as of the Effective Date, the Owners anticipate that the Residential Parcel will be used and developed for residential purposes. The Owners also acknowledge and agree that this Declaration does not create or establish any obligation on the Residential Parcel Owner to develop the Residential Parcel for residential purposes or to develop the Residential Parcel at all if any such development is, in Residential Owner's sole discretion, not feasible for any reason or not the highest and best use of the Residential Parcel at any point in time. In the event that the Residential Owner shall determine to develop the Residential Parcel for non-residential purposes, all provisions applicable to the Residential Owner, Residential Building and Residential Parcel shall continue to apply to such development, parcel and owner, and this Declaration shall be amended to reflect the nature of the actual improvements on such Parcel.

17. Office Parcel Use Restriction. In the event that the existing lease by and between Office Owner, as landlord, and Zenith Education Group, Inc., as tenant, expires or is otherwise terminated, and said tenant vacates the building located on the Office Parcel, then Office Owner acknowledges and agrees that the first (1st) floor of the building located on the Office Parcel shall be renovated so that such first floor will be used for an office building lobby and retail use, as applicable, as required by Legal Requirements.

18. Miscellaneous.

(a) Representation and Warranties. Each Owner represents and warrants to the other (i) that the execution and delivery of this Declaration has been fully authorized by all necessary corporate or limited liability company action, as applicable, (ii) that the persons signing this Declaration have the requisite authority to do so and the authority and power to bind the entity on whose behalf they have signed, and (iii) that to the best of their knowledge and belief, this document is valid, binding and legally enforceable in accordance with its terms.

(b) Notices. Any notices required to be given pursuant to this Declaration shall be deemed received upon delivery and/or delivery and refusal, if hand delivered, or if sent by (i) United States Registered Mail, (ii) United States Certified Mail, or (iii) a nationally recognized courier service (such as FedEx or UPS), to the Parties at the following addresses or at such other addresses as any of the Parties may hereafter specify in the same manner:

If to Office Owner: 225 North Federal Highway, LLC
c/o Brenner Real Estate Group
1500 West Cypress Creek Road
Suite 409
Ft. Lauderdale, FL 33309
Attention: Scott Brenner, Manager

with copies to: Stearns Weaver Miller Weissler
Alhadeff & Sitterson, P.A.
New River Centre, Suite 2100
200 East Las Olas Boulevard
Fort Lauderdale, FL 33301
Attention: George A. Pincus, Esq.

If to Residential Owner: [_____]

with a copy to: [_____]

If to Bank Owner: 225 North Federal Highway, LLC
c/o Brenner Real Estate Group
1500 West Cypress Creek Road
Suite 409
Ft. Lauderdale, FL 33309
Attention: Scott Brenner, Manager

with a copy to: [_____]

(c) Waiver; Subsequent Modification. Except as expressly provided herein, no waiver by any party or any failure or refusal of the other party to comply with its obligations under this Declaration shall be deemed a waiver of any other or subsequent failure or refusal to so comply by such other party. No waiver or modification of the terms hereof shall be valid unless in writing and signed by the party to be charged, and then only to the extent therein set forth.

(d) Recording. An original of this Agreement, and all subsequent modifications or amendments hereto, shall be recorded in the Public Records of Broward County, Florida.

(e) Mortgage Loans. This Declaration shall not restrict any Owner's right to grant a mortgage or security interest in, or to assign or convey its interest in, its Parcel or any rights, benefits, privileges, easements or entitlements thereto, as security for a loan secured by its respective Parcel and such appurtenances. However, any and all such mortgage liens encumbering any Parcel shall be subordinate and subject in all respects to this Agreement, except with respect to any liens filed pursuant to Section 12(b) or any other provisions hereof, and any lender foreclosing on any such mortgage lien, or acquiring title by reason of a deed-in-lieu of foreclosure, shall acquire title to the subject Parcel subject to all of the terms, conditions and covenants of this Agreement, with the exception of any claims of lien as aforesaid.

(f) Estoppel Certificate. At any time, and from time to time within thirty (30) days after notice or request by (i) the holder of any actual or proposed mortgage affecting or intending to affect any Parcel, (ii) a proposed assignee of a ground lease of any Parcel or (iii) a proposed subtenant subject to any ground lease of any Parcel, the other Owners to this Declaration shall execute and deliver to such mortgagee, assignee or subtenant, a statement certifying (i) that this Declaration is unmodified and in full force and effect or if there have been modifications, that it is in full force and effect as modified in the manner specified in the statement, (ii) that to the knowledge of such Owner there exists no default under this Declaration or circumstances which with the passage of time would result in the existence of such a default, other than specified in such statement and (iii) that all payments then currently required to be paid by the owner or ground lessee of such Parcel have been paid, or if not, what amount is due and payable.

(g) Severability. If any term or provision of this Declaration or application thereof to any person or circumstance shall, to any extent, be found by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term or provision of this Declaration shall be valid and enforceable to the fullest extent permitted by law.

(h) Requests for Approval. Where this Declaration provides for the approval of any Owner or consent to any matter (or if any matter is required to be satisfactory or acceptable to any Owner, or any words or phrases of similar meaning) (collectively, a "Consent"), unless otherwise expressly indicated: (i) in order to be effective and binding upon the granting Owner, such Consent must be in writing, and must provide to the Owner from whom a request is made a written notice requesting such Consent which contains the following in bold: **YOUR FAILURE TO RESPOND TO THIS LETTER BY THAT DATE THAT IS [insert applicable time period set forth in this Agreement] AFTER THE DATE OF THIS LETTER SHALL BE DEEMED YOUR CONFIRMATION OF THE REQUESTS SET FORTH IN THIS LETTER**; (ii) such Consent may not be unreasonably withheld, delayed or conditioned; and (iii) shall be deemed to be given (or such matter shall be deemed to be acceptable or satisfactory) if not so given or rejected within ten (10) days (unless this Declaration expressly provides for a different time period) of the subject Owner's receipt of such request.

(i) Not a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any portion of any Parcel to the general public or for the general public or for any public purpose whatsoever, it being the intention of the parties that this Declaration shall be strictly limited to and for the purposes herein expressed.

(j) Breach Shall Not Permit Termination. It is expressly agreed that no breach of this Declaration shall entitle any Owner hereto to cancel, rescind or otherwise terminate this Agreement, but such limitation shall not affect in any manner any other rights or remedies which any Owner may have hereunder by reason of any breach of this Agreement. Any breach of this Declaration shall not defeat or render invalid the lien of any mortgage made in good faith for value, but this Declaration shall be binding upon and be effective against any Owner whose title is acquired by foreclosure, deed-in-lieu of foreclosure or otherwise.

(k) Governing Law; Venue. This Declaration shall be governed by and construed in accordance with the internal laws of the State of Florida. Venue for any action arising out of, or in any way connected with this Agreement, shall be Miami-Dade County, Florida.

(l) Cumulative Remedies. Unless otherwise expressly provided herein, the remedies of the parties provided for herein shall be cumulative and concurrent, and may be pursued singularly, successively or together, at the sole discretion of the party for whose benefit such remedy is provided, and may be exercised as often as occasion therefor shall arise. Each Owner waives all rights to consequential damages, punitive damages, or special damages of any kind against the other.

(m) Attorneys' Fees, Costs and Expenses. In any action or proceeding arising out of this Agreement, the prevailing party in such action or proceeding, shall be entitled to recover from the other party thereto, the reasonable attorneys' fees and costs actually incurred, including one or more appeals, court costs, filing fees, publication costs and other expenses, as well as any fees, costs or expenses incurred and bankruptcy or insolvency provisions.

(n) Parties Not Partners. Nothing contained in this Agreement, or any of the documents or actions to be executed or undertaken pursuant hereto, shall operate to make any Owner to this Agreement, or any of its successors, administrators or assigns, a partner(s) with, agent(s) for, or principal(s) of any of the other Parties to this Declaration and vice-versa.

(o) Joint Preparation. The preparation of this Declaration has been a joint effort of the parties and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

(p) Captions. The title of this Declaration and the headings of the various articles, sections and subsections have been inserted only for the purpose of convenience, are not part of this Declaration and shall not be deemed in any manner to modify, explain, expand or restrict any of the provisions of this Agreement.

(q) Entire Agreement. Except as otherwise expressly provided herein, this Declaration constitutes the entire Declaration of the Owners hereto with respect to the matters addressed herein and supersedes all prior or contemporaneous contracts, promises, representations, warranties and statements, whether written or oral, with respect to such matters.

[SIGNATURES TO FOLLOW]

IN WITNESS WHEREOF, the Parties have caused this Declaration to be signed by its authorized signatory as of the day and year first set forth above.

WITNESSES:

By:_____
Printed Name:_____

By:_____
Printed Name:_____

OFFICE OWNER:

[_____],

By: _____
Name: _____
Title: _____
Date: _____

STATE OF _____)
) ss.
COUNTY OF_____)

The foregoing instrument was acknowledged before me this ___ day of _____, 2015, by _____, as _____, {_____], a Delaware limited liability company, on behalf of the limited liability company. He ☐ / She ☐ is (check one) is ☐ personally known to me or ☐ has produced _____ as identification.

_____
Signature of Notary Public
(SEAL)

_____
Printed Name of Notary Public

State of _____
My Commission No.:
My Commission Expires:

WITNESSES:

By:_____
Printed Name:_____

By:_____
Printed Name:_____

RESIDENTIAL OWNER:

[_____],

By: _____
Name: _____
Title: _____
Date: _____

STATE OF _____)
) ss.
COUNTY OF_____)

The foregoing instrument was acknowledged before me this ___ day of _____, 2015, by _____, as _____, {_____], a Delaware limited liability company, on behalf of the limited liability company. He ☐ / She ☐ is (check one) is ☐ personally known to me or ☐ has produced _____ as identification. identification.

_____
Signature of Notary Public
(SEAL)

_____
Printed Name of Notary Public

State of _____
My Commission No.:

My Commission Expires:

WITNESSES:

By:_____
Printed Name:_____

By:_____
Printed Name:_____

BANK OWNER:

[_____],

By: _____
Name: _____
Title: _____
Date: _____

STATE OF _____)
) ss.
COUNTY OF_____)

The foregoing instrument was acknowledged before me this ___ day of _____, 2015, by _____, as _____, {_____], a Delaware limited liability company, on behalf of the limited liability company. He ☐ / She ☐ is (check one) is ☐ personally known to me or ☐ has produced _____ as identification. identification.

_____
Signature of Notary Public
(SEAL)

_____
Printed Name of Notary Public

State of _____
My Commission No.:

My Commission Expires:

EXHIBIT A

(THE ENTIRE PROPERTY)

EXHIBIT B

(OFFICE PARCEL)

EXHIBIT B-1

(OFFICE INGRESS/EGRESS AREA)

EXHIBIT C

(RESIDENTIAL PARCEL)

EXHIBITC-1

(RESIDENTIAL INGRESS/EGRESS AREA)

EXHIBIT D

(BANK PARCEL)

EXHIBIT D-1

(BANK INGRESS/EGRESS AREA)

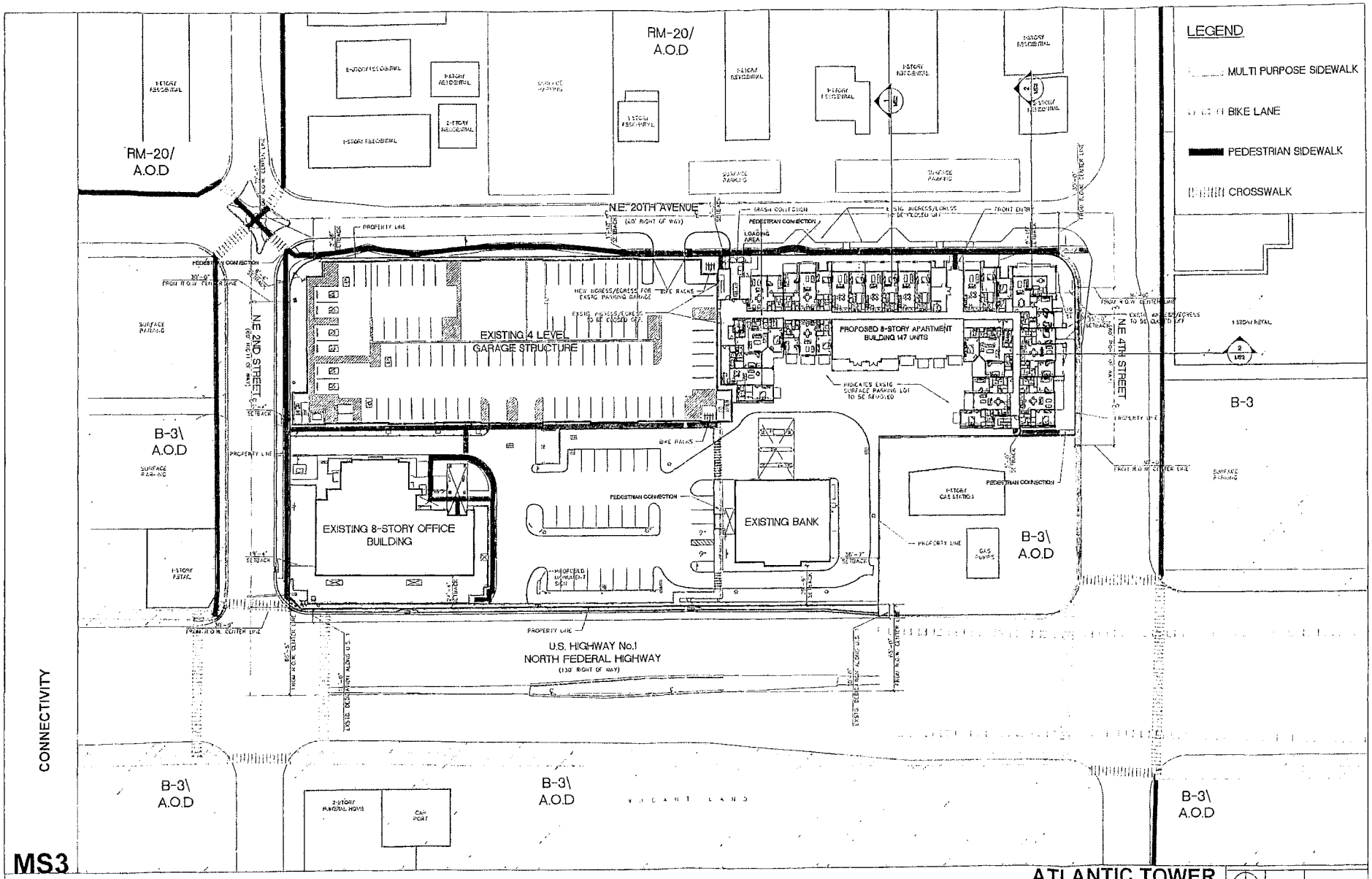
EXHIBIT E

(THE CURRENT SITE PLAN)

EXHIBIT F

(PARKING GARAGE)

Exhibit C

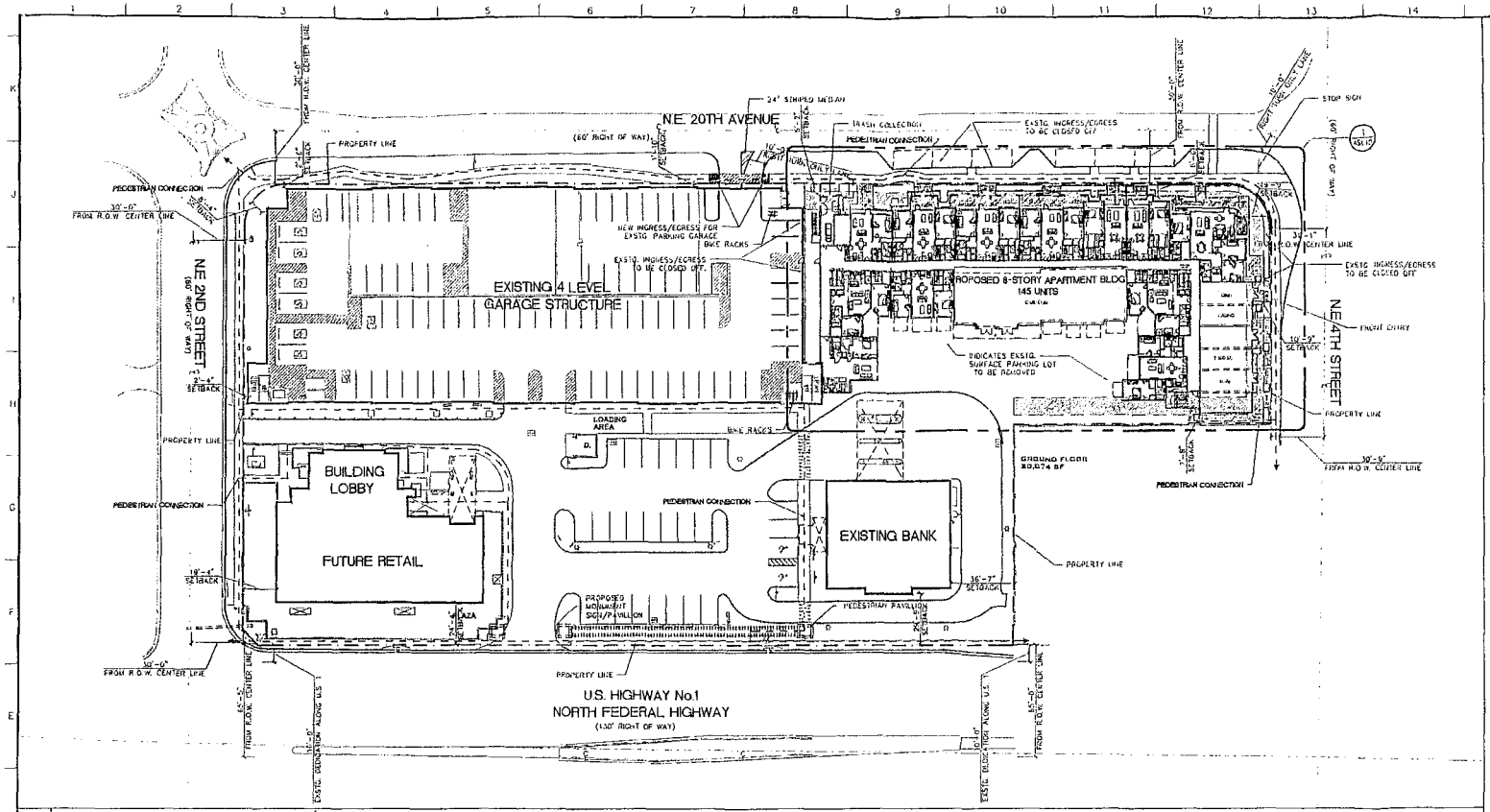


ATLANTIC TOWER

POMPANO BEACH, FLORIDA

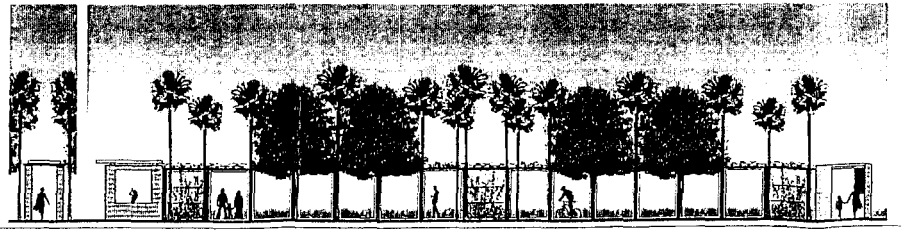
RLC Architects

06.30.15



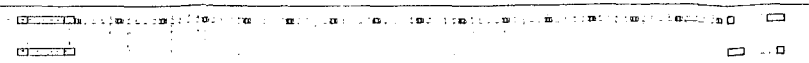
3 OVERALL MASTER PLAN / SITE PLAN

AS1.00 SCALE: 1"=30'-0"



2 TRELLIS RENDERED ELEVATIONS

AS1.00 SCALE: N.T.S.



1 TRELLIS PLAN

AS1.00 SCALE: N.T.S.

Juan Caycedo

Digitally signed by Juan Caycedo
DN: cn=Juan Caycedo, o=RLC Architects PA, ou, email=juan@rlcarchitects.com, c=US
Date: 2015.10.13 14:00:29 -04'00'

TRUE NORTH

D.R.C.
RE-SUBMITTAL
10/13/2015

RLC Architects

JUAN E. CAYCEDO

ATLANTIC TOWER
POMPANO BEACH, FLORIDA

BREMNER REALTY

REVISIONS

Drawing Title
OVERALL MASTER PLAN / SITE PLAN

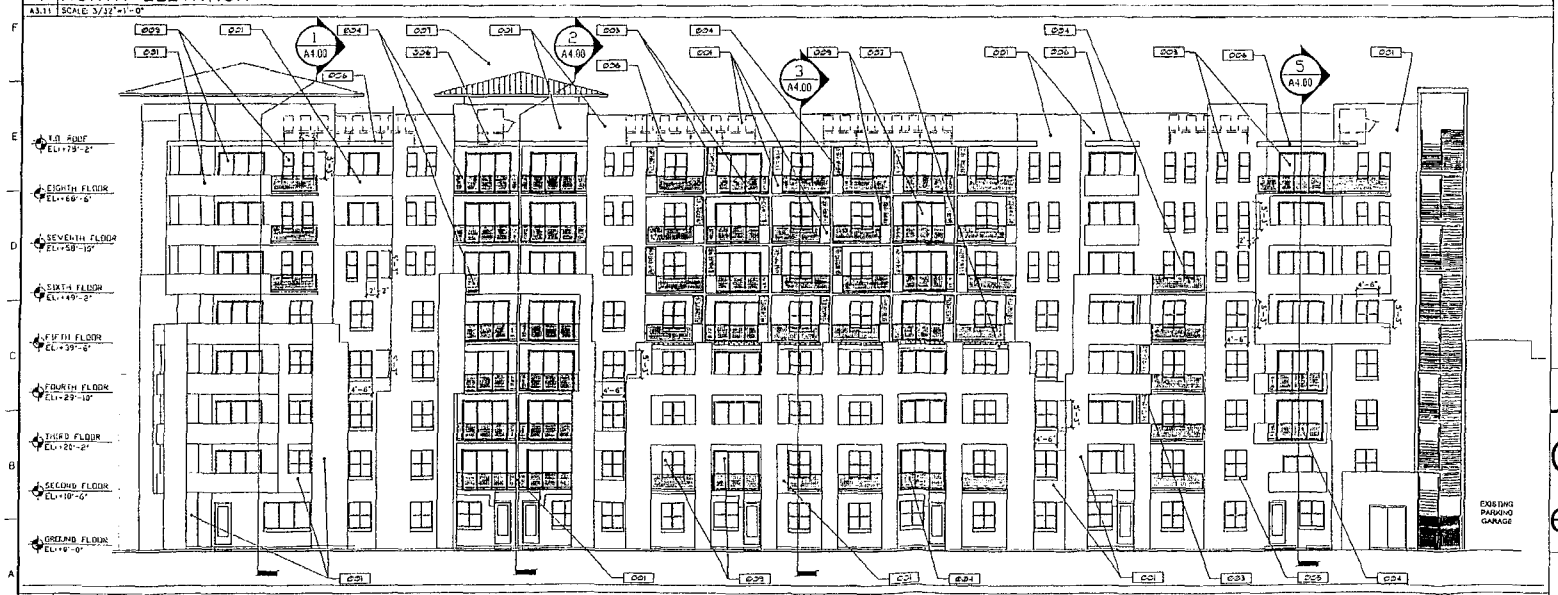
Scale AS NOTED
Project No. 1407B.00
Date

Principal: JCC
Project Director:
Project Manager: JCC
Drafted by: SMH
Checked by:

Sheet No.
AS1.00

1 NORTH ELEVATION

A3.11 SCALE: 3/32"=1'-0"



2 WEST ELEVATION

A3.11 SCALE: 3/32"=1'-0"

LEGEND

- 001 PAINTED STUCCO A
- 002 PRESTRESSED WOOD TRELLIS
- 003 ALUMINUM LOUVERED PANEL
- 004 METAL RAILING
- 005 STUCCO WINDOW SILL
- 006 EYEBROW
- 007 STANDING SEAM METAL ROOF
- 008 STUCCO SCORE JOINT
- 009 BLUE TINTED GLASS
- 010 BLUE TINTED STOREFRONT

SUPERWHITE (SW 6995)

NEBULOUS WHITE (SW 7063)

ON THE ROCKS (SW 7671)

AQUA SPHERE (SW 7613)

GOLD CREST (SW 6670)

AMALFI (SW 6783)

Juan Caycedo

Digitally signed by Juan Caycedo
DN: cn=Juan Caycedo, o=RLC Architects PA, ou, email=juan@rlcarchitects.com, c=US
Date: 2015.10.13 13:56:59 -04'00'

TRUE NORTH

D.R.C.
RE-SUBMITTAL
10/13/2015

RLC Architects

JUAN C. CAYCEDO

ATLANTIC TOWER
POMPANO BEACH, FLORIDA

BRENNER REALTY

REVISIONS

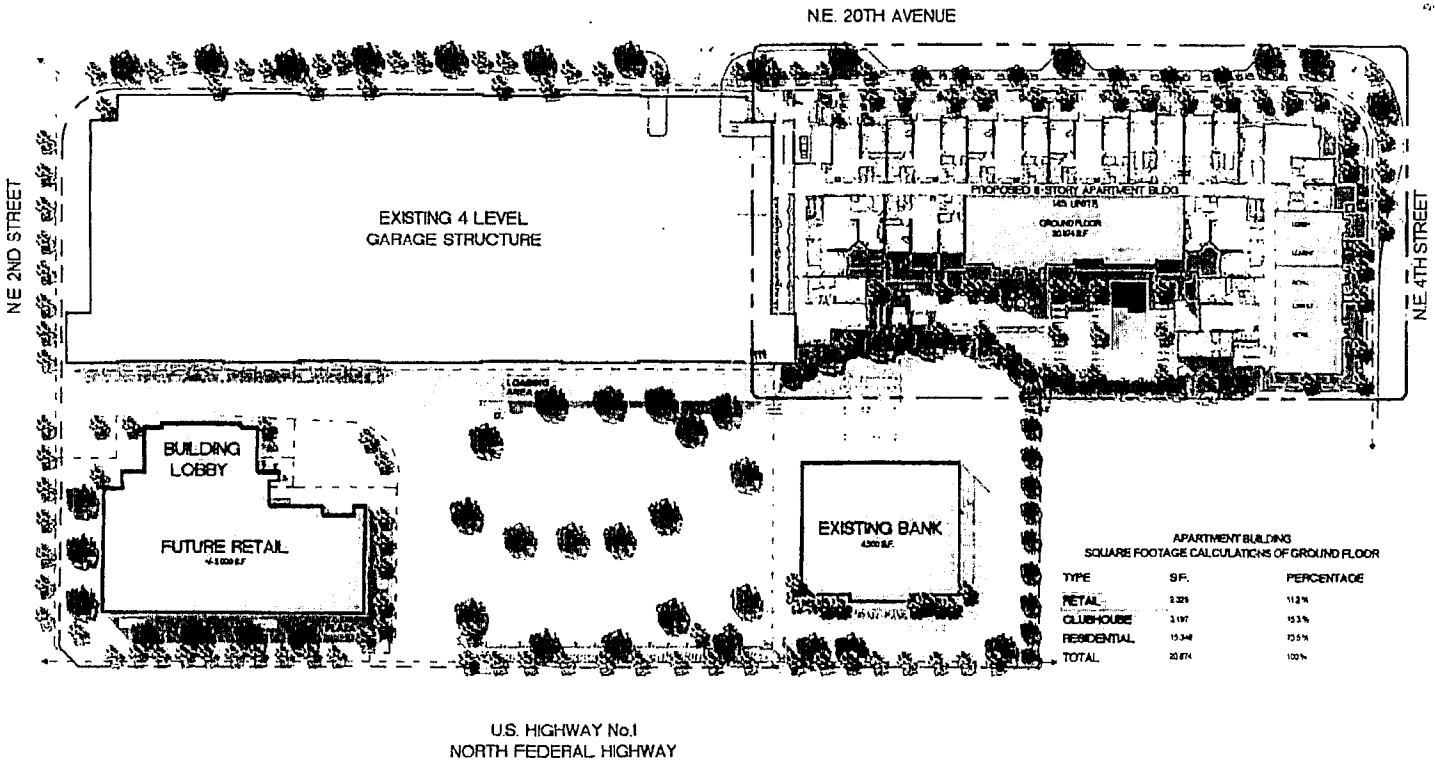
Drawing Title
EXTERIOR ELEVATIONS

Scale AS NOTED
Project No. 14078.00
Date

Principal: JCC
Project Director:
Project Manager: JCC
Drafted by: SMM
Checked by:

Sheet No.
A3.11

10.15.15



APARTMENT BUILDING
SQUARE FOOTAGE CALCULATIONS OF GROUND FLOOR

TYPE	S.F.	PERCENTAGE
RETAIL	[illegible]	[illegible]
CLUBHOUSE	[illegible]	[illegible]
RESIDENTIAL	[illegible]	[illegible]
TOTAL	[illegible]	[illegible]

RLC

ATLANTIC TOWER

POMPANO BEACH FLORIDA

ATLANTIC TOWER
QUALITATIVE ELEMENTS

4.1.1 Relationship of buildings to site and surroundings. The project should be designed in consideration of a three dimensional context that includes surrounding private properties and public realm. The effects of the proposed building scales and form on adjacent streets, neighboring properties, and the overall development of the area in which the project is located shall be assessed to ensure any possible negative impacts are minimized.

The proposed development is to include 147 dwelling units on the 1st through 8th floors along with leasing office, commercial and clubhouse uses on the 1st floor ("Proposed Development"). The residential units will be comprised of one, two and three bedroom units.

The Proposed Development provides for addition residential uses on the same scale as the existing office building on the Property so as to be compatible with the existing character of development in the area. The existing office building on the Property is 8 stories, the same as the proposed building.

The Property has an underlying land use plan designation of Commercial which allows for free standing residential and mixed-use residential development. The zoning on the Property is B-3 zoning with the AOD overlay. Properties to the north, south and east have the same land use and zoning designations as this Property. The land use plan and zoning pattern in the area provides for residential and commercial uses in an urban, pedestrian friendly environment. The proposed residential use will provide patrons to support existing and proposed commercial uses in an area of the City that provides a grid pattern of streets which helps to create a pedestrian friendly environment. Proposed Development and existing and proposed commercial uses are mutually beneficial and compatible in this urban environment.

The Proposed Development provides for a residential use adjacent to properties to the west that are also designated for residential use. The City established a land use buffer to the west of the Property to protect the Old Pompano Neighborhood from the redevelopment potential in the AOD and ensure compatibility. The maximum height allowed on the Property and all others in the AOD is 105 feet. Although the allowable height in the block to the west of the Property is 105 feet because it is in the AOD, the allowable density is stepped down moving from Federal Highway west to the existing single family portions of Old Pompano which will be a limiting factor in the actual height of future buildings. The 2.5 blocks west of the Property are designated Medium Residential with a density of 10-16 dwelling units per acre and the blocks further west are designated Low Residential with a maximum density of 1-5 dwelling units per acre in Old Pompano. This stepped down residential density provides for a transition from higher densities along Federal Highway to the lower densities in the Old Pompano

Neighborhood to ensure compatibly of future development with the existing neighborhoods.

The existing residential uses on the two blocks west of the Property are predominately duplex and multi-family units. The majority of those two blocks are also in the AOD which signifies that these areas are in need of redevelopment in order to promote the urban character that the City desires. The addition of new residential units will help to highlight the redevelopment potential in the area and stimulate redevelopment that the City desires.

4.1.2 Circulation and traffic flow. The project should promote pedestrian circulation by providing attractive, safe and comfortable paths of travel. Vehicular circulation should be efficient and limit impacts to pedestrian movement around and through the site. Vehicular circulation should not detract from the active uses occurring on-site or on adjacent sites.

The Proposed Development will create an integrated mixed-use development which is adjacent to or in close proximity to major traffic corridors. The Property is adjacent to Federal Highway and is one block from Atlantic Boulevard. The proposed site plan is designed to not encroach on the existing right of way. Access to these major traffic corridors will provide easy vehicular access from the mixed-use development to the regional roadway network. This location will also provide easy access to transit. Broward County transit routes run along both Federal Highway and Atlantic Boulevard. The proposed site plan is also designed with proper vehicular access to the adjacent roadway network. Pedestrian connections to the existing uses on the Property and to the adjacent sidewalks and transit routes will be provided.

The Proposed Development will provide for additional residential units in a compact urban form with access to transit and pedestrian connections to the parks, beaches and commercial uses in the area. Development of this Property will discourage urban sprawl by allowing redevelopment on a property in the eastern portion of the City where all public facilities currently exist. The Proposed Development will promote the use of mass transit by increasing residential density adjacent to or in close proximity to transit routes on Atlantic Boulevard and Federal Highway. Pedestrian paths on the Property provide for connections from the Property to the existing sidewalks on Federal Highway and the other adjacent roadways will provide easy access to these transit routes. The Proposed Development will promote the use of bicycles, transit and walking as means of transportation within the City which will reduce vehicular traffic, increase energy efficiency, reduce greenhouse gas emissions and increase the health and well-being of the residents.

There are existing sidewalks adjacent to the Property. The Applicant will maintain these sidewalks and also provide pedestrian connections between the Existing Development and Proposed Development on the Property to ensure easy access to the uses in the

surrounding area. Street trees will be provided as required to improve the pedestrian experience adjacent to the Property.

4.1.3 Building design. While architectural style should not be restricted, the project will be evaluated based upon the quality and execution of the design, as well as its relationship to surrounding buildings. The architectural elements chosen should be consistent across the entire development. Consistency will be determined based upon mass, bulk, proportion, fenestration, and rhythm of building elements, both reviewed together and as separate elements.

The Proposed Development is a quality design that creates a vibrant new development, and accommodates and encourages high levels of pedestrian circulation. The Proposed Development represents a compact, mixed-use, and pedestrian-oriented development that improves walkability, provides a critical mass of housing and creates the sense of a vibrant and active urban center.

The Proposed Development is located on a Property with existing development and is designed to be compatible with the existing development. The height of the Proposed Development is comparable with that of the existing office building to ensure that the mass, bulk and proportion of the existing and proposed buildings are consistent. The existing parking structure on the Property will be modified with finishes and architectural elements that tie it to the architectural design of the Proposed Development. The streetscape along NE 20th in front of the proposed building will be enhanced with landscape treatments that will be continued along the existing parking garage to the extent possible where sufficient area is available for landscape plantings.

The architectural design of the proposed building provides fenestration and a variety of building elements to create architectural rhythm and to break up the mass of the building. In this way, the building mass will reads as smaller building components from the street view.

4.1.4 Public realm. The project should enhance the quality of the public realm. Enhancement may be determined based upon the provision of open space, public amenities, landscaping or a building design with features which contribute to the viability and attractiveness of the public realm. The public realm space should be integrated with the building site plan in a way that not only fully incorporates surrounding pedestrian circulation at the ground level, but also allows visual interaction with the floors above the ground level.

The Proposed Development is designed to be integrated with and enhance the public realm. The Proposed development provides for a pedestrian-oriented development that improves walkability within the district, provides a critical mass of housing within walking

distance of the commercial core, and provides convenient access to transit routes and facilities.

The Proposed Development will utilize the existing driveways on the Property. Limiting the number of driveways enhances the pedestrian experience on the perimeter sidewalks by limiting potential conflicts between pedestrians and vehicles.

The AOD encourages the use of on-street parking on all streets except Atlantic Boulevard and Federal Highway. Although it is not required, the proposed site plan provides for on-street parking on both NE 20th Avenue and NE 4th Street. The provision of on-street parking provides public parking that will be available for existing and future commercial developments in the area and visitors of the Proposed Development. The on-street parking creates a pedestrian-friendly streetscape by providing a buffer between pedestrians and moving vehicles to improve the pedestrian experience.

The Proposed Development provides for direct access from residential units and commercial spaces to the adjacent sidewalks. Stoops are provided along the street façade and will be accessible from the adjacent sidewalk via a clear, direct path. The stoop platforms are partially covered overhead at the entrance door. Balconies are provided above the ground floor. Those units with direct access to the street or balconies provide for a street-facing building facade and natural surveillance of the public realm to ensure safety and activity along public streets and create the sense of a vibrant and active urban center.

Meeting Date: April 26, 2016 Agenda Item 14

REQUESTED COMMISSION ACTION: **QUASI-JUDICIAL**

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

SHORT TITLE

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, ALLOCATING A MAXIMUM OF THREE (3) FLEX UNITS FOR A PROPOSED MULTIFAMILY RESIDENTIAL PROJECT TO BE LOCATED ON THE SOUTHEAST CORNER OF EAST ATLANTIC BOULEVARD AND SE 7TH WAY; PROVIDING AN EFFECTIVE DATE.

Summary of Purpose and Why:

This Flex Unit allocation request is for a three (3) Flex units for a .15 acre (6,508 sq ft) property located at the southeast corner of East Atlantic Blvd and SE 7th Way (aka 100 SE 7th Way). The property has a Commercial (C) Land Use and Limited Business (B-1) Zoning and is owned by 9 Atlantic East, LLC. The purpose for the Flex unit allocation request is to allow the development of the three townhome units for the Atlantic East development. In 2004 the property received an allocation of five Reserve Units via Resolution 2004-104 and Major Site Plan approval. The time limit for those approvals has since lapsed. In addition to the flex unit allocation request, the applicant has applied for, and recently received, Major Site Plan approval (P&Z #15-12000051). The subject property is located in an area that was included in the 2013 Atlantic Blvd Corridor Study. Atlantic Boulevard is envisioned as a vibrant street, serving as the main street of the City and as a gateway to the heart of Pompano Beach and the Atlantic Ocean beaches. The corridor features a number of opportunities to evolve into a center of activity for the City, including additional housing opportunities. The Study identifies this property as "Residential Mixed-Use Frontage". The proposed application was unanimously recommended at the March 23, 2016 Planning and Zoning Board meeting, with no conditions of approval. A copy of the Draft minutes from the hearing is attached.

(1) Origin of request for this action: 9 Atlantic East, LLC
(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: None

DEPARTMENTAL COORDINATION	DATE	DEPARTMENTAL RECOMMENDATION	DEPARTMENTAL HEAD SIGNATURE
Dev. Services	03/14/2016	Approval	Memo #16-115
City Attorney	4-13-16		
X Planning and Zoning Board		Approval	Memo #16-018 (04/12/2016)
X City Manager			

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

City Attorney's Communication #2016-684
March 28, 2016

TO: Karen Friedman, AICP, Principal Planner

FROM: Mark E. Berman, City Attorney

RE: Resolution – Flex Unit Allocation for 100 SE 7th Way / 9 Atlantic East, LLC

As requested in your memorandum of March 25, 2016, Department of Development Services Memorandum No. 16-140, 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, ALLOCATING A MAXIMUM OF THREE (3) FLEX UNITS FOR A PROPOSED MULTIFAMILY RESIDENTIAL PROJECT TO BE LOCATED ON THE SOUTHEAST CORNER OF EAST ATLANTIC BOULEVARD AND SE 7TH WAY; 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/2016-684

Attachment

RESOLUTION NO. 2016 -____

CITY OF POMPANO BEACH
Broward County, Florida

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, ALLOCATING A MAXIMUM OF THREE (3) FLEX UNITS FOR A PROPOSED MULTIFAMILY RESIDENTIAL PROJECT TO BE LOCATED ON THE SOUTHEAST CORNER OF EAST ATLANTIC BOULEVARD AND SE 7TH WAY; PROVIDING AN EFFECTIVE DATE.

WHEREAS, 9 Atlantic East, LLC ("Applicant") requests an allocation of a maximum of three (3) flex units in order to construct a multifamily residential project on property known as Atlantic East, legally described in Exhibit "A"; and

WHEREAS, the City's Comprehensive Plan provides for the utilization of flexibility units ("Flex Units") to facilitate proposed mixed use developments in urban infill areas provided that the proposed developments are compatible with the community character; and

WHEREAS, the City's Comprehensive Plan further provides that the City shall use Flex Units to increase residential densities within flex receiving areas when consistent with the community character and adjacent land uses; and

WHEREAS, the applicant has submitted a compatibility plan demonstrating compatibility with adjacent properties; and

WHEREAS, the 2013 Atlantic Boulevard Corridor Study's Transformation Plan identified this property as "Residential Mixed-Use Frontage"; and

WHEREAS, pursuant to Section 154.61(C)(3) the Development Services Department has obtained a recommendation of approval from the Planning and Zoning Board on March 23, 2016; and

WHEREAS, the City is willing to transfer a maximum of three (3) Flex Units to Applicant pursuant to the terms of this Resolution; now, therefore,

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

SECTION 1. That the City Commission of the City of Pompano Beach finds that the requirements in Section 154.61(D) have been met and hereby allocates a maximum of three (3) Flex Units, all of which will come from the unified flex zone for the proposed multifamily residential project to be constructed on the property which is legally described in Exhibit "A."

SECTION 2. The number of flex units in the unified flex zone shall be reduced by how ever many units are necessary for the project, not to exceed three (3) Flex Units.

SECTION 3. The proposed project must be built in substantial conformity with the attached conceptual site plan, a copy of which is attached hereto and made a part hereof (Exhibit "B").

SECTION 4. Failure of the applicant to obtain apply for a Major Site Plan for the proposed building and related site features as shown in Exhibit "B" within twelve (12) months of the date of this resolution shall render the allocation of the flex units null and void.

SECTION 5. Failure of the applicant to obtain a principal building permit for the proposed building and related site features as shown in Exhibit "B" within twenty four (24) months of the date of this resolution shall render the allocation of the flex units null and void.

SECTION 6. This Resolution shall become effective upon passage.

PASSED AND ADOPTED this _____ day of _____, 2016.

_____
LAMAR FISHER, MAYOR

ATTEST:

_____
ASCELETA HAMMOND, CITY CLERK

:jrm
3/28/16
l:reso/2016-180

Exhibit A

LEGAL DESCRIPTION

A PORTION OF PARCEL "A", ATLANTIC EAST PLAT, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 174, PAGES 118 AND 119 OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA, MORE PARTICULARLY

DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID PARCEL "A"; THENCE NORTH 89° 44' 54" WEST, ALONG THE NORTH LINE OF SAID PARCEL "A", 84. 76 FEET;

THENCE SOUTH 00° 06' 37" EAST, 72. 16 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE NORTHEAST;

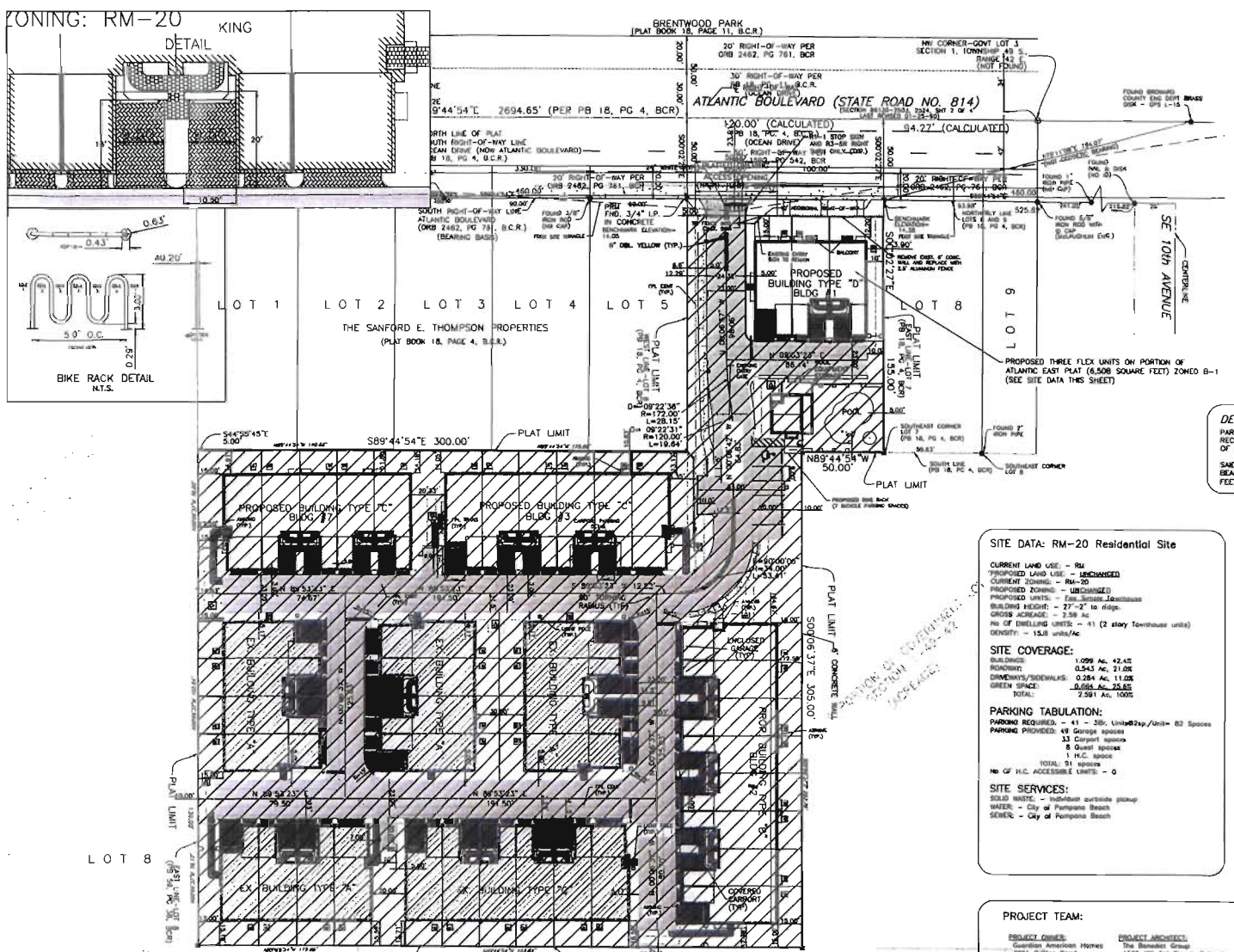
THENCE SOUTHEASTERLY, ALONG THE ARC OF SAID CURVE HAVING A RADIUS OF 5. 00 FEET, A CENTRAL ANGLE OF 90° 00' 00", AN ARC DISTANCE OF 7. 86 FEET TO THE POINT OF TANGENCY;

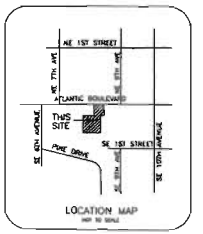
THENCE NORTH 89°53' 23" EAST, 79. 66 FEET TO THE EAST LINE OF SAID PARCEL "A";

THENCE NORTH 00° 02' 27" WEST, ALONG SAID EAST LINE, 76. 62 FEET TO THE POINT OF BEGINNING.

SAID LANDS LYING IN THE CITY OF POMPANO BEACH, BROWARD COUNTY, FLORIDA, CONTAINING 6,508 SQUARE FEET, MORE OR LESS.

BCHC&ED REF NO: 050120050





DESCRIPTION:

PARCEL "A", ATLANTIC EAST PLAT, ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 174, PAGE 118 OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA.

SAID LANDS SITUATED LYING AND BEING IN THE CITY OF POMPANO BEACH,BROWARD COUNTY, FLORIDA, CONTAINING 130,288 SQUARE FEET (2.991 ACRES), MORE OR LESS.

SITE DATA: RM-20 Residential Site

CURRENT LAND USE: - RM
PROPOSED LAND USE: - UNCHANGED
CURRENT ZONING: - RM-20
PROPOSED ZONING: - UNCHANGED
PROPOSED UNITS: - Fee Simple Townhouse
BUILDING HEIGHT: - 27'-2" to ridge.
GROSS ACREAGE: - 2.58 Ac
No OF DWELLING UNITS: - 41 (2 story Townhouse units)
DENSITY: - 15.8 units/ac

SITE COVERAGE:

BUILDINGS:	1.099 Ac. 42.4%
ROADWAY:	0.543 Ac. 21.0%
DRIVEWAYS/SIDEWALKS:	0.284 Ac. 11.0%
GREEN SPACE:	0.664 Ac. 25.6%
TOTAL:	2.591 Ac. 100%

PARKING TABULATION:

PARKING REQUIRED: - 41 - 3Br. Units@2sp./Unit= 82 Spaces
PARKING PROVIDED: 49 Garage spaces
33 Carport spaces
8 Guest spaces
1 H.C. space
TOTAL: 91 spaces
No OF H.C. ACCESSIBLE UNITS: - 0

SITE SERVICES:

SOLID WASTE: - Individual curbside pickup
WATER: - City of Pompano Beach
SEWER: - City of Pompano Beach

SITE DATA: B1 Commercial Site

CURRENT LAND USE: - C
PROPOSED LAND USE: - UNCHANGED
CURRENT ZONING: - B1
PROPOSED ZONING: - UNCHANGED
PROPOSED UNITS: - Fee Simple Townhouse
BUILDING HEIGHT: - 27'-2" to ridge.
GROSS ACREAGE: - 0.427 Ac
NET ACREAGE: - 0.40 Ac
No OF DWELLING UNITS: - 3 (2 story Townhouse units)
DENSITY: - 7.0 units/ac

SITE COVERAGE:

POOL/DECK:	0.053 Ac. 12.4%
BUILDINGS:	0.088 Ac. 20.6%
ROADWAY:	0.128 Ac. 30.0%
DRIVEWAYS/SIDEWALKS:	0.038 Ac. 8.9%
GREEN SPACE:	0.120 Ac. 28.1%
TOTAL:	0.427 Ac. 100%

PARKING TABULATION:

PARKING REQUIRED: - 3 - 3Br. Units@2sp./Unit= 6 Spaces
PARKING PROVIDED: 3 Garage spaces
3 Carport spaces
0 Guest spaces
0 H.C. space
TOTAL: 6 spaces
No OF H.C. ACCESSIBLE UNITS: - 0

SITE SERVICES:

SOLID WASTE: - Individual curbside pickup
WATER: - City of Pompano Beach
SEWER: - City of Pompano Beach

PROJECT TEAM:

PROJECT OWNER:	PROJECT ARCHITECT:	PROJECT ENGINEER:	PROJECT LANDSCAPE ARCHITECT:
Guardian American Homes 3091 Griffin Road Dania Beach, FL 33312 (954) 568-7828	The Benedict Group 1525 NW 3rd Street, Suite 1. Deerfield Beach, FL. 33442 (954) 570-9500	Shah, Drotos & Associates 3410 North Andrews Avenue Ext Pompano Beach, FL. 33064 (954) 943-9433	Toth Leventhal 4310 W. Broward Blvd. Plantation, FL. 33317 (954) 327-1950

NOTES:

1. ALL PARKING SPACES TO BE DOUBLE STRIPED PER CITY OF POMPANO BEACH STANDARDS.
2. ALL TRELLIS, FENCING AND WALLS WILL NOT EXCEED 6' IN HEIGHT.

REVISIONS

DATE	BY	DESCRIPTION
12-7-15	MJG	REVISED PER CITY DRC COMMENTS DATED 11/4/15
1-4-16	MJG	REVISED BUILDING #3 AND #7 LAYOUTS
1-25-16	MJG	REVISED PER DRC COMMENTS
2-18-16	MJG	REVISED BUILDING #3 AND #7 LAYOUTS
2-26-16	MJG	REVISED PER DRC COMMENTS
3-1-16	MJG	REVISED SITE PLAN WITH 30 DEG. SHARP TRIP AND LAYOUT

SDA SHAH DROTOS & ASSOCIATES
ENGINEERING
SURVEYING
PLANNING
Certificate of Authorization No. LB6456
3410 North Andrews Avenue Ext. Pompano Beach, FL. 33064
PH: 954-943-9433 • FAX: 954-783-4754

DRAWN BY: MSS
CHECKED BY: JFD
DESIGNED BY: JFD
APPROVED BY: SDA
SCALE: 1"=30'

RESIDENCES AT ATLANTIC EAST

POMPANO BEACH, BROWARD COUNTY, FLORIDA

SITE PLAN

FOR THE FIRM:

FOR THE FIRM,
BY:
James Drotos
JAMES D
P.E.
MARCH, 2

P&Z
PZ16-05000001
MAR 23 2016

Exhibit "B"

PLANNING AND ZONING BOARD/ LOCAL PLANNING AGENCY
MEMORANDUM #16-018

DATE: March 30, 2016

TO: City Commission

FROM: Planning and Zoning Board/ Local Planning Agency

SUBJECT: FLEX UNIT REQUEST
100 SE 7th Way
P & Z #16-05000001 9 Atlantic East, LLC / Flex Allocation request

---

At the meeting of the Planning and Zoning Board/ Local Planning Agency held on March 23rd, 2016, the Board considered the request by **9 ATLANTIC EAST, LLC** requesting 3 FLEX UNITS on the above referenced property that has a Commercial Land Use.

As it is consistent with Section 154.61(D)(3) of the Code and the goals, objectives, and policies of the Comprehensive Plan stated in Administrative Report 16-115, the Board unanimously recommends the approval of the flex allocation.

4-12-16

Fred Stacer
Chairman
Planning and Zoning Board/ Local Planning Agency

KEM
G:\Zoning 2009\Miscellaneous Zoning Cases\Flex Unit Request\2016\16-05000001 Atlantic East\PZB\P&Z Approval Memo 16-018.doc

MOTION was made by Jeff Torrey and seconded by Beth Anderson to approve the site plan subject to the nine (9) conditions of staff. All voted in favor of the above motion; therefore, the motion passed.

7. **9 ATLANTIC EAST, LLC / RESIDENCES AT ATLANTIC EAST - FLEX UNIT REQUEST**
Planning and Zoning #16-05000001

Consideration of the FLEX UNIT REQUEST submitted by **JAMES DROTOS** on behalf of **9 ATLANTIC EAST, LLC** to request three (3) Flex units to be allocated on a property that has a Commercial Land Use and Limited Business (B-1) Zoning. The .15 acre subject property is located at 100 SE 7th Way and is owned by 9 Atlantic East, LLC. The purpose for the flex unit allocation is to allow the development of the three townhome units for the Atlantic East Development. The property is more specifically described as follows:

> A PORTION OF PARCEL "A", ATLANTIC EAST PLAT, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 174, PAGES 118 AND 119 OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:
>
> BEGINNING AT THE NORTHEAST CORNER OF SAID PARCEL "A";
> THENCE NORTH 89°44'54" WEST, ALONG THE NORTH LINE OF SAID PARCEL "A", 84.76 FEET;
> THENCE SOUTH 00°06'37" EAST, 72.16 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE NORTHEAST;
> THENCE SOUTHEASTERLY, ALONG THE ARC OF SAID CURVE HAVING A RADIUS OF 5.00 FEET, A CENTRAL ANGLE OF 90°00'00", AN ARC DISTANCE OF 7.86 FEET TO THE POINT OF TANGENCY;
> THENCE NORTH 89°53'23" EAST, 79.66 FEET TO THE EAST LINE OF SAID PARCEL "A";
> THENCE NORTH 00°02'27" WEST, ALONG SAID EAST LINE, 76.62 FEET TO THE POINT OF BEGINNING.
>
> SAID LANDS LYING IN THE CITY OF POMPANO BEACH, BROWARD COUNTY, FLORIDA, CONTAINING 6,508 SQUARE FEET, MORE OR LESS.

AKA: 100 SE 7th Way
ZONED: Limited Business (B-1)
STAFF CONTACT: Karen Friedman (954) 545-7792

Karen Friedman introduced herself to the Board and stated that the Flex allocation request is for three (3) Flex units in conjunction with the next item on the agenda. The property is located at 100 SE 7th Way. In 2004, the property received an allocation of

five Reserve Units via Resolution 2004-104 (Attachment III) and Major Site Plan approval (Attachment IV). The time limit for these approvals has since lapsed.

The purpose for the Flex unit allocation request is to allow the development of the three townhome units for the Atlantic East development. The subject property is located in an area that was included in the 2013 Atlantic Blvd Corridor Study. The study identifies this property for residential mixed-use frontage and an excerpt from the corridor study is included in the backup.

The B-1 zoning would allow up to 46 units per acre and this property could have a maximum of 6 units; however, the Applicant is proposing three units. This application is exempt from the affordable housing requirement due to its size (.15 acre) and it is also located in the City's urban infill area. Pertinent goals, objectives and policies from the City's Comprehensive Plan are included in Staff's report.

Alternative Motion I is to recommend approval of this flex application because the Board finds that it is consistent with the Comprehensive Plan goals, objectives and policies as identified.

Alternative Motion II is to table the application for additional information as requested by the Board.

Alternative Motion III is to recommend denial.

The Chair asked if the Board had any questions of Staff and no one responded.

James Drotos (3400 N Andrews avenue Pompano Beach, FL) introduced himself to the Board. Mr. Drotos stated that the townhouses were built but the development stopped when the economy slowed. There is a new owner and they would like to finish the project and the site plan has not changed from when it was originally approved.

Tobi Aycock asked if they are requesting less flex units than they originally were approved for. The Applicant confirmed and stated that they are requesting three now instead of the five that were previously granted.

The Chairman asked if there were any questions from the audience and received no response.

MOTION was made by Trip Bechert and seconded by Jeff Torrey to recommend approval of the Flex Unit request. All voted in favor of the above motion; therefore, the motion passed.

8. <u>9 ATLANTIC EAST, LLC / RESIDENCES AT ATLANTIC EAST</u>
Planning and Zoning #15-12000051

Consideration of the MAJOR SITE PLAN submitted by **JAMES DROTOS** on behalf of **9 ATLANTIC EAST, LLC** in order to construct

DRAFT

pompano beach
Florida's Warmest Welcome

MEMORANDUM

Development Services

ADMINISTRATIVE MEMORANDUM NO. 16-115

DATE: March 14, 2016

TO: Planning and Zoning Board

VIA: Robin M. Bird, Development Services Director

FROM: Karen Friedman, Principal Planner KRF for RB

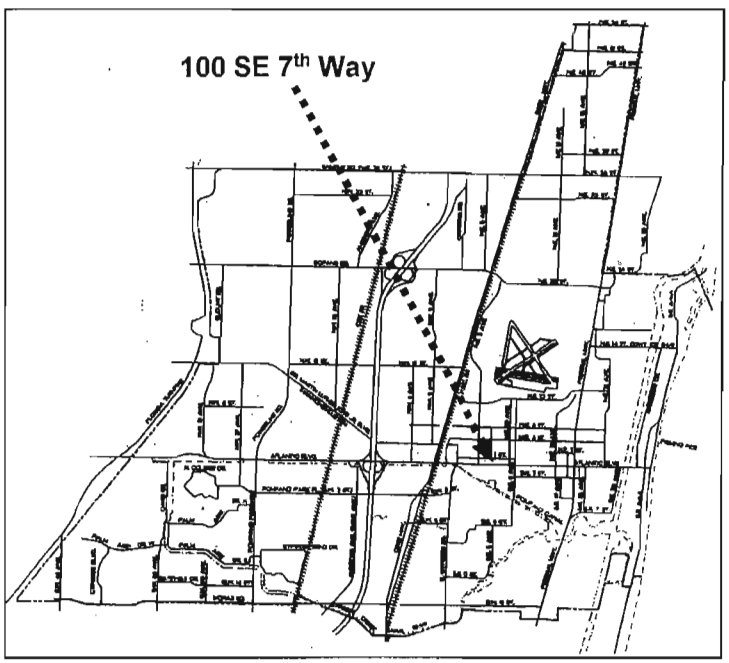
RE: 9 Atlantic East, LLC / Flex Allocation Request
March 23, 2016 meeting P&Z # 16-5000001

Request

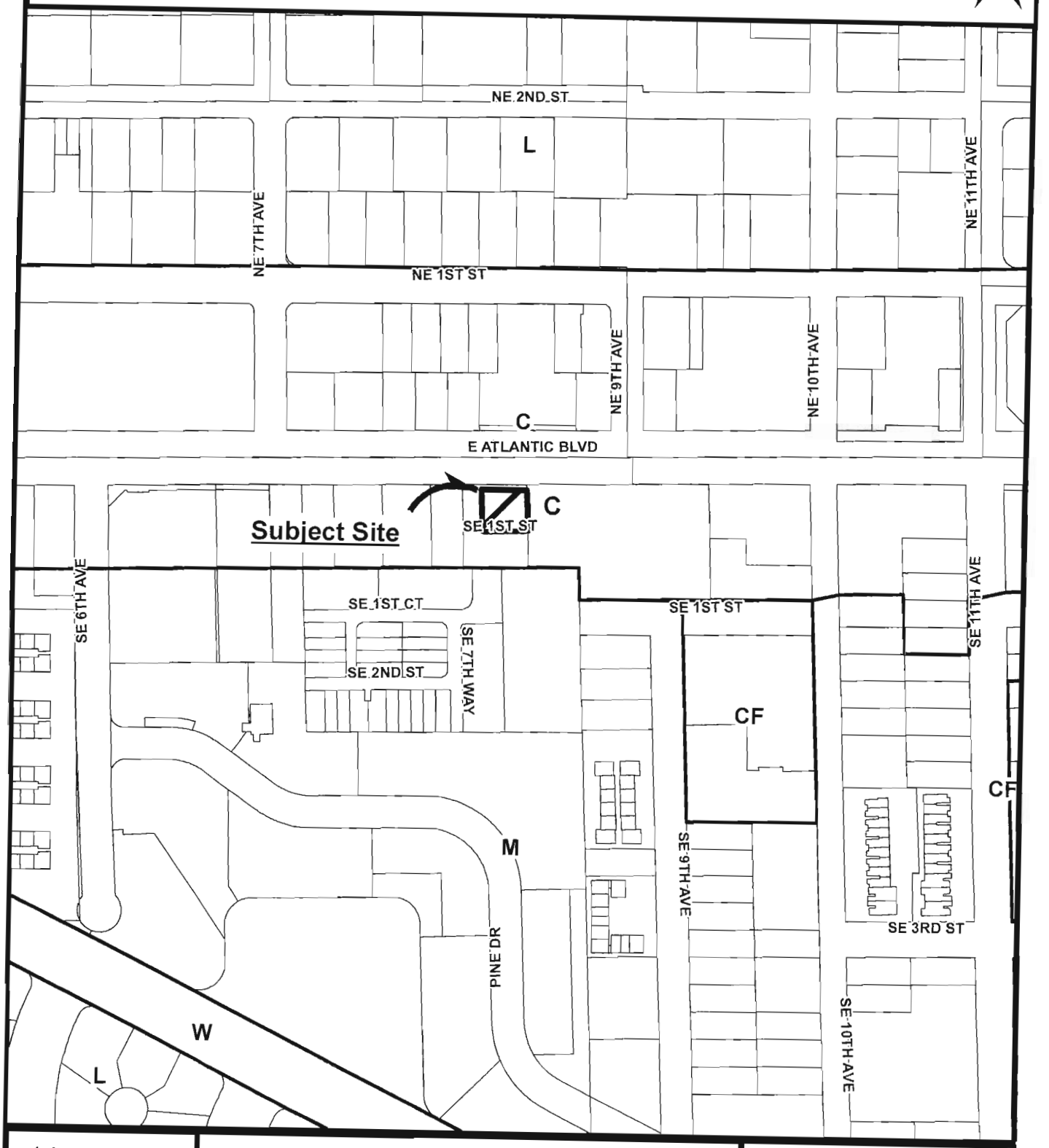
This Flex allocation request is for three (3) Flex units for a .15 acre (6,508 sq ft) property located at 100 SE 7th Way. The property has a Commercial (C) Land Use and Limited Business (B-1) Zoning. The site is owned by 9 Atlantic East, LLC. The purpose for the Flex unit allocation request is to allow the development of the three townhome units for the Atlantic East development. The applicant is concurrently seeking Major Site Plan approval (P&Z #15-12000051). The applicant has submitted a conceptual site plan showing the layout of the units on the subject property (Attachment I). The applicant has submitted a compatibility plan demonstrating the existing adjacent uses (Attachment II)

In 2004 the property received an allocation of five Reserve Units via Resolution 2004-104 (Attachment III) and Major Site Plan approval (Attachment IV). The time limit for those approvals has since lapsed.

The subject property is located in an area that was included in the 2013 Atlantic Blvd Corridor Study. Atlantic Boulevard is envisioned as a vibrant street, serving as the main street of the City and as a gateway to the heart of Pompano Beach and the Atlantic Ocean beaches. The corridor features a number of opportunities to evolve into a center of activity for the City, including additional housing opportunities. The Study identifies this property as "Residential Mixed-Use Frontage" (Attachment V).



CITY OF POMPANO BEACH
OFFICIAL LAND USE MAP



1 in = 250 ft

3/9/2016 macker

3

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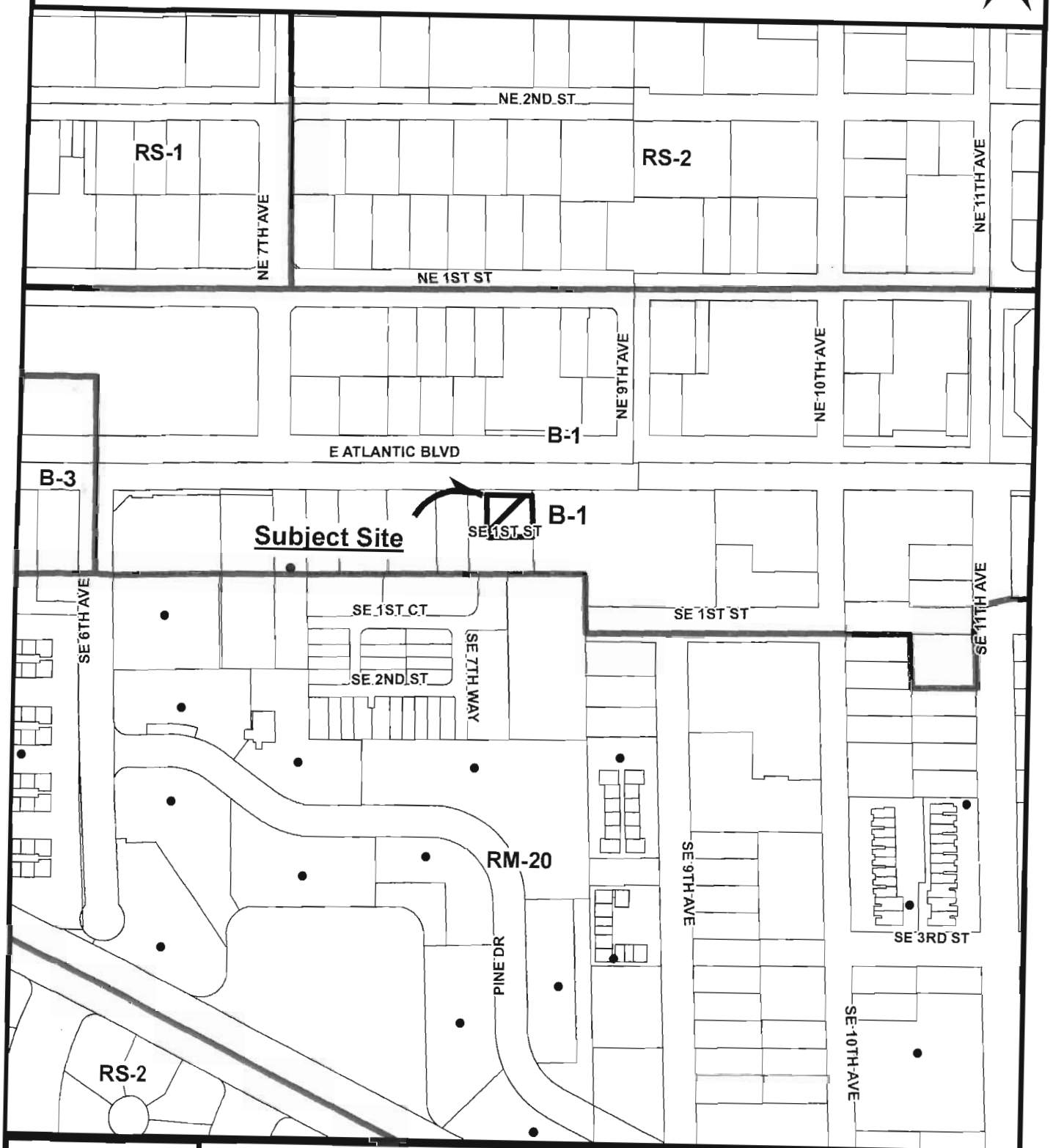
PREPARED BY:
DEPARTMENT OF
DEVELOPMENT SERVICES

CITY OF POMPANO BEACH
OFFICIAL ZONING MAP



1 in = 250 ft

3/9/2016 macker

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PREPARED BY:
DEPARTMENT OF
DEVELOPMENT SERVICES

CITY OF POMPANO BEACH
AERIAL MAP

1 in = 250 ft

3/9/2016 macker

5

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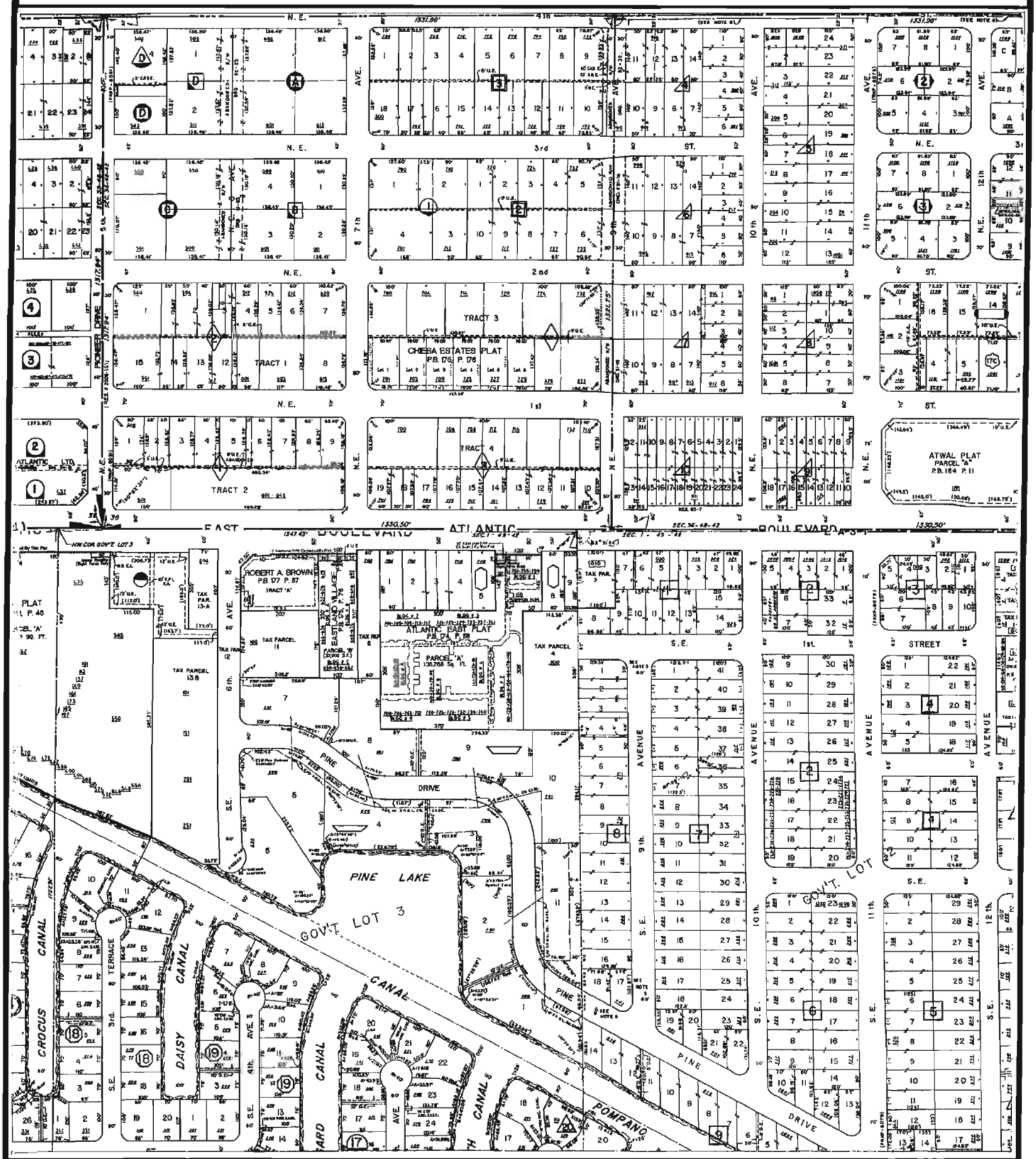
PREPARED BY:
DEPARTMENT OF
DEVELOPMENT SERVICES

EXCERPT FROM THE CITY OF POMPANO BEACH
PLAT MAP



SCALE: NTS

NORTH

REVIEW & SUMMARY

A. Development Services Department staff submits the following factual information which is relevant to this Flex Allocation request:

1. The property is located at 100 SE 7th Way and will be accessed from SE 7th Way.

2. The Zoning and uses of adjacent properties are:

Direction	Zoning	Use
North	B-1	Health Care Uses / Indoor Commercial Recreation
South	RM-20	Two-story multifamily / two-story townhomes
East	B-1	Retail shopping center
West	B-1	Personal Services / Retail

3. In 2004 the site, in conjunction with property located to the south, received Major Site Plan approval via PZ04-12000025 (PRA #04-2929). The 2004 Major Site Plan included three townhouses at the subject site, as currently proposed. In 2004 the site was approved for the allocation of five Reserve Units (Resolution 2004-104).

4. The applicant is concurrently requesting Major Site Plan approval via application P&Z #15-12000051.

5. The Land Use Designation is C (Commercial) and the zoning would remain B-1 (Limited Business).

6. The subject property is included in the Flex Receiving Area.

7. The B-1 zoning allows 46 units per acre. The maximum density on this lot is 6 units, however the applicant is proposing only three units.

8. The review criteria is Section 154.61(D) and states the following:
An application shall only be approved on a finding that there is competent substantial evidence in the record that all of the following standards are met:
   (1) Consistency with applicable goals, objectives and policies of the city's Comprehensive Plan and this chapter.
   (2) The use of the reserve and flexibility units will produce a reasonable development pattern. The criteria for reasonableness shall include compatibility of adjacent land uses and suitability of the parcel for various development patterns.
   (3) An agreement to provide affordable housing units per subsection (E) below, except that infill properties which are one-acre or less are exempt from this requirement.

9. This application is exempt from the requirement to provide affordable housing per 154.61(D)(3), due to its size (.15 acre) and location within urban infill area (east of I-95).

B. The following goals, objectives and policies of the City's Comprehensive Plan have been identified as pertinent to this flex application:

Goal

01.00.00 The attainment of a living environment which provides the maximum physical, economic and social well-being for the City and its residents through the thoughtful and planned use and control of the natural and man-made environments that discourages urban sprawl, is energy efficient and reduces greenhouse gas emissions.

Policies

01.04.01 The Planning Department shall support and promote the intermix of residential and commercial uses along major traffic corridors, where mass transit is available, through the allocation of flex and reserve units and approval of land use plan map amendments allowing for residential developments.

C. 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

Recommend approval of the Flex allocation. This approval is recommended since the use of the flexibility units will produce a reasonable development pattern. Furthermore, the request is consistent with the goals, and policies of the Comprehensive Plan specifically:

Goal
01.00.00 The attainment of a living environment which provides the maximum physical, economic and social well-being for the City and its residents through the thoughtful and planned use and control of the natural and man-made environments that discourages urban sprawl, is energy efficient and reduces greenhouse gas emissions.

Objectives
01.04.00 Support and promote the intermix of residential and commercial uses along major traffic corridors.

01.12.00 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.

Policies
01.04.01 The Planning Department shall support and promote the intermix of residential and commercial uses along major traffic corridors, where mass transit is available, through the allocation of flex and reserve units and approval of land use plan map amendments allowing for residential developments.

01.12.04 The City shall utilize flexibility units and reserve units to increase residential densities within the flex and reserve receiving areas when consistent with the community character; adjacent land uses; and public school capacity both within Pompano and affected contiguous municipalities; and has undergone a compatibility review relative to potential impacts on Environmentally Sensitive Lands and County or regional parks in accordance with Policy 13.01.10 of the Broward County Land Use Plan.

Alternative Motion II

Table this application for additional information as requested by the Board.

Alternative Motion III

Recommend denial as the Board finds that the use of the reserve and flexibility units will not produce a reasonable development pattern, including failure to demonstrate compatibility of adjacent land uses and suitability of the parcel for various development patterns.

Further, the Flex request is found to be not consistent with the goals, objectives and policies of the Comprehensive Plan, specifically:

Goal
01.00.00 The attainment of a living environment which provides the maximum physical, economic and social well-being for the City and its residents through the thoughtful and planned use and control of the natural and man-made environments that discourages urban sprawl, is energy efficient and reduces greenhouse gas emissions.

Objectives
01.04.00 Support and promote the intermix of residential and commercial uses along major traffic corridors.

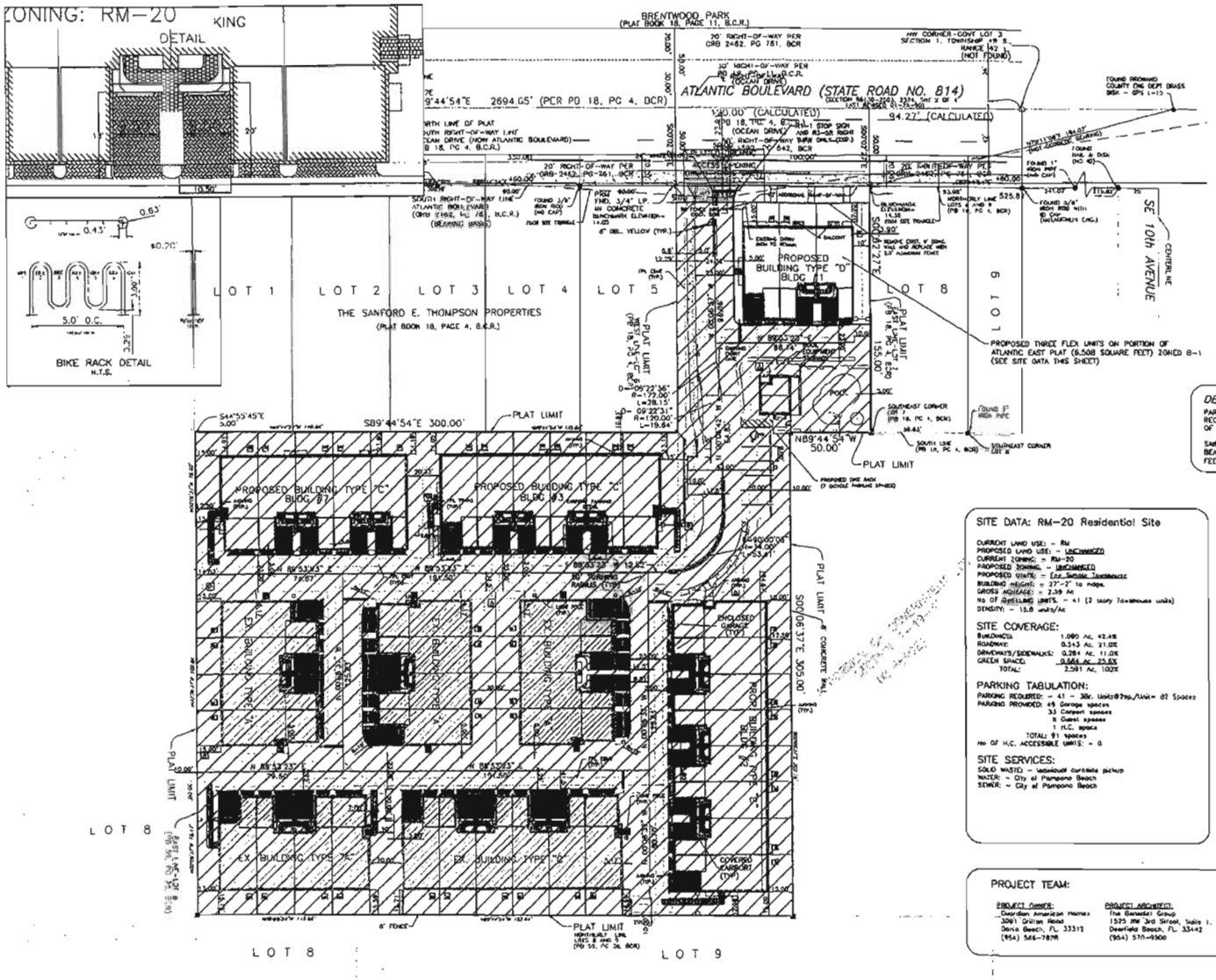
01.12.00 Establish criteria which encourage development of urban infill and community redevelopment areas to promote economic development, increase housing opportunities and maximize the use of existing public facilities and services.

Policies
01.04.01 The Planning Department shall support and promote the intermix of residential and commercial uses along major traffic corridors, where mass transit is available, through the allocation of flex and reserve units and approval of land use plan map amendments allowing for residential developments.

01.12.04 The City shall utilize flexibility units and reserve units to increase residential densities within the flex and reserve receiving areas when consistent with the community character; adjacent land uses; and public school capacity both within Pompano and affected contiguous municipalities; and has undergone a compatibility review relative to potential impacts on Environmentally Sensitive Lands and County or regional parks in accordance with Policy 13.01.10 of the Broward County Land Use Plan.

Attachment I
Conceptual Plan

BCHC&ED REF NO: 050120050



DESCRIPTION:

PARCEL "A", ATLANTIC EAST PLAT, ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 174, PAGE 118 OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA.

SAID LANDS SITUATED LYING AND BEING IN THE CITY OF POMPANO BEACH, BROWARD COUNTY, FLORIDA, CONTAINING 130,288 SQUARE FEET (2.991 ACRES), MORE OR LESS.

SITE DATA: RM-20 Residential Site

CURRENT LAND USE: - RM
PROPOSED LAND USE: - UNCHANGED
CURRENT ZONING: - RM-20
PROPOSED ZONING: - UNCHANGED
PROPOSED USE: - Fee Simple Townhouse
BUILDING HEIGHT: - 27'-2" to ridge.
GROSS ACREAGE: - 2.39 Ac
NET ACREAGE: - 0.40 Ac
No OF DWELLING UNITS: - 41 (3 story Townhouse units)
DENSITY: - 15.8 units/Ac

SITE COVERAGE:

BUILDINGS:	1.090 Ac.	42.4%
ROADWAY:	0.543 Ac.	21.0%
DRIVEWAYS/SIDEWALKS:	0.284 Ac.	11.0%
GREEN SPACE:	0.664 Ac.	25.6%
TOTAL:	2.581 Ac.	100%

PARKING TABULATION:

PARKING REQUIRED: - 41 - 3Br. Units@2sp./Unit= 82 Spaces
PARKING PROVIDED: 49 Garage spaces
33 Carport spaces
8 Guest spaces
1 H.C. space
TOTAL: 91 spaces
No OF H.C. ACCESSIBLE UNITS: - 0

SITE SERVICES:

SOLID WASTE: - Individual curbside pickup
WATER: - City of Pompano Beach
SEWER: - City of Pompano Beach

SITE DATA: B1 Commercial Site

CURRENT LAND USE: - C
PROPOSED LAND USE: - UNCHANGED
CURRENT ZONING: - B1
PROPOSED ZONING: - UNCHANGED
PROPOSED USE: - Fee Simple Townhouse
BUILDING HEIGHT: - 27'-2" to ridge.
GROSS ACREAGE: - 0.427 Ac
NET ACREAGE: - 0.40 Ac
No OF DWELLING UNITS: - 3 (2 story Townhouse units)
DENSITY: - 7.0 units/Ac

SITE COVERAGE:

POOLDECK:	0.053 Ac.	12.4%
BUILDINGS:	0.088 Ac.	20.8%
ROADWAY:	0.128 Ac.	30.0%
DRIVEWAYS/SIDEWALKS:	0.038 Ac.	8.9%
GREEN SPACE:	0.120 Ac.	28.1%
TOTAL:	0.427 Ac.	100%

PARKING TABULATION:

PARKING REQUIRED: - 3 - 3Br. Units@2sp./Unit= 6 Spaces
PARKING PROVIDED: 3 Garage spaces
3 Carport spaces
0 Guest spaces
0 H.C. space
TOTAL: 8 spaces
No OF H.C. ACCESSIBLE UNITS: - 0

SITE SERVICES:

SOLID WASTE: - Individual curbside pickup
WATER: - City of Pompano Beach
SEWER: - City of Pompano Beach

PROJECT TEAM:

PROJECT OWNER:	PROJECT ARCHITECT:	PROJECT ENGINEER:	PROJECT LANDSCAPE ARCHITECT:
Guardian American Homes	The Bernstein Group	Shah, Drotos & Associates	Tony Lonzetta
3091 Gateway Road	1525 NW 3rd Street, Suite 1.	3410 North Andrews Avenue Ext	4310 W. Broward Blvd.
Delray Beach, FL. 33312	Deerfield Beach, FL. 33442	Pompano Beach, FL. 33064	Plantation, FL. 33317
(954) 586-7898	(954) 570-9300	(954) 943-9433	(954) 327-1856

NOTES:

1. ALL PARKING SPACES TO BE DOUBLE STRIPED PER CITY OF POMPANO BEACH STANDARDS.
2. ALL TRELLIS, FENCING AND WALLS WILL NOT EXCEED 8' IN HEIGHT.

DATE	BY	REVISIONS
12-3-13	MJG	REVISED PER CITY DRC COMMENTS DATED 11/26/13
1-2-14	MJG	REVISED BUILDING #3 AND #2 LAYOUTS
1-28-14	MJG	REVISED FLEX UNITS SIZE & ADDED FLEX UNITS ON SITE PLAN
2-28-14	MJG	REVISED FLEX UNITS SIZE & ADDED ADDITIONAL FLEX UNIT
3-11-14	MJG	REVISED SITE PLAN AREA TO FIRST FLOOR FLEX UNITS
5-1-14	MJG	REVISED SITE PLAN AREA TO FIRST FLOOR FLEX UNITS

SDA SHAH DROTOS & Associates
ENGINEERING SURVEYING PLANNING
Certificate of Authorization No. LB6456
3410 North Andrews Avenue Ext. • Pompano Beach, FL 33064
PH: 954-943-9433 • FAX: 954-783-4754

DRAWN BY: MSS
CHECKED BY: JFD
DESIGNED BY: JFD
APPROVED BY: SDA
SCALE: 1"=30'

RESIDENCES AT ATLANTIC EAST

POMPANO BEACH, BROWARD COUNTY, FLORIDA

SITE PLAN

FOR THE FIRM:

FOR THE FIRM, BY: James Drotos
JAMES DROTOS, P.E.
FLA. P.E. No. 35505

DATE: MARCH, 2004
JOB NO. 04-0648
SHEET SP1

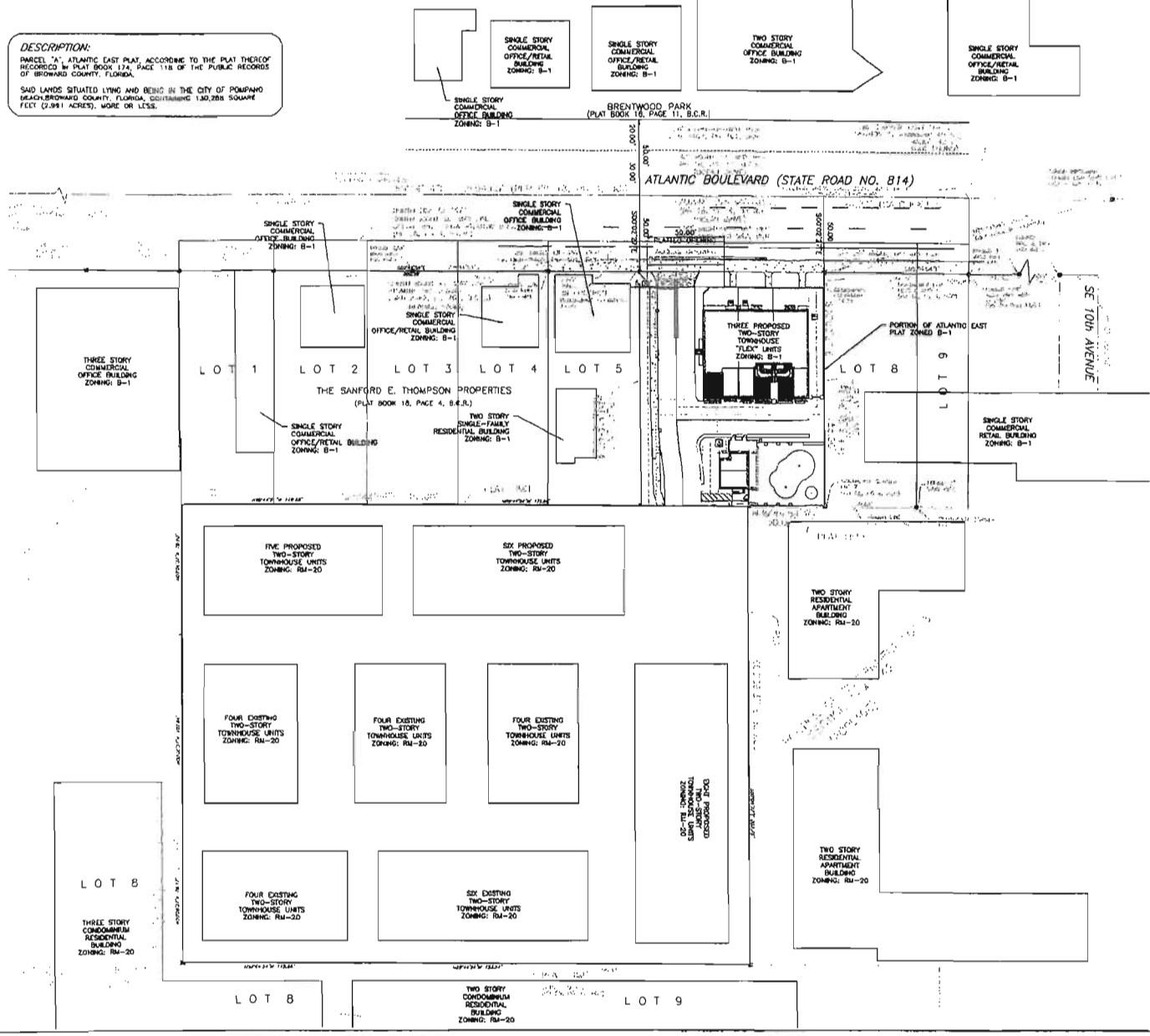
Attachment II
Compatibility Plan

BCHC&ED REF NO: 050120050

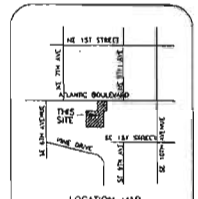
DESCRIPTION:

PARCEL "A", ATLANTIC EAST PLAT, ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 174, PAGE 118 OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA.

SAID LANDS SITUATED LYING AND BEING IN THE CITY OF POMPANO BEACH,BROWARD COUNTY, FLORIDA, CONTAINING 130,288 SQUARE FEET (2.991 ACRES), MORE OR LESS.



Scale: 1" = 30'



LOCATION MAP
NOT TO SCALE

SITE DATA: B1 Commercial Site

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PROPOSED LAND USE: - UNCHANGED
CURRENT ZONING: - B1
PROPOSED ZONING: - UNCHANGED
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BUILDING HEIGHT: - 27'-2" to ridge.
GROSS ACREAGE: - 0.427 Ac
NET ACREAGE: - 0.40 Ac
No OF DWELLING UNITS: - 3 (2 story Townhouse units)
DENSITY: - 7.0 units/Ac

SITE COVERAGE:

POOL/DECK:	0.053 Ac.	12.4%
BUILDINGS:	0.088 Ac.	20.6%
ROADWAY:	0.128 Ac.	30.0%
DRIVEWAYS/SIDEWALKS:	0.038 Ac.	8.9%
GREEN SPACE:	0.120 Ac.	28.1%
TOTAL:	0.427 Ac.	100%

PARKING TABULATION:

PARKING REQUIRED: - 3 - 3Br. Units@2sp./unit= 6 Spaces
PARKING PROVIDED: 3 Garage spaces
3 Carport spaces
0 Guest spaces
0 H.C. space
TOTAL: 6 spaces
No OF H.C. ACCESSIBLE UNITS: - 0

SITE SERVICES:

SOLID WASTE: - Individual curbside pickup
WATER: - City of Pompano Beach
SEWER: - City of Pompano Beach

SITE DATA: RM-20 Residential Site

CURRENT LAND USE: - RM
PROPOSED LAND USE: - UNCHANGED
CURRENT ZONING: - RM-20
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PROPOSED UNITS: - Fee Simple Townhouse
BUILDING HEIGHT: - 27'-2" to ridge.
GROSS ACREAGE: - 2.59 Ac
No OF DWELLING UNITS: - 41 (2 story Townhouse units)
DENSITY: - 15.8 units/Ac

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BUILDINGS:	1.099 Ac.	42.4%
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TOTAL:	2.591 Ac.	100%

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PARKING PROVIDED: 48 Garage spaces
33 Carport spaces
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1 H.C. space
TOTAL: 91 spaces
No OF H.C. ACCESSIBLE UNITS: - 0

SITE SERVICES:

SOLID WASTE: - Individual curbside pickup
WATER: - City of Pompano Beach
SEWER: - City of Pompano Beach

DATE	BY	REVISIONS DESCRIPTION

SDA SHAH DROTOS & ASSOCIATES
ENGINEERING SURVEYING PLANNING
Certificate of Authorization No. LB6456
3410 North Andrews Avenue Ext. • Pompano Beach, FL 33064
PH: 954-942-9433 • FAX: 954-783-4754

DRAWN BY: HSB
CHECKED BY: JFD
DESIGNED BY: JFD
APPROVED BY: SDA
SCALE: 1"=30'

RESIDENCES AT ATLANTIC EAST

POMPANO BEACH, BROWARD COUNTY, FLORIDA

COMPATIBILITY PLAN

FOR THE FIRM:

FOR THE FIRM:
BY:
James Drotos
JAMES DROTOS, P.E.
FLA. P.E. No. 35565

DATE: FEB 2016
JOB NO. 04-0648
SHEET CP1

Attachment III
Resolution 2004-104

RESOLUTION NO. 2004-104

CITY OF POMPANO BEACH
Broward County, Florida

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, ALLOCATING FIVE RESERVE UNITS FOR A PROPOSED RESIDENTIAL PROJECT LOCATED AT 724 EAST ATLANTIC BOULEVARD; PROVIDING AN EFFECTIVE DATE.

WHEREAS, James F. Drotos of Shah Drotos & Associates representing Residences at Atlantic East, LLC has requested the allocation of five (5) reserve units in order to construct free standing residential buildings with a total of forty four (44) dwelling units on property known as 724 East Atlantic Boulevard, which is legally described in Exhibit A;

WHEREAS, the Comprehensive Plan permits free standing residential buildings in areas designated as Commercial, subject to the allocation of flex or reserve units, on parcels of land ten (10) acres or less in the Urban Infill Area;

WHEREAS, The applicant, being required to obtain a special exception according to Section 155.183 (D) (4) of Chapter 155 of the Code Ordinances, brought his request before the Planning and Zoning Board/Local Planning Agency, who at their September 17, 2003 meeting recommended approval, subject to the following conditions:

1. All required parking spaces within the project to be 10 feet by 20 feet unencumbered;
2. Parallel spaces shall be 22 feet in length with a maximum of 4 in a row;
3. Setbacks and design standards of Section 155.187 shall be strictly observed.
4. Applicant to dedicate right of way for East Atlantic Boulevard.
5. Applicant must seek approval from F.D.O.T. of landscape nodes to terminate the on-street parking along Atlantic Boulevard for each side of the access drive.

WHEREAS, The Zoning Board of Appeals at their October 16, 2003 meeting, heard Appeal 04-10 by Residences at Atlantic East, LLC for a special exception and voted in favor of the special exception subject to the following conditions as required by the Planning and Zoning Board at their September 17, 2003 meeting.

WHEREAS, The proposed density of the free standing residential building on the commercial portion of the project which requires the five (5) reserve units would not exceed the maximum density of twenty (20) dwelling units per net acre as allowed in the B-1, Limited Business, Zoning District;

WHEREAS, in order to construct the proposed free standing residential building on the subject property, the City will have to allocate five (5) reserve units from Flex Zone 23;

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

SECTION 1: That the City Commission of the City of Pompano Beach hereby allocates five (5) reserve units from Flex Zone 23 to property known as 724 East Atlantic Boulevard, legally described in Exhibit A.

SECTION 2: The number of reserve units in Flex Zone 23 shall be reduced accordingly.

SECTION 3: The applicant is advised that Special Exception Permits shall expire within one hundred eighty (180) days after approval unless the applicant has obtained the principal building permit as per Section 155.024 of the Code of Ordinances of the City of Pompano Beach, Florida.

SECTION 4: Failure of the applicant to obtain a principal building permit for its free standing residential project within eighteen (18) months after the date of Planning and Zoning Board site plan approval, which date is contained in Exhibit "B", TIME FRAME FOR RESIDENCES AT ATLANTIC EAST, LLC., shall render the allocation of five (5) reserve units from Flex Zone 23 null and void.

SECTION 5: This Resolution shall become effective upon passage.

PASSED AND ADOPTED this 13th day of January, 2004.

KAY. McGINN MAYOR

ATTEST:

MARY L. CHAMBERS CITY CLERK

Exhibit A

Lots 6 and 7 of the Sanford E. Thompson Properties, according to the plat thereof as recorded in Plat Book 18, Page 4 of the public records of Broward County, Florida, less the north 20.00 feet thereof as described in the official record book 2462, page 761 of said public records; and the north 305 feet of the folllowing property:

Beginning at the southwest corner of Lot 1 of said Sanford E. Thompson Properties, thence east 370 feet, south 656.36 feet, more or less, to the south boundary of the north one-half of Government Lot 3, Section 1, Township 49 South, Range 42 East; thence west 370 feet, thence north 656.36 feet, more or less, to the Point of Beginning; said lands situated lying and being in Broward County Florida.

Exhibit "B"

TIME FRAME FOR RESIDENTIAL RESIDENCES AT ATLANTIC EAST, LLC., DEVELOPMENT

This time frame allows for some overlap of review and approvals but some sequences require previous approvals.

Site-Plan Approval

The site-plan should be submitted to the city no later than **January 21, 2004**.

DRC review on **February 18, 2004**.

Architectural Appearance Committee on **February 23, 2004**.

P&Z Approval on **March 24, 2004**.

Plat Approval

The property will require a replat with concurrent reviews by the City and Broward County.

Plat Application filed with the city by **February 3, 2004**.

Plat Application to DRC on **February 18, 2004**.

Plat Application to P&Z on **March 24, 2004**.

Plat Application to City Commission on **April 13, 2004.**

According to County staff it can take from 6 to 9 months to review, approve, and record a plat with the county.

Building Permits

Building permit plans can be filed with Zoning staff any time the **after March 24, 2004** P&Z approval. If filed in anticipation of an 8 month plat review and approval process permits could be issued in **November 2004.** The allocated units must be included in a building permit issued no later than August 24, 2005.

Attachment IV
2004 Major Site Plan

CITY OF POMPANO BEACH
BROWARD COUNTY
FLORIDA

DEVELOPMENT ORDER

PRA NO. 04-2929

A DEVELOPMENT ORDER ISSUED BY THE PLANNING AND ZONING BOARD (LOCAL PLANNING AGENCY) OF THE CITY OF POMPANO BEACH, BROWARD COUNTY, FLORIDA, PURSUANT TO CHAPTER 157 OF THE CODE OF ORDINANCES; APPROVING WITH CONDITIONS THE APPLICATION FOR DEVELOPMENT PERMIT FOR RESIDENCES AT ATLANTIC EAST, LLC

WHEREAS, Section 157.05, of the Code of Ordinances, defines the project referenced above as a Major Review; and

WHEREAS, Section 157.32, of the Code of Ordinances, authorizes the Planning and Zoning Board (Local Planning Agency) to issue a final development order for the subject project which is the construction of 44 townhouses on the property known as 724 East Atlantic Boulevard; and;

WHEREAS, the Development Review Committee has met to review this project and has provided the applicant with written comments; and

WHEREAS, the Application for Development Permit is not in compliance with the applicable standards and minimum requirements of this Code, but the developer has agreed in writing that no building permit will be issued until those conditions the Planning and Growth Management Director finds reasonably necessary to insure compliance are met; and

WHEREAS, copies of the survey and final site plan are attached hereto as Exhibits "A" and "B" respectively and are incorporated herein by reference as if set full in full.

The Application for Development Permit is hereby approved by the Planning and Zoning Board (Local Planning Agency) subject to the following conditions and bases therefore:

1) Recording of the final plat in Broward County records and providing a copy of the plat to the Planning Department.

2) Maintaining in good status the Special Exception approval and the flex or reserve units awarded by the City Commission.

3) Relocate the mechanical equipment from the front elevation towards Atlantic Boulevard. Mechanical equipment may not be located in front of a building wall facing a street.

4) Satisfaction of the comments of the Urban Forester as follows:

   a) The applicant must submit a tree appraisal prepared by an ISA certified arborist pursuant to the guide for plant appraisal.

   b) Provide irrigation plans.

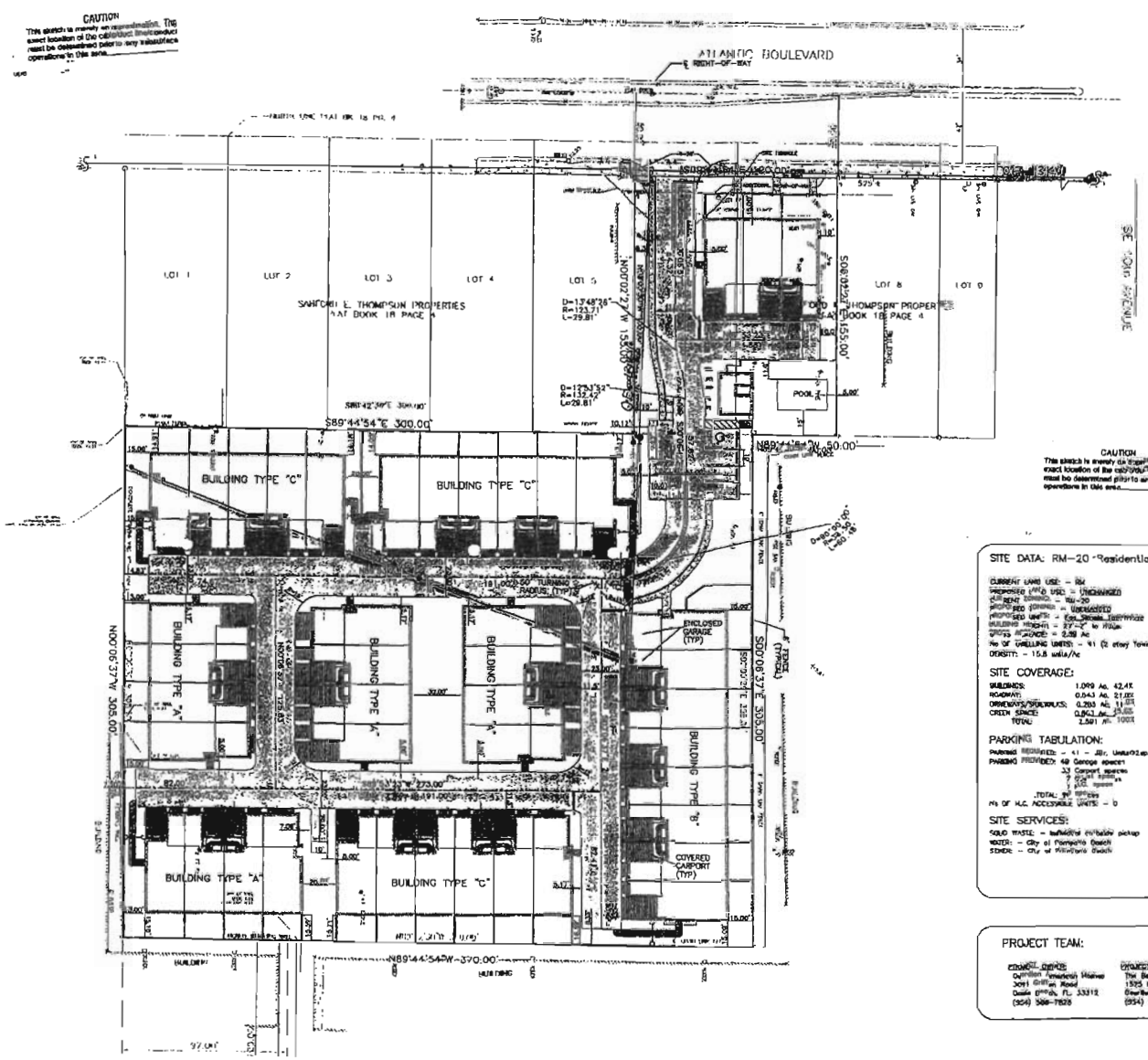
5) Payment of the appropriate park impact fees at time of building permit.

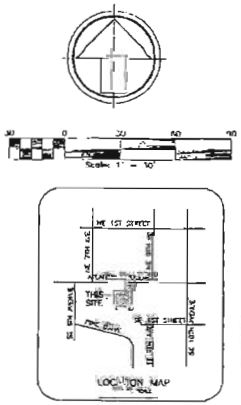
DONE AND ORDERED this 28th day of July, 2004.

A.L. STEIN
Chairman
Planning and Zoning Board/Local Planning Agency

lrh
8.1.04

PRD 04-2924
RESIDENCES at Atlantic East (EH)





Scale: 1" = 30'

CAUTION
This sketch is merely an approximation. The exact location of the catchpost line/conduit must be determined prior to any trench/trench operations in this area.

DESCRIPTION:

LOTS 6 AND 7 OF THE SANFORD E. THOMPSON PROPERTIES, ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 18, PAGE 4 OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA, AND THE NORTH 305 FEET OF THE FOLLOWING DESCRIBED PROPERTY: TO WIT: BEGINNING AT THE SOUTHWEST CORNER OF LOT 1, OF SAID THE SANFORD E. THOMPSON PROPERTIES, THENCE EAST 370 FEET, THENCE SOUTH 155.34 FEET, MORE OR LESS, TO THE SOUTH BOUNDARY OF THE NORTH 1 1/2 OF GOVERNMENT LOT 3, SECTION 1, TOWNSHIP 48 SOUTH, RANGE 42 EAST, THENCE WEST 370 FEET, THENCE NORTH 155.34 FEET, MORE OR LESS, TO THE POINT OF BEGINNING, SAID LANDS LYING AND BEING IN BROWARD COUNTY, FLORIDA, CONTAINING 3.017 ACRES, MORE OR LESS.

SITE DATA: RM-20 Residential Site

CURRENT LAND USE: - RM
PROPOSED LAND USE: - UNCHANGED
CURRENT ZONING: - RM-20
PROPOSED ZONING: - UNCHANGED
PROPOSED USE: - Exp. Senior Townhouse
BUILDING HEIGHT: - 27'-2" to ridge.
GROSS ACREAGE: - 2.59 Ac
No OF DWELLING UNITS: - 41 (2 story Townhouse units)
DENSITY: - 15.8 units/Ac

SITE COVERAGE:

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SITE SERVICES:

SOLID WASTE: - Individual curbside pickup
WATER: - City of Pompano Beach
SEWER: - City of Pompano Beach

SITE DATA: B1 Commercial Site

CURRENT LAND USE: - C
PROPOSED LAND USE: - UNCHANGED
CURRENT ZONING: - B1
PROPOSED ZONING: - UNCHANGED
PROPOSED USE: - Exp. Senior Townhouse
BUILDING HEIGHT: - 27'-2" to ridge.
GROSS ACREAGE: - 0.43 Ac
NET ACREAGE: - 0.40 Ac
No OF DWELLING UNITS: - 3 (2 story Townhouse units)
DENSITY: - 7.0 units/Ac

SITE COVERAGE:

POOLDECK:	0.053 Ac.	12.4%
BUILDINGS:	0.087 Ac.	20.2%
ROADWAY:	0.128 Ac.	30.0%
DRIVEWAYS/SIDEWALKS:	0.037 Ac.	8.7%
GREEN SPACE:	0.121 Ac.	28.3%
TOTAL:	0.427 Ac.	100%

PARKING TABULATION:

PARKING REQUIRED: - 3 - 3Br. Units@2sp./Unit= 6 Spaces
PARKING PROVIDED: 3 Garage spaces
3 Carport spaces
9 Guest spaces
15 H.C. spaces
TOTAL: 6 spaces
No OF H.C. ACCESSIBLE UNITS: - 0

SITE SERVICES:

SOLID WASTE: - Individual curbside pickup
WATER: - City of Pompano Beach
SEWER: - City of Pompano Beach

PROJECT TEAM:

OWNER:	PROJECT ARCHITECT:	PROJECT ENGINEER:	PROJECT LANDSCAPE ARCHITECT:
Damian Tomarkin Maines 3051 Griffin Road Dania Beach, FL 33312 (954) 586-7828	The Berkshire Group 1595 W. 1st Street, Suite 1, Deerfield Beach, FL 33442 (954) 570-9000	Shah, Drotos & Associates 3410 North Andrews Avenue Ext Pompano Beach, FL 33064 (954) 943-9433	Tom Lonergan 4310 N. Dixie Hwy. Pompano Beach, FL 33317 (954) 377-1958

SHAH DROTOS & ASSOCIATES
ENGINEERING SURVEYING PLANNING
Certificate of Authorization No. LB8456
3410 North Andrews Avenue Extension, Pompano Beach, FL 33064
PH: 954-943-9433 o FAX: 954-783-4754

REVISIONS		
DATE	BY	

DRAWN BY: MSS
CHECKED BY: JFD
DESIGNED BY: JFD
APPROVED BY: SDA
SCALE: 1"=30'

RESIDENCES AT ATLANTIC EAST
POMPANO BEACH, BROWARD COUNTY, FLORIDA

SITE PLAN

FOR THE FIRM:
FOR THE FIRM, BY:
APR 2 7 2004
JAMES DROTOS, P.E.
FLA. P.E. No. 35305
DATE: MARCH, 2004
JOB NO. 04-0648
SHEET SP1

Attachment V
Corridor Study Designation of Parcel

DOWNTOWN POMPANO Atlantic Boulevard and Dixie Highway

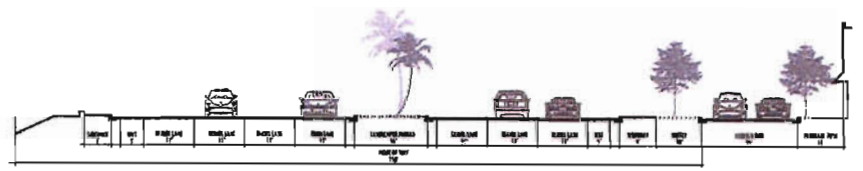
Downtown Pompano is solidifying its role as the heart of the City. Plans for this area will capitalize on the rich history of Old Pompano while embracing new efforts such as the transit oriented corridor area focused on Dr. Martin Luther King Boulevard and Community Redevelopment Agency (CRA) plans. A planned civic campus near City Hall will add another layer of vibrancy to the community and become a gathering place for community events. The area is envisioned as a walkable, mixed-use environment with pedestrian-oriented streets with retail shops, local services, office space and a mix of housing types. Downtown Pompano will fill in with a mix of specialty stores, dining establishments, unique work spaces and urban housing types, addressing the nearby bus transfer station and future FEC commuter train station.

Old Pompano retail area on NE 1st Street

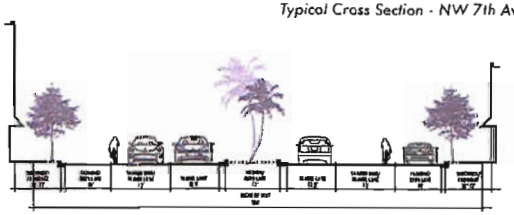
NE 1st Street, looking east toward NE 2nd Avenue

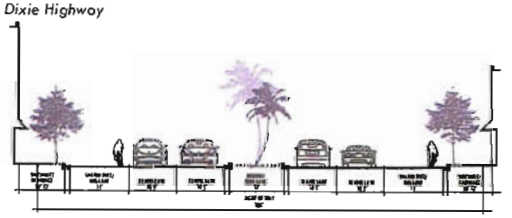
Intermodal Transfer Center at Dixie Highway and Dr. Martin Luther King, Jr. Boulevard

LEGEND
- Framing Streets / Study Corridors
- Pedestrian Emphasis Streets
- Local / Access Streets
- Greenway
- Blueway
- Retail Frontage
- Commercial Mixed Use Frontage
- Residential Mixed Use Frontage
- Residential Frontage
- Industrial Frontage
- Parking Structure



Typical Cross Section - NW 7th Avenue to Dixie Highway





Typical Cross Section - NE 2nd Avenue to Federal Highway

Meeting Date: April 26, 2016 Agenda Item 15

REQUESTED COMMISSION ACTION:

____ Consent X Ordinance ____ Resolution ____ Consideration ____ Workshop

SHORT TITLE An Ordinance of the City Commission of the City of Pompano Beach, approving and Authorizing the proper City officials to execute a technical service support agreement between the City of Pompano Beach and Physio-Control.

OR MOTION: (Fiscal impact: $118,345.74 over 3 fiscal years)

Summary of Purpose and Why:

This 3 year technical service agreement with Physio-Control will provide the needed maintenance and repair of our Lucas-2 Chest Compression system, battery charging systems, and LIFEPAK 12 and 15 ECG monitor/defibrillators and support battery charging systems. The technical service agreement begins 4/30/2016 and ends 3/31/2019. (FISCAL IMPACT TOTAL $118,345.74, of which 3 payments of $39,448.58 x 3 years are made).

(1) Origin of request for this action: Staff

(2) Primary staff contact: John Jurgle, Fire Chief 954 786-4510

(3) Expiration of contract, if applicable: 3/31/2019

(4) Fiscal impact and source of funding: Maintenance Contracts: Line 140-2231-522.46-40 (FISCAL IMPACT TOTAL $118,345.74, equally divided over three fiscal years). - with Attached Budget Adjustment

DEPARTMENTAL COORDINATION	DATE	DEPARTMENTAL RECOMMENDATION	DEPARTMENTAL HEAD SIGNATURE OR ATTACHED MEMO NUMBER
Fire Administration	3/28/2016	Approval	
Budget	3/30/16	—	
Finance	3/30/16	Approval	
City Attorney	3/30/16	✓	Memo #2016-676
Risk Manager	4/6/16	approved	

___ Advisory Board
___ Planning and Growth Management Director
___ Public Works Administrator
x City Manager

ACTION TAKEN BY COMMISSION:

Ordinance	Resolution	Consideration	Workshop
1st Reading 4/12/16 Approved	1st Reading	Results:	Results:
2nd Reading 4/26/16			

City Attorney's Communication #2016-676
March 24, 2016

TO: Frank Galgano, EMS Division Chief

FROM: Carrie L. Sarver, Assistant City Attorney

RE: Ordinance –Technical Service Support Agreement/Physio-Control, Inc.

As requested in your e-mail of March 15, 2016, I have prepared and attached the following captioned ordinance:

> **AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A TECHNICAL SERVICE SUPPORT AGREEMENT BETWEEN THE CITY OF POMPANO BEACH AND PHYSIO-CONTROL, INC.; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.**

Please ensure that the appropriate city signature page is attached to the agreement prior to presenting the ordinance to the City Commission.

CARRIE L. SARVER

/jrm
L:cor/fire/adm/2016-676

Attachment

Pompano Beach
Fire Rescue

FIRE ADMINISTRATION
MEMO # 16-A060

To: John Jurgle, Fire Chief

From: Frank Galgano

Date: 2/24/16

Re: **Physio Control Technical Service Agreement (LifePak/Lucas device)**

Please be advised, this is the proposal for a 3 year Technical Service Support Agreement for LifePak heart monitors and Lucas chest compression devices from our current vendor for over 15 years.

DISCUSSION

The fire department has long history in using and servicing its Physio-Control ECG heart monitor LifePak (LP) and chest compression devices (Lucas). These products are federally mandated to be on all Advanced Life Support transport and non-transport units. The LP device is a diagnostic and treatment device used on all medical 911 calls to interpret and treat cardiac arrhythmias, and the Lucas device provides automatic chest compression for patients in cardiac arrest. Both pieces of equipment are used interactively during cardiac arrest calls.

The LP and Lucas devices are held to an optimal performance and maintenance standard. These devices perform a dual need as a diagnostic tool in determining life-threatening heart and vital sign abnormalities, and as an invasive device for cardiac defibrillation, cardioversion and pacing. The LP heart monitors are heavily regulated by the FDA in its manufacturing, maintenance, and usage, therefore require extensive service and calibration requirements which can only be performed by a certified and authorized service technician.

FISCAL IMPACT:

The fire department has eight (8) LP-12 heart monitors, fourteen (14) LP-15 heart monitors and eight (8) Lucas devices. We're proposing this technical service agreement to insure compliance and functional FDA performance standards are being met during annual service and calibration inspections. Additionally, we are implementing a repair component that covers potential repairs needed during the 3 year contract period.

This proposal replaces and annual service agreement which covers service, repairs and calibration for just one year with same associated (proposed) costs. Approving the three year agreement will lock in pricing protecting the Department from costly and unpredictable price increases which covers needed servicing, repairs and maintenance. The agreement includes the benefit of 15% off all product line accessories, ECG monitoring mechanical and expendable components, as well as 10% reduction from future Physio Control product units i.e. LifePak 15 monitors, during the life of the three year agreement.

RECOMMENDATION

Staff recommends approving Physio-Control, Inc., as a sole source vendor requesting council to approve a three year Technical Service Support Agreement to cover diagnostic repairs, mechanical repairs, servicing and calibration maintenance as well as future purchasing of hardware and accessory purchases. As an extra cost, there is a one time service and inspection fee of $10,886.00. The agreement will spread a separate total cost of $118,345.74 over a 3 year period in 3 payment installments. The $10,886.00 is in addition to the three year term.

PRODCUT PAYMENT SCHEDULE

LifePak (12 and 15), Lucas device service and repair agreement.

A total cost of $118,345.74 is spread over 3 payments in 3 years.

4/30/16:	$39,448.58
4/30/17:	$39,448.58
4/30/18:	$39,448.58

The above annual installment plan is lower than preceding 5 annual contracts council has approved.

PHYSIO CONTROL

Physio-Control, Inc. | Lifesaving starts here.™

ADDRESS
11811 Willows Road NE
Redmond, WA 98052

PHONE
GENERAL
425 867 4000
TOLL-FREE
800 442 1142

www.physio-control.com

January 2016

Physio-Control, Inc. is the sole-source provider in the Hospital (hospitals and hospital-owned facilities), Emergency Response Services and Emergency Response Training markets for the following products:

- New LIFEPAK® 15 monitor/defibrillators
- New LIFEPAK 20e defibrillator/monitors
- New LIFEPAK 1000 automated external defibrillators
- New LUCAS® 2 Chest Compression System

Physio-Control, Inc. is the sole-source provider in **all** markets for the following products and services:

- RELI℠ (Refurbished Equipment from the Lifesaving Innovators) devices
- LIFENET® System and related software
- Factory-authorized inspection and repair services which include repair parts, upgrades, inspections and repairs
- PulsePoint Agency Services
- HealthEMS® Software
- HomeSolutions.NET® Software

Physio-Control is also the sole-source distributor of the following products for EMS customers in the U.S. and Canadian markets:

- McGRATH® MAC EMS Video Laryngosope
- McGRATH® MAC Disposable Laryngoscope Blades
- McGRATH® X Blade™

Physio-Control does not authorize any resellers to sell these products or services in the markets listed above. We will not fulfill orders placed by non-authorized businesses seeking to resell our products. If you have questions, please feel free to contact your local Physio-Control sales representative at 800.442.1142.

Sincerely,

PHYSIO-CONTROL, INC.

Allan Criss

Allan Criss, Vice-President, Americas Sales

GDR 3321967_D

ORDINANCE NO. 2016-_____

CITY OF POMPANO BEACH
Broward County, Florida

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A TECHNICAL SERVICE SUPPORT AGREEMENT BETWEEN THE CITY OF POMPANO BEACH AND PHYSIO-CONTROL, INC.; 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 a Technical Service Support Agreement between the City of Pompano Beach and Physio-Control, Inc. for maintenance and repair to the LUCAS-2 Chest Compression System and battery charging systems and for maintenance and repair to the Physio-Control LIFEPAK 12 and 15 monitor/defibrillators and battery charging systems, a copy of which Agreement is attached hereto and incorporated herein 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.

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
1/15/16
L:ord/2016-104

TECHNICAL SERVICE SUPPORT AGREEMENT

Contract Number:

End User # 03741403
CITY OF POMPANO BEACH
FIRE ADMIN
120 SW 3RD ST
POMPANO BEACH, FL 33060

Bill To # 03741403
CITY OF POMPANO BEACH
FIRE ADMIN
120 SW 3RD ST
POMPANO BEACH, FL 33060

This Technical Service Support Agreement begins on 04/30/2016 and expires on 03/31/2019.

The designated Covered Equipment and/or Software is listed on Schedule A. This Technical Service Agreement is subject to the Terms and Conditions on the reverse side of this document and any Schedule B, if attached. If any Data Management Support and Upgrade Service is included on Schedule A then this Technical Service Support Agreement is also subject to Physio-Control's Data Management Support and Upgrade Service Terms and Conditions, rev 7/99-1.

Price of coverage specified on Schedule A total of $118,345.74 is per term, payable in three Annual installments.

Special Terms

15% DISCOUNT ON ACCESSORIES
15% DISCOUNT ON ALL ELECTRODES

Total of $118,345.74 is spread over 3 payments over 3 years. Schedule is listed below:

4/30/16:	$39,448.58
4/30/17:	$39,448.58
4/30/18:	$39,448.58

*All devices listed in Schedule A will be inspected and repaired at time and material prior to the service plan start date. Estimated cost of inspections and pending repair is $10,886.

** LEFT BLANK INTENTIONALLY, SIGNATURES ARE ON PAGE 2 OF THIS AGREEMENT **

Territory Rep: EAVV57
Adalid Colon
Phone: 8004421142
FAX: 800-772-3340

Customer Contact:
Frank Galgano
Phone: (954) 270-8861
FAX:

Accepted: Physio-Control, Inc.

By: _____

Title: CONTRACT ANALYST

Date: 04/01/2016

Witness: _____

Witness: _____

Customer:

By: _____

Print: _____

Title: _____

Date: _____

Purchase Order Number: _____

State of Washington
County of King

I certify that I know that Alexandra Carvalho, is the person who appeared before me, and said person acknowledged that she signed this document, that she is authorized to execute the document and acknowledged as the Contract Analyst of Physio-Control, Inc., to be the free and voluntary act of such party for the uses and purposes mentioned in the document.

Dated: April 1, 2016

Signature: _____

Name: ELLEN MAXON, Notary Public

My appointment expires October 9, 2016

ELLEN MAXON
NOTARY PUBLIC
STATE OF WASHINGTON
COMMISSION EXPIRES
10-09-16

"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

PHYSIO-CONTROL, INC.
TECHNICAL SERVICE SUPPORT AGREEMENT TERMS AND CONDITIONS

Customer's signature on this Agreement or a valid purchase order referencing this Technical Service Support Agreement is required prior to Physio-Control's acceptance and performance of this Agreement. This Agreement covers only the equipment listed on Schedule A ("Covered Equipment"). These terms constitute the complete agreement between the parties and they shall govern over any other documents, including Customer's purchase order. These terms may not be revised in any manner without the prior written consent of Physio-Control.

SERVICES. The Services provided under this Agreement are set forth on Schedule A. Physio-Control strives, but does not guarantee, to return service calls within two (2) hours and to resolve service issues within twenty-four (24) hours. Following Services, Physio-Control will provide Customer with a written report of actions taken or recommended and identification of any materials replaced or recommended for replacement. The following Services are available and further described as they relate to each specific Physio-Control device on Schedule B:

" *Repair Plus Service* " or "*Repair Only Service*" means repairs, Battery Replacement Service, parts and labor necessary to restore Covered Equipment to original specifications, subject to Exclusions (as set forth below).

" *Preventative Maintenance* " or "*Inspection Only Service*" means inspection and adjustment to maintain Covered Equipment in satisfactory operating condition. Inspections include tests, measurements, and a thirty-point evaluation of Covered Equipment. Covered Equipment is properly calibrated, mechanical operations are checked and adjusted, if necessary, and output measurements are verified to function properly. Electrical safety checks are also performed in accordance with National Fire Protection Association (NFPA) guidelines. Preventative Maintenance and Inspection Only Service are subject to Exclusions.

" *Comprehensive Service*" or "*Repair & Inspect Service* " means repairs, Battery Replacement Service, parts and labor necessary to restore Covered Equipment to original specifications, and inspections to verify proper device calibration, mechanical operations and output measurements, electrical safety check in accordance with NFPA guidelines, and Updates (as set forth below), subject to Exclusions.

" *Battery Replacement Service*" means replacement of batteries on a one-for-one, like-for-like basis, up to the number of batteries and/or devices listed in Schedule A. Only batteries manufactured or distributed by Physio-Control are eligible for replacement. Battery replacement is available upon Customer notification to Physio-Control of the occurrence of: (i) battery failure as determined by Customer's performance testing and evaluation in accordance with the applicable Operating Instructions; or (ii) as recommended in the applicable device's Operating Instructions.

At the discretion of Physio-Control, battery replacement shall be effected by shipment to Customer and replacement by Customer, or by on-site delivery and replacement by a Physio-Control Service Technician. Upon Customer's receipt of a replacement battery, the battery being replaced shall become the property of Physio-Control, and Customer must return the battery being replaced to Physio-Control for proper disposal. In the event that Physio-Control does not receive the battery being replaced, Physio-Control will invoice Customer the then-current rate for the replacement battery.

" *On-Site Service* " means that a Physio-Control factory-trained technician will provide Services at Customer's location. Services will be performed between 8:00am and 5:00pm local time, Monday through Friday, excluding holidays. Customer is to ensure Covered Equipment is available for Services at scheduled times. Some Services may not be completed On-Site. Physio-Control will cover travel and/or round-trip freight for Covered Equipment that must be sent to our designated facility for repair.

" *Ship-In Service*" means that Services will be performed at Physio-Control's designated facility. Physio-Control will cover round-trip freight for Covered Equipment that is sent to our designated facility for Services.

If Covered Equipment is not available when Services are scheduled or Customer requests services or goods not covered by this Agreement or outside of designated Services frequency or hours, Physio-Control will charge Customer for such services at 10% off Physio-Control's standard rates (including overtime, if appropriate) and applicable travel costs in addition to the contract price. Repair parts required for such repairs will be made available at 15% off the then-current list price.

EXCLUSIONS. Unless otherwise specified, Services do not include the following Exclusions:

- supply or repair of accessories or disposables
- repair of damage caused by misuse, abuse, abnormal operating conditions, operator errors, acts of God, and use of batteries, electrodes, or other products not distributed by Physio-Control
- case changes
- repair or replacement of items not originally distributed or installed by Physio-Control
- Upgrades, and installation of Upgrades
- battery maintenance, performance testing, evaluation, removal, and recycling

LOANERS. If Covered Equipment must be removed from use to complete Services, Physio-Control will strive to provide Customer with a similar loaner device until the Covered Equipment is returned. Customer assumes complete responsibility for the loaner and shall return the loaner at Customer's expense to Physio-Control in the same condition as received, upon the earlier of the return of the removed Covered Equipment or Physio-Control's request.

UPDATES. "*Update*" means a change to a device to enhance its current features, stability, or software. If Comprehensive Service or Repair & Inspect Service is designated for Covered Equipment on Schedule A, Physio-Control will install Updates at no additional cost, provided such Updates are installed at the time of regularly scheduled Services. Updates installed on Covered Equipment designated on Schedule A as Repair Plus Service, Repair Only Service, Preventative Maintenance Service, Inspection Only Service, or at a time other than regularly scheduled Comprehensive Service or Repair & Inspect Service, will be billed on a separate invoice at 20% off the then-current list price of the Update. For all Service plans, if parts must be replaced to accommodate installation of new software, such parts may be purchased at a rate of 30% off the then-current list price.

UPGRADES. "*Upgrade*" means a major, standalone version of software or the addition of features or capabilities to a device. For all Service plans, Upgrades must be purchased separately and are not provided under this Agreement. Upgrades are available at a rate of 17% off the then-current list price.

PRICING. Pricing is set forth on the first page of this Agreement, on the Quote for Services, and/or on the Invoice for the Services purchased. Prices do not include taxes. Sales, service or use taxes will be invoiced in addition to the price of the goods and Services covered by this Agreement unless Physio-Control receives a copy of a valid exemption certificate. If the number or configuration of Covered Equipment changes during the Term, pricing shall be pro-rated accordingly. For Preventative Maintenance Service, Inspection Only Service, Comprehensive Service, and Repair & Inspect Service, no pricing deduction will be made for removal of Covered Equipment if preventative maintenance and inspection have already been performed during the Term and no further preventative maintenance and inspection are scheduled to occur. Discounts may not be combined with other special terms, discounts, and/or promotions.

PAYMENT. Payment is due within thirty (30) days of invoice date.

WARRANTY. Physio-Control warrants Services performed under this Agreement and repair/replacement parts provided in performing such Services against defects in material and workmanship for ninety (90) days from the date Services were performed or a repair/replacement part was provided. Customer's sole remedy shall be reservicing the affected Covered Equipment and/or replacement of any part determined to be defective, without additional charge, provided Customer notifies Physio-Control of any allegedly defective condition within ten (10) calendar days of its discovery by Customer. Physio-Control makes no other warranties, express or implied, including, without limitation, **NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND IN NO EVENT SHALL PHYSIO-CONTROL BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR OTHER DAMAGES.**

TERM. The Term of this Agreement is set forth on the first page of this document, or in the Quote and/or Invoice for the Services purchased. This Agreement shall renew upon mutual agreement. Prices are subject to change upon renewal.

TERMINATION. Either party may terminate this Agreement for material breach by the other party by providing thirty (30) days' written notice to the other party, and provided such breach is not cured within the notice period. In addition, either party may terminate this Agreement at any time upon sixty (60) days' prior written notice to the other party. In the event of such early termination by Customer, Customer shall be responsible for the portion of the designated price which corresponds to the portion of the Term prior to the effective date of termination and the list-price cost of any preventative maintenance, inspections, or repairs rendered during the Term.

DELAYS. Physio-Control will not be liable for any loss or damage of any kind due to its failure to perform or delays in its performance resulting from any cause beyond its reasonable control, including, but not limited to, acts of God, labor disputes, labor shortages, the requirements of any governmental authority, war, civil unrest, delays in manufacture, obtaining any required license or permit, and Physio-Control's inability to obtain goods from its usual sources. Any such delay shall not be considered a breach of Physio-Control's obligations and the performance dates shall be extended for the length of such delay.

DEVICE INSPECTION BEFORE ACCEPTANCE. Any device that is not covered by either a Physio-Control Limited Warranty or a current Physio-Control Technical Service Support Agreement must be inspected and repaired (if necessary) to meet original specifications at customer's cost at the then-current list prices prior to being covered under a Technical Service Support Agreement. Physio-Control reserves the right to refuse to support any device that has been remanufactured by a company other than Physio-Control.

MISCELLANEOUS. (a) During the Term of this Agreement and for one (1) year following its expiration, without Physio-Control's prior written consent, Customer agrees to not to solicit or offer employment to anyone who is employed by Physio-Control to provide Services such as those described in this Agreement; (b) this Agreement, and any related obligation of other party, may not be assigned in whole or in part without the prior written consent of the other party; (c) this Agreement shall be governed by the laws of the State in which the Services are provided; (d) all costs and expenses incurred by the prevailing party related to the enforcement of its rights under this Agreement, including reasonable attorney's fees, shall be reimbursed by the other party.

Public Records, Recordkeeping, Inspection and Audit Procedures. Contractor acknowledges City is a public agency subject to Chapter 119, Florida Statutes, as amended, and shall comply with Florida's Public Records Law by making available to City for examination all records related to this Agreement and its performance hereunder. All records Contractor stores electronically shall be provided to City in a format compatible with the information technology systems of the City.

Specifically, Contractor shall (a) keep and maintain public records that ordinarily and necessarily would be required by the City in order to perform the Work; (b) provide the public with access to such public records on the same terms and conditions that City would at a cost that

does not exceed that provided in Chapter 119, Florida Statutes, or as otherwise provided by law; (c) provide City with reasonable local access to such public records during normal business hours; (d) ensure public records that are exempt or confidential and exempt from public record requirements are not disclosed except as authorized by law; (e) include the provisions of this Section in any subcontracts Contractor enters into for the Work hereunder and (f) meet all requirements for retaining and/or destroying public records unless City has provided written notice that an audit has been initiated and findings have not been resolved in which case Contractor and any of its agents hereunder shall be required to retain the aforesaid documentation until resolution of the audit findings.

Performance Under Law and Authority To Engage in Business. Contractor, in the performance of the Work hereunder, shall be responsible to ascertain and comply with all applicable local, state and/or federal laws and ordinances as exist now or as may subsequently be enacted during the term of this Agreement, including, but not limited to, standards of licensing, permitting, annual filings, copyright law, conduct of business and other matters and ignorance on Contractor's part shall in no way relieve Contractor from this important responsibility.

Limitation of Liability. The City desires to enter into this Agreement only if in doing so the City can place a limit on the City's liability for any cause of action arising out of this Agreement, so that the City's liability for any breach never exceeds the sum of the contract amount. For other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Contractor expresses its willingness to enter into this Agreement with the knowledge that the Contractor's recovery from the City to any action or claim arising out or from this Agreement is limited to a maximum amount of the contract value less the amount of funds actually paid by the City to Contractor pursuant to this Agreement. Notwithstanding the foregoing, the parties agree and understand that the provisions of this Section do not apply to monies owed, if any, for services rendered to Contractor by the City under the provisions of this Agreement.

Sovereign Immunity. Nothing in this Agreement shall be construed to waive or affect in any way the City's rights, privileges, and immunities as set forth in Section 768.28, Florida Statutes.

Representations of Contractor. The individual executing this Agreement and related documents on behalf of Contractor is duly authorized to take such action which action shall be, and is, binding on Contractor. There are no legal actions, suits or proceedings pending or threatened against or affecting Contractor that Contractor is aware of which would have any material effect on its ability to perform its obligations under this Agreement. Contractor represents it has the ability, skill and resources to complete its requisite responsibilities under this Agreement. City shall be entitled to rely upon the professional skills of Contractor or others authorized by Contractor under this Agreement. Contractor represents and warrants it has and will continue to maintain all licenses, insurance and approvals required to conduct business and provide services under this Agreement and that it shall at all times conduct its activities in a professional, reputable manner. Contractor for itself, its heirs, executors, administrators, successors and assigns, does hereby agree to full performance of all its obligations and covenants under this Agreement.

Default and Dispute Resolution. If either party fails to perform any material covenant or undertaking hereunder, or if the parties' representations set forth herein are materially untrue or incorrect, then the party alleging default shall give written notice, in which event the party alleged to be in default shall have 15 business days to cure or resolve same. If such default or breach is not timely cured or otherwise resolved, the party not in default may institute such proceedings as may be necessary, in its opinion to cure and remedy such default, including, but not limited to, the informal dispute resolution process set forth below, termination of this Agreement, proceedings to compel specific performance and for damages for breach of contract, and any other remedies provided by law, equity or hereunder.

Both parties' rights and obligations, whether provided by law, equity or hereunder, shall be cumulative and the exercise by either party of any one of more of such remedies shall not preclude the exercise by it, at the same or different times, of any other such remedies for the same default or any of its remedies for any other default at the same or different times, of any other such remedies for the same default or of any of its remedies for any other default.

Informal Dispute Resolution Process. If either party claims the other is in default of this Agreement, the parties may, but are not required to, timely schedule a conference or meeting and make every reasonable effort to reach an amicable resolution. Both parties shall be entitled to have representatives of their choice present at any such meeting or conference. The informal dispute resolution process herein is non-exclusive and without prejudice to the right of either party to pursue other remedies available at law.

Independent Contractor.

A. It is expressly understood between the parties that Contractor's relationship to City hereunder is that of an independent contractor and that this Agreement shall not constitute or make the parties a partnership or joint venture. Contractor shall have no authority to employ any person as an employee or agent on behalf of City for any purpose.

B. Neither Contractor nor any person engaging in any Work hereunder be deemed an employee or agent of City nor shall they represent themselves to others as an employee or agent of City. Should any person indicate by written or verbal communication that they believe Contractor and/or any of its employees or agents are employees or agents of the City, Contractor shall use its best efforts to correct or cause its employee or agent to correct said mistaken belief.

C. Contractor shall be deemed an independent contractor for all purposes, and the employees of the Contractor or any of its agents shall not in any manner be deemed to be employees of the City. As such, Contractor's employees and other agents hereunder shall not be subject to any withholding for tax, Social Security or other purposes by the City, nor shall such employee or agent be entitled to sick leave, pension benefits, vacation, medical benefits, life insurance, workers or unemployment compensation or the like from the City.

PHYSIO-CONTROL, INC.
TECHNICAL SERVICE SUPPORT AGREEMENT
SCHEDULE A

Contract Number:

Servicing Rep: Adalid Colon, EAVV57
District: SOUTHEAST
Phone: 8004421142
FAX: 800-772-3340

Equipment Location: CITY OF POMPANO BEACH, 03741403
FIRE ADMIN
120 SW 3RD ST
POMPANO BEACH, FL 33060

Scope Of Service On Site Repair Plus

Model	Part Number	Serial Number	Ref. Line	Effective Date	Expiration Date	Total Inspections
LUCAS US	3302430-000	30090284	1	03/01/2016	02/28/2019	0
LUCAS US	3302430-000	30101789	2	03/01/2016	02/28/2019	0
LUCAS US	3302430-000	30101792	3	03/01/2016	02/28/2019	0
LUCAS US	3302430-000	30101525	4	03/01/2016	02/28/2019	0
LUCAS US	3302430-000	30101526	5	03/01/2016	02/28/2019	0
LUCAS US	3302430-000	30113245	6	03/01/2016	02/28/2019	0
LUCAS US	3302430-000	30113374	7	03/01/2016	02/28/2019	0
LUCAS US	3302430-091	30149577	8	09/22/2017	02/28/2019	0

** Denotes an inventory line that has changed since the last contract revision or addendum.

PHYSIO-CONTROL, INC.
TECHNICAL SERVICE SUPPORT AGREEMENT
SCHEDULE A

Contract Number:

Servicing Rep: Adalid Colon, EAVV57
District: SOUTHEAST
Phone: 8004421142
FAX: 800-772-3340

Equipment Location: CITY OF POMPANO BEACH, 03741403
FIRE ADMIN
120 SW 3RD ST
POMPANO BEACH, FL 33060

Scope Of Service On Site Comprehensive Coverage

Model	Part Number	Serial Number	Ref. Line	Effective Date	Expiration Date	Total Inspections
LIFEPAK® 12	VLP12-02-007228	36238190	13	03/01/2016	02/28/2019	3
LIFEPAK® 12	VLP12-02-007228	36238303	14	03/01/2016	02/28/2019	3
LIFEPAK® 12	VLP12-02-005985	34990930	10	03/01/2016	02/28/2019	3
LIFEPAK® 15	V15-2-000051	40009563	15	03/01/2016	02/28/2019	3
LIFEPAK® 15	V15-2-000051	40009565	16	03/01/2016	02/28/2019	3
LIFEPAK® 15	V15-2-001603	40793357	17	03/01/2016	02/28/2019	3
LIFEPAK® 15	V15-2-001603	40793358	18	03/01/2016	02/28/2019	3
LIFEPAK® 15	V15-2-001603	42022683	19	03/01/2016	02/28/2019	3
LIFEPAK® 15	V15-2-001603	42026751	20	03/01/2016	02/28/2019	3
LIFEPAK® 15	V15-2-001603	42903564	21	03/01/2016	02/28/2019	3
LIFEPAK® 15	V15-2-001603	42903312	22	03/01/2016	02/28/2019	3
LIFEPAK® 15	V15-2-000051	38164448	1	03/01/2016	02/28/2019	3
LIFEPAK® 15	V15-2-000051	38370425	2	03/01/2016	02/28/2019	3
LIFEPAK® 15	V15-2-000051	38371709	3	03/01/2016	02/28/2019	3
LIFEPAK® 15	V15-2-000051	38567825	4	03/01/2016	02/28/2019	3
LIFEPAK® 15	V15-2-000051	39246170	5	03/01/2016	02/28/2019	3
LIFEPAK® 15	V15-2-000051	39246179	6	03/01/2016	02/28/2019	3

Scope Of Service On Site Preventative Maintenance

Model	Part Number	Serial Number	Ref. Line	Effective Date	Expiration Date	Total Inspections
LIFEPAK® 12	VLP12-02-005985	32761489	7	03/01/2016	02/28/2019	3
LIFEPAK® 12	VLP12-02-005985	32761667	8	03/01/2016	02/28/2019	3
LIFEPAK® 12	VLP12-02-005985	33887664	9	03/01/2016	02/28/2019	3
LIFEPAK® 12	VLP12-02-005985	34990976	11	03/01/2016	02/28/2019	3
LIFEPAK® 12	VLP12-02-005985	34990978	12	03/01/2016	02/28/2019	3

PHYSIO-CONTROL, INC.
TECHNICAL SERVICE SUPPORT AGREEMENT
SCHEDULE A

Contract Number:
Additional Items

Service Type	Item	Quantity	Start Date	End Date
CASE CHANGE	LP12/15/20 CASE CHG 1-9	3	03/01/2016	02/28/2019

PHYSIO-CONTROL, INC.
TECHNICAL SERVICE SUPPORT AGREEMENT
SCHEDULE B

LUCAS® 2 Chest Compression System Services

LUCAS® 2 Chest Compression System Comprehensive Service

- Inspections at intervals set forth on Schedule A
- Parts and labor necessary to restore Covered Equipment to original specifications, subject to Exclusions
- Battery Replacement Service
- For each LUCAS 2 listed on Schedule A, replacement of one (1) LUCAS 2 battery in accordance with the device operating Instructions, or upon battery failure
- Cleaning of the hood and bellows exterior
- Replacement of suction cup and patient straps, if necessary
- Updates installed at no additional cost, provided such Updates are installed at the time of regularly scheduled Services. If parts must be replaced to accommodate installation of new software, such parts may be purchased at a rate of 30% off the then-current list price

LUCAS® 2 Chest Compression System Repair Plus Service

- Parts and labor necessary to restore device to original specifications, subject to Exclusions
- Battery Replacement Service
- For each LUCAS 2 listed on Schedule A, replacement of one (1) LUCAS 2 battery in accordance with the device operating Instructions, or upon battery failure
- Updates installed at 20% off the then-current list price provided such Updates are installed at the time of regularly scheduled Services. If parts must be replaced to accommodate installation of new software, such parts may be purchased at a rate of 30% off the then-current list price

LUCAS® 2 Chest Compression System Preventative Maintenance Service

- Inspections at intervals set forth on Schedule A
- Cleaning of the hood and bellows exterior
- Replacement of suction cup and patient straps, if necessary
- Updates installed at 20% off the then-current list price provided such Updates are installed at the time of regularly scheduled Services. If parts must be replaced to accommodate installation of new software, such parts may be purchased at a rate of 30% off the then-current list price

PHYSIO-CONTROL, INC.
TECHNICAL SERVICE SUPPORT AGREEMENT
SCHEDULE B

LIFEPAK® 15 Monitor/Defibrillator Services

LIFEPAK® 15 Monitor/Defibrillator Comprehensive Service

- Inspections at intervals set forth on Schedule A
- Parts and labor necessary to restore device to original specifications, subject to Exclusions
- Standard detachable hard paddles repair or replacement
- REDI-CHARGE® battery charger (Catalog# 11141-000115) repair or replacement of one for each LIFEPAK 15 Monitor/Defibrillator listed in Schedule A and as determined necessary by Physio-Control
- Power Adapter repair or replacement
- Battery Replacement Service
- For each LIFEPAK 15 listed on Schedule A, replacement of up to three (3) LIFEPAK Lithium-ion batteries in accordance with the device Operating Instructions, or upon battery failure
- Updates installed at no additional cost, provided such Updates are installed at the time of regularly scheduled Services. If parts must be replaced to accommodate installation of new software, such parts may be purchased at a rate of 30% off the then-current list price.

LIFEPAK® 15 Monitor/Defibrillator Repair Plus Service

- Parts and labor necessary to restore device to original specifications, subject to Exclusions
- Standard detachable hard paddles repair or replacement
- REDI-CHARGE® battery charger (Catalog# 11141-000115) repair or replacement of one for each LIFEPAK 15 Monitor/Defibrillator listed in Schedule A and as determined necessary by Physio-Control
- Power Adapter repair or replacement
- Battery Replacement Service
- For each LIFEPAK 15 listed on Schedule A, replacement of up to three (3) LIFEPAK Lithium-ion batteries in accordance with the device Operating Instructions, or upon battery failure
- Updates installed at 20% off the then-current list price provided such Updates are installed at the time of regularly scheduled Services. If parts must be replaced to accommodate installation of new software, such parts may be purchased at a rate of 30% off the then-current list price.

LIFEPAK® 15 Monitor/Defibrillator Preventative Maintenance Service

- Inspections at intervals set forth on Schedule A
- Updates installed at 20% off the then-current list price provided such Updates are installed at the time of regularly scheduled Services. If parts must be replaced to accommodate installation of new software, such parts may be purchased at a rate of 30% off the then-current list price.

#21

pompano beach
Florida's Warmest Welcome

CITY OF POMPANO BEACH
BUDGET ADJUSTMENT

ORIGINATING DEPT. Fire/EMS

DATE 3/30/16

ACCOUNT DESCRIPTION	FND	DP	DV	SUB	EL	OB	AVAILABLE FUNDS	CURRENT BUDGET	* INCREASE	* DECREASE	REVISED BUDGET
Non-Exempt Fire	140	22	31	522	12	22	3491,575	6171940		7000	
Maintenance Cont	140	22	31	522	46	40	34623	42540	7000		
								TOTAL	7000	7000	

* USE WHOLE DOLLARS ONLY

REASON

$7000 To Maintenance Contract To Fund service Agreement for EMS Equipment

Department Head 3/30/16 Date

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 3/30/16 Date | Budget Office Date | City Manager Date | AUDITED BY 3/30/16 | INPUT BY | CONTROL NO.

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

Agenda Item

PB 1330 (Revised 5/05)

CITY OF POMPANO BEACH, FLORIDA
NOTICE OF PUBLIC HEARINGS

YOU ARE HEREBY NOTIFIED of Public Hearings before the City Commission on **Tuesday, April 12, 2016 at 6:00 p.m.**, in the City Commission Chambers of the City Hall Complex, 100 West Atlantic Boulevard, Pompano Beach, Florida, to consider the Ordinances entitled:

P.H. 2016-58: **AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A TECHNICAL SERVICE SUPPORT AGREEMENT BETWEEN THE CITY OF POMPANO BEACH AND PHYSIO-CONTROL, INC.; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.**

P.H. 2016-59: **AN ORDINANCE 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 LEASE AGREEMENT BETWEEN THE CITY OF POMPANO BEACH AND HILLSBORO INLET FISHING CENTER, INC.; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.**

The Ordinances are available for public inspection at the City Clerk's Office, 100 West Atlantic Boulevard, Suite 253, Pompano Beach, Florida 33060. All interested persons are urged to attend the Public Hearings, send a representative, or express their views by letter.

You may either be present in person at the Public Hearings, represented by counsel or letter. All interested persons take due notice of the time and place of the Public Hearings and govern yourselves accordingly.

Any person, who decides to appeal any decision of the City Commission with respect to any matter considered at this meeting, will need a record of the proceedings and for this reason, may need to ensure that a verbatim record of the proceedings is made. This record will include the testimony and evidence upon which the appeal is to be based.

Any person requiring auxiliary aids and services at this meeting may contact the City Clerk's Office at (954) 786-4611 at least 24 hours prior to the meeting. If you are hearing or speech impaired, please contact the Florida Relay Service at 1-800-955-8770 or 1-800-955-8771.

CITY OF POMPANO BEACH, FLORIDA
BY: ASCELETA HAMMOND, CMC, CITY CLERK

Published: April 2, 2016
Sun Sentinel

Meeting Date: April 26, 2016 Agenda Item 16

REQUESTED COMMISSION ACTION:

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

SHORT TITLE AN ORDINANCE OF THE CITY COMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A FIRST AMENDMENT TO THE LEASE AGREEMENT BETWEEN THE CITY OF POMPANO BEACH AND HILLSBORO INLET FISHING CENTER, INC.; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE. ($4,800 annual revenue to City)

Summary of Purpose and Why:

The purpose of this ordinance is to revise the lease the City has with the Hillsboro Inlet Fishing Center (Hillsboro Inlet Mariana) to allow the Fishing Center to sell live bait on the premises. The monthly lease payment will increase by $400 per month and the cost for the installation and maintenance of the system required to contain the bait will be the responsibility of the Fishing Center.

(1) Origin of request for this action: Hillsboro Inlet Fishing Center
(2) Primary staff contact: Robert McCaughan, Public Works Director 954 786-4097
(3) Expiration of agreement: July 1, 2019
(4) Fiscal impact and source of funding: $4,800 Annual Revenue

DEPARTMENTAL COORDINATION	DATE	DEPARTMENTAL RECOMMENDATION	DEPARTMENTAL HEAD SIGNATURE
Public Works	3/31/2016	APPROVE	Robert McCaughan
Finance	4/1/16	APPROVE	S. Kibble
Budget	4/5/16	APPROVE	
City Attorney	4/1/16	APPROVE	Stacey A. Hyatt

X City Manager

ACTION TAKEN BY COMMISSION:

Ordinance		Resolution		Consideration	Workshop
1st Reading	4/12/16	1st Reading		Results:	Results:
Approved					
2nd Reading	4/26/16				

City Attorney's Communication #2016-686
March 28, 2016

TO: Robert A. McCaughan, Public Works Director

FROM: Mark E. Berman, City Attorney

RE: Ordinance for First Amendment to Hillsboro Inlet Fishing Center Lease

As requested in your memorandum dated March 4, 2016, Public Works Department Memorandum No. 2016-24, the above-referenced Agreement has been prepared and is attached at this time along with the appropriate Ordinance captioned as follows:

> **AN ORDINANCE 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 LEASE AGREEMENT BETWEEN THE CITY OF POMPANO BEACH AND HILLSBORO INLET FISHING CENTER, INC.; 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/pw/2016-686

Attachment

ORDINANCE NO. 2016-_____

CITY OF POMPANO BEACH
Broward County, Florida

AN ORDINANCE 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 LEASE AGREEMENT BETWEEN THE CITY OF POMPANO BEACH AND HILLSBORO INLET FISHING CENTER, INC.; 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 a First Amendment between the City of Pompano Beach and Hillsboro Inlet Fishing Center, Inc., a copy of which Amendment is attached hereto and incorporated herein 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.

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
3/28/16
L:ord/2016-182

FIRST AMENDMENT

THIS FIRST AMENDMENT is entered into on this _____ day of _____, 2016, by and between:

> **CITY OF POMPANO BEACH, FLORIDA,** a municipal corporation of the State of Florida, 100 W. Atlantic Blvd., Pompano Beach, Florida 33060, hereinafter referred to as "LESSOR,"
>
> and
>
> **HILLSBORO INLET FISHING CENTER, INC.,** a Florida corporation, having its principal address at 2705 N. Riverside Drive, Pompano Beach, Florida 33062, hereinafter referred to as "LESSEE."

WHEREAS, the parties entered into a Lease Agreement for premises delineated as City of Pompano Beach Hillsboro Inlet Property, ("Original Agreement"), a copy of which is attached hereto and made a part hereof, and approved by City Ordinance No. 2014-44; and

WHEREAS, the parties now desire to amend certain terms and conditions to the agreement to include the selling of live bait on the premises; 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. Paragraph 2. of the Original Agreement is hereby amended as follows:

> 2. **PURPOSE.** The premises shall be used as a marina for a charter fleet which may comprise drift boats, dive boats, charter boats, and other seagoing vessels of similar or complementary nature, and uses related thereto (including <u>sale of live bait in support of said uses,</u> emergency and rescue vessels and supporting vessels), to be operated under LESSEE's supervision and to the extent permitted by the covenants of the non-tax bond issue. However, LESSEE shall not sell nor allow

the sale of petroleum fuels and motor oils to third parties on the Premises; provided however, this limitation does not preclude the delivery of fuel and petroleum products by third parties to the charter fleet (owners and operators docked at the marina as subtenants or licensees) on the Premises. For purposes of this section, the term "third parties" does not include owners or operators of commercial vessels docked at the marina as subtenants or licensees. LESSEE will otherwise comply with all covenants and conditions of the Internal Improvement Trust Fund lease and the provisions of the Hillsboro Inlet Marina Waterways Assistance Grant from the Florida Inland Navigation District. LESSEE and its occupants may operate a wholesale business and/or retail outlet for the sale of any seafood and other marine produce, if, and to the extent, permitted by the State of Florida, and if such sale complies with all applicable statutes, ordinances and regulations. LESSEE, subtenants and licensees may prepare (for consumption except for cooking) seafood and other marine produce for their respective customers, subject to the requirement that the premises are cleaned and kept sanitary.

. . .

4. Paragraph 9. of the Original Agreement is hereby amended as follows:

9. **BASE RENT.** The initial monthly base rent for the Premises shall be $1,350 per Charter Slip times seven slips, plus $500 per tow boat slip times one slip, plus $2,250 per drift boat docking point times two drift boat docking points. Payments shall be due on the 5th Calendar Day of each month, and shall be delinquent if not paid by the 15th Calendar Day of the due month. Rent shall be adjusted each month as follows:

A. For each Charter Boat slip occupied by a charter boat on the first day of the calendar month in excess of seven slips, rent shall be increased by 85% of the monthly rent per Charter Boat slip.

. . .

I. <u>Rent shall be increased by $400 per month for such periods that a live bait business is actively operating at the Marina. The $400 per month shall not be subject to increases under Section 10.</u>

5. Paragraph 12. of the Original Agreement is hereby amended as follows:

12. **ASSIGNMENT, SUBLEASING, AND LICENSING.** LESSEE shall not, without prior approval of LESSOR, assign or transfer this Agreement nor any share, part or interest in it, nor any of the rights or privileges granted by it, nor enter into any contract requiring or permitting the doing of anything under this agreement by an independent contractor unless otherwise expressly provided in this

Agreement. LESSEE further agrees that it shall not enter into any agreement of any nature, formal or informal, concerning other business activities at the Premises, with any individual, partnership or corporation without prior approval of CITY, it being understood that the only activity that LESSEE may conduct directly or indirectly, alone or through others, on, upon or from said demised premises and facilities located there, be they demised to the others or under the control of CITY, is as authorized under the terms of this Agreement. However and notwithstanding these limitations, LESSEE shall be permitted to sublease or license slips and docking points for uses set forth in Section 2 and as set forth below, without CITY's approval.

. . .

LESSEE shall maintain copies of all licenses and subleases it grants, which shall be available for inspection by the CITY's City Manager, Deputy City Manager, and Public Works Director.

LESSEE may allow the installation of concrete pedestals along the southern boundary of the Marina, within 25 feet of the Intracoastal seawall, tanks on those pedestals for keeping live bait, and associated pumps and piping into the Intracoastal Waterway. Location of pedestals is shown in Exhibit D. There shall be landscaping along the northern portion of the bait fish operation, to obscure the tanks and equipment from view from the parking lot. To the extent there is not obscuring landscaping along the southern portion of the bait fish operation (by the adjoining property owner), LESSEE shall require obscuring landscaping along that portion of the bait fish operation. Electrical service to the equipment shall be underground from the meter to the electrical equipment. All such improvements are at no cost to the CITY and subject to required city approved building permit(s). LESSEE is responsible for maintenance and operation of installed system, and all such improvements shall not be removed upon installation unless written approval from the CITY for such removal is first obtained.

LESSEE may permit signage along the finger pier (a/k/a emergency dock — on the northern portion of the Western dock) identifying the bait company, and availability of bait delivery of bait to Marina occupants, and to the general public from boats temporarily docked at the finger pier, as approved by CITY and per permits as required. "Temporarily" means for a period of 30 minutes or less, in the absence of unusual or exigent circumstances.

6. Paragraph 21. to the Original Agreement is hereby amended as follows:

21. **LESSEE IMPROVEMENTS.**

. . .

CITY shall design and install signage at the north end of the West Dock, signifying that the use of the finger pier is limited to emergency use only. See Section 12 regarding sale of bait on the finger pier.

7. 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.

8. 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.

"LESSOR":

Witnesses:

CITY OF POMPANO BEACH

_____

By:_____
LAMAR FISHER, MAYOR

_____

By:_____
DENNIS W. BEACH, CITY MANAGER

Attest:

_____
ASCELETA HAMMOND, CITY CLERK (SEAL)

Approved by:

_____
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

"LESSEE":

Witnesses:

HILLSBORO INLET FISHING CENTER, INC.
a Florida corporation

By: _____
M. ROSS SHULMISTER, Vice-President

Mary E. Gritter
Print Name

Debra M. Troyer
Print Name

(SEAL)

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 1st day of April, 2016, by **M. ROSS SHULMISTER** as Vice-President of **HILLSBORO INLET FISHING CENTER, INC.,** a Florida corporation on behalf of the corporation. He is personally known to me or who has produced _____ (type of identification) as identification.

NOTARY'S SEAL:

NOTARY PUBLIC, STATE OF FLORIDA

DEBRA M TROYER
Notary Public - State of Florida
My Comm. Expires Nov 26, 2016
Commission # EE 827416
Bonded Through National Notary Assn.

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number

MEB/jm
3/28/16
L:agr/pw/2016-682

on page 12

ORDINANCE NO. 2014-44

CITY OF POMPANO BEACH
Broward County, Florida

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A LEASE AGREEMENT BETWEEN THE CITY OF POMPANO BEACH AND HILLSBORO INLET FISHING CENTER, INC.; 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 a Lease Agreement between the City of Pompano Beach and Hillsboro Inlet Fishing Center, Inc., a copy of which Agreement is attached hereto and incorporated herein 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.

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 10th day of June, 2014.

PASSED SECOND READING this 24th day of June, 2014.

LAMAR FISHER, MAYOR

ATTEST:

MARY L. CHAMBERS, CITY CLERK

/jrm
5/23/14
L:ord/2014-280

original 12

Lease Agreement

This Lease Agreement is entered into effective July 1, 2014, by and between THE CITY OF POMPANO BEACH, a municipal corporation of the State of Florida, hereinafter referred to as "CITY" or as "Lessor", and HILLSBORO INLET FISHING CENTER, INC., a Florida Corporation, hereinafter referred to as "LESSEE".

Know all men by these presents, that

Whereas, the CITY owns and operates municipal dockage facilities and other improvements at the Hillsboro Inlet; and

Whereas, the LESSEE is desirous of leasing from CITY certain dockage facilities and improvements at the Hillsboro Inlet; now

Therefore, in consideration of the mutual promises, covenants and conditions contained in this Agreement and other good and valuable consideration, the receipt and adequacy of which are acknowledged, the parties agree as follows:

1. **PREMISES.** CITY leases to LESSEE certain premises delineated as City of Pompano Beach Hillsboro Inlet Property (the "Premises"), and more particularly described as Lot 26, Block 20 of HILLSBORO SHORES SECTION "8", according to the Plat thereof, as recorded in Plat Book 22, Page 39 of the Public Records of Broward County Florida. The premises includes additional lands and submerged lands set forth in Exhibits A and B.

   The premises are configured with a continuous dock and ten slips along the Northern perimeter designed for perpendicular docking, and a continuous dock along the Western perimeter, with three slips designed for docking parallel to the docks. For convenience, the Western slips are referred to, from South to North, as Drift Boat Docking Point 1, Drift Boat Docking Point 2, and the Emergency Dock. For convenience, the Northern slips are referred to, from East to West, as Slip 1, Slip 2, and Charter Boat Slips 3 through 10. For convenience, a diagram is attached hereto as Exhibit C, but does not alter any terms of this Lease.

   The premises include submerged land adjacent to the above-described real property (See Section 33).

2. **PURPOSE.** The Premises shall be used as a marina for a charter fleet which may comprise drift boats, dive boats, charter boats, and other seagoing vessels of similar or complementary nature, and uses related thereto (including emergency and rescue vessels and supporting vessels), to be operated under LESSEE's supervision and to the extent permitted by the covenants of the non-tax bond issue. However, LESSEE shall not sell nor allow the sale of petroleum fuels and motor oils to

third parties on the Premises; provided, however, this limitation does not preclude the delivery of fuel and petroleum products by third parties to the charter fleet (owners and operators docked at the marina as subtenants or licensees) on the Premises. For purposes of this section, the term "third parties" does not include owners or operators of commercial vessels docked at the marina as subtenants or licensees. LESSEE will otherwise comply with all covenants and conditions of the Internal Improvement Trust Fund lease and the provisions of the Hillsboro Inlet Marina Waterways Assistance Grant from the Florida Inland Navigation District. LESSEE and its occupants may operate a wholesale business and/or retail outlet for the sale of any seafood and other marine produce, if, and to the extent, permitted by the State of Florida, and if such sale complies with all applicable statutes, ordinances and regulations. LESSEE, subtenants and licensees may prepare (for consumption except for cooking) seafood and other marine produce for their respective customers, subject to the requirement that the premises are cleaned and kept sanitary.

For purposes of this Lease, a "subtenant" is a person or other legal entity which leases a portion of the Premises from LESSEE; a "licensee" is a person or other legal entity which occupies a portion of the Premises under a license from LESSEE; "occupant" encompasses subtenants, licensees, boats occupying a slip, boats occupying a docking point, owners of boats, licensed captains of boats occupying a slip or docking point, and, where the context requires, crews and LESSEE.

3. **ACCEPTANCE OF PREMISES.** LESSEE acknowledges that it is thoroughly and completely familiar and knowledgeable of the Premises and is fully advised of the condition, nature of construction and state of repair. LESSEE fully accepts the Premises in the present condition, subject to repair and maintenance obligations of CITY.

4. **NO LIENS CREATED.** LESSEE covenants and agrees that LESSEE has no power to incur any indebtedness giving a right to a lien of any kind or character upon the right, title or interest of CITY in and to the Premises. Should any such lien be filed against CITY without CITY's expressed consent, LESSEE shall discharge the same within thirty (30) days thereafter by paying the same or by filing a bond, or otherwise as permitted by law, unless CITY shall agree otherwise. LESSEE shall not be deemed to be the agent of CITY under any term, paragraph, condition or covenant of this Agreement.

5. **OPERATING COSTS.**

   A. CITY agrees to pay promptly all operating costs of the marina billed to it or to LESSEE, and incurred as a result of LESSEE's business operations on the Premises, which costs are not by this Lease an expense of LESSEE. Operating costs include but are not limited to utility charges, CITY's employees if any (except as specifically set forth herein), ad valorem taxes, and other normal business expenses, plus or except as may otherwise be set forth herein. Operating costs do not include any expense incurred by an occupant or by LESSEE which costs would not be the expense of a marina owner.

B. CITY shall provide garbage and/or refuse receptacles in the parking lot, and at or near the building, and the same shall be removed by CITY contractors at CITY EXPENSE. LESSEE (and all occupants under LESSEE) shall deposit all other garbage and trash generated by its business operations on a daily basis in enclosed containers (dumpsters) at the Hillsboro Inlet location and CITY shall provide for removal on a regular basis at CITY's cost. Any garbage and trash that does not fit in the enclosed containers shall be properly disposed of at LESSEE's expense and shall not be left on the Premises.

C. CITY shall provide connections for municipal water service, electricity, sanitary sewer service, cable television (CATV) and telephone for LESSEE and its occupants. LESSEE or its licensees and subtenants ("occupants") shall pay directly for telephone and CATV services if such services are desired, and for electric service to individual slips and to the office. Specifically, the connections shall consist of the following: one electric meter for each slip and one for the office; one water connection for each slip plus one for the office and plus one for irrigation purposes; one (1) telephone and CATV connection for each slip and for the office; and plumbing for public rest room facilities.

D. It shall be CITY's responsibility to have the public rest room facilities cleaned at least on a daily basis and maintained at all times in a clean and sanitary condition and furnish at its expense toilet and washroom supplies. CITY grants LESSEE permission and authority to supplement this function at LESSEE's expense for labor and for materials not supplied by CITY.

E. The CITY shall pay the costs of electricity for the property, except for metered access (office and occupied individual slips). CITY shall maintain the lighting and other electrical fixtures serving the marina.

F. CITY shall provide adequate water for irrigation purposes through the installed irrigation system. The water for irrigation may be recycled water.

6. **REPAIRS, MAINTENANCE AND SURRENDER.** CITY shall at its expense maintain the Premises (except as provided otherwise herein), in the same <u>or better</u> state of repair and condition as existed on the date of commencement of this Agreement, or better, reasonable wear and tear excepted. Such maintenance shall NOT include cleaning windows, washing and waxing floors, carpet cleaning, and repair of ice machines, all of which shall be LESSEE's responsibility. CITY may provide a reasonable inventory of light bulbs, and toilet and washroom supplies, and, if it does so, authorizes but does not require LESSEE to replace light bulbs and toilet and washroom supplies from that inventory. LESSEE at its expense agrees to repair any damage caused by LESSEE or by its subtenants and licensees ("occupants") not covered by insurance. Upon the termination of this Agreement, the entire Premises, in the same or better state of repair and condition as existed on the date of

commencement of this Agreement, shall be surrendered to CITY, reasonable wear and tear excepted. LESSEE may remove ice machines and other removable fixtures installed by LESSEE.

CITY shall make all exterior repairs, including repairs of the roof, sidewalks, and parking lot, as well as repairs as required because of water entering the demised premises from the roof or other parts of the building or from other causes not resulting from the negligence or intentional act of LESSEE or its occupants. CITY shall maintain the exterior of the building in good condition. CITY shall maintain the seawalls, docks, pilings, and the parking lot on the premises so as to maintain the value of the capital assets in a manner consistent with generally accepted landlord/tenant responsibilities. LESSEE shall promptly report, preferably in writing, to CITY any defective or dangerous conditions known to LESSEE, and CITY shall maintain all landscaping, planted areas and grassy areas, in a same or similar fashion as at the commencement of this Agreement. Also, CITY shall maintain the installed irrigation system in good order and repair. CITY may provide a reasonable inventory of sprinkler heads and other supplies, authorizes (but does not require) LESSEE to replace defective sprinkler heads and perform other minor maintenance. LESSEE is expected to notify CITY of any required maintenance.

If CITY shall fail to make a needed repair within thirty five (35) days of being notified of the necessity, and shall also fail within that same time to provide justification for the failure, LESSEE may submit a letter of intent to make the repair, which must include the cost of the repair. Thereupon, CITY shall either make the repair within an additional thirty five (35) days from receipt of the letter of intent, or shall object to the reasonableness of the cost of repair, together with a counterproposal within that same additional thirty five (35) days. If within the time allowed CITY shall fail to object to the reasonableness of LESSEE's repair proposal, or shall object without making a counterproposal, LESSEE may proceed to make the repair, and shall be entitled to deduct the cost of the repair (which may not exceed the cost stated in the letter of intent) from an ensuing monthly rent payment. If the repair is needed to correct a dangerous or hazardous condition, the time periods shall be reduced from thirty five (35) days to fourteen (14) days.

CITY shall not be liable to LESSEE for damage to property of LESSEE or any loss of revenue to LESSEE resulting from its acts, omissions or neglect in the maintenance and operation of the demised premises facilities, except to the extent such liability is covered by insurance; however, CITY shall be otherwise liable to LESSEE for damage to property of LESSEE caused by the intentional or negligent acts of agents, employees and servants of CITY.

7. **TERM.** The term of this Agreement is for the period of five (5) years, commencing July 1, 2014, at 12:01 a.m. and ending at midnight on June 30, 2019, unless sooner terminated, as provided herein. This Agreement may be extended upon the agreement of both parties for one additional five (5) year term.

8. **POSSESSION.** LESSEE agrees to take possession of the Premises as of the effective date of this Lease.

9. **BASE RENT.** The initial monthly base rent for the Premises shall be $1,350 per Charter Slip times seven slips, plus $500 per tow boat slip times one slip, plus $2,250 per drift boat docking point times two drift boat docking points. Payments shall be due on the 5th Calendar Day of each month, and shall be delinquent if not paid by the 15th Calendar Day of the due month. Rent shall be adjusted each month as follows:

A. For each Charter Boat slip occupied by a charter boat on the first day of the calendar month in excess of seven slips, rent shall be increased by 85% of the monthly rent per Charter Boat slip.

B. For each vacant Charter Boat slip in excess of one, rent shall be reduced by 85% of the monthly rent per Charter Boat slip. By way of example, if seven Charter Boat slips are occupied, the base rent shall apply; but if five Charter Boat slips are occupied, the base rent shall be reduced by 85% of the rent for two Charter Boat slips.

C. For each vacant Drift Boat docking points, rent shall be reduced by 90% of the monthly rent for each Drift Boat docking points.

D. If and when CITY obtains permission for occupancy of Slip 1 of a houseboat or office boat, and Slip 1 becomes occupied, rent shall increase by the base rent for a tow boat slip.

E. If a tow boat slip shall become vacant, rent shall be reduced by 100% of the base rent for that vacant slip.

F. Vacancies and occupancies shall be determined as of the first calendar day of each month, and LESSEE shall notify CITY with the submission of the monthly rent payment of the current occupancies and vacancies.

SUMMARY:	Base Rent	Adjustments for Vacancies/Occupancies
Charter Boats	$1,350 x 7	85% of Base Rent per slip
Drift Boats	$2,250 x 2	90% of Base Rent per slip
Tow/Rescue Boats	$ 500 x 1	100% of Base Rent per slip
other types	subject to agreement between CITY and LESSEE	

G. In the event any slip or docking point is vacant for more than one month, CITY may refer any prospective occupant to LESSEE. If the prospective occupant is qualified to operate a business as a charter boat and LESSEE fails to approve the prospective occupant for a vacant charter boat slip without justification, that slip shall be deemed occupied for a period of four months (unless sooner occupied by a licensee or subtenant). If the prospective occupant is qualified to operated a business as a drift boat and LESSEE fails

to approve the prospective occupant for a vacant drift boat docking point without justification, that docking point shall be deemed occupied for a period of four months (unless sooner occupied by a licensee or subtenant).

H. In the event there are more than four vacancies (a vacant drift boat docking point shall be deemed to be one and one-half vacancies) for four consecutive months, or for more than six months in any calendar year, CITY may terminate this lease upon sixty days notice.

10. COST OF LIVING INCREASES; DELINQUENCY. Monthly rent shall not increase for a period of three years.

Commencing July 1, 2017, the base rent shall be increased or decreased by a factor based on the Cost of Living Index, as herein defined, and as set forth below, until termination of the Lease. Increases shall be calculated and imposed biennially, commencing with the renewal period starting July 1, 2017, and on every second anniversary thereafter.

In the event of any controversy arising as to the proper adjustment for rental payments as herein provided, LESSEE shall continue paying the base rent under the last preceding rental adjustment as herein provided plus 2½%, until such time as said controversy has been settled, at which time an adjustment will be made retroactive to the beginning of the adjustment period in which the controversy arose.

LESSEE shall pay to CITY a penalty of two and one half percent (2½%) of monies due for any period during which any payment is delinquent (unpaid more than ten (10) days from the due date), said penalty not to exceed Five Hundred ($500.00) Dollars. Failure of LESSEE to pay any sums due hereunder within thirty (30) days after receipt of written notice of delinquency shall authorize CITY, at its option and without any legal proceedings, to declare the Agreement in default, to cancel the same, and to re-enter and to take possession of the premises.

In addition to the rent and other charges outlined herein, LESSEE's occupants shall responsible for the payment of all fees, charges, license fees and taxes of whatever nature, if necessary, as required by federal and state law or ordinance of the City of Pompano Beach, excluding ad valorem taxes.

<u>Cost of Living Index and Changes</u>

The parties hereto adopt as a standard of measuring such fluctuations, the Consumers' Price Index, United States average of all items and commodity groups issued by the Bureau of Labor Statistics of the United States Department of Labor, hereinafter referred to as "The Index." The average of the Index for the month of April, 2016, shall be the "Initial Reference Index" as that term is hereinafter used. This adjustment shall be made and the base rent for the first adjustment period (July 1, 2017 – June 30, 2018) of this lease shall be arrived at by multiplying the monthly base rent for each type of slip by a fraction, the numerator of which shall be the index for April 2017, and the denominator of which shall be the Initial Reference Index.

For each successive adjustment period, the previous numerator shall become the denominator, and the Index for the month of April preceding the renewal term shall become the numerator, and the adjusted rent shall be the rent for the then-current period multiplied by the newly determined fraction. By way of example, the base rent for the second adjustment period (July 1, 2019) shall be (i) the base rent for the first renewal period (July 1, 2017) multiplied by (ii) the Index for the April (2019) immediately preceding the start of the second adjustment period, divided by (iii) the Index for the April (2017) immediately preceding the start of the first renewal period, which is illustrated by the following formula:

R1 = Base rent for the then-current period
R2 = Base rent starting July 1 of the new adjustment period
I1 = Index for the April preceding the start of the then-current period
I2 = Index for the April preceding the start of the new adjustment period

$$R2 = \frac{R1 \times I2}{I1}$$

with the limitation that R2 cannot be greater than 1.05 x R1 nor less than 0.95 x R1.

There shall be a cap on CPI Adjustments, and no increase or decrease may exceed five percent (5%).

It is understood that the above Index is now being published by the Bureau of Labor Statistics of the United States Department of Labor each month. Should it be published at other, then the basic standard shall be arrived at from the Index or Indexes published by said Bureau most closely approximating the biennial increase or decrease. Should said Bureau of Labor Statistics change the manner of computing such Index, the Bureau shall be requested to furnish a conversion factor designed to adjust the new Index to the one previously in use, and the adjustment of the new Index shall be made on the basis of such conversion factor. Should the publication of said Index be discontinued by said Bureau of Labor Statistics, then such other Index as may be published by such Bureau, most closely approaching such discontinued Index, shall be used in making the adjustment herein provided for. Should said Bureau discontinue the publication of an Index approximating the Index herein contemplated, then such Index as may be published by another United States Governmental Agency as most nearly approximates the Index herein first above referred to shall govern and be substituted as the Index to be used, subject to the application of an appropriate conversion factor to be furnished by the governmental agency publishing the adopted Index. If such governmental agency will not furnish such conversion factor, then the parties shall agree upon a conversion factor of a new Index, and in the event agreement cannot be reached as to such conversion factor, or such new Index, then the parties hereto agree to submit the question to a commercial arbitrator, selected under the Commercial Arbitration Rules of the American Arbitration Association, or to such other arbitrator as the parties may agree. In reaching this conclusion a new Index shall be selected approximating as nearly as

can be the Index hereinbefore first contemplated, which new Index may be one published by a governmental agency, or one published by a private agency and generally accepted and approved as an Index reflecting the contemplated fluctuation in the purchasing power of the dollar shall be agreed upon by the parties thereto, or, failing such agreement, a generally accepted or approved Index shall be selected by the arbitrator chosen in the above manner. The selection of an Index by such arbitrator in either of the above mentioned events shall be binding upon the parties hereto.

In the event of any controversy arising as to the proper adjustment for rental payments herein provided, the Lessee shall continue paying the rental under the preceding rental plus two and one half percent (2½%) until such time as said controversy has been settled, at which time an adjustment will be made retroactive to the beginning of the adjusted period.

CITY shall notify LESSEE not less than twenty (20) calendar days before the commencement of each adjustment period of the indices upon which the rent (and vacancy abatements) will be adjusted, substantially in the format: "The index for this past April was ___, the index upon which current rent was based is ___, the percentage increase/decrease will be [I2 (new index)]÷[I1 (old index)] = ___%. The new monthly base rent for Charter Boat slips will be $___, for Drift Boat docking points will be $___, and for Tow Boat slips will be $___."

The percentage of monthly reductions of rent for vacancies and increase for additional occupancies shall remain as set forth in Section 9.

11. **INSURANCE.**

LESSEE shall require licensees and subtenants to maintain insurance, at their expense, during their occupancy of a slip or docking point, with an insurance company or companies acceptable to CITY, liability insurance for the operation of their respective vessels in the minimum amount of $1,000,000.00 single limit coverage for each occurrence for liability, bodily injury, loss of life, property loss or damage, and products liability. Insurance shall be required to cover liabilities occurring on or created by vessels occupying slips or docking points, and by acts or omissions incident to the operation of individual licensees' and subtenants' businesses.

LESSEE shall maintain copies of all insurance policies, which shall be available for inspection by the City Manager, CITY's Risk Manager, and the City Attorney at any reasonable time. LESSEE shall require subtenants and licensees to provide CITY with a certificate of insurance for each licensee and subtenant within twenty one (21) days of the date of this Lease for licensees and subtenants occupying a slip or docking point at the commencement of this Lease, and within twenty one (21) days of the commencement of occupancy by subsequent licenses and subleases.

12. **ASSIGNMENT, SUBLEASING, AND LICENSING.** LESSEE shall not, without

prior approval of LESSOR, assign or transfer this Agreement nor any share, part or interest in it, nor any of the rights or privileges granted by it, nor enter into any contract requiring or permitting the doing of anything under this agreement by an independent contractor unless otherwise expressly provided in this Agreement. LESSEE further agrees that it shall not enter into any agreement of any nature, formal or informal, concerning other business activities at the Premises, with any individual, partnership or corporation without prior approval of CITY, it being understood that the only activity that LESSEE may conduct directly or indirectly, alone or through others, on, upon or from said demised premises and facilities located there, be they demised to the others or under the control of CITY, is as authorized under the terms of this Agreement. However and notwithstanding these limitations, LESSEE shall be permitted to sublease or license slips and docking points for uses set forth in Section 2 and as set forth below, without CITY's approval.

LESSEE may license slips for uses set forth in Section 2 as follows:

Slip 2 (Northern Perimeter) may be licensed for use by a tow or salvage boat, or other emergency vessel, the purpose of which shall be to respond to maritime emergencies in or near the City of Pompano Beach and adjacent Intracoastal and Ocean waters. For good cause shown, and with consideration to any safety issues which the proximity of the A1A overpass may create, CITY's city manager or public works director may approve the licensing of Slip 2 for use by a Charter Boat or other oceangoing vessel. LESSEE's base rent for that slip shall be determined by the nature of the occupying vessel (Charter Boat, tow boat, rescue boat, dive boat, etc.) as a commercial fishing vessel, or as a tow or other type of rescue vessel or adjunct use.

Subject to compliance with applicable statutes, ordinances and regulations, Slip 1 (Northern Perimeter) may be licensed to for use by an oceangoing vessel configured as a business office, as an adjunct to the function of a tow or salvage boat licensed to use Slip 2. Because of the occasionally hazardous waters at the entrance to Slip 1, it may not be licensed to a vessel which accepts passengers for carriage or other non-stationary uses wherein a member of the general public becomes a passenger for compensation. It may also be licensed to a tow, salvage, or rescue boat.

Charter boat slips 3 through 10 may be licensed only for use by Charter Boats, which are defined as oceangoing vessels capable of, and registered for, carrying six (6) passengers, plus the boat's crew, for purposing of fishing. For good cause shown, and at LESSEE's specific request, CITY's city manager or public works director may grant a waiver to allow for a charter vessel with a greater or lesser passenger capacity, but such approval shall have considered safety, compliance with US Coast Guard rules and regulations, probable effect on other licensees and the public, and conformance with the purposes for which this Lease is granted by CITY.

Drift boat docking points 1 and 2 may be licensed for any commercial passenger use by boats which are defined as oceangoing vessels capable of, and registered for carrying twenty five (25) or more passengers, plus the boat's crew, for

purposes of fishing. Those slips may also be configured for use by dive boats, which are defined as oceangoing vessels equipped for carrying divers with fishing gear, cameras, self-contained underwater breathing apparatus (SCUBA), or snorkels. If Intracoastal side slips are reconfigured for use by charter boats (as defined above), Intracoastal side slips may also be licensed for charter boat use.

For good cause shown, and at LESSEE's specific request, CITY's city manager or its public works director may grant a waiver to allow for a different nature of commercial oceangoing vessel involving fishing or marine produce, but such approval shall have considered safety, compliance with US Coast Guard rules and regulations, probable effect on other licensees and the public, and conformance with the purposes for which this Lease is granted by CITY.

The portion of the Western dock which extends northward of the Northern dock may be designated by LESSEE or by the CITY as an Emergency Dock, for use by the general public and other maritime users in emergency situations. CITY or LESSEE may erect signage indicating the purpose of the Emergency Dock, and reasonable limitations on its use. Both CITY and LESSEE are authorized to enforce rules and regulations as they apply to the Emergency Dock, with assistance of any law enforcement agency having jurisdiction of the Premises (marine, land, or both), or by civil action, or both.

Licenses and subleases shall, at a minimum, contain the following information:

a. Description of the boat slip
b. Name of the boat owner (licensee) or subtenant
c. Description of the boat, to include the name
d. Rent or monthly license fee, which shall include the base rent to the City under Section 9 (with Cost-of-Living Increases), additional charges for taxes, utilities, and other expenses of LESSEE
e. Basis and procedures for increases of rent, license fees, and expenses
f. Term of the license or sublease, plus any automatic renewals and provisions for termination
g. Required insurance
h. Licensee's and subtenant's obligation to adhere to rules and regulations, and terms of this Lease
i. Activities in which the licensee or subtenant is authorized to engage

LESSEE shall maintain copies of all licenses and subleases it grants, which shall be available for inspection by the CITY's City Manager, Deputy City Manager, and Public Works Director.

13. DELIVERIES AND FUELING.

A. General deliveries may be made at the Premises as required.

B. Except for bona fide emergencies, only LESSEE's licensees and subtenants

may fuel their vessels from, at, or in the vicinity of the Premises, providing the fuel is acquired from an authorized dealer of marine fuel and by an operator that is independent of licensees and subtenants.

C. On-board servicing and maintenance of boats is permitted. [See section 28]

14. **LAWS AND ORDINANCES.** LESSEE agrees to comply with all applicable state statutes, Broward County and CITY's ordinances, and any safety requirements of all federal, state and local governments; and LESSEE shall, to the extent practicable, require all licensees to also comply with all applicable state statutes, Broward County and CITY's ordinances, and any safety requirements of all federal, state and local governments. LESSEE and its occupants shall maintain all required licenses from governmental agencies in full force and effect during the term of this Agreement.

Both CITY and LESSEE are authorized to enforce compliance with statutes, ordinances and safety requirements, with assistance of any law enforcement agency having jurisdiction of the Premises (marine, land, or both), or by civil action, or both.

15. **INDEMNIFICATION AGAINST CLAIMS.** Each party shall indemnify and save the other harmless from and against any and all claims, suits, actions, damages, and causes of action arising during the term of this Agreement, to the extent provided by law, for any bodily injury, loss of life, or damage to property sustained in or about the premises, or the appurtenances to them, arising out of any alleged act or omission of the indemnitor or its employees, agents or servants, and from and against all costs, counsel fees, expenses and liabilities incurred in and about any such claim, the investigation of them, or the defense of any action or proceeding brought on them, and from and against any orders, judgments or decrees which may be entered in them, except to the extent covered by insurance. Each will further, upon the indemnitee's request, assume and defend any action that may be brought against the indemnitee as the result of any alleged act or omission of the indemnitor or its employees, agents or servants and shall further assume and pay all associated costs and attorneys' fees which may be reasonably incurred by the indemnitee. Notwithstanding, each shall be liable for the intentional or negligent acts of its own employees and agents, except to the extent covered by insurance. Notwithstanding this paragraph, CITY does not waive its sovereign immunity.

16. **OWNERSHIP AT TERMINATION.** Except for removable fixtures, all fixtures, alterations, improvements, structures, additions and modifications of every kind now existing or later erected, installed or placed within the Premises shall, at the end of the term or earlier termination of this Agreement, for any reason, be and become the property of CITY and shall be left in good condition and repair, ordinary wear and tear excepted unless CITY at its option permits LESSEE to remove all or a portion of same. In such event LESSEE at its sole expense shall promptly remove same. LESSEE further agrees at its sole expense to promptly repair and restore all portions of the entire Premises to good condition upon such removal. A fixture is defined as an article which was a chattel, but which, by being

physically annexed or affixed to the Premises by LESSEE and incapable of being removed without structural or functional damage to the Premises, becomes a part and parcel of them. Nonfixture personalty owned by LESSEE (or by a licensee) at the expiration of the term or earlier termination of this Agreement, for any reason, shall continue to be owned by LESSEE (or the licensee), and at the time of such expiration or earlier termination, LESSEE at its option, may remove all such personalty, provided LESSEE is not then in default of any covenant or condition of this Agreement; otherwise, all property shall remain on the Premises until the damages suffered by CITY from any such default have been ascertained and compensated. Any damage to the Premises caused by the removal by LESSEE of any such personalty shall be repaired by LESSEE immediately at its expense.

17. **LOUDSPEAKERS AND SPOTLIGHTS.** LESSEE shall not at any time use or permit the use of exterior (land-based) spot lights (except lighting that is directed downward, and does not create glare toward adjacent properties or marine traffic) or loudspeakers or any device to amplify sound including, but not limited to, voice, music (live or otherwise), with the exception of the sounding of horns for navigational purposes and informational messages through the Dockmaster's office. A continuing violation of this provision shall be considered a basis for termination of this Agreement by CITY pursuant to the provisions for default as provided for herein.

18. **DEFAULT.** It is agreed that upon any default by LESSEE in keeping and performing any and all material terms and conditions of this Agreement to be kept and performed by LESSEE, CITY may, at its option, declare this Agreement terminated and may, after thirty (30) days written notice to LESSEE to cure such default, re-enter and take possession of the Premises. The power granted in this paragraph to CITY is in addition to any other rights or remedies which CITY may have under the existing laws of the State of Florida with regard to the removal of tenants, distress or other legal recourse. All rights and remedies available to CITY may be exercised concurrently or separately.

19. **NON-WAIVER.** The failure of either party to insist upon the strict performance of any of the covenants, conditions and agreements of this Agreement in any one or more instances shall not be construed as a waiver or relinquishment in the future of any such covenants, conditions and agreements.

20. **DAMAGE TO PREMISES.** In the event the Premises or the building of which the Premises are a part shall be damaged or destroyed by fire or other casualty, the same may be promptly repaired or rebuilt by CITY at its expense as soon as funds are available, but CITY shall not be obligated to repair, rebuild, restore or replace any fixtures, equipment, displays or other property installed by LESSEE or others pursuant to this Agreement unless the losses (less deductibles) are covered by insurance.

CITY may elect, at its sole option, not to repair or reconstruct the Premises or the facility which are a part of this Lease, and upon written notice of such election

from CITY to LESSEE the obligation of LESSEE to pay rent shall cease and this Agreement shall thereupon terminate. However, if CITY does not give notice of termination, LESSEE's obligation to pay rent shall abate during the existence of any damage or other casualty which renders the demised premises unsuitable for LESSEE and its occupants in continued operation of business. In the event the demised premises are rendered only partially unsuitable for LESSEE's operations, rent abatement shall be prorated. Prorated rental shall be determined by CITY.

21. **LESSEE IMPROVEMENTS.** LESSEE shall not attach, affix or permit to be attached or affixed, upon the premises, or if so attached or affixed, relocate, replace, alter or modify, without the consent in writing in each instance of CITY any flags, placards, signs, poles, wires, aerials, antennae, improvements or fixtures. In connection therewith, CITY may require submission of proposed designs, floor plans, construction plans, specifications and contract documents therefor and, if then approved, may incorporate all or part thereof within this Agreement as attachments thereto. A writing signed by the CITY's Public Works Director, which shall include a statement of whether or not a Building Permit is required, shall constitute consent. CITY's approval will not constitute approval by any County, State or Federal Agency which may have jurisdiction over the proposed improvements.

CITY and LESSEE acknowledge that LESSEE owns pedestals and workbenches at each slip, and that each occupant has or may have one or two signs at each pedestal or workbench identifying the occupant of the adjacent slip, and other pertinent information. LESSEE shall require signage that is not gaudy or oversized, so as to present a professional appearance to the public, and may enact reasonable regulations to accomplish that requirement.

CITY shall design and install signage at the north end of the West Dock, signifying that the use of the finger pier is limited to emergency use only.

22. **TIME OF PERFORMANCE.** Time is of the essence in this Agreement and the parties agree promptly to perform, comply with and abide by all terms and conditions of this Agreement.

23. **SUCCESSORS.** This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. LESSEE's occupants shall not violate any of the requirements of this Agreement.

24. **PARAGRAPH HEADINGS.** Paragraph headings of this Agreement are for convenience of the parties, are not part of the substance of this Agreement, and shall have no effect upon the construction or interpretation of any terms, conditions or part of this Agreement.

25. **GOVERNING LAW.** This Agreement shall be construed and enforced according to the

laws of the State of Florida, notwithstanding conflict of law provisions of the State of Florida.

26. **SEVERABILITY.** The unenforceability, invalidity, or illegality of any provision of this Lease Agreement shall not render the other provisions unenforceable, invalid or illegal.

27. **NOTICE.** The parties to this Agreement shall be contacted and noticed at the following addresses:

CITY:	Director of Public Works City of Pompano Beach 100 West Atlantic Boulevard Pompano Beach, Florida 33060
LESSEE:	Hillsboro Inlet Fishing Center, Inc. 2705 North Riverside Drive Pompano Beach, Florida 33062

28. **REPAIRS TO VESSEL.** Any repairs to be done to vessels at the premises shall be limited to those of a minor and routine nature that do not generate excessive air, water or noise pollution.

29. **WASTEWATER.** All vessels docked at the Premises shall at all times abide by all city, state and federal regulations governing the discharge of sewage, including, but not limited to, 40 CFR Parts 3 and 4 and 33 CFR 159.7, Pages 520-521 NAVIGATION AND NAVIGABLE WATERS CHAPTER 1, COAST GUARD, DEPARTMENT OF TRANSPORTATION (CONTINUED) PART 159, MARINE SANITATION DEVICES. In the event the City at any time reasonably believes any vessel is not in compliance with same, the City shall have the right to inspect said vessel to verify compliance. LESSEE shall maintain records of all wastewater discharges and shall furnish CITY with a copy of such records upon request.

30. **RIGHT TO ENTER.** CITY may enter the office building at any time upon giving reasonable notice to the LESSEE and so long as the same does not unduly interfere with the conduct of regular business by LESSEE and its occupants. In the event of an emergency, CITY shall not be required to give notice prior to entering the office building. CITY may enter the public portions of the premises at any time.

31. **PARKING SPACES AND ADDITIONAL LANDS – LESSEE'S EXCLUSIVE USE.** There shall be available at and contiguous to the Premises 53 parking spaces for the exclusive use of LESSEE and its licensees and subtenants. At LESSEE's request, CITY may assist enforcing LESSEE's possession of those spaces, which may include issuing parking citations. LESSEE may also, at its own

expenses and risk, enter into a towing agreement with a commercial towing company. LESSEE shall be afforded use and benefit of the adjacent parking facilities on Lot 27 and additional lands described in Exhibit A.

LESSEE may designate or allow the designation of parking spaces along the Northern perimeter as reserved for the occupant. LESSEE may designate or allow the designation of other spaces in the parking area provided that the number of Handicap Spaces must not be less than required by law or ordinance. LESSEE shall establish the criteria for designating or allowing the designation of reserved spaces, but is under no obligation to designate or allow the designation of reserved spaces. No occupant may be entitled to more than two reserved spaces.

32. **SIGNAGE.** LESSEE, may, at its own expense, erect or place in a manner as it sees fit signage for the advertising of LESSEE and Lessee's licensees on the Premises, and for information regarding the Fishing Fleet and its operation, including parking management. Thereafter, LESSEE shall maintain said signage in a good state of repair, and shall repair any damage thereto, or replace them. CITY shall also lend reasonable assistance in obtaining approval of signage on the A1A right-of-way from the Florida Dept. of Transportation; and shall give reasonable approval or assistance (or both) for other signage which would help tourists and others locate and navigate to the Fishing Center's premises. Nothing in this Lease is intended to exempt LESSEE or its licensees and subtenants from the CITY's sign ordinance.

33. **SUBMERGED LAND LEASE.** City agrees to maintain for the exclusive use of LESSEE the submerged land lease at no additional cost to LESSEE as described on Exhibit B and attached hereto throughout the term of the lease subject to the approval of the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida. LESSEE specifically agrees to abide by the terms and conditions of the Sovereignty Submerged Land Lease between the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida and the City of Pompano Beach.

34. **CITY OFFICIALS.** Whenever any provision of this Lease calls for approval by CITY, unless specifically provided otherwise in this Lease, that approval shall be valid if given by CITY's Public Works Director or by CITY's City Manager.

WHEREFORE, the parties have hereunto set their hands and seals effective the day and year first above stated.

CITY OF POMPANO BEACH	HILLSBORO INLET FISHING CENTER, INC.
By: _____	By: _____
LAMAR FISHER, Mayor	JOHN CASELLI, President

By: _____
DENNIS BEACH, City Manager

Attest:

_____
MARY CHAMBERS, City Clerk [SEAL]

Approved by:

_____
GORDON B. LINN, City Attorney

EXHIBIT A ADDITIONAL LANDS

THAT PORTION OF THE SW¼ OF THE SW¼ OF SECTION 20, TOWNSHIP 48 SOUTH, RANGE 43 EAST, WHICH IS DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST NORTHWESTERLY CORNER OF LOT 27 OF BLOCK 20 OF HILLSBORO SHORES, SECTION "B", ACCORDING TO THE PLAT THEREOF RECOREDED IN PLAT BOOK 22, AT PAGE 39 OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA, AND RUNNING THENCE EASTERLY ALONG THE NORTH LINE OF SAID LOT 27, A DISTANCE OF 129.68 FEET TO THE NORTHEASTERLY CORNER OF SAID LOT 27; THENCE NORTHWESTERLY ALONG A PROJECTION OF THE EASTERLY LINE OF SAID LOT 27 OF SAID EASTERLY LINE WERE PROJECTED NORTHWESTERLY A DISTANCE OF 99.14 FEET TO AN INTERSECTION WITH THE EASTERLY RIGHT-OF-WAY LINE OF THE INTRACOASTAL WATERWAY AS SAME IS RECORDED IN PLAT BOOK 17, PAGE 58 OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA; THENCE SOUTHWESTERLY ALONG SAID EASTERLY RIGHT-OF-WAY LINE OF THE INTRACOASTAL WATERWAY A DISTANCE OF 130.16 FEET TO A POINT ON THE SOUTH LINE OF SAID SECTION 20; THENCE EASTERLY 21.71 FEET TO THE POINT OF BEGINNING; SAID LAND SITUATE, LYING AND BEING IN BROWARD COUNTY, FLORIDA.

TOGETHER WITH

BEGINNING AT A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF A-1-A AS SAME IS NOW LOCATED AND CONSTRUCTED, A DISTANCE OF 62 FEET NORTHEASTERLY OF THE MOST SOUTHEAST CORNER OF LOT 27, BLOCK 20, HILLSBORO SHORES, SECTION "B". ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 22, PAGE 39 OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA; THENCE SOUTHWESTERLY ALONG THE NORTHERLY RIGHT-OF-WAY LINE OF ROAD A-1-A A DISTANCE OF 62 FEET PLUS OR MINUS TO SAID SOUTHEREASTERLY CORNER OF SAID LOT 27; THENCE NORTHWESTERLY ALONG THE NORTHEASTERLY PROPERTY LINE OF SAID LOT 27, AND

THE PROJECTION NORTHWESTERLY OF SAID NORTHEASTERLY PROPERTY LINE OF SAID LOT 27 A DISTANCE OF 185 FEET, PLUS OR MINUS; THENCE SOUTHEASTERLY ALONG A CONCRETE CAP RUBBLE ROCK WALL A DISTANCE OF 195 FEET, PLUS OR MINUS TO THE POINT OF BEGINNING, CONTAINING 0.13 ACRES, MORE OR LESS, LYING AND BEING IN SECTION 29, TOWNSHIP 48 SOUTH, RANGE 43 EAST, BROWARD COUNTY, FLORIDA.

TOGETHER WITH

LOT 27, BLOCK 20, HILLSBORO SHORES SECTION "B", ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 22, PAGE 39 OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA.

SAID LANDS LYING IN THE CITY OF POMPANO BEACH, BROWARD COUNTY, FLORIDA.

EXHIBITB SUBMERGED LAND LEASE HILLSBORO INLET MARINA

PARCEL I

COMMENCING AT THE MOST NORTHWESTERLY CORNER OF LOT 27 OF BLOCK 20 OR HILLSBORO SHORES, SECTION B, ACCORDING TO THE PLAT RECORDED IN PLAT BOOK 22, PAGE 39 OF THE PUBLIC RECORDS OF BROWARD COUNTY; THENCE S88°36'30" W A DISTANCE OF 21.71 FEET TO THE POINT OF BEGINNING LYING ON THE EASTERLY RIGHT OF WAY LINE OF THE INTRACOASTAL WATERWAY AS SAME IS RECORED IN PLAT BOOK 17, PAGE 58 OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA; THENCE N29°23'58" W A DISTANCE OF 65.00 FEET; THENCE N60°36'02" E A DISTANCE OF 170.27 FEET; THENCE S50°09"14" E A DISTANCE OF 259.92 FEET;THENCE S39°50'46" WA DISTANCE OF 65.0 FEET; THENCE N 50°09'14" W A DISTANCE OF 195 FEET PLUS OR MINUS TO A POINT ON THE EXTENSION OF THE EASTERLY LINE OF THE SAID LOT 27; THENCE N33°09'59" W A DISTANCE OF 34.90 TO A POINT ON THE SAID EASTERLY RIGHT OF WAY LINE OF THE INTRACOASTAL WATERWAY; THENCE S48°15'09"W A DISTANCE OF 130.16 FEET TO THE POINT OF BEGINNING, SAID LAND LYING IN BROWARD COUNTY, FLORIDA AND CONTAINING 23,328 SQUARE FEET, MORE OR LESS. SAID DESCRIPTION PROVIDED BY THE CITY OF POMPANO BEACH ENGINEERING DIVISION AND ARE BASED ON LAND SURVEYS BY MICHAEL D. AVIRON, DATED APRIL 16, 1987.

PARCEL 2

A PORTION OF THE INTRACOASTAL WATERWAY AS SHOWN IN PLAT BOOK 17, PAGE 58 OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA LYING IN THE NORTHWEST ONE-QUARTER OF THE NORTHWEST ONE-QUARTER OF THE SOUTHWEST ONE-QUARTER OF SECTION 20, TOWNSHIP 48 SOUTH, RANGE43 SOUTH BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF LOT 26 OF BLOCK 20 OF HILLSBORO SHORES SECTION B AS RECORDED IN PLAT BOOK 22, PAGE 39 OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA; THENCE N25°53'21" W ALONG THE NORTHERLY EXTENSION OF THE WESTERLY LINE OF SAID LOT 26 A DISTANCE OF 39.67 FEET TO A POINT ON A LINE 30.00 FEET SOUTH EAST OF AND PARALLEL WITH THE RANGE 125 LINE OF THE INTRACOASTAL WATERWAY; THENCE N63°20'07" E ALONG SAID PARALLEL LINE A DISTANCE OF 72.31 FEET; THENCE S29°23'58"E A DISTANCE OF 36.14 FEET TO A POINT ON THE NORTH LINE OF SAID LOT 26; THENCE S60°36'02"A DISTANCE OF 74.66 FEET TO THE POINT OF BEGINNING. SAID LAND SITUATE WITHIN THE CITY OF POMPANO BEACH, BROWARD COUNTY, FLORIDA, CONTAINING 2,783 SQUARE FEET, MORE OR LESS.

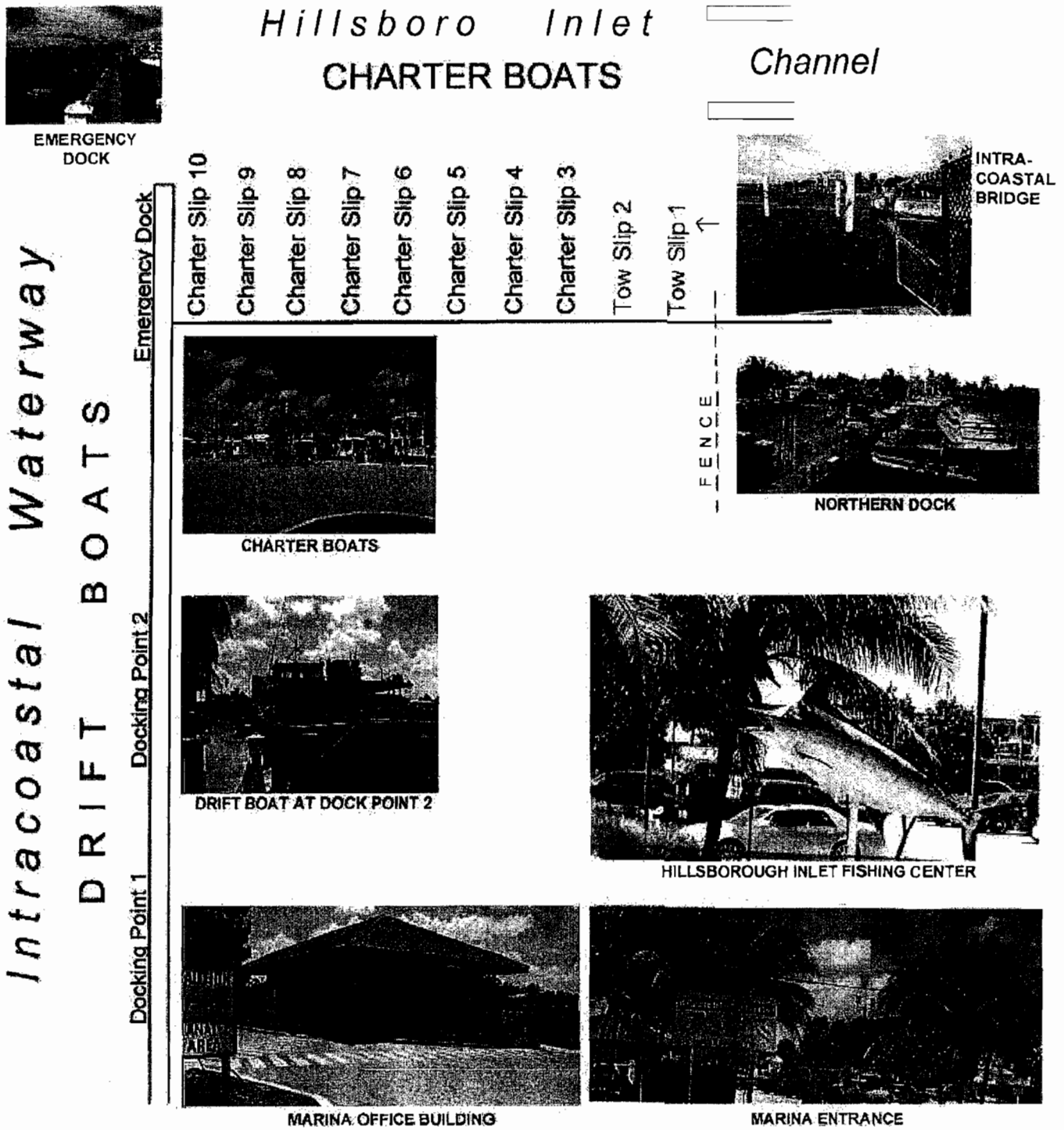


EXHIBIT C
MARINA DIAGRAM

Photos are not part of diagram, and are included solely to show current usage

Meeting Date: April 26, 2016 Agenda Item 17

REQUESTED COMMISSION ACTION:

Consent	X Ordinance	Resolution	Consideration/ Discussion	Presentation

SHORT TITLE An ordinance of the City of Pompano Beach, approving and authorizing the proper city officials to execute a license agreement between the City of Pompano Beach and Offerdahl's Hand-Off Foundation, Inc. for the Gridiron Grill-Off Food and Wine Festival.

Fiscal Impact: Police Services - $3,653; City In-kind Services - $17,946

Term of Agreement: 3 year period; each annual festival shall take place on a mutually agreed upon weekend in November.

Summary of Purpose and Why:

The ordinance is to enter into an agreement with Offerdahl's Hand-Off Foundation, Inc. to host the Gridiron Grill-Off Food and Wine Festival at Community Park. The term of the license is for a period of three years and the event shall be on a mutually agreed upon weekend in November.

(1) Origin of request for this action: Offerdahl's Hand-Off Foundation, Inc./PRCA staff

(2) Primary staff contact: Mark Beaudreau, Recreation Programs Administrator Ext. 4191

(3) Expiration of contract, if applicable: November 30, 2018; agreement is for a 3 year period with first event to be held in November 2016

(4) Fiscal impact and source of funding: $21,599

In-Kind Services from Parks, Recreation & Cultural Arts, Public Works and Fire Departments - $17,946. BSO fees of $3,653 will be paid from working capital reserve.

DEPARTMENTAL COORDINATION	DATE	DEPARTMENTAL RECOMMENDATION	DEPARTMENTAL HEAD SIGNATURE
Parks & Recreation	4-8-16	Approve	[illegible]
City Attorney	4-14-16		[illegible]
Risk Manager	4-19-16	approved	[illegible]
Internal Audit	4-12-16	Approve	[illegible]

X City Manager [illegible]

ACTION TAKEN BY COMMISSION:

Ordinance		Resolution		Consideration	
Workshop					
1st Reading	4/26/16	1st Reading		Results:	Results:
2nd Reading	5/10/16				

pompano beach
Florida's Warmest Welcome

MEMORANDUM

Parks, Recreation & Cultural Arts

MEMORANDUM 16-A060

DATE: April 7, 2016

TO: Dennis W. Beach, City Manager

FROM: Mark A. Beaudreau, Recreation Programs Administrator MAB

SUBJECT: Agenda Item – License Agreement Offerdahl's Hand-Off Foundation, Inc. Gridiron Grill-Off Food and Wine Festival

Please place the attached ordinance on the April 26, City Commission Agenda. The City Clerk advertised the ordinance for public hearing in the Sun-Sentinel. The license agreement is between the City and Offerdahl's Hand-Off Foundation, Inc. to conduct the Gridiron Grill-Off Food and Wine Festival, which is a celebrity competition and charity event for the purpose of fundraising for the benefit of various nonprofit foundations as listed in the license agreement. The annual events shall be held on a mutually agreed upon weekend in November at Pompano Beach Community Park, Amphitheater Grounds and Emma Lou Olson Civic Center.

The City is authorizing the use of the premises, furnishing supplies, equipment, facilities, necessary personnel and marketing/advertising support for the annual Gridiron Grill-Off Food and Wine Festival as shown in Exhibit 4 of the License Agreement. The License Agreement is for a term of three years, with the first event being held in November 2016.

If you have any questions or concerns regarding the License Agreement please call me at 954-786-4191.

MB/afh

cc: Cynthia Kitts, Recreation Manager
Scott Moore, Recreation Manager

City Attorney's Communication #2016-582
April 4, 2016

TO: Mark A. Beaudreau, Recreation Programs Administrator

FROM: Fawn Powers, Assistant City Attorney

RE: Offerdahl's Hand-Off Foundation, Inc.

As requested, the above-referenced Agreement has been prepared and is attached at this time along with the appropriate Ordinance captioned as follows:

> **AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A LICENSE AGREEMENT BETWEEN THE CITY OF POMPANO BEACH AND OFFERDAHL'S HAND-OFF FOUNDATION, INC. FOR THE GRIDIRON GRILL-OFF FOOD AND WINE FESTIVAL; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.**

Fawn Powers

FAWN POWERS

l:cor/recr/2016-582f
Attachments

ORDINANCE NO. 2016-_____

CITY OF POMPANO BEACH
Broward County, Florida

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A LICENSE AGREEMENT BETWEEN THE CITY OF POMPANO BEACH AND OFFERDAHL'S HAND-OFF FOUNDATION, INC. FOR THE GRIDIRON GRILL-OFF FOOD AND WINE FESTIVAL; 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 a License Agreement between the City of Pompano Beach and Offerdahl's Hand-Off Foundation, Inc., a copy of which Agreement is attached hereto and incorporated herein 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.

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

4/4/16
L:ord/2016-151f

City of Pompano Beach

LICENSE AGREEMENT

with

Offerdahl's Hand-Off Foundation, Inc.

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INDEX OF EXHIBITS

Exhibit 1	Accounting and Recordkeeping Procedures
Exhibit 2	City Policy for distribution and consumption of alcohol
Exhibit 3	Licensee's sponsor benefits for Festival Activities
Exhibit 4	City's estimated Expenses for Festival Activities
Exhibit 5	Festival Parking
Exhibit 6	Marketing support for Festival Activities
Exhibit 7	Insurance Requirements

THIS AGREEMENT ("Agreement"), entered into this _____ day of _____, 2016, by and between:

> **CITY OF POMPANO BEACH, FLORIDA,** a municipal corporation of the State of Florida, having its principal office located at 100 W. Atlantic Blvd., Pompano Beach, Florida 33060, hereinafter referred to as "CITY,"
>
> and
>
> **OFFERDAHL'S HAND-OFF FOUNDATION, INC.,** a Florida not for profit corporation, with a principal address of 2749 NE 37th Drive, Fort Lauderdale, Florida 33308, hereinafter referred to as "LICENSEE."

WHEREAS, LICENSEE is desirous of conducting the annual Gridiron Grill-Off Food and Wine Festival (the "Festival") for the next three (3) years at the CITY's Amphitheater, Community Park and the Emma Lou Olson Civic Center (collectively the "Properties");

WHEREAS, the Festival is a charitable event that features a Grill-Off competition with Miami Dolphins legends and celebrity chefs from South Florida's finest restaurants, food and beverage concessions, a corn hole Festival, live music, a VIP area and other related activities;

WHEREAS, 100% of the proceeds from the Festival benefits Offerdahl's Hand-Off Foundation and its mission to "Feed the Needs of Kids in Crisis" through sustaining partnerships between business, government and faith-based agencies;

WHEREAS, CITY has determined that entering into this Agreement with LICENSEE to provide a Festival at the Properties is in the best interest of the public; and

WHEREAS, CITY and LICENSEE desire to enter into this Agreement setting forth the parties' mutual understandings and undertakings.

NOW, THEREFORE, in consideration of the conditions, covenants and mutual promises herein contained, CITY and LICENSEE agree as follows.

ARTICLE 1
REPRESENTATIONS

A. **Representations of CITY.** CITY makes the following representations to LICENSEE, which CITY acknowledges LICENSEE has relied upon in entering into this Agreement.

1. This Agreement is a valid, binding and permissible activity within the power and authority of the CITY and does not violate any CITY Code, Charter provision, rule, resolution, ordinance, policy or agreement of the CITY or constitute a default of any agreement or contract to which the CITY is a party.

2. The individuals executing the Agreement on behalf of the CITY are duly authorized to take such action, which action shall be, and is, binding upon the CITY.

3. LICENSEE shall be entitled to rely upon the accuracy and completeness of any information supplied by CITY or by others authorized by the CITY's Recreation Program Administrator.

B. **Representations of Offerdahl's Hand-Off Foundation, Inc.** LICENSEE makes the following representations to CITY, which CITY relies upon in entering into this Agreement.

1. Offerdahl's Hand-Off Foundation, Inc. is a Florida not for profit corporation duly organized, existing and in good standing under the laws of the State of Florida with the power and authority to enter into this Agreement.

2. LICENSEE's execution, delivery, consummation and performance under this Agreement will not violate or cause LICENSEE to be in default of any provisions of its governing documents, rules and regulations or any other agreement to which LICENSEE is a party or constitute a default thereunder or cause acceleration of any obligation of LICENSEE thereunder.

3. The individual executing this Agreement and related documents on behalf of Offerdahl's Hand-Off Foundation, Inc. is duly authorized to take such action which action shall be, and is, binding on LICENSEE.

4. There are no legal actions, suits or proceedings pending or threatened against or affecting Offerdahl's Hand-Off Foundation, Inc. or its principals that LICENSEE is aware of which would have any material effect on LICENSEE's ability to perform its obligations under this Agreement.

5. LICENSEE represents it has the ability, skill and resources to complete its requisite responsibilities under this Agreement.

6. CITY shall be entitled to rely upon the professional administrative, management and interpersonal skills of LICENSEE or others authorized by LICENSEE under this Agreement.

7. LICENSEE represents and warrants it has and will continue to maintain all licenses and approvals required to conduct business and provide services under this Agreement and that it will at all times conduct its activities in a professional, reputable manner.

8. LICENSEE agrees to be bound by all terms, conditions, duties, obligations and specifications set forth in this Agreement.

ARTICLE 2
NON-ASSIGNABILITY AND SUBCONTRACTING

A. This Agreement is not assignable and LICENSEE agrees it shall not sell, assign, transfer, merge or otherwise convey any of its interests, rights or obligations under this Agreement, in whole or in part, to any other person, corporation or entity without prior written approval from CITY.

B. Any attempt by LICENSEE to assign or transfer any of its rights or obligations under this Agreement without first obtaining CITY's written approval shall result in CITY's immediate cancellation of this Agreement. Specifically, no formal assignment of any right or obligation under this Agreement shall be binding on CITY without the formal written approval of the City Commission of Pompano Beach.

C. This Agreement and the rights and obligations therein shall not be assignable or transferable by any process or proceeding in court, or by judgment, execution, proceedings in insolvency, bankruptcy or receivership. In the event of LICENSEE's insolvency or bankruptcy, CITY may, at its option, terminate and cancel this Agreement without any notice of any kind whatsoever, in which event all rights of LICENSEE hereunder shall immediately cease and terminate.

D. Nothing herein shall be construed to create any personal liability on the part of CITY, its agents, officers or employees nor shall it be construed as granting any rights or benefits hereunder to anyone other than CITY and LICENSEE.

ARTICLE 3
TERM AND RENEWAL

The term of this Agreement shall extend over a three (3) year period. Each annual Festival shall take place on a mutually agreed upon weekend in November from Thursday at 7:00 a.m. to Sunday at 11 p.m. with specific annual dates to be agreed upon between the parties a minimum of ten (10) months prior to each Festival except that the date for the 2016 Festival shall be mutually agreed upon as expeditiously as possible upon the full execution of this Agreement. The date for each Festival shall be set so as not to interfere with previously planned events at or near the Properties. The parties reserve the right to extend this Agreement for an additional three (3) year term provided both parties agree in writing to said extension. Renegotiation shall commence at least 180 days prior to termination of the original three (3) year term.

If circumstances beyond the control of either party, such as those set forth in Article 21 herein, prevent or delay either party from timely performance of their obligations hereunder, both parties agree to cooperatively work together towards scheduling a reasonable alternative date.

ARTICLE 4
ACCOUNTING AND RECORDKEEPING PROCEDURES

A. LICENSEE shall use such accounting methods and procedures as may be prescribed by CITY, in accordance with generally accepted accounting principles, which shall include but not be limited to, those methods and procedures set forth in this Article and in Exhibit 1 attached hereto and made a part hereof.

B. LICENSEE shall be required to record and preserve complete and accurate records for all activities and revenues generated under this Agreement for a period of five (5) years after its termination or as otherwise required by applicable law(s). However, if an audit has been initiated and audit findings have not been resolved, the records shall be retained until resolution of the audit findings.

C. If Florida public records law is determined by CITY to be applicable to the records of LICENSEE, its subcontractors, vendors and other agents hereunder, they shall comply with all requirements thereof; however, they shall violate no confidentiality or non-disclosure requirement by either federal or state law. LICENSEE shall, by written contract, require its subcontractors, vendors or other agents to agree to the requirements and obligations of this Article.

ARTICLE 5
RESPONSIBILITIES OF LICENSEE

A. Duty of Licensee to Provide Site Plan and Other Items. Not less than thirty (30) days prior to the commencement of each annual Festival, LICENSEE shall provide the following documentation for CITY's review and approval:

1. A proposed final Site Plan depicting the location of all booths, stages, display areas, port-o-lets, etc.;

2. A description of all activities and events to occur on the Properties during each Festival and a Schedule for same;

3. A copy of all service contracts signed by LICENSEE;

4. The home and business phone numbers of LICENSEE's corporate officers;

5. A Maintenance of Traffic Plan as further described in this Article; and

6. Any other information or documentation required by the CITY.

The final detailed Site Plan and Schedule shall detail the location of all booths, tents, stages, display areas, port-o-lets, etc., the times when such will be constructed and dismantled, and require the approval of the CITY's Contract Administrator and other reviewing CITY

departments authorized to require LICENSEE to make revisions to same. LICENSEE shall revise the Site Plan and Schedule as requested by CITY and be required to re-submit same to CITY for its review and written approval.

B. City Booth. The CITY shall be provided at no charge a standard sized booth in the main vendor tent or location for CITY's own use.

C. Clean up of Properties. LICENSEE shall be responsible for clean-up of the Properties, including dismantling, clean up and removal of any booths, tents, supplies, equipment, stages, display areas, port-o-lets, and any other temporary facility.

D. LICENSEE Responsible for all Contracts. LICENSEE agrees to be solely responsible for all contracts or agreements of any nature for the Festivals. All contracts shall be negotiated by LICENSEE and secured at LICENSEE's sole expense. CITY shall not be named as a party in any contract and CITY shall have no obligation to ensure payment to any individual or entity for goods and/or services provided in conjunction with the Festivals. LICENSEE represents and warrants that prior to each annual Festival, LICENSEE shall have secured all necessary performing rights and licenses. In addition, LICENSEE shall ensure that all performance payments required to be made under such licenses are made promptly and appropriately paid. CITY shall have no responsibilities to any performing rights licensing organization for any performances during the Festival.

E. Concession Rights. During the Festival(s) and to the extent permitted by law and CITY Code, LICENSEE shall have exclusive concessionaire rights on the Properties and agrees to comply with the CITY's Policy for the Distribution and Consumption of Alcohol attached as Exhibit 2.

F. Required Licenses and Permits. A minimum of three (3) business days prior to set up of each annual Festival, LICENSEE, at its own expense, shall obtain and provide CITY a copy of all licenses and permits required for Festival activities by the State of Florida, Broward County, and the CITY. In particular, LICENSEE shall provide sanitary and food facilities in accordance with applicable laws and regulations of the Florida Department of Environmental Protection and the Broward County Health Department.

G. Compliance With all Laws. In the conduct of its activities under this Agreement, LICENSEE shall comply with all applicable federal and state laws and regulations and all applicable county and city ordinances and regulations, including, but not limited to, compliance with the Americans with Disabilities Act with respect to all ramping. Ignorance on LICENSEE's part shall in no way relieve LICENSEE from this responsibility.

H. Emergency Access. LICENSEE agrees to provide any and all emergency access required by the CITY and its employees for the safety and welfare of the community and those attending the Festivals. If, in the course of LICENSEE's operations, CITY or its officers, agents and employees become aware of any condition on the Properties which may be dangerous, upon being notified, LICENSEE shall immediately correct such condition or cease operations so as not to endanger persons or the Properties.

I. Waste Recyclables and Recycling. LICENSEE agrees to utilize its best efforts to keep the Properties clean and recycle materials in the receptacles provided by CITY for this purpose.

J. Maintenance of Traffic Plan ("MOT Plan"). Not less than sixty (60) days prior to the set-up of each Festival, LICENSEE shall provide CITY a preliminary construction and traffic flow schedule which includes detailed information regarding opening and closing times for all streets or lanes and the use of variable message signs. LICENSEE shall provide a final MOT Plan for CITY's review and written approval no later than thirty (30) days prior to the opening day of each Festival. No additional street or lane closures shall be permitted unless included in the MOT Plan and approved in writing by the CITY's Contract Administrator.

K. Notification to Surrounding Businesses. A minimum of four (4) weeks prior to set up for each annual Festival, LICENSEE shall provide all residences and businesses located within one half mile of the Properties, notice of the dates, times and location of Festival activities as further detailed in Exhibit 6. However, if the approved MOT Plan recommends road closures, LICENSEE shall provide those real properties affected by the closures written notice of same and also provide the CITY's Contract Administrator copies of said notices.

L. LICENSEE shall be responsible to pay any and all sales taxes and other charges of any nature or kind, which may be assessed against LICENSEE's provision of services or goods under this Agreement.

M. LICENSEE is responsible for hiring and managing its own employees, all of which shall be a minimum of eighteen (18) years old, under LICENSEE's exclusive direction and control and not deemed agents or employees of the CITY.

N. LICENSEE shall be solely responsible for compensating its employees, representative and other agents and complying with all federal, state and local laws, ordinances and regulations pertaining to employment of such persons including, but not limited to, provision of workers' compensation insurance and any other benefits required by law.

O. LICENSEE shall be responsible to ensure that all its employees, other agents or representatives are suitable in terms of general character, knowledge, ability, manner and conduct.

P. LICENSEE shall maintain, and be required to verify, that it operates a "Drug Free Workplace" as set forth in § 287.087, Florida Statutes.

Q. LICENSEE shall utilize the Properties exclusively for the activities described herein and not allow any part thereof to be used for any immoral or illegal purposes. LICENSEE shall not allow, suffer or permit the Properties to be used for any purpose, business, activity, use or function to which the CITY objects, including gambling.

R. LICENSEE shall provide sponsor benefits for Festival Activities as detailed in Exhibit 3.

ARTICLE 6
RESPONSIBILITIES OF CITY

A. CITY shall annually furnish the supplies, equipment, facilities and personnel listed in Exhibit 4 which shall change annually to comport with the CITY's current costs for salaries and other related expenditures. City shall determine the value of said services ninety (90) days prior to each Festival and timely provide LICENSEE copies of such information.

B. The CITY shall conduct a final inspection immediately prior to each annual Festival to ensure that the location of booths, port-o-lets, stages, etc. are in accordance with the CITY approved Site Plan.

C. CITY shall provide free parking for the Festival on the shaded areas depicted on Exhibit 5.

D. Waste Recyclables and Recycling. CITY agrees to provide sufficient waste receptacles and recycle bins to accommodate LICENSEE's responsibility to keep the Properties clean and also recycle materials resulting from Festival activities.

E. CITY shall be responsible for clean-up of the Properties and removal of all debris and trash during and after each Festival.

F. CITY shall be responsible to dismantle and remove any supplies, equipment or facilities CITY provides for each Festival (but not any items provided by LICENSEE).

G. CITY shall provide marketing support for Festival Activities as detailed in Exhibit 6.

ARTICLE 7
MISCELLANEOUS TERMS AND CONDITIONS

A. License Fees. LICENSEE shall not pay a license fee, instead LICENSEE shall donate net income (gross receipts less expenses) to Offerdahl's Hand-Off Foundation, Inc., a qualified 501-3(c) charity. Gross receipts shall include all monies, the total amount of money, or equivalent of money received by LICENSEE at the Properties in exchange for goods or service covered by this Agreement except that sales tax or other such taxes, if any, levied directly upon the sale and remitted as such by LICENSEE shall not be included. CITY reserves the right to require the total amount of the net income be recalculated by a member of the Internal Audit Department or Parks, Recreation and Cultural Arts Department of the CITY at the end of each annual Festival. Any Business Tax license or permit required by the CITY or any other governmental agency shall be in addition to the license hereby granted and exempt from this paragraph.

B. Protection of Properties. A representative of the CITY and LICENSEE shall inspect and document the condition of the Properties prior to set up each year. LICENSEE shall take no action which would cause damage to the Properties and, in this regard, shall place all

booths, stages, vendors, port-o-lets, etc. in locations which will not cause damage to the landscaping, foliage or other part(s) of the Properties. No heavy equipment or motor vehicles shall be brought onto the Properties.

CITY expects the Properties to be restored to the same condition which existed prior to set up of each Festival. If the Properties or any portion thereof, or any structure attached thereto, or any equipment, fixture, or other item located thereon, including the grass or asphalt, shall be destroyed, damaged, marred, altered, or physically changed during the term in any manner whatsoever, then CITY will take the necessary remedial action to cause such repair or replacement to occur and LICENSEE shall pay CITY for any such expenditures within two (2) weeks after receipt of CITY's written invoice for same.

C. No Leasehold: Properties "As Is". LICENSEE and CITY intend this Agreement shall be a license and privilege and that no leasehold or other interest in the Properties is conferred upon the LICENSEE hereunder. LICENSEE takes the Properties in "as is" condition.

D. Articles Left on Premises. LICENSEE understands and agrees that the CITY shall not in any way be responsible for any personal property of Festival patrons or LICENSEE, its contractors, sub-contractors, representative or other agents, which is left on the Properties and that LICENSEE bears any and all risks of loss. Any article(s) remaining on the Properties at the conclusion of each Festival shall become the property of the CITY.

E. CITY's Right To Make Improvements, Modify the Properties and the Number and Manner of Streets Closures. Throughout the term of this license and not withstanding any other term or condition herein, CITY retains the right, in its sole discretion, to modify and reconfigure the Properties, including, but not limited to, attendant green and open space areas and the public right-of-way. Specifically, both parties agree that the public right-of-way and open and green space areas may be temporarily or permanently relocated, reconfigured, modified or closed at CITY's sole discretion. LICENSEE agrees to make adjustment to any such changes implemented by CITY.

ARTICLE 8
INDEMNIFICATION OF CITY

A. LICENSEE shall at all times indemnify, hold harmless and defend the CITY, its Mayor and Commissioners, employees and other agents from and against any and all claims, demands, suit, damages, attorneys' fees, fines, penalties, defense costs or liabilities of any kind arising directly or indirectly out of or in connection with Festival activities whether same occurs or the cause arises on or away from the Properties or arises as a direct result of LICENSEE's officers, employees, agents, volunteers or contractors or other agents' negligence or misconduct under this Agreement. LICENSEE agrees to investigate, handle, respond to, provide defense for, and defend any such claims at its sole expense and to bear all other costs and expenses related thereto, even if the claim(s) is/are groundless, false or fraudulent. The foregoing indemnification shall not be operative as to any claims by LICENSEE for any causes of action LICENSEE has or may have for breaches or defaults by the CITY under this Agreement.

B. LICENSEE acknowledges and agrees that the CITY would not enter into this Agreement without this indemnification of CITY by LICENSEE. The parties agree that one percent (1%) of the total in-kind services provided by CITY hereunder shall constitute specific consideration to LICENSEE for the indemnification provided under this Article. These provisions shall survive expiration or early termination of this Agreement.

C. For Professional Liability claims, CONTRACTOR agrees this indemnification and hold harmless subsection shall survive the termination or expiration of this Agreement for a period of four (4) years, unless sooner terminated by the applicable statute of limitations. For General Liability claims, Contractor agrees this indemnification and hold harmless subsection shall survive the termination or expiration of this Agreement for a period of two (2) years, unless sooner terminated by the applicable statute of limitations.

D. LICENSEE shall be solely responsible for insuring all stock, inventory, monies or other personal Properties at the Properties against damage or loss of any nature or kind. LICENSEE acknowledges and agrees that CITY assumes no responsibility whatsoever for any personal Properties placed at the Properties and, with the exception of damages or loss suffered as a result of CITY's negligence, CITY is hereby expressly released and discharged from any and all liability for any loss, injury or damage to persons or Properties which may be sustained by reason of LICENSEE's presence and occupancy at the Properties.

E. The indemnification provisions of this Article shall survive the termination of this License Agreement.

ARTICLE 9
INSURANCE

LICENSEE shall maintain insurance in the amounts and subject to all conditions set forth in Exhibit 7 attached hereto and made a part hereof and shall not commence operations under this Agreement until proof of insurance detailing the terms and provisions of coverage has been received and approved in writing by the CITY's Risk Manager.

ARTICLE 10
INDEPENDENT CONTRACTOR

Both CITY and LICENSEE agree that LICENSEE is an independent contractor and not a CITY employee. CITY shall not be liable for any wages, salaries, debts, liabilities or other obligations for LICENSEE's employees, agents or other representatives performing obligations of LICENSEE hereunder. Except as otherwise provided hereunder, neither party is the agent of the other nor is authorized to act on behalf of the other in any matter.

ARTICLE 11
DEFAULT AND DISPUTE RESOLUTION

A. If either party claims the other is in default of this Agreement, the parties may, but are not required to, timely schedule a conference or meeting and make every reasonable effort to

reach an amicable resolution. Both parties shall be entitled to have representatives present at any such meeting or conference.

B. If there is a default of any covenant or obligation under this Agreement, the defaulting party shall be given ten (10) calendar days to cure said default after written notice from the other in accordance with Article 15 herein.

If the party receiving written notice of default provides written notice denying same within ten (10) calendar days of receipt or the alleged default has not been remedied within ten (10) calendar days after receipt of written notice and is continuing, either party may appeal in writing to the CITY Manager for the CITY in accordance with this Article.

Upon receipt of said written appeal or demand, the CITY Manager for the CITY may request additional information relating to the dispute from either or both parties, which shall be provided within a reasonable time. Upon the CITY Manager's receipt and timely review of the disputed matter, the CITY Manager may make a decision regarding the alleged default, as he/she deems appropriate under the circumstances. If the CITY Manager's decision is not implemented within the deadline set forth therein, the forty-five (45) day advance written notice provision set forth in Article 12 herein shall not apply and it shall be lawful for either party to immediately terminate this Agreement in addition to any other remedies provided by law.

The default and dispute resolution process described in this Article is non-exclusive and without prejudice to the right of either party to pursue other remedies available at law.

ARTICLE 12
TERMINATION

A. Either party may terminate this Agreement, in whole or in part, with cause upon a minimum of 180 days advance written notice to the other in accordance with Article 15 herein.

B. Should either party fail to perform any of its obligations under this Agreement for a period of ten (10) days after receipt of written notice of such failure or deficiency, the non-defaulting party may elect to follow the Default and Dispute Resolution procedures set forth in Article 11 herein or terminate this Agreement upon forty-five (45) days written notice to the other.

C. The foregoing rights of termination are in addition to any other rights and remedies that either party may have.

ARTICLE 13
NO DISCRIMINATION

During the performance of this Agreement, LICENSEE agrees not to discriminate against its or CITY's employees, contractors, subcontractors, or patrons of the Festival, or in the solicitation or purchase of goods or services on the basis of race, color, religion, sex, age, national origin, ancestry, marital status, physical or mental disability.

ARTICLE 14
PUBLIC ENTITY CRIMES ACT

Through execution of this Agreement and in accordance with Section 287.133, Florida Statutes, LICENSEE certifies that it is not listed on the convicted vendors list maintained by the State of Florida, Department of General Services.

ARTICLE 15
NOTICES AND DEMANDS

Whenever it is provided herein that notice, demand, request, or other communication shall or may be given to, or served upon, either of the parties by the other, it must be in writing, sent by certified United States mail with return receipt requested, addressed to the party to whom it is intended at the places designated below until changed by written notice in compliance with the provisions of this Article. For the present, the parties designate the following respective places for giving of notice, to-wit:

For CITY:

City Manager
P.O. Drawer 1300
Pompano Beach, Florida 33061
dennis.beach@copbfl.com
954-786-4191 office
954-786-4504 fax

With a copy to:

Recreation Program Administrator
1801 NE 6th Street
Pompano Beach, Florida 33060
mark.beaudreau@copbfl.com
954-786-4034 office
954-786-4113 fax

For LICENSEE:

John Offerdahl
2749 NE 37th Drive
Fort Lauderdale, Florida 33308
joffer@offerdahls.com
954 372 3530 office
954 725 4070 fax

ARTICLE 16
GOVERNING LAW AND VENUE

A. The Agreement shall be governed by the laws of the State of Florida, both as to interpretation and performance. CITY and LICENSEE agree that the proper venue for any suit at law or in equity attendant to this Agreement shall be instituted and maintained only in state and federal courts of competent jurisdiction in Broward County, Florida. To encourage prompt and equitable resolution of any disputes, the parties agree to attempt to mediate or arbitrate their differences prior to instituting any formal litigation.

B. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and in addition to every other remedy given herein, now or hereafter existing at law or in equity or by statue or otherwise.

ARTICLE 17
CONTRACT ADMINISTRATOR

A. The CITY's Recreation Program Administrator or his written designee shall serve as the CITY's Contract Administrator during the performance of services under this Agreement.

B. Johnny Williams shall serve as LICENSEE's Contract Administrator during the performance of services under this Agreement.

ARTICLE 18
NO CONTINGENT FEE

LICENSEE warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for LICENSEE, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for LICENSEE any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement.

In the event of LICENSEE's breach or violation of this provision, the CITY shall have the right to terminate this Agreement without liability and, at CITY's sole discretion, to recover the full amount of such fee, commission, percentage, gift or consideration.

ARTICLE 19
ATTORNEY'S FEES

In the event of litigation between the parties, the prevailing party shall be entitled to recover all costs of collection, including a reasonable attorney's fees and court costs. The provisions of this paragraph shall survive termination of this Agreement.

ARTICLE 20
FORCE MAJEURE

Neither party shall be obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, war, civil disorder, sabotage, accident, flood, acts of God or by any reason of any other matter or condition beyond the control of either party which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall economic hardship or lack of funds be considered an event of force majeure.

If CITY or LICENSEE are unable to perform, or are delayed in their performance of any obligations under this Agreement by reason of any event of force majeure, such inability or delay shall be excused at any time during which compliance therewith is prevented by such event and

during such period thereafter as may be reasonably necessary for either party to correct the adverse effect of such event of force majeure.

In order to be entitled to the benefit of this Article, a party claiming an event of force majeure shall be required to give prompt written notice to the other party specifying in detail the event of force majeure and also diligently proceed to correct the adverse effect of any force majeure. The parties agree that, as to this Article, time is of the essence.

ARTICLE 21
WAIVER AND MODIFICATION

A. Failure to insist upon strict compliance with any terms, covenants or conditions of this Agreement shall not be deemed a waiver of such, nor shall any waiver or relinquishment of such right or power at any time be taken to be a waiver of any other breach.

B. CITY and LICENSEE may request changes to modify certain provisions of this Agreement, including increasing or decreasing the scope of services to be provided. However, unless otherwise provided for herein, any such changes must be contained in a written amendment executed by both parties with the same formality of this Agreement.

ARTICLE 22
RELATIONSHIP BETWEEN THE PARTIES

LICENSEE is being contracted by CITY for the purposes and to the extent set forth in this Agreement and, as such, shall be free to dispose of such other portion of its time and skill as does not interfere with its obligations hereunder.

ARTICLE 23
SEVERABILITY

Should any provision of this Agreement or the application of such provisions be rendered or declared invalid by a court action or by reason of any existing or subsequently enacted legislation, the remaining parts or provisions of this Agreement shall remain in full force and effect.

ARTICLE 24
APPROVALS

Whenever CITY approval(s) shall be required for any action under this Agreement, said approval(s) shall not be unreasonably withheld.

ARTICLE 25
ABSENCE OF CONFLICTS OF INTEREST

Both parties represent they presently have no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with their performance under this Agreement and that no person having any conflicting interest shall be employed or engaged by either party in their performance hereunder.

ARTICLE 26
BINDING EFFECT

The benefits and obligations imposed pursuant to this Agreement shall be binding and enforceable by and against the parties hereto.

ARTICLE 27
NO WAIVER OF SOVEREIGN IMMUNITY

Nothing contained in this Agreement is intended to serve as a waiver of sovereign immunity by CITY.

ARTICLE 28
ENTIRE AGREEMENT AND INTERPRETATION

This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein and both parties agree there are no commitments, agreements or understandings concerning the subject matter herein that are not contained in this Agreement. Accordingly, both parties agree no deviation from the terms herein shall be predicated upon any prior representations or agreements, whether oral or written.

Regardless of which party or party's counsel prepared the original draft and subsequent revisions of this Agreement, both CITY and LICENSEE and their respective counsel have had equal opportunity to contribute to and have contributed to its contents, and this Agreement shall not be deemed to be the product of, and therefore construed against either party.

It is further agreed the omission of a term or provision contained in an earlier draft of this Agreement shall have no evidentiary significance regarding the contractual intent of the parties and that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document agreed to and executed by authorized representatives of both parties with the same formality of this Agreement.

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IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.

"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

"LICENSEE"

OFFERDAHL'S HAND-OFF FOUNDATION, INC., a Florida nonprofit corporation

Witnesses:

Jonathan Nasser

Print Name

SCOTT R MOORE

Print Name

By: _____

JOHN OFFERDAHL, President

(SEAL)

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 11 day of April, 2016, by **JOHN OFFERDAHL** as a Director of OFFERDAHL'S HAND-OFF FOUNDATION, INC., a Florida not for profit corporation. He is personally known to me or who has produced _____ (type of identification) as identification.

NOTARY'S SEAL:

ANNE HOLLADY
Notary Public - State of Florida
My Comm. Expires Feb 1, 2019
Commission # FF 166298
Bonded through National Notary Assn.

Anne Holladay

NOTARY PUBLIC, STATE OF FLORIDA

Anne Hollady

(Name of Acknowledger Typed, Printed or Stamped)

FF 166298

Commission Number

4/4/16
l:agr/recr/2016-08f

Exhibit 1

Accounting and Recordkeeping Procedures:

1. LICENSEE shall keep a true and accurate account of all monies received and spent through the operation of their Gridiron Grill-Off Food, Wine and Tailgate Festival event and the manner in which the funds were spent; and further agree to give the CITY access at all reasonable times to all books and/or records.

2. LICENSEE shall preserve and make available locally all financial records, supporting documents, (including federal tax returns and state sales tax returns) pertinent to this Agreement for a period of five (5) years or, if an audit has been initiated and audit findings have not been resolved at the end of this five (5) year period, the records shall be retained until resolution of audit finding.

3. LICENSEE will submit a report to the Recreation Programs Administrator showing gross receipts and all expenditures within sixty (60) days following the end of each annual event. Detailed receipts statements will be signed and sworn by LICENSEE's representative in charge of event operations and show each operating gross receipts by category. CITY's agents shall have the right to examine and audit LICENSEE books and records during business hours.

4. In addition to the annual report of event sales and expenses as above, a copy of LICENSEE's annual report submitted to the State of Florida Corporate Records office shall be sent to the CITY thirty (30) days prior to the set up date of each annual event. Also a copy of the corporation's financial statement submitted to the Internal Revenue Service shall also be sent to the CITY with the annual report of sales, concession expenses and use of funds required by the License Agreement as defined above.

5. Records shall include but not be limited to, all business records, bookkeeping and accounting records, receipts, invoices, bank statements, supporting documents, and/or financial and statistical records; federal/state tax returns, attendance logs or rosters that are pertinent to this Agreement.

Exhibit 2

City of Pompano Beach ("City") Policy
For Distribution and Consumption of Alcoholic Beverages on City Properties

The distribution and consumption of sale of beer, wine and spirits (collectively "alcohol") shall be allowed on City Properties subject to the following rules and procedures.

1. The distribution of alcohol shall be prohibited on City Properties during any activity intended for children under age 21.
2. Only alcohol distributed by Licensee's approved vendors may be allowed or consumed on City Properties; no outside alcohol shall be allowed.
3. All Licensee's vendors authorized to provide alcohol on City Properties shall be required to indemnify and hold harmless the City, its officers, agents, employees, and volunteers, from any and all claims for liability arising directly or indirectly out of alcohol sales or consumption. Proof of insurance acceptable to the City's Risk Manager shall be required to satisfy this indemnification obligation prior to any alcohol sales taking place.
4. Prior to any taking place on City Properties, all Licensee's approved vendors authorized shall have received written approval from the City's Risk Manager that their Certificate of Liability Insurance includes the requisite coverage for alcohol sales.
5. Police or security officers shall be authorized to prohibit the distribution or consumption of alcohol to any person that appears intoxicated. Police or security officers are also authorized to order persons that appear intoxicated to immediately leave the City Properties.
6. Persons serving alcohol shall be at least 21 years old, properly trained in such service, and not be allowed to consume alcohol immediately before, during, or following an event or activity Circuit activity. Any server violating this policy shall be immediately ordered to leave the City Properties by Licensee, police or a security officer.
7. Servers shall be responsible to verify that persons attempting to purchase alcohol are of legal drinking age. Alcohol sales shall be denied to persons who are not able to provide photo identification evidencing proof of legal drinking age upon request. Servers shall be required to refuse to provide alcohol to any person who appears intoxicated.
8. Signs shall be posted at the concession areas on the City Properties which state that all persons must be of legal drinking age to receive and consume alcohol, that alcohol sales are limited to two (2) drinks per person per transaction, and that servers reserve the right to refuse service to any person who appears intoxicated.
9. The distribution of alcohol shall cease at least thirty (30) minutes before the official end of all activities and events on the City Properties. The cutoff of alcohol sales shall be determined according to the schedule of activities provided to City by Licensee which City has approved.

Exhibit 3
Grid Iron Grill Off Food and Wine Festival
Sponsor Benefits for Festival Activities

The City of Pompano shall receive benefits similar to those provided to a Prime Sponsor of The Grid Iron Grill Off Food and Wine Festival. Companies desiring to become a Prime Sponsor pay approximately $20,000 for the following benefits, which shall be provided to the City of Pompano Beach:

Revenue Generation
The Grid Iron Grill Off Food and Wine Festival provides economic benefit to the City by hiring local vendors such as Classic Party Rentals (formerly known as Panache), Trinity Highway rentals, Ft. Lauderdale Ice, PCI concessions and by utilizing the Marriott Pompano Beach as the host hotel for the event increasing lodging, dining revenue.

Visibility
2015 media reach – The Grid Iron Grill Off Food and Wine Festival provides the City with tremendous exposure through a variety of media outlets and marketing channels. As the host venue/prime sponsor of the 2015 Grid Iron Grill Off Food and Wine Festival, the City was part of a comprehensive media & marketing campaign that generated in excess of $975,000 in media value and over 168,000,000 impressions. Additionally, the City received exposure in Delta's Sky magazine promotion of the Grid Iron Grill Off Food and Wine Festival!

ON-SITE DISPLAY SPACE – as a prime sponsor the City receives on-site display space to promote (10 x 10). Additionally, the City receives exposure as part of over 35 corporate sponsor pre-event promotions created to generate exposure and ticket sales for the annual Grid Iron Grill Off Food and Wine Festival.

Logo & branding – as a prime sponsor of the event the City receives logo recognition in the following areas:

- Event main entrance signage
- Ten (10) 3 x 10 banner displayed around the event site
- Website – with link to city site from grill-off event site

Print media
The City logo is branded on the following pieces of Grid Iron Grill Off Food and Wine Festival collateral as part of the prime sponsorship:

- Flyers (15,000)
- One (1) 4-color full page ad in the official event program (3,000)
- Grid Iron Grill Off Food and Wine Festival press releases
- Editorial features in magazines (covers/calendar listings, etc)

Social media
The City receives significant exposure from the Grid Iron Grill Off Food and Wine Festival's comprehensive social media campaign via the following outlets:

- Facebook
- Instagram
- Twitter

Exhibit 4
City's Estimated Expenses

Name of Event:	**Gridiron Grill Off Food and Wine Festival**
Company/Organization:	**Offerdahl's Hand-Off Foundation**
Representative:	**John Offerdahl**
Address:	**2749 NE 37 Drive, Fort Lauderdale, FL 33308**

Police Services

Day Security -		**# Workers**	**X**	**# Hours**	**X**	**Hourly Fee**	**Estimated Costs**
9:00 am - 4:00 pm	Estimate	1	x	7.0		$43.00	$301.00

Day Security -		# Workers	X	# Hours	X	Hourly Fee	**Estimated Costs**
BSO (Site Commander)	Estimate	1	x	7.0		$49.00	$343.00
BSO (Traffic Supervisor)	Estimate	1	x	7.0		$46.00	$322.00
BSO (Traffic Deputy)	Estimate	4	x	7.0		$43.00	$1,204.00
BSO (Inner Security Supervisor)	Estimate	1	x	7.0		$46.00	$322.00
Security Deputy (Traffic/Security at Entrance)	Estimate	1	x	3.0		$43.00	$129.00
BSO Deputy (Inner Security)	Estimate	2	x	7.0		$43.00	$602.00
BSO Deputy (Inner Security)	Estimate	2	x	5.0		$43.00	$430.00
							$3,352.00
						Total:	**$3,653.00**

Fire Rescue

Incident Commander	Estimate						
Inspector	Estimate						
Engine	Estimate						
Rescue	Estimate						$4,400.00
						Total:	**$4,400.00**

PARKS & RECREATION

PR Recreation Manager	Estimate	1	x	5.5		28	$154.00
PR Recreation Supervisor	Estimate	1	x	8		24	$192.00
PR Service Worker	Estimate	2	x	10		10	$200.00
							$546.00

EQUIPMENT RENTAL COSTS

Bleachers	Estimate						$500.00
Golf Carts	Estimate						$1,000.00
Bathroom supplies	Estimate						$500.00
Tables/Chairs	Estimate						$1,000.00
Showmobile	Estimate						$1,657.50
Barricades and Cones	Estimate						$250.00
Bucket Truck	Estimate						$520.00
Trash Cans and Trash Truck	Estimate						$520.00
Auditorium N/P	Estimate	1	x	$492.00		$492.00	$492.00
East Banquet Room N/P	Estimate	1	x	$307.00		$307.00	$307.00
West Banquet Room /P	Estimate	1	x	$307.00		$307.00	$307.00
Kitchen N/P	Estimate	1	x	$50.00		$50.00	$50.00
Meeting Room N/P	Estimate	1	x	$218.50		$218.50	$218.50
Craft Room N/P	Estimate	1	x	$218.50		$218.50	$218.50
Game Room N/P	Estimate	1	x	$218.50		$218.50	$218.50
Plants & Greenery	Estimate	2	x	$250.00		$500.00	$500.00
Light Trees for Parking	Estimate	6	x				$2,600.00
							$10,859.00

PUBLIC WORKS

Gators with staff	Estimate						$1,640.00
Street Pole Banner Labor	Estimate						$200.00
							$1,840.00
						Total	**$21,599.00**

Exhibit 5
Parking Map

Exhibit 6

Marketing Support for Festival

1. Four (4) 4' x 6' City banners that promote the Festival shall be displayed for six weeks prior to the start of each annual Festival. One banner promoting the Festival will be displayed when not in use for City Festivals. Licensee shall be responsible to design and print the banners in accordance with specifications provided by City, to pay all associated costs, and to deliver said banners to City one week prior to the start of each annual Festival. City, at its own cost, shall be responsible to timely install and remove the banners in the following locations: Atlantic/Cypress, US 1/10th Street, Community Park and at the Civic Center.

2. Licensee has the right to provide and display up to fifty street pole banners to promote the Festival which City agrees to timely install on its street poles in the following locations, at City's own costs, four weeks prior to the start of each annual Festival: U.S. 1 South and North of Atlantic Blvd and Atlantic Blvd. City agrees to timely remove said street pole banners after the Festival and to deliver them to Licensee.

3. The City agrees to annually provide Licensee with a half page back cover or inside cover advertisement for the Festival in the October issue of its Tradewinds publication and Licensee agrees to pay City for placement of the ad.

4. The City agrees to provide marketing, advertising and promotional support for the Festival via the following outlets for a period of no less than eight weeks prior to the start date of each annual Festival:
    - CITY Website
    - CITY Facebook page
    - CITY Twitter account
    - Press Release by media industry standard should be disseminated two to three weeks prior to an Festival.
    - Parks & Recreation upcoming Festivals calendar
    - Marquee (2): Skolnick Center and Civic Center
    - CITY Television Network:
    - PowerPoint slide promoting the Festival
    - A thirty second PSA promoting charitable beneficiaries of the Festival which Licensee shall produce and submit for approval to the City's Public Communications Director to ensure compliance with FCC guidelines for Government Access Television.

5. Licensee agrees to connect City with its Public Relations Firm prior to the start of each annual Festival so the parties can refine a schedule and strategy for the above described marketing activities.

EXHIBIT 7

INSURANCE REQUIREMENTS

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. If you are responding to a bid and have questions regarding the insurance requirements hereunder, please contact the City's Purchasing Department at (954) 786-4098. If the contract has already been awarded, please direct any queries and proof of the requisite insurance coverage to City staff responsible for oversight of the subject project/contract.

CONTRACTOR is responsible to deliver to the CITY for 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.

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.

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 checked types of insurance and indicated minimum policy limits.

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
XX	explosion & collapse hazard	
XX	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	
__	sexual abuse/molestation	Minimum $1,000,000 Per Occurrence and Aggregate
XX	liquor legal liability	Minimum $1,000,000 Per Occurrence and Aggregate

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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	
__	owned	
__	hired	
__	non-owned	

REAL & PERSONAL PROPERTY

__	comprehensive form	Agent must show proof they have this coverage.

EXCESS LIABILITY			Per Occurrence	Aggregate
XX	other than umbrella	bodily injury and property damage combined	$1,000,000	$1,000,000

PROFESSIONAL LIABILITY		Per Occurrence	Aggregate
__	* 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 set forth in 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. 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.

D. 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.

E. 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.

Meeting Date: 04/26/2016 Agenda Item 18

REQUESTED COMMISSION ACTION:

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

SHORT TITLE AN ORDINANCE OF THE CITY COMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A SOVEREIGNTY SUBMERGED LANDS FEE WAIVED LEASE RENEWAL AND MODIFICATION TO INCREASE SQUARE FOOTAGE BETWEEN THE BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND OF THE STATE OF FLORIDA AND THE CITY OF POMPANO BEACH; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE. (No Cost)

Summary of Purpose and Why:

The purpose of this ordinance is to renew the submerged land lease the City has with State of Florida and modify the existing terms of the lease to allow for the increased dimensions of future new pier. This lease is no cost to City as it is a fee waived lease with the pier currently earning no income. In the future, if the pier did earn income the City would be required to pay 6% of reported total direct and indirect income earned by pier. This is a 5-year lease that will expire April 1, 2021.

(1) Origin of request for this action: State of Florida, Department of Environmental Protection
(2) Primary staff contact: Robert McCaughan, Public Works Director 954 786-4507
(3) Expiration of Lease: April 1, 2021
(4) Fiscal impact and source of funding: None.

DEPARTMENTAL COORDINATION	DATE	DEPARTMENTAL RECOMMENDATION	DEPARTMENTAL HEAD SIGNATURE
Public Works	4/14/2016	APPROVE	
Finance	4/15/16	APPROVE	
Budget	4/18/16	APPROVE	
City Attorney	4/15/16	APPROVE	

X City Manager

ACTION TAKEN BY COMMISSION:

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

City Attorney's Communication #2016-675
March 23, 2016

TO: Robert A. McCaughan, Public Works Director

FROM: Jill R. Mesojedec, FRP, Paralegal

VIA: Mark E. Berman, City Attorney

RE: Ordinance – Renew Modified Submerged Land Lease for Municipal Pier with the State of Florida

As requested in your memorandum dated March 23, 2016, Public Works Department Memorandum No. 2016-26, I have prepared and attached the following captioned ordinance:

> **AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A SOVEREIGNTY SUBMERGED LANDS FEE WAIVED LEASE RENEWAL AND MODIFICATION TO INCREASE SQUARE FOOTAGE BETWEEN THE BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND OF THE STATE OF FLORIDA AND THE CITY OF POMPANO BEACH; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.**

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

JILL R. MESOJEDEC

/jrm
l:cor/pw/2016-675

Attachment

ORDINANCE NO. 2016-_____

CITY OF POMPANO BEACH
Broward County, Florida

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A SOVEREIGNTY SUBMERGED LANDS FEE WAIVED LEASE RENEWAL AND MODIFICATION TO INCREASE SQUARE FOOTAGE BETWEEN THE BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND OF THE STATE OF FLORIDA AND THE CITY OF POMPANO 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 a Sovereignty Submerged Lands Fee Waived Lease Renewal and Modification to Increase Square Footage between the City of Pompano Beach and the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida, a copy of which is attached hereto and incorporated herein 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.

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

MEB/jrm
3/23/16
l:ord/2016-172

This Instrument Prepared By:
Tiana D. Brown
Bureau of Public Land Administration
3900 Commonwealth Boulevard
Mail Station No. 125
Tallahassee, Florida 32399

BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND
OF THE STATE OF FLORIDA

SOVEREIGNTY SUBMERGED LANDS FEE WAIVED LEASE RENEWAL
AND MODIFICATION TO INCREASE SQUARE FOOTAGE

BOT FILE NO. 060129546
PA NO. 0333632-001-JC

THIS LEASE is hereby issued by the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida, hereinafter referred to as the Lessor.

WITNESSETH: That for and in consideration of the faithful and timely performance of and compliance with all terms and conditions stated herein, the Lessor does hereby lease to City of Pompano Beach, Florida, hereinafter referred to as the Lessee, the sovereignty lands described as follows:

A parcel of sovereignty submerged land in Section 31,
Township 48 South, Range 43 East, in Atlantic Ocean,
Broward County, Florida, containing 43,298 square feet, more or less,
as is more particularly described and shown on Attachment A, dated July 13, 2015.

TO HAVE THE USE OF the hereinabove described premises from February 11, 2016, the effective date of this modified lease renewal, through April 1, 2021, the expiration date of this modified lease renewal. The terms and conditions on and for which this modified lease renewal is granted are as follows:

1. USE OF PROPERTY: The Lessee is hereby authorized to construct and operate a public recreational pier that includes an observation tower, which is partially located on the leased premises, turtle friendly lighting, seating, shade structures, educational signage and bait cutting stations. The pier is to be used exclusively for passive recreation and fishing in conjunction with an upland public recreational area, without fueling facilities, without a sewage pumpout facility, and without liveaboards as defined in paragraph 25 as shown and conditioned in Attachment A,and the State of Florida Department of Environmental Protection Consolidated Joint Coastal Permit No. 0333632-001-JC, dated February 11, 2016, incorporated herein and made a part of this lease by reference. The construction of the proposed structures depicted on Page 12 of this modified lease shall be completed no later than February 11, 2021. The failure to complete construction of such authorized structures within this time period shall constitute a material breach of the lease pursuant to Paragraph 12 herein. All of the foregoing subject to the remaining conditions of this lease.

2. AGREEMENT TO EXTENT OF USE: This lease is given to the Lessee to use or occupy the leased premises only for those activities specified herein and as conditioned by the permit referenced in paragraph 1. The Lessee shall not (i) change or add to the approved use of the leased premises as defined herein (e.g., from commercial to multi-family residential, from temporary mooring to rental of wet slips, from rental of wet slips to contractual agreement with third party for docking of cruise ships, from rental of recreational pleasure craft to rental or temporary mooring of charter/tour boats, from loading/offloading commercial to rental of wet slips, etc.); (ii) change activities in any manner that may have an environmental impact that was not considered in the original authorization or regulatory permit; or (iii) change the type of use of the riparian uplands or as permitted by the Lessee's interest in the riparian upland property that is more particularly described in Attachment **B** without first obtaining a regulatory permit/modified permit, if applicable, the Lessor's written authorization in the form of a modified lease, the payment of additional fees, if applicable, and, if applicable, the removal of any structures which may no longer qualify for authorization under the modified lease. If at any time during the lease term this lease no longer satisfies the requirements of subparagraph 18-21.011(1)(b)7., Florida Administrative Code, for a fee waived lease, the Lessee shall be required to pay an annual lease fee in accordance with Rule 18-21.011, Florida Administrative Code, and if applicable, remove any structures which may no longer qualify for authorization under this lease.

3. SUBMITTING ANNUAL CERTIFIED FINANCIAL RECORDS: Within 30 days after each anniversary of the effective date of this lease, the Lessee shall submit annual certified financial records of income and expenses to the State of Florida Department of Environmental Protection, Division of State Lands, Bureau of Public Land Administration, 3900 Commonwealth Blvd, MS 130, Tallahassee, FL 32399. "Income" is defined in subsection 18-21.003(31), Florida Administrative Code. The submitted financial records shall be certified by a certified public accountant.

4. EXAMINATION OF LESSEE'S RECORDS: The Lessor is hereby specifically authorized and empowered to examine, for the term of this lease including any renewals, plus three (3) additional years, at all reasonable hours, the books, records, contracts, and other documents confirming and pertaining to the computation of annual lease payments as specified in paragraph two (2) above.

5. MAINTENANCE OF LESSEE'S RECORDS: The Lessee shall maintain separate accounting records for: (i) gross revenue derived directly from the use of the leased premises, (ii) the gross revenue derived indirectly from the use of the leased premises, and (iii) all other gross revenue derived from the Lessee's operations on the riparian upland property. The Lessee shall secure, maintain and keep all records for the term of this lease and any renewals plus three (3) additional years. This period shall be extended for an additional two (2) years upon request for examination of all records and accounts for lease verification purposes by the Lessor.

6. PROPERTY RIGHTS: The Lessee shall make no claim of title or interest to said lands hereinbefore described by reason of the occupancy or use thereof, and all title and interest to said land hereinbefore described is vested in the Lessor. The Lessee is prohibited from including, or making any claim that purports to include, said lands described or the Lessee's leasehold interest in said lands into any form of private ownership, including but not limited to any form of condominium or cooperative ownership. The Lessee is further prohibited from making any claim, including any advertisement, that said land, or the use thereof, may be purchased, sold, or re-sold.

7. INTEREST IN RIPARIAN UPLAND PROPERTY: During the term of this lease, the Lessee shall maintain satisfactory evidence of sufficient upland interest as required by paragraph 18-21.004(3)(b), Florida Administrative Code, in the riparian upland property that is more particularly described in Attachment **B** and by reference made a part hereof together with the riparian rights appurtenant thereto. If such interest is terminated or the Lessor determines that such interest did not exist on the effective date of this lease, this lease may be terminated at the option of the Lessor. If the Lessor terminates this lease, the Lessee agrees not to assert a claim or defense against the Lessor arising out of this lease. Prior to sale and/or termination of the Lessee's interest in the riparian upland property, the Lessee shall inform any potential buyer or transferee of the Lessee's interest in the riparian upland property and the existence of this lease and all its terms and conditions and shall complete and execute any documents required by the Lessor to effect an assignment of this lease, if consented to by the Lessor. Failure to do so will not relieve the Lessee from responsibility for full compliance with the terms and conditions of this lease which include, but are not limited to, payment of all fees and/or penalty assessments incurred prior to such act.

8. ASSIGNMENT OF LEASE: This lease shall not be assigned or otherwise transferred without prior written consent of the Lessor or its duly authorized agent. Such assignment or other transfer shall be subject to the terms, conditions and provisions of management standards and applicable laws, rules and regulations in effect at that time. Any assignment or other transfer without prior written consent of the Lessor shall be null and void and without legal effect.

9. INDEMNIFICATION/INVESTIGATION OF ALL CLAIMS: The Lessee shall investigate all claims of every nature at its expense. Each party is responsible for all personal injury and property damage attributable to the negligent acts or omissions of that party and the officers, employees and agents thereof. Nothing herein shall be construed as an indemnity or a waiver of sovereign immunity enjoyed by any party hereto, as provided in Section 768.28, Florida Statutes, as amended from time to time, or any other law providing limitations on claims.

10. NOTICES/COMPLIANCE/TERMINATION: The Lessee binds itself, its successors and assigns, to abide by the provisions and conditions herein set forth, and said provisions and conditions shall be deemed covenants of the Lessee, its successors and assigns. In the event the Lessee fails or refuses to comply with the provisions and conditions herein set forth, or in the event the Lessee violates any of the provisions and conditions herein set forth, and the Lessee fails or refuses to comply with any of said provisions or conditions within twenty (20) days of receipt of the Lessor's notice to correct, this lease may be terminated by the Lessor upon thirty (30) days written notice to the Lessee. If canceled, all of the above-described parcel of land shall revert to the Lessor. All notices required to be given to the Lessee by this lease or applicable law or administrative rules shall be sufficient if sent by U.S. Mail to the following address:

City of Pompano Beach, Florida
100 W. Atlantic Boulevard, 4th Floor
Pompano Beach, Florida 33060

The Lessee shall notify the Lessor by certified mail of any change to this address at least ten (10) days before the change is effective.

11. TAXES AND ASSESSMENTS: The Lessee shall assume all responsibility for liabilities that accrue to the subject property or to the improvements thereon, including any and all drainage or special assessments or taxes of every kind and description which are now or may be hereafter lawfully assessed and levied against the subject property during the effective period of this lease.

12. NUISANCES OR ILLEGAL OPERATIONS: The Lessee shall not permit the leased premises or any part thereof to be used or occupied for any purpose or business other than herein specified unless such proposed use and occupancy are consented to by the Lessor and the lease is modified accordingly, nor shall Lessee knowingly permit or suffer any nuisances or illegal operations of any kind on the leased premises.

13. MAINTENANCE OF FACILITY/RIGHT TO INSPECT: The Lessee shall maintain the leased premises in good condition, keeping the structures and equipment located thereon in a good state of repair in the interests of public health, safety and welfare. No dock or pier shall be constructed in any manner that would cause harm to wildlife. The leased premises shall be subject to inspection by the Lessor or its designated agent at any reasonable time.

14. NON-DISCRIMINATION: The Lessee shall not discriminate against any individual because of that individual's race, color, religion, sex, national origin, age, handicap, or marital status with respect to any activity occurring within the area subject to this lease or upon lands adjacent to and used as an adjunct of the leased area.

15. ENFORCEMENT OF PROVISIONS: No failure, or successive failures, on the part of the Lessor to enforce any provision, nor any waiver or successive waivers on its part of any provision herein, shall operate as a discharge thereof or render the same inoperative or impair the right of the Lessor to enforce the same upon any renewal thereof or in the event of subsequent breach or breaches.

16. PERMISSION GRANTED: Upon expiration or cancellation of this lease all permission granted hereunder shall cease and terminate.

17. RENEWAL PROVISIONS: Renewal of this lease shall be at the sole option of the Lessor. Such renewal shall be subject to the terms, conditions and provisions of management standards and applicable laws, rules and regulations in effect at that time. In the event that the Lessee is in full compliance with the terms of this lease, the Lessor will begin the renewal process. The term of any renewal granted by the Lessor shall commence on the last day of the previous lease term. In the event the Lessor does not grant a renewal, the Lessee shall vacate the leased premises and remove all structures and equipment occupying and erected thereon at its expense. The obligation to remove all structures authorized herein upon termination of this lease shall constitute an affirmative covenant upon the Lessee's interest in the riparian upland property more particularly described in Attachment **B**, which shall run with the title to the Lessee's interest in said riparian upland property and shall be binding upon the Lessee and the Lessee's successors in title or successors in interest.

18. REMOVAL OF STRUCTURES/ADMINISTRATIVE FINES: If the Lessee does not remove said structures and equipment occupying and erected upon the leased premises after expiration or cancellation of this lease, such structures and equipment will be deemed forfeited to the Lessor, and the Lessor may authorize removal and may sell such forfeited structures and equipment after ten (10) days written notice by certified mail addressed to the Lessee at the address specified in Paragraph 10 or at such address on record as provided to the Lessor by the Lessee. However, such remedy shall be in addition to all other remedies available to the Lessor under applicable laws, rules and regulations including the right to compel removal of all structures and the right to impose administrative fines.

19. REMOVAL COSTS/LIEN ON RIPARIAN UPLAND PROPERTY: Subject to the noticing provisions of Paragraph 18 of this lease, any costs incurred by the Lessor in removal of any structures and equipment constructed or maintained on state lands shall be paid by Lessee and any unpaid costs and expenses shall constitute a lien upon the Lessee's interest in the riparian upland property that is more particularly described in Attachment **B**. This lien on the Lessee's interest in the riparian upland property shall be enforceable in summary proceedings as provided by law.

20. RIPARIAN RIGHTS/FINAL ADJUDICATION: In the event that any part of any structure authorized hereunder is determined by a final adjudication issued by a court of competent jurisdiction to encroach on or interfere with adjacent riparian rights, Lessee agrees to either obtain written consent for the offending structure from the affected riparian owner or to remove the interference or encroachment within 60 days from the date of the adjudication. Failure to comply with this paragraph shall constitute a material breach of this lease agreement and shall be grounds for immediate termination of this lease agreement at the option of the Lessor.

21. AMENDMENTS/MODIFICATIONS: This lease is the entire and only agreement between the parties. Its provisions are not severable. Any amendment or modification to this lease must be in writing, must be accepted, acknowledged and executed by the Lessee and Lessor, and must comply with the rules and statutes in existence at the time of the execution of the modification or amendment. Notwithstanding the provisions of this paragraph, if mooring is authorized by this lease, the Lessee may install boatlifts within the leased premises without formal modification of the lease provided that (a) the Lessee obtains any state or local regulatory permit that may be required; and (b) the location or size of the lift does not increase the mooring capacity of the facility.

22. ADVERTISEMENT/SIGNS/NON-WATER DEPENDENT ACTIVITIES/ADDITIONAL ACTIVITIES/MINOR STRUCTURAL REPAIRS: No permanent or temporary signs directed to the boating public advertising the sale of alcoholic beverages shall be erected or placed within the leased premises. No restaurant or dining activities are to occur within the leased premises. The Lessee shall ensure that no permanent, temporary or floating structures, fences, docks, pilings or any structures whose use is not water-dependent shall be erected or conducted over sovereignty submerged lands without prior written consent from the Lessor. No additional structures and/or activities including dredging, relocation/realignment or major repairs or renovations to authorized structures, shall be erected or conducted on or over sovereignty, submerged lands without prior written consent from the Lessor. Unless specifically authorized in writing by the Lessor, such activities or structures shall be considered unauthorized and a violation of Chapter 253, Florida Statutes, and shall subject the Lessee to administrative fines under Chapter 18-14, Florida Administrative Code. This condition does not apply to minor structural repairs required to maintain the authorized structures in a good state of repair in the interests of public health, safety or welfare; provided, however, that such activities shall not exceed the activities authorized by this agreement.

23. USACE AUTHORIZATION: Prior to commencement of construction and/or activities authorized herein, the Lessee shall obtain the U.S. Army Corps of Engineers (USACE) permit if it is required by the USACE. Any modifications to the construction and/or activities authorized herein that may be required by the USACE shall require consideration by and the prior written approval of the Lessor prior to the commencement of construction and/or any activities on sovereign, submerged lands.

24. COMPLIANCE WITH FLORIDA LAWS: On or in conjunction with the use of the leased premises, the Lessee shall at all times comply with all Florida Statutes and all administrative rules promulgated thereunder. Any unlawful activity which occurs on the leased premises or in conjunction with the use of the leased premises shall be grounds for the termination of this lease by the Lessor.

25. LIVEABOARDS: The term "liveaboard" is defined as a vessel docked at the facility and inhabited by a person or persons for any five (5) consecutive days or a total of ten (10) days within a thirty (30) day period. If liveaboards are authorized by paragraph one (1) of this lease, in no event shall such "liveaboard" status exceed six (6) months within any twelve (12) month period, nor shall any such vessel constitute a legal or primary residence.

26. GAMBLING VESSELS: During the term of this lease and any renewals, extensions, modifications or assignments thereof, Lessee shall prohibit the operation of or entry onto the leased premises of gambling cruise ships, or vessels that are used principally for the purpose of gambling, when these vessels are engaged in "cruises to nowhere," where the ships leave and return to the state of Florida without an intervening stop within another state or foreign country or waters within the jurisdiction of another state or foreign country, and any watercraft used to carry passengers to and from such gambling cruise ships.

27. SPECIAL LEASE CONDTIONS:

A. The Lessee shall prohibit any person from residing in the observation tower on either a temporary or permanent basis.

B. All permanent exterior lighting shall be maintained as depicted on the lighting drawings, tables and cut sheets approved, stamped and signed by the Florida Fish and Wildlife Commission on October 8, 2015.

C. During the operation of the pier, the Lessee shall implement and follow, at all times, the protocols established in the Sea Turtle Protection Plan approved by the State of Florida Department of Environmental Protection ("Department") on October 15, 2015. All signage required by the plan shall be installed prior to the pier's reopening, and shall be maintained in perpetuity to include replacement of faded, damaged or lost signs. Signs shall be posted in high traffic areas and made easily visible to pier patrons.

D. The Lessee shall expeditiously recover any breakaway debris, such as pier deck sections or railing, dislodged from the pier following the impact of storms. Any storm damage that occurs shall be reported to the JCP Compliance Officer, and shall be supported by photo documentation.

E. Following completion of construction, the Lessee shall provide free access on or about the pier to Department employees for the purpose of conducting compliance inspections, observations or data acquisition. Sufficient space shall be provided for the installation and maintenance of scientific instrumentation, such as those used to record tides, waves, sediment, temperature, turbidity, water quality, meteorologic, hydrologic, and hydrographic.

F. The Lessee shall allow Department staff, including engineers, access onto the pier immediately following storm events to evaluate any structural damage and/or beach and coastal erosion conditions.

IN WITNESS WHEREOF, the Lessor and the Lessee have executed this instrument on the day and year first above written.

WITNESSES:

_____
Original Signature

_____
Print/Type Name of Witness

_____
Original Signature

_____
Print/Type Name of Witness

BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND OF THE STATE OF FLORIDA

(SEAL)

BY: _____
Cheryl C. McCall, Chief, Bureau of Public Land Administration, Division of State Lands, State of Florida Department of Environmental Protection, as agent for and on behalf of the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida

"LESSOR"

STATE OF FLORIDA
COUNTY OF LEON

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by Cheryl C. McCall, Chief, Bureau of Public Land Administration, Division of State Lands, State of Florida Department of Environmental Protection, as agent for and on behalf of the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida. She is personally known to me.

APPROVED SUBJECT TO PROPER EXECUTION:

_____ 3/21/16
DEP Attorney Date

_____
Notary Public, State of Florida

_____
Printed, Typed or Stamped Name

My Commission Expires:

_____
Commission/Serial No._____

WITNESSES:

City of Pompano Beach, Florida (SEAL)

_____
Original Signature

BY: _____
Original Signature of Executing Authority

_____
Typed/Printed Name of Witness

Lamar Fisher
Typed/Printed Name of Executing Authority

_____
Original Signature

Mayor
Title of Executing Authority

_____
Typed/Printed Name of Witness

"LESSEE"

STATE OF_____

COUNTY OF_____

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by Lamar Fisher as Mayor, for and on behalf of City of Pompano Beach, Florida. He is personally known to me or who has produced _____, as identification.

My Commission Expires:

_____
Signature of Notary Public

Notary Public, State of_____

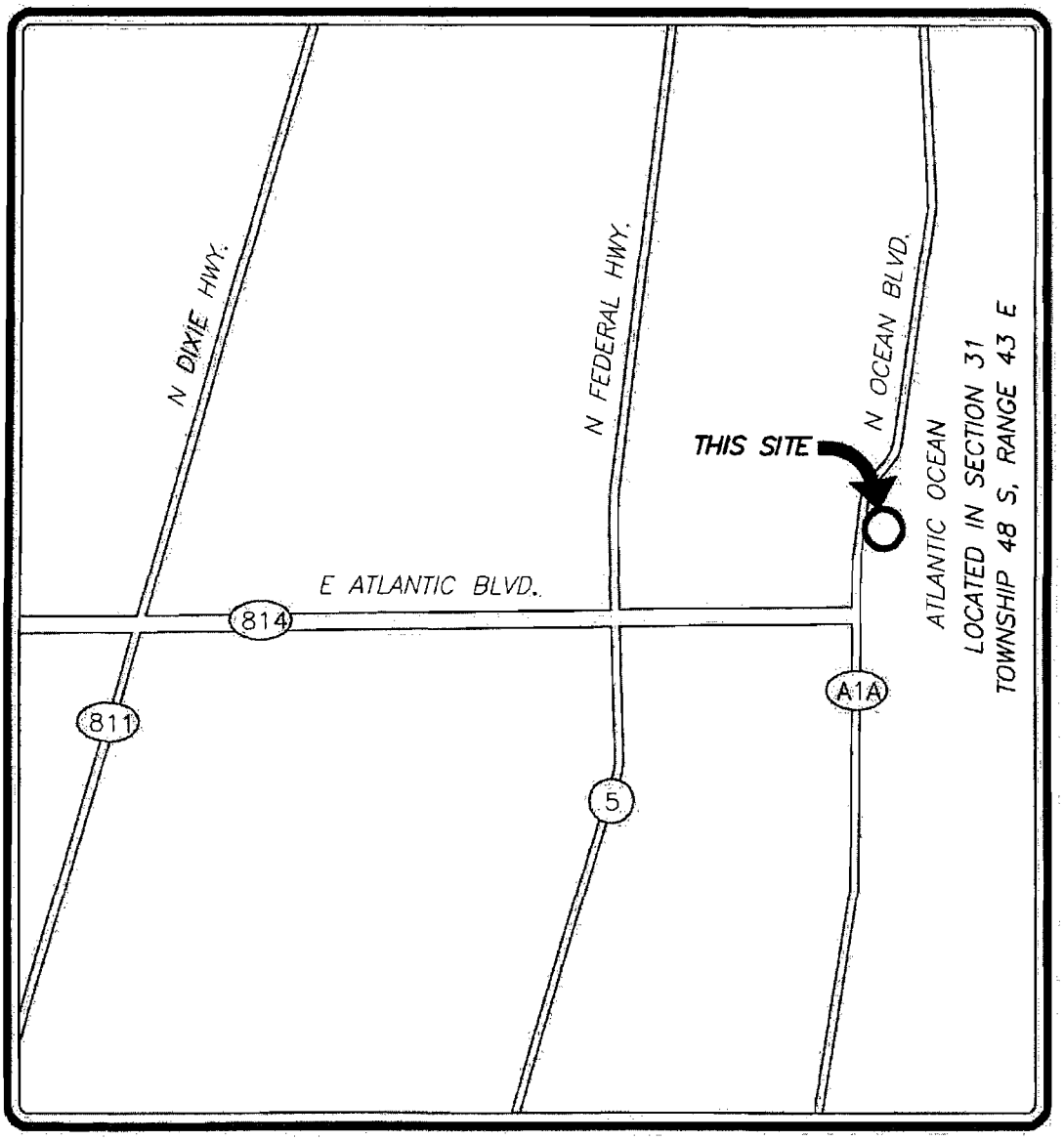
_____

Commission/Serial No._____

_____
Printed, Typed or Stamped Name

WGI
Wantman Group, Inc.
Engineering ❖ Planning ❖ Surveying ❖ Environmental
2035 VISTA PARKWAY, SUITE 100, WEST PALM BEACH, FL 33411
(866) 909-2220 phone (561) 687-1110 fax
CERTIFICATE OF AUTHORIZATION No. LB 7055
JACKSONVILLE – ORLANDO – TALLAHASSEE – TAMPA
www.wantmangroup.com

THIS IS A FIELD SURVEY
PREPARED FOR:
CITY OF POMPANO BEACH, FLORIDA



LOCATION MAP
(NOT TO SCALE)

N

DATE:	REVISION:	BY:
07/13/15	REVISED PER FDEP COMMENTS	MRG

OFFICE	MRG	DATE	06/04/15	JOB	31411445.00
CHECKED	DGZ	SHEET	1 OF 6	DWG	144500_Sub Pcl

K:\31411445.00 Pompano Pier\dwg\Legals\144500_Sub Pcl.dwg Sh 1 Jul 13, 2015

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PREPARED FOR:
CITY OF POMPANO BEACH, FLORIDA

LEGAL DESCRIPTION:

A SUBMERGED PARCEL OF LAND LYING IN THE ATLANTIC OCEAN AND BEING A PORTION OF SECTION 31, TOWNSHIP 48 SOUTH, RANGE 43 EAST, LYING EAST OF THE MEAN HIGH WATER BASE LINE OF THE ATLANTIC OCEAN, AS RECORDED IN MISCELLANEOUS PLAT BOOK 2, PAGE 49, OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA, SAID BASE LINE ALSO KNOWN AS THE EROSION CONTROL LINE AS SHOWN ON THE MISCELLANEOUS MAP OF POMPANO BEACH/LAUDERDALE-BY-THE-SEA EROSION CONTROL LINE, AS RECORDED IN MISCELLANEOUS MAP BOOK 7, PAGE 6 OF SAID RECORDS, BEING DESCRIBED AS FOLLOWS:

COMMENCE AT THE PERMANENT REFERENCE MONUMENT DESIGNATED R-34 AND SHOWN ON THE MISCELLANEOUS MAP OF COASTAL CONSTRUCTION CONTROL LINE AS RECORDED IN MISCELLANEOUS MAP BOOK 6, PAGE 10 OF SAID PUBLIC RECORDS; THENCE SOUTH 56°37'18" EAST, FOR 205.53 FEET TO A POINT OF INTERSECTION WITH SAID MEAN HIGH WATER BASE LINE, SAID POINT ALSO BEING AN ANGLE POINT OF SAID BASE LINE, THE FOLLOWING TWO (2) COURSES BEING ALONG SAID BASE LINE (EROSION CONTROL LINE); THENCE NORTH 03°57'55" EAST, FOR 343.39 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE NORTH 03°57'55" EAST, FOR 71.76 FEET; THENCE SOUTH 80°51'13" EAST, FOR 23.70 FEET; THENCE SOUTH 09°08'47" WEST, FOR 15.28 FEET; THENCE SOUTH 80°51'13" EAST, FOR 406.53 FEET;

(Continued on Sheet 3)

SURVEYOR'S NOTES:

1. *THIS IS A SPECIFIC PURPOSE SURVEY, AS DEFINED IN CHAPTER 5J-17.050(10)(A)-(K) OF THE FLORIDA ADMINISTRATIVE CODE. THE PURPOSE OF THIS SURVEY IS FOR APPROVAL OF A SUBMERGED LAND LEASE.*
2. *THE BEARINGS SHOWN UPON THIS SURVEY ARE BASED ON THE COASTAL CONSTRUCTION CONTROL LINE RUNNING NORTH FROM CONTROL POINT R-34 AS SHOWN ON BROWARD COUNTY COASTAL CONSTRUCTION CONTROL LINE, MISCELLANEOUS MAP BOOK, 6, AT PAGE 10, OF THE PUBLIC RECORDS OF BROWARD COUNTY RECORDS, SAID LINE BEARS NORTH 08°53'20" EAST AND ALL OTHER BEARING RECITED HEREON ARE RELATIVE THERETO.*
3. *RIPARIAN RIGHTS LINES SHOWN HEREON, ARE NOT A LEGAL OR APPROVED LINES. THE CITY OF POMPANO BEACH HAS ADDITIONAL RIGHTS FURTHER NORTH AND SOUTH BUT OUTSIDE THE LIMITS OF THIS SURVEY.*
4. *THE COORDINATE VALUES SHOWN HEREON ARE STATE PLANE COORDINATES (TRANSVERSE MERCATOR PROJECTION), FLORIDA EAST ZONE, NORTH AMERICAN DATUM (NAD) 1983, (2007 ADJUSTMENT).*
5. *THIS SURVEY MAP AND REPORT OR THE COPIES THEREOF ARE NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.*

CERTIFICATION:

CERTIFIED TO THE BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND OF THE STATE OF FLORIDA.

FOR THE FIRM
WANTMAN GROUP, INC.

BY: _____ *DATE:* 7/13/15
DEREK G. ZEMAN,
PROFESSIONAL SURVEYOR AND MAPPER
FLORIDA LICENSE NO. 5655

DATE:	REVISION:	BY:
07/13/15	REVISED PER FDEP COMMENTS	MRG

OFFICE	MRG	DATE 06/04/15	JOB 31411445.00
CHECKED	DGZ	SHEET 2 OF 6	DWG 144500_Sub Pcl

K:\31411445.00 Pompano Pier\dwg\Legals\144500_Sub Pcl.dwg Sh 2 Jul 13, 2015;

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THIS IS A FIELD SURVEY
PREPARED FOR:
CITY OF POMPANO BEACH, FLORIDA

(Continued from Sheet 2)

THENCE NORTH 09°08'47" EAST, FOR 9.54 FEET; THENCE SOUTH 80°51'13" EAST, FOR 61.77 FEET; THENCE SOUTH 09°08'47" WEST, FOR 9.54 FEET; THENCE SOUTH 80°51'13" EAST, FOR 304.25 FEET; THENCE SOUTH 09°08'47" WEST, FOR 98.96 FEET; THENCE NORTH 80°51'13" WEST, FOR 54.26 FEET; THENCE NORTH 35°51'13" WEST, FOR 49.50 FEET; THENCE NORTH 09°08'47" EAST, FOR 13.04 FEET; THENCE NORTH 80°51'13" WEST, FOR 214.99 FEET; THENCE SOUTH 09°08'47" WEST, FOR 9.54 FEET; THENCE NORTH 80°51'13" WEST, FOR 61.77 FEET; THENCE NORTH 09°08'47" EAST, FOR 9.54 FEET; THENCE NORTH 80°51'13" WEST, FOR 171.24 FEET; THENCE NORTH 09°08'47" EAST, FOR 10.00 FEET; THENCE NORTH 80°51'13" WEST, FOR 235.29 FEET; THENCE SOUTH 09°08'47" WEST, FOR 15.28 FEET; THENCE NORTH 80°51'13" WEST, FOR 17.22 FEET TO THE POINT OF BEGINNING.

SUBJECT TO EXISTING EASEMENTS, RIGHTS-OF-WAY, COVENANTS, RESERVATIONS AND RESTRICTIONS OF RECORD, IF ANY.

SAID LANDS LYING AND SITUATE IN BROWARD COUNTY, FLORIDA.

SAID LANDS CONTAIN 0.994 ACRES, MORE OR LESS.

DATE:	REVISION:	BY:
07/13/15	REVISED PER FDEP COMMENTS	MRG

OFFICE	MRG	DATE 06/04/15	JOB 31411445.00
CHECKED	DGZ	SHEET 3 OF 6	DWG 144500_Sub Pcl

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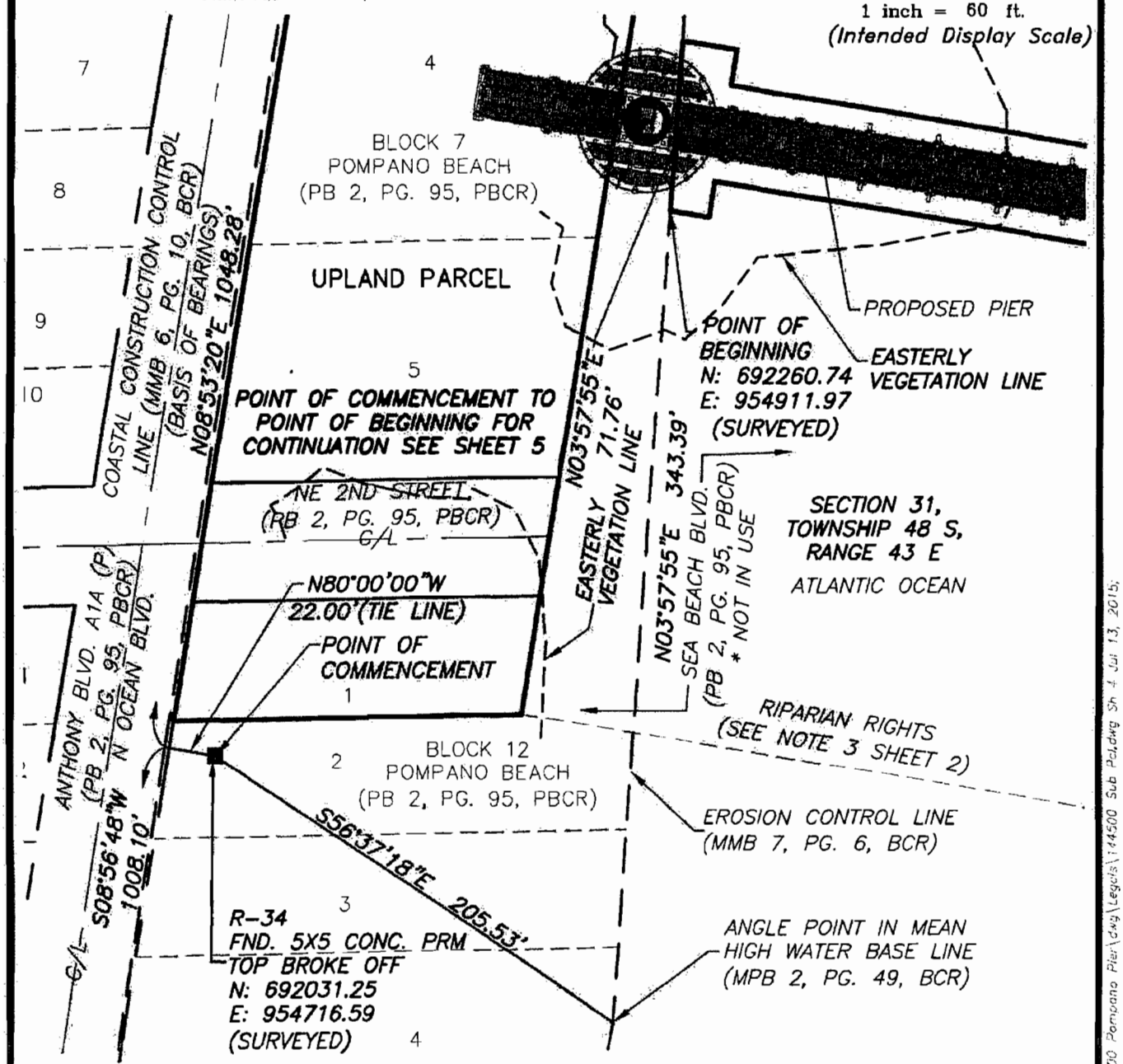
LEGEND:

BCR	=	Broward County Records
FND.	=	Found
MMB	=	Miscellaneous Map Book
MPB	=	Miscellaneous Plat Book
ORB	=	Official Records Book
PBCR	=	Palm Beach County Records
PB	=	Plat Book
(P)	=	Per Plat
PG.	=	Page
PRM	=	Permanent Reference Monument

N

GRAPHIC SCALE
60 0 30 60
(IN FEET)
1 inch = 60 ft.
(Intended Display Scale)

THIS IS A FIELD SURVEY
PREPARED FOR:
CITY OF POMPANO BEACH, FLORIDA



DATE:	REVISION:	BY:				
07/13/15	REVISED PER FDEP COMMENTS	MRG	OFFICE	MRG	DATE 06/04/15	JOB 31411445.00
			CHECKED	DGZ	SHEET 4 OF 6	DWG 144500_Sub Pcl

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GRAPHIC SCALE
80 0 40 80
(IN FEET)
1 inch = 80 ft.
(Intended Display Scale)

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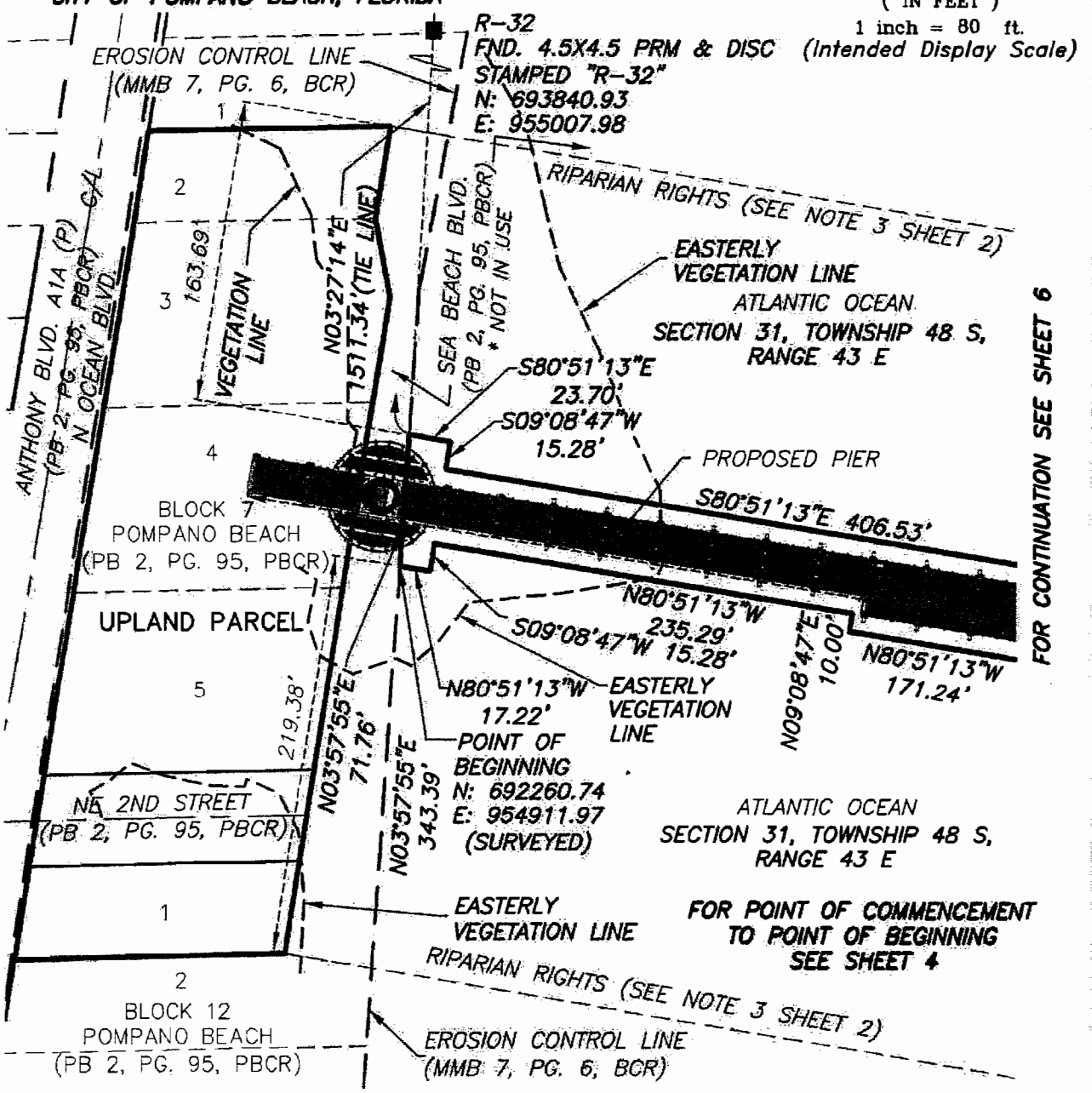
PREPARED FOR:
CITY OF POMPANO BEACH, FLORIDA



DATE:	REVISION:	BY:				
07/13/15	REVISED PER FDEP COMMENTS	MRG	OFFICE	MRG	DATE 06/04/15	JOB 31411445.00
			CHECKED	DGZ	SHEET 5 OF 6	DWG 144500_Sub Pcl

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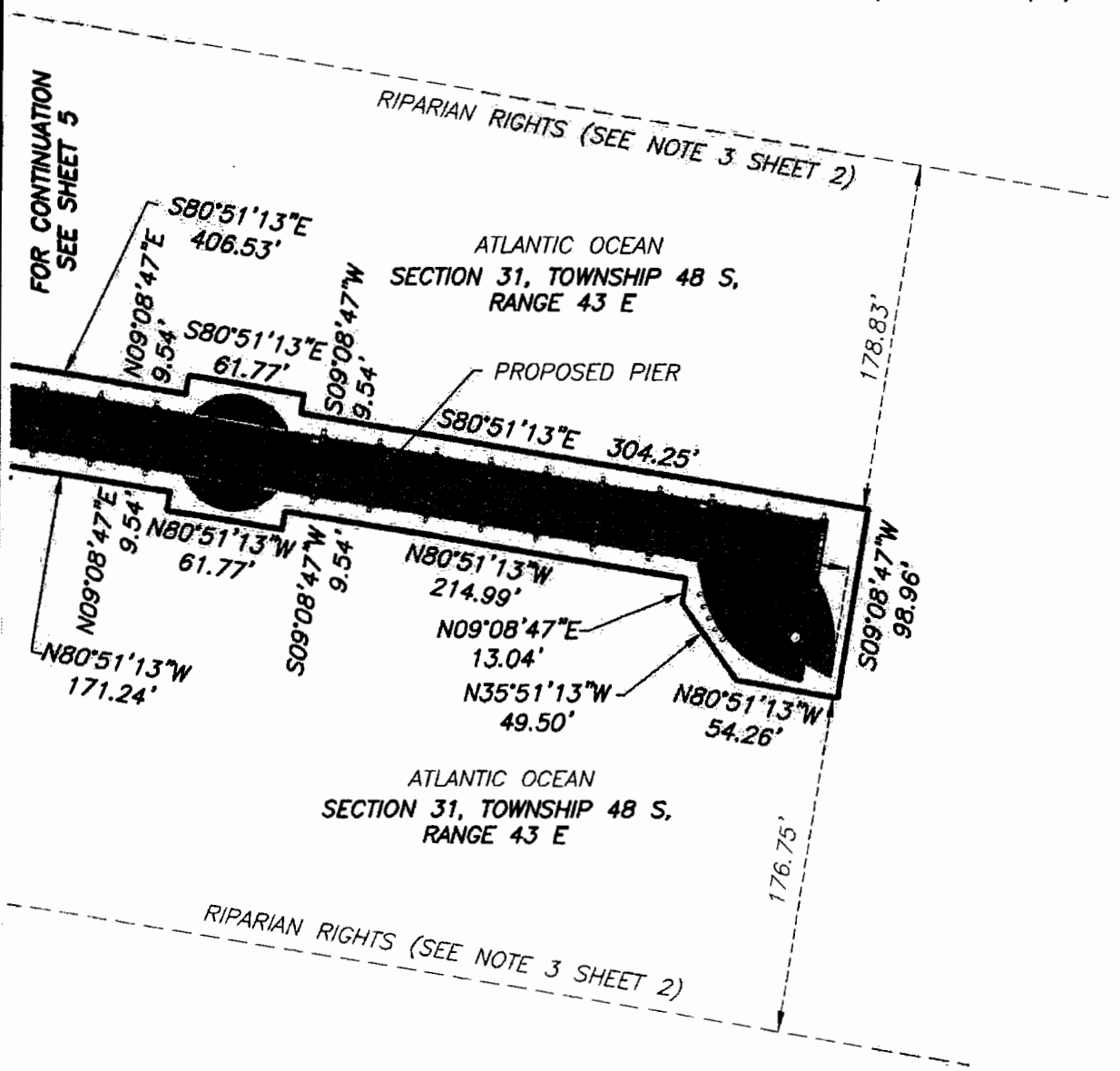

DATE:	REVISION:	BY:				
07/13/15	REVISED PER FDEP COMMENTS	MRG	OFFICE	MRG	DATE 06/04/15	JOB 31411445.00
			CHECKED	DGZ	SHEET 6 OF 6	DWG 144500_Sub Pcl

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454984

DEED 765 PAGE 456

WARRANTY DEED

THIS INDENTURE, Made this 5th day of December, A. D. 1951 between W. L. KESTER, a single man, of the County of Broward and State of Florida, party of the first part, and CITY OF POMPANO BEACH, a municipal corporation, party of the second part,

WITNESSETH, that the said party of the first part, for and in consideration of the sum of Ten Dollars and other good and valuable considerations to him in hand paid, the receipt whereof is hereby acknowledged, has granted, bargained, sold and transferred, and by these presents does grant, bargain, sell and transfer unto the said party of the second part and its successors and assigns forever, all that certain parcel of land lying and being in the County of Broward and State of Florida, more particularly described as follows:

Lots 1, 2, 4, 5, 6, 7, 8 and 9, Block 6
Lots 4 and 5, Block 7
Lots 3, 8 and 9, Block 11
Lots 1, 2, 4, 5, and 6, Block 12

all being in Pompano Beach Subdivision, being a subdivision of Government Lot 2, Section 31, Township 48 South, Range 43 East, as recorded March 29, 1913 in Book 2 of Plats, Page 95, Public Records, Palm Beach County, said land lying, situate and being in Broward County, Florida.

The City covenants and agrees that the grantor herein may maintain his rental office on Lot 4 of Block 7, described above, free of all rent for a period of five years from the date hereof, at which time the grantor shall have the right to remove the existing building from said lot, and he covenants and agrees that in the event he fails to remove said building from said lot within five years from the date hereof, that said building shall revert to the grantee herein.

The above described property is conveyed subject to the following restrictions:

1. The City of Pompano Beach, as an additional consideration of the purchase price of the above described property, covenants and agrees that said property shall only be used for

municipal and public park purposes.

2. The City covenants and agrees that no buildings shall be erected by it on the above described property.

TOGETHER with all the tenements, hereditaments and appurtenances, with every privilege, right, title, interest and estate, dower and right of dower, reversion, remainder and easement thereto belonging to or in anywise appertaining:

TO HAVE AND TO HOLD the same in fee simple forever.

And the said party of the first part does covenant with the said party of the second part that he is lawfully seized of the said premises, that they are free from all incumbrances and that he has good right and lawful authority to sell the same; and the said party of the first part does hereby fully warrant the title to said land, and will defend the same against the lawful claims of all persons whomsoever.

IN WITNESS WHEREOF, the said party of the first part has hereunto set his hand and seal the day and year above written.

Signed, sealed and delivered
in our presence:

H P Edmond : W L Kester (SEAL)

W. Marion Walton :

STATE OF FLORIDA
COUNTY OF BROWARD

I HEREBY CERTIFY that on this 5th day of December, A. D. 1951, before me personally appeared W. L. Kester, a single man, to me known to be the person described in and who executed the foregoing conveyance to the City of Pompano Beach, a municipal corporation, and severally acknowledged the execution thereof to be his free act and deed for the uses and purposes therein mentioned.

WITNESS my signature and official seal at Pompano Beach, in the County of Broward and State of Florida, the day and year last aforesaid.

STATE OF FLORIDA, COUNTY OF BROWARD
This instrument filed for record 3 day of Mar 1952 and recorded in book 765 of Deed on page 456 RECORD VERIFIED.
TED CABOT, Clerk of the Circuit Court
By Keith Walsh D. C.

W. Marion Walton
Notary Public, State of Florida at large
My commission expires Oct. 31, 1953.
Bonded by American Surety Co. of N. Y.

~~45~~1985

This Indenture Made this 30th day of November, A. D. 1951,

BETWEEN

BENJAMIN HARRISON JAMES, JR., AND MARTHA B. JAMES, his wife

of the County of Broward and State of Florida parties of the first part and

CITY OF POMPANO BEACH, a municipal corporation

party of the second part, WITNESSETH, that the said parties of the first part, for and in consideration of the sum of

Ten Dollars and other good and valuable considerations

to them in hand paid, the receipt whereof is hereby acknowledged, have granted, bargained, sold and transferred, and by these presents doth grant, bargain, sell and transfer unto the said party of the second part and its successors ~~heirs~~ and assigns forever, all that certain parcel of land lying and being in the County of Broward and State of Florida, more particularly described as follows:

Lot Three (3) of Block Seven (7), Pompano Beach, a Sub. of Gov. Lot Two (2), Section Thirty-one (31), Township Forty-eight (48) South, Range Forty-three (43) East, recorded in Plat Book Two (2), page Ninety-five (95), Palm Beach County Records.

TOGETHER with all the tenements, hereditaments and appurtenances, with every privilege, right, title, interest and estate, dower and right of dower, reversion, remainder and easement thereto belonging or in anywise appertaining: TO HAVE AND TO HOLD the same in fee simple forever. And the said parties of the first part covenants with the said party of the second part that they are lawfully seized of the said premises that they are free from all encumbrances and that they good right and lawful authority to sell the same; and that the said parties of the first part do hereby fully warrant the title to the said land, and will defend the same against the lawful claims of all persons whomsoever.

IN WITNESS WHEREOF, the said parties of the first part have hereunto set their hands and seals the day and year above written.

Signed, Sealed and Delivered in Our Presence:

A. J. Nussbaumer Jr. — B. H. James Jr. (SEAL)

Betty G. Jones — Martha B. James (SEAL)

(SEAL)

(SEAL)

STATE OF FLORIDA, COUNTY OF BROWARD

This instrument filed for record 3 day of Mar 1952 and recorded in book 765 of Deed on page 458 RECORD VERIFIED

TED CABOT, Clerk of the Circuit Court

By Keith Wahn D. C.

State of

County of

I HEREBY CERTIFY, That on this 30 day of November A. D. 19 51, before me personally appeared

BENJAMIN HARRISON JAMES, JR. AND MARTHA B. JAMES, his wife

to me known to be the persons described in and who executed the foregoing conveyance and severally acknowledged the execution thereof to be their free act and deed for the uses and purposes therein mentioned.

WITNESS my signature and official seal at Pompano Beach in the County of Broward and State of Florida, the day and year last aforesaid.

A. J. Nussbaumer Jr. (SEAL)
Notary Public

My commission expires: Notary Public, State of Florida at large My commission expires Sept. 19, 1954. Bonded by American Surety Co. of N. Y.

Meeting Date: April 26, 2016 Agenda Item 19

REQUESTED COMMISSION ACTION:

Consent	X Ordinance	Resolution	Consideration/ Discussion	Presentation

SHORT TITLE

AN ORDINANCE AMENDING CHAPTER 155, "ZONING CODE," OF THE CODE OF ORDINANCES OF THE CITY OF POMPANO BEACH, FLORIDA, BY AMENDING SECTION 155.4303., "STANDARDS FOR SPECIFIC ACCESSORY USES AND STRUCTURES," TO PROVIDE A DEFINITION OF AND STANDARDS GOVERNING LOCATION OF ATHLETIC COURTS OR FIELDS; BY AMENDING SECTION 155.5302, "FENCES AND WALLS," TO PROVIDE STANDARDS FOR FENCING PROVIDED AS PART OF A PERMITTED ATHLETIC COURT OR FIELD; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

Summary of Purpose and Why:

The proposed text amendments clarify the city's allowance of accessory athletic courts and fields, as well as the customary fencing. A new accessory use is created which includes standards that ensure that the impacts of these courts on neighboring properties and abutting right-of-way are minimized. The customary fencing would be permitted up to 14 feet in height provided their location, materials, and transparency comply with additional standards. The text amendments were unanimously recommended at the March 23, 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 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	03/15/2016	Approval	Memo #16-052 for RB
City Attorney	4-13-16	✓	
X Planning and Zoning Board		Approval	Memo #16-019 (04/12/2016)
X City Manager			James W. Bell

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

City Attorney's Communication #2016-689
March 31, 2016

TO: Karen Friedman, AICP, Principal Planner

FROM: Mark E. Berman, City Attorney

RE: Ordinance Amending Chapter 155, "Zoning Code"

As requested in your memorandum of March 25, 2016, Department of Development Services Memorandum No. 16-139, 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 155.4303., "STANDARDS FOR SPECIFIC ACCESSORY USES AND STRUCTURES," TO PROVIDE A DEFINITION OF AND STANDARDS GOVERNING LOCATION OF ATHLETIC COURTS OR FIELDS; BY AMENDING SECTION 155.5302, "FENCES AND WALLS," TO PROVIDE STANDARDS FOR FENCING PROVIDED AS PART OF A PERMITTED ATHLETIC COURT OR FIELD; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.**

Please carefully review the ordinance to ensure that it meets with your requirements.

MARK E. BERMAN

/jrm
l:cor/dev-srv/2016-689

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 155.4303., "STANDARDS FOR SPECIFIC ACCESSORY USES AND STRUCTURES," TO PROVIDE A DEFINITION OF AND STANDARDS GOVERNING LOCATION OF ATHLETIC COURTS OR FIELDS; BY AMENDING SECTION 155.5302, "FENCES AND WALLS," TO PROVIDE STANDARDS FOR FENCING PROVIDED AS PART OF A PERMITTED ATHLETIC COURT OR FIELD; 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 155.4303., "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

. . .

VV. ATHLETIC COURT OR FIELD

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	A	A	A	A	A	A	A	A	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				A	A	A	A	A

2. Definition

Athletic Court or Field as an accessory use is an area designed for tennis, handball, basketball, racquetball, or similar athletic activities on a property whose principal use is not Park or Plaza. This use does not include a basketball hoop.

3. Standards

An Athletic Court or Field may be located in a required interior side yard setback or required rear yard setback provided they are located at least five feet from any interior side or rear lot line.

SECTION 2. That Section 155.5302., "Fences and Walls," of Chapter 155, "Zoning Code," of the Code of Ordinances of the City of Pompano Beach is hereby amended to read as follows:

§155.5302. FENCES AND WALLS

. . .

D. HEIGHT REQUIREMENTS FOR FENCES AND WALLS

1. Applicability

a. General

. . .

b. Exemptions

i. Required Screening

. . .

~~**ii. Recreational Fencing**~~

~~Customary fencing provided as a part of a permitted tennis court, athletic field, or other recreational facility shall be exempt from the height restrictions of this subsection.~~

. . .

6. Fences for Athletic Court or Field

Fences provided as part of a permitted Athletic Court or Field may be allowed to increase maximum fence height to fourteen (14) feet provided they comply with the following standards:

a The fence is not located within a required front and/or street side yard;

b. The fence is located at least five feet from the interior side and rear property lines;

c. The fence is at least 75 percent see-through;

d. The fence is located outside of the Rear Yard Corner Triangle as described in §155.5302.D.5.a, Fences and Walls Adjacent to Waterways; and

e. Chain link fences visible from adjacent right-of-way shall be vinyl coated.

. . .

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
4/7/16
L:ord/ch155/2016-181

PLANNING AND ZONING BOARD/ LOCAL PLANNING AGENCY
MEMORANDUM #16-019

DATE: March 28, 2016

TO: City Commission

FROM: Planning and Zoning Board/ Local Planning Agency

SUBJECT: Proposed Text Amendments to Zoning Code
Athletic Courts and related fencing

At the meeting of the Planning and Zoning Board/ Local Planning Agency held on March 23, 2016, the Board considered proposed text amendments to the Zoning Code regarding Athletic Courts and Related Fencing as set forth in the Department of Development Services Administrative Report 16-052.

Staff recommends text amendments that create a new accessory use "Athletic Court of Field," delete the existing exemption from fence height standards for recreational fencing, and create a new subsection in the Fences standards regarding fences for Athletic Court or Field.

With a unanimous vote for the approval of the amendment, it is the recommendation of the Board that the text amendments be approved.

4-12-16

Fred Stacer
Chairman
Planning and Zoning Board/ Local Planning Agency

kem
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11. Chapter 155 Zoning Code Text Amendment, Athletic Courts and related fencing

Staff is recommending text amendments which propose a new accessory use: Athletic Court or Field and propose revisions to the related "recreational fencing" standards.

Karen Friedman introduced herself to the Board and stated that the intent of the proposed text amendments are to clarify the city's allowance of the accessory use of Athletic Courts as well as the necessary fencing. The intent of the text amendments are to permit this athletic courts and fields as an accessory use with reasonable standards that ensure that the impacts of these courts on neighboring properties and abutting right-of-way are minimized.

In particular, the text amendments create a new accessory use "Athletic Court or Field." The definition clarifies this is not for Parks or Plazas. The definition also clarifies this use is not intended to regulate a basketball hoop. This use would be permitted as an accessory use for many principal uses, including but not limited to, single-family and multi-family residential uses, schools, community centers, and hotels. They would not be permitted in the front or street side yards. They could be located in the interior side or rear yard setback, provided they are five feet from the property line. The text amendments would also delete the existing exemption from fence height standards for recreation fencing.

Instead, a new subsection in the Fences standards regarding fences for Athletic Court or Field. The standards would allow these fences to be permitted up to fourteen (14) feet in height provided their location, materials, and transparency comply with additional standards. The 14 foot height is recommended for two reasons. First, fencing industry standards for athletic court fencing vary between 10 feet and 15 feet. Second, Miami-Dade County utilizes a 14 foot height standard for "Fences for tennis courts; fences and walls for other recreational uses". A copy of the industry information and Miami-Dade County standards are attached for your reference.

Tobi Aycock asked Karen Friedman if the fence is transparent, why would there be any restrictions if it is in the rear yard corner of houses on waterways. Ms. Friedman answered that the City would like to protect the views of adjacent property owners and the increased height prompts the restrictions.

Ms. Friedman stated that she is concerned that the Board's staff reports do not have all of the conditions due to a missing page. It was determined that a page of the staff report was missing and it was needed to continue with the Board's review.

MOTION was made by Jeff Torrey and seconded by Tobi Aycock to table the text amendments until Staff can provide the missing page to the Board. All voted in favor of the above motion; therefore, the motion was approved.

MOTION was made by Trip Bechert and seconded by Tobi Aycock to remove the item from the table. All voted in favor of the above motion; therefore, the motion passed.

Karen Friedman stated that the Board received the five (5) specific conditions that would need to be met in order for the fence associated with an athletic court or field to be extended up to fourteen (14) feet in height. Ms. Friedman read off the five conditions to the Board.

MOTION was made by Trip Bechert 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.

12. Special Meeting, ETOC Land Use Plan Amendment

Consideration of a request for a special meeting to present and discuss the proposed East Transit Oriented Corridor (ETOC) Land Use Plan Amendment on April 20th, 2016.

Mr. Stacer asked the Board if the proposed date was ok with everyone's schedules. The Board members had no objections.

MOTION was made by Trip Bechert and seconded by Beth Anderson to approve the proposed workshop on April 20, 2016 at 6pm. All voted in favor of the above motion; therefore, the motion passed.

13. Special Meeting, Capital Improvement Plan

Consideration of a request to meet in June to review the presentation of the FY 17-21 Capital Improvement Plan.

Ms. MacNeil stated that in order for the Planning and Zoning Board to be the last advisory board to review the Capital Improvement Plan (CIP), the meeting would have to take place in the month of June. Ms. MacNeil stated that the Chambers were available on June 15th and the 29th. Ms. MacNeil added that the regular meeting for June is on the 22nd; however, the special magistrate's schedule would conflict with the Planning and Zoning Board hosting a meeting at 5pm.

The Chairman discussed reviewing the CIP at 6pm on June 22, 2016 and having the regular meeting moved to 7pm. Ms. Anderson asked if an hour is sufficient for this meeting. Ms. Gomez stated that an hour would be sufficient. Ms. Sarver asked if the Planning and Zoning Board is required to review the CIP and Ms. Gomez confirmed that it is a requirement. Mr. Stacer asked the Board their preference for the time of the special meeting and several members of the Board responded that the 6pm meeting time for the CIP review on June 22nd worked well.

MOTION was made by Beth Anderson to hold a special meeting for the review of the Capital Improvement Plan at 6pm on June 22, 2016 and for the regular meeting to be held

DRAFT

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MEMORANDUM

Development Services

ADMINISTRATIVE MEMORANDUM NO. 16-052

DATE: March 15, 2016

TO: Planning and Zoning Board

VIA: Robin M. Bird, Director of Development Services

FROM: Karen Friedman, AICP, Principal Planner KBF

RE: Proposed Revisions to §155.4303 and 155.5302.D.1.b.ii: Athletic Courts and related fencing

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Staff has prepared text amendments which propose a new accessory use: Athletic Court or Field and propose a revisions to the related "recreational fencing" standards.

The text amendments are proposed to clarify the city's allowance of this accessory use as well as the necessary fencing. The intent of the text amendments are to permit this athletic courts and fields as an accessory use with reasonable standards that ensure that the impacts of these courts on neighboring properties and abutting right-of-way are minimized.

The proposed text amendments, therefore, address the following:

- Create a new accessory use "Athletic Court or Field"
  - The definition clarifies this is not for Parks or Plazas. The definition also clarifies this use is not intended to regulate a basketball hoop.
  - This use would be permitted as an accessory use for many principal uses, including but not limited to, single-family and multi-family residential uses, schools, community centers, and hotels.
  - They would not be permitted in the front or street side yards. They could be located in the interior side or rear yard setback, provided they are five feet from the property line.
- Delete the existing exemption from fence height standards for recreation fencing.
- Create a new subsection in the Fences standards regarding fences for Athletic Court or Field
  - The standards would allow these fences to be permitted up to 14 feet in height provided their location, materials, and transparency comply with additional standards
    - The 14 foot height is recommended for two reasons. First, fencing industry standards for athletic court fencing vary between 10 feet and 15 feet. Second, Miami-Dade County utilizes a 14 ft height standard for "Fences for tennis courts; fences and walls for other recreational uses". A copy of the industry information and Miami-Dade County standards are attached for your reference.

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

§155.4303. STANDARDS FOR SPECIFIC ACCESSORY USES AND STRUCTURES

. . .

VV. ATHLETIC COURT OR FIELD

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	A	A	A	A	A	A	A	A	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				A	A	A	A	A

2. Definition

Athletic Court or Field as an accessory use is an area designed for tennis, handball, basketball, racquetball, or similar athletic activities on a property whose principal use is not Park or Plaza. This use does not include a basketball hoop.

3. Standards

An Athletic Court or Field may be located in a required interior side yard setback or required rear yard setback provided they are located at least five feet from any interior side or rear lot line.

. . .

§155.5302. FENCES AND WALLS

. . .

D. Height Requirements for Fences and Walls

1. Applicability

. . .

b. Exemptions

. . .

~~ii. Recreational Fencing~~

~~Customary fencing provided as a part of a permitted tennis court, athletic field, or other recreational facility shall be exempt from the height restrictions of this subsection.~~

. . .

5. Fences for Athletic Court or Field

Fences provided as part of a permitted Athletic Court or Field may be allowed to increase maximum fence height to fourteen (14) feet provided they comply with the following standards:

a. The fence is not located within a required front and/or street side yard;

b. The fence is located at least five feet from the interior side and rear property lines;

c. The fence is at least 75 percent see-through;

d. The fence is located outside of the Rear Yard Corner Triangle as described in §155.5302.D.5.a, Fences and Walls Adjacent to Waterways; and

e. Chain link fences visible from adjacent right-of-way shall be vinyl coated.

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- WINDSCREENS & PRIVACY SCREENS
- SLATS PRIVACY
- POSTS & PIPE
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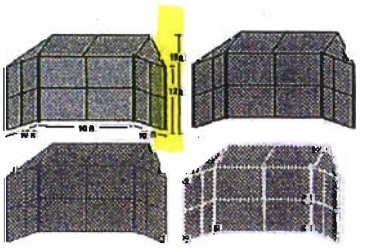

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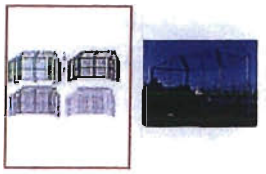

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properly compacted road base or non-expansive native soils. For Sand-Filled Turf courts, asphalt or concrete is recommended, although they can be constructed on properly prepared road base materials.
return to questions

What kinds of surfaces are available?
Acrylic color coatings are standard hard court surfaces. These are comprised of resurfacer coats for blending/smoothing and color coats for texture and aesthetics. Cushioned surfaces are installed on hard-court substrates, such as concrete or asphalt. The cushioned surface can either be an acrylic-and-rubber build up system or a textile product. There are several options for each type of cushioned surface, all with varying degrees of cushion. Sand-filled Turf surfaces can be installed on either concrete, asphalt or a properly prepared gravel base. These surfaces are finding a niche in the industry as a rehabilitative surface, being placed over severely cracked substrates. There are several manufacturers of these surfaces, each with certain attributes. Har-Tru Clay surfaces are comprised of aggregate bases, with crushed granite as the actual play surface. Most installations are new facilities, although it is becoming more common to rebuild existing facilities by overlaying the existing courts with a clay court system.
return to questions

What resurfacing options are available for hard courts?
Standard resurfacing includes crack filling and re-coating of the acrylic surface. Birdbath leveling may or may not be included, depending on their severity and the customers' budget. Structural cracks, although filled, will reopen, although in diminished form, due to thermal expansion/contraction. The sand-filled turf systems and some of the textile cushion systems can be installed over cracked substrates to prevent the cracks from interfering with play. These surfaces are free-floating over the surface area of the court to allow the cracks to continue movement without reflecting through.
return to questions

What size fences are required for tennis courts?
Recommended fence height for tennis courts is 10' or 12', with 10' high being the most common height. As the majority of tennis balls will bounce to the ends or the corners, the high fence is required at each end, returning along the sides for a minimum of 20'. At this point, the side fences can be reduced in height, or even eliminated, to allow for viewing onto the court.
return to questions

What types of fencing are recommended?
Standard fencing for tennis courts is a chain link fencing system. Options for chain link fencing include Galvanized chain link systems and Vinyl-coated chain link fence systems. Options for fencing can include wooden posts and rails with chain link fence fabric, wooden picket fences, or a soft-fence, which is a nylon mesh netting.
return to questions

Should an architect and/or engineer be involved with my project?
In instances where a total site development or reconstruction is to be done, a landscape architect can offer a total "vision" of the completed project. This can include plantings, irrigation, walls, etc. In instances where a tennis court is to be constructed on an existing landscaped lot, or if the owner has a plan for amenities and plantings, an architect would not be required. Although not required, a soils report prepared by a soils engineer can offer invaluable insight to sub-surface conditions, and recommend procedures to overcome any problems that may lie beneath. We do not generally include this cost in our proposals, but we do recommend that the owner consider such. Problems that may be encountered might be expansive soils, underground springs, or substantial organic materials that may deteriorate. Typically, a property owner has already had this evaluation done when constructing structures on it. We can prepare engineered drawings for permitting and construction, for the tennis court, drains, retaining walls, lighting, etc.
return to questions

Miami - Dade County, Florida - Code of Ordinances

Sec. 33-11. - Fences, walls, bus shelters and hedges.

(f) Fences for tennis courts; fences and walls for other recreational uses. Fences for tennis courts may be erected up to fourteen (14) feet in height if such fence conforms to accessory use setbacks. Fences and/or walls in connection with other permitted recreational uses, such as baseball backstops, handball courts, and the like, shall be permitted of a height necessary for the particular use if required accessory use setbacks are observed.

(Ord. No. 69-62, § 1, 9-17-69; Ord. No. 70-20, § 1, 3-11-70; Ord. No. 80-127, § 1, 11-4-80; Ord. No. 82-31, § 1, 4-20-82; Ord. No. 85-31, § 2, 5-7-85; Ord. No. 89-109, § 1, 11-7-89: Ord. No. 95-25, § 1, 2-7-95; Ord. No. 95-199, § 1, 11-7-95; Ord. No. 03-159, § 1, 7-8-03; Ord. No. 05-77, § 1, 4-19-05; Ord. No. 10-87, § 1, 12-7-10; Ord. No. 11-57, § 1, 8-2-11; Ord. No. 11-68, § 1, 9-20-11; Ord. No. R-13-09, § 1, 2-5-13; Ord. No. 14-06, § 1, 1-22-14; Ord. No. 15-128, § 1, 11-3-15; Ord. No. 15-143, § 1, 12-1-15)